



GREEN PAPER

A possible extension of geographical indication protection of the European Union to non-agricultural products

ANSWERS of the Hungarian Association for the Protection of Industrial Property and Copyright

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1. Do you see advantages or disadvantages in the currently diverse levels and means of GI protection for non-agricultural products in the different Member States of the EU? Please explain your response.

- An advantage is definitely that some, even if diverse level and means of GI protection are already available for non-agricultural products in the Member States, prior to an EU-level protection. Another advantage lies in that the different means of protection at national level provide the possibility of the enforcement of rights in relation to geographical indications of territorially limited significance, not claiming cross-border or EU-wide protection. These advantages, however, are not in contraposition with the advantages and potential need of a harmonised protection of geographical indications at EU level. It may also be noted that some harmonisation has been subsisting on the legal basis of Part II, Section 3 of the TRIPS Agreement.

2. Do you think that enhanced and harmonised EU GI protection for non-agricultural products, at EU level, could have positive economic effects in the internal market as set out above?

- We think yes. The GI protection at EU level would provide more efficient enforceability of rights against unauthorized and fraudulent use of the protected geographical indication, bringing about the intensification (enhancing the value) of the intellectual property right.

- In this connection, we also agree with the predication that an EU-wide GI protection guaranteeing the reputation and quality of a non-agricultural product enjoying protection throughout the EU could help producers to access promotion funds, investment aid and facilitate better access to trade fairs. It could also increase the efficiency of the organisation and management of the protected geographical indications, improving thereby the reputation of the GI and bringing more publicity to the region.

- Additional economic preference is likely from the perspective of employment, keeping the jobs even in less developed economic areas, as the production of GI-protected goods, due to the inherent link between the product and the territory, cannot be moved away from the region of origin to other countries or regions.

- A secondary beneficial output can be the development of tourism and cultural activities in the region of possessing a famous GI.
- From the consumers' perspective, a GI protection at EU level can provide a transparent and reliable information and guarantee of the origin and the expected (defined) quality of the GI-protected goods in the internal market.

3. Do you see adverse effects such protection could have on the EU economy?

- We do not see adverse effects of GI protection at EU level on the EU economy.

4. Do you consider that a harmonised EU GI protection for non-agricultural products could benefit consumers?

- From the consumers' perspective, a GI protection at EU level can provide a transparent and reliable information and guarantee of the origin and the specified quality of the GI-protected goods. The consumer in the internal market shall know with higher certainty that the product bearing a protected geographical indication originates from the given region and its quality complies with the expected characteristics and quality.

5. Do you see potential negative consequences for consumers?

- We do not see negative consequences for consumers.

6. Do you see potential benefits or disadvantages of harmonised EU GI protection for non-agricultural products on EU trade relations with third countries? If so, where?

- In case the EU appears as a monolithic unit in the trade relation with a party of a third country, it shall be important to emphasize to the trade party that although the GI protection is EU-wide, the geographical indication and the particular features and quality of the product bearing a GI belong to a specific location, region or country of the EU, which shall be the place of origin of the protected goods. It is important that the trade partners of third countries see that the product authentically bearing the GI is the only lawful alternative of the protected good within the common market.

7. Do you believe that harmonised protection for non-agricultural GIs at EU level would help preserve the traditional cultural and artistic heritage reflected in the eligible products? Please explain your response.

- We think that an IP protection, be it national and/or at EU level, helps to preserve exclusive (in case of geographical indications quasi-exclusive) rights, whereby it supports preserving traditional cultural and artistic heritage reflected in the products

8. Would such protection contribute to building social capital in the areas of production?

- An EU-wide GI protection guaranteeing the reputation and quality of a non-agricultural product enjoying protection throughout the EU could help producers to access promotion funds, investment aid and facilitate better access to trade fairs. It could also increase the

efficiency of the organisation and management of the protected geographical indications, improving thereby the reputation of the GI and bringing more publicity to the region.

- Additional economic preference is from the perspective of employment (keeping the jobs even in less developed economic areas), as the production of GI-protected goods, due to the inherent link between the product and the territory, cannot be moved away from the region of origin to other countries or regions.

9. Do you believe that harmonised EU GI protection for non-agricultural products could help producers defend themselves against imitations and abuse? Please explain your response.

- We think yes. The GI protection at EU level would provide more efficient enforceability of rights against unauthorized and fraudulent use of the protected geographical indication throughout the whole territory of the common market.

10. How could competing producers protect themselves against an over-reach of GI?

- We think that the authorized producers of goods bearing a protected GI keep a platform of common interest, namely to improve the reputation and the value of the geographical indication they use, by way of cooperation in protecting/enforcing the GI against unauthorized third parties, by maintaining and improving the special/traditional characteristics, features and quality of their goods, and preferably by way of concerted advertising and promotion. The competition between competing authorized producers of goods bearing a protected GI (rightful competitors) may show itself in the competition in quality, effectiveness of marketing and productive efficiency.

