

Economic aspects of geographical indication protection for non-agricultural products at EU level

Minutes of the workshop

18 November 2019



The meeting took place on 18 November 2019, 10:00 – 16:15, in Brussels in the Berlaymont building.

1 Opening

The meeting was opened by Ms. Amaryllis VERHOEVEN (DG GROW). In her introduction she stressed that the Commission intends to improve our intellectual property rights system, so that it works better for companies and especially for SMEs. Specifically, the workshop looks into the potential of geographical indication (GI) protection for non-agricultural products. Already in 2013, a study on the legal aspects of GI protection was published, which concluded that there exists a very diverse landscape of legal protection mechanisms in Europe. This was followed up by a public consultation in 2014, which showed a lot of interest in and support for GI protection.

In order to further progress, the European Commission commissioned a study to **analyse the economic impacts of GI protection for non-agricultural goods**. This study looks into the current landscape of GI protection, other protection mechanisms, their advantages and disadvantages while taking both the producer perspective and the consumer perspective. The study does not look into international aspects such as trade nor is it an impact assessment looking into potential policy options. This would be part of any follow-up. As part of this meeting, the contractor presents the study and then finalises their work based on inputs from stakeholders. Finally, Ms VERHOEVEN mentioned also other relevant work, for example a study launched by the European Parliament and one by the Max-Planck Institute, before handing over to the moderator of the meeting.

Mr. Harrie TEMMINK (DG GROW) thanked his colleague for the introduction before outlining the agenda of the day and giving the floor to the contractor.

2 Study on Economic Aspects of Geographical Indication protection at EU level for non-agricultural products

The project manager, Ms. Julia RZEPECKA (VVA) opened the presentation by introducing the project team. She also excused Ms. Sara KETTