

REPORT
on the EU Study on GI protection
for non-agricultural products

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1.- On 18 February 2013 a study, commissioned by the EU and conducted by Insight Consulting, REDD and OriGIn on the protection of non-agricultural products within the EU internal market, was published.

2.- The aim of the Study is to reconstruct the present framework of national and international protection of non-agricultural GI products in the 27 EU Member States, as well as Iceland, Liechtenstein, Norway and Switzerland and to offer indications as to the advisability of establishing a system of protection for these GIs at EU level (where, at the moment, the protection of PDOs and PGIs concerns only agricultural products and foodstuffs).

3.- After an introduction (pp. 16-20 of the Study) on GIs and their legal protection and an outline of the objectives and methodology of the Study (pp. 21-28), Part I of the Study (pp. 29-96) analyzes the means of protection of the GIs of non-agricultural products in EEA countries and Switzerland. The analysis begins by examining protection at national level and then protection deriving from international treaties and conventions. The analysis reveals a very fragmented framework of protection deriving from national laws, in that the States use, according to their different local legislation, national unfair competition, consumer deception and trademark laws, applying them to unlawful uses of non-agricultural GIs. Several countries have *ad hoc* laws for the protection of a product or type of product and 14 States have a *sui generis* national GI law for the protection of all non-agricultural GI products. The Study highlights the fact that this set-up is rather unsatisfactory,

given that: laws on unfair competition and consumer deception run the risk of focusing too much on consumer protection and not enough on producer protection; trademark laws run the risk of not being completely in line with the type of protection required for GIs; and *sui generis* national laws are, in the absence of harmonization, so different that it is difficult for producers to use them and such laws end up creating “additional barriers to the protection of non-agricultural products bearing a geographical name”. The Study then assesses the possibility of international protection of non-agricultural GIs on the basis of the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, the Madrid system for the International Registration of Marks, the Lisbon Agreement for the Protection of Appellations of Origin and the TRIPs agreements, the CTM Regulation and bilateral agreements between States.

4.- Part II (pp. 97-111) of the Study contains data on the infringement and imitation problems of non-agricultural GIs, giving examples of types of infringement, outlining its financial consequences and indicating a number of actions adopted by Member States in addressing it.

5.- Part III (pp. 112-149) analyzes from an economic perspective the protection of non-agricultural GIs – examining product types, the enterprises involved and their size, employment data in the sector and product sale data – to reach the conclusion that “better protection would maintain local identities and traditions linked to these products as well as traditional knowledge associated with their production. The introduction of a better protection tool for non-agricultural GIs at the EU level could also have positive effects on a large majority of the analyzed products. It is certainly an important socio-economical issue for several remote regions where many of these products are manufactured, as well as for young and female workers seeking local job opportunities. Pressure of increased competition is experienced by a large amount of enterprises in our set of products, and tends to rise in the context of globalisation and the increase of international trade. The need for a better protection tool should therefore be taken into consideration in the near future”.

6.- Part IV (pp. 150-275) gives the results of a wide-ranging stakeholders’ survey on the needs and expectations connected with possible protection at EU

level of non-agricultural GIs. The survey, which involved producers, public bodies and private bodies of the States considered by the Study, shows that most respondents know about the existing systems of protection of the names of non-agricultural products but, at the same time, consider these means of protection to be unsatisfactory and hope for broader protection of the GIs for these products, indicating a preference for uniform GI protection for non-agricultural products at EU level.

7.- The Study concludes with Part V (pp. 276-328) which outlines the possible options for the creation of a uniform system for the protection of GIs for non-agricultural products in the EU. The conclusions of the Study are as follows:

- i) the EU is advised to adopt laws protecting non-agricultural GIs and not to limit itself to a “soft law approach” consisting of mere recommendations, communications and guidelines. It is advised to adopt initiatives which lead to harmonisation and to the “creation of a new unitary title of protection for non-agricultural GI products across the EU”;
- ii) the preferable legal instrument is an EU Regulation which establishes a unitary system at EU level, of an exclusive nature and therefore without the possibility of there being parallel protection of non-agricultural GIs at national level. The Study specifies that the system must be “one single horizontal legal instrument which would allow for the protection of all types of non-agricultural products bearing a GI name”;
- iii) protection should be limited to product GIs excluding, at this stage, service GIs;
- iv) possible provisions of the new EU Regulation may concern: using only the GI definition and not the DO definition; the mandatory registration of the GI name and the creation of an EU register for non-agricultural GI products; the possibility of registering not only geographical names but also other traditional denominations, excluding, in any case, generic names; a single-step EU level registration procedure without previous national steps; the need for a well-defined specification file; the need for a clear strong link between the product and the geographical area; the creation of a compulsory independent control system; provision for extensive *ex officio* legal protection that would prohibit the use of the registered GI name by non-right-holders, even when the name is translated, accompanied by an expression or a delocalizer, and in domain names; the creation of clear provisions on the relationship between trademarks and GIs and between homonymous GIs; entrusting management of the system to an Office – preferably the OHIM.

8.- Following publication of the Study, the EU organized a hearing on 22 April 2013. Dr. Volker Schoene, Member of the SC Q220, participated in the hearing, on behalf of GRUR, the German branch of AIPPI. Representatives of the EU Commission, of WIPO, of the authors of the Study, of national trademark offices and of producer organizations spoke at the hearing. The opinions expressed were in favour of GI protection also for non-agricultural products. At the end of the hearing the EU Commission said it intended to launch a debate on extension of GI protection also to non-agricultural products.

9.- The SC Q220 will continue to monitor developments at European level concerning the possible extension of GI protection to sectors other than that of agricultural products. It would also be advisable for a SC Member to participate on behalf of AIPPI in any future hearings or meetings which may be organized by the EU. For that purpose it is suggested that contact be made with EU bodies so that AIPPI is always informed in good time of any initiatives in this regard.

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