11. What do you think of current alternatives to harmonised protection for non-agricultural GIs?

- The current alternatives to harmonised protection for non-agricultural geographical indications, the legal basis of which can be i. e.

- geographical indication protection at national level,
- International Registration of Appellations of Origin (under the Lisbon Agreement),
- registered certification marks,
- registered collective marks,
- the prohibition of unfair competition,
- the prohibition of consumer deception,
- bilateral/multilateral agreements,

provide an enforceability of GI rights at national level (optionally, alternative dispute resolution) which may be efficient in some territories, but it is of course hardly effective for providing a sufficient protection throughout the common market. It is also notable that the costs of simultaneous legal actions against infringers (or against the same infringer in several countries) on similar or even different legal basis, may be a significant financial burden for a right-holder.

12. If a new system was developed at EU level, should this protect GIs that cover non-geographical names which are unambiguously associated with a given place?

- We think yes.

13. If so, how could be the system ensure that such protection does not affect the rights of other producers?

- Among other adequate means, by the circumspect definition of the potential applicants and by means of transitional provisions in respect of lawful earlier rights obtained in good faith.

14. Should similar protection also cover symbols such as the contours of a geographical area? If so, under what conditions?

- We think yes, provided that the figurative sign (symbol) is characteristic and sufficiently distinctive (it is distinctly associated with the geographical area and it cannot be confused with other signs and symbols), and the GI protection shall not restrict third parties continuing lawful/fair use of their maybe similar signs.

15. Do you see a need to add any further exceptions to GI protection other than those already provided in TRIPS? Please explain your response.

- We think that further exceptions would be probably justified. There should be examined potential justification of exceptions both in view of local (territorial) and language-based circumstances (including accident conflicts), and in view of products categories. In addition, we think that there should be left open the possibility of subsequent introducing of further exceptions, provided the necessity thereof occur.

16. Do you see a need to differentiate between various protection schemes depending on the categories of non-agricultural products involved (sectoral approach)? If so, please explain why.

- We think that differentiating between the protection schemes of product categories is not definitely important, but there might be considered a differentiation depending on the relevancy of the strictly geographic conditions/factors (geological and hydrological factors, soil, climate etc.) against the complex of human/traditional and geographical factors. According to the Hungarian sui generis model [similarly to that provided by Regulation (EU) No 1151/2012 of the European Parliament and of the Council], there are two types of registrable geographical signs: protected geographical indications ('PGIs') and designations of origin ('PDOs'), distinguished according to the essential role of the natural geographic factors and, respectively, the complex of geographic and human/traditional factors of the geographical area in the specific characteristic, quality and reputation of the product bearing the GI.

17. Do you think some products should be excluded from GI protection at EU level? If so, please specify.

- In equivalency with trademark law, goods which are contrary to public policy or to accepted principles of morality, shall be excluded from geographical indication protection at EU level.

18. How strong should the link be between non-agricultural products and their place of origin, in order to qualify for GI protection in any new system?

- We think that, in order avoid undue restriction of third parties' (competitors') interests, there should be required a strict link between product and territory.

19. Should a new system allow for two types of link (one stronger than the other) between non-agricultural products and their area of origin?

- On the one hand, we do not see an essential difference between the content of said types of GI protections distinguished on the basis of the link be between products and their place of origin (i. e. between PGI and PDO). On the other hand, those differences are not definitely unequivocal. Therefore, we do not think that the differentiation of two types of geographical indication protection is necessarily grounded.

20. Should there be differences depending on different types of products? Please explain.

- In case of non-agricultural products the link between the quality and characteristic features of the product and the geographic area is typically not that close like in case of agricultural products, although there are some prominent exceptions, like special raw materials, minerals, building stones (e. g. granite, marble), natural spa etc.

21. Would a quality benchmark make sense for non-agricultural products?

- We think, yes.

22. How could such benchmark be defined?

- Benchmarks should be defined by competent local authorities.

23. Do you agree that there would be a need to check whether the specific characteristics, quality and origin of a GI are maintained during the whole period of protection? Please explain.

- We agree with the provision of regular checking of the characteristic features, the quality and even the geographic origin of the products bearing a protected GI.

24. How do you think specific characteristics of the product should be defined to ensure quality and geographic origin meets the required standards, while not limiting innovation?

- Specific characteristics of the product should be defined in a specification which shall be the substantive part of an application for GI protection.

25. Should 'quality, reputation and other characteristics' be required in order to obtain GI protection for non-agricultural products? If not all, which of these elements do you think should be required? Please explain your choice.

- We think that GI-candidate products should be required to have reputation and either some special characteristics/features or a definite quality.

26. What should a product specification include? Should minimum requirements be set? (For example, relating to frequency, method for selecting products, and parties involved in different production and distribution stages.)

- It really depends on the kind of product. For example, in case of a mineral, it shall define the natural source (the specification of the geographic place where it can be exploited and the required quality and/or the most significant unique characteristics of the mineral), while in case of an industrial product there should be specified raw material, the steps of process of manufacture etc.

27. Would harmonising national legislation be sufficient to effectively protect GIs for non-agricultural products across the internal market, or do you consider that a single EU-level protection system is required?

- As set out above in connection with other questions, we think that an EU-level protection would have essential advantages.

28. If you are in favour of a single EU system, should national systems of protection (e.g. the current sui generis national laws) continue to coexist? Please explain.

- Yes. We think that national/regional sui generis laws (and also said other means of the protection of geographical indications have *raison d'être*, even in coexistence with a protection at EU level.

29. If a new system were to be developed, do you think there should be a registration process to protect a non-agricultural GI?

- Yes, we think that a registration system would be necessary, it would support the efficiency of the new system and the enforceability of the protection.

30. Do you think that the potential costs of a system of registering GIs outweigh the costs of a system without registration?

- Not definitely. A registration system is certainly expensive, but in lack of an authentic registration system there occur significant plus costs, for example in connection with obtaining authentic information and definitely in an enforcement action, too.

31. Do you think the registration process should involve a national element, e.g. checking compliance with product specifications, indicated geographical area, quality, reputation etc.?

- Yes, we think that the cooperation of competent national authorities and/or authentic professional organizations would be indispensable.

32. *If a new system is created, should producers and their associations be the only people allowed to apply to register non-agricultural GIs, or should other bodies be allowed to apply? If so, which ones?*

- We think that not only producers (producer's associations, representative bodies etc.), but also territorially competent organizations, competent trading associations, municipalities and other local authorities and even governmental bodies should be potential applicants

33. *Should individual producers be allowed to apply?*

- In reasonable cases and under well-defined conditions, we would not rule out this possibility.

34. *If a new system were to be created, would you agree that an objection process should be included and that it should be open to the same type of interested parties as under the agricultural GI rules?*

- We agree with the necessity of the inclusion of an objection process in a new system.

35. *Should protecting non-agricultural GIs at EU level by registration require the payment of a fee?*

- We think yes.

36. *What level of registration fee would you consider to be fair?*

- We think that the fees shall not be higher than necessary to discourage inadequate, frivolous or for other reasons chanceless candidates, so that it shall be payable by applicants having limited financial capability, too. We would not close out the options of a reasonable differentiation between applicants of different capabilities, or the introduction of some subservience system.

37. *What scope of protection should be granted for non-agricultural GIs in the EU?*

- We would prefer a higher level of protection for registered geographical indications. Our position is that a registered GI should enjoy protection against any confusing similar indication, including also the likelihood of association, even if the use of the objected term does is not expressly deceiving.

38. *Should the protection granted to non-agricultural GIs match the safeguards already provided to agricultural GIs at EU level. If so, how closely?*

- We think that the application of the safeguards provided to agricultural GIs at EU level would be reasonable for the geographical indications of non-agricultural products, too.

39. *Would you prefer a system to monitor and enforce non-agricultural GI rights that was exclusively private, public, or a combination of public and private? Please explain, taking into account, if possible, the effectiveness and costs of action to enforce rights.*

- For authenticity and efficiency considerations, we would prefer public control and enforcement system, with the optional possibility of alternative dispute resolution and means of monitoring.

40. *In your opinion, should GI protection for non-agricultural products be unlimited in duration, or limited with the possibility of renewal? If you suggest a limited duration, how long should this be?*

- We think that the term of protection should not be limited. Nevertheless, there might be a reasonable option to prescribe a mandatory control of use after the expiration of some time, e. g. 10 years, whereby the protection should be consolidated to unlimited term, or revised if necessary, or cancelled if it is found that the geographical indication does not meet the requirements of GI protection for any reason.

41. *Do you agree that there should be the possibility to cancel a GI after registration?*

- Yes, we agree.

42. *Who should be allowed to apply to cancel the GI?*

- Any private or legal person, professional bodies, local authorities or governmental bodies with a substantiated lawful interest should be allowed to file a proposal (application) for cancellation.

43. *If a new system were to be established, would you agree that a cancellation process should be introduced, with the same terms and conditions as for agricultural GIs?*

- Yes, we agree.

44. *Do you think that GIs and trade marks should be subject to the pure 'first in time, first in right' principle (i.e. the prior right always prevails)?*

- No, we think that a mechanic application of the 'first to file' principle is not adequate in these conflicts. Earlier rights as well as traditional and even national and probably other relevant aspects shall be also taken into consideration. Under given circumstances, earlier trademarks might be declared invalid because of a non-reparable conflict with a geographical indication (even with a non-registered GI), and vice versa, under reasonable conditions a trademark can also be a relative ground for refusal or a ground for cancellation of a geographical indication.

45. *Should GIs prevail, in certain circumstances, over trade marks? Please explain.*

- In certain circumstances yes. For example, in case of a geographical indication (either registered or non-registered) used for some traditional products in the geographic area, the

protection of a registered trademark covering similar goods cannot be enforced against the geographical indication, that is the trademark owner shall not be able to enjoin authentic producers and distributors of said traditional product from using the geographical indication on it, nor can he successfully oppose the registration of the GI.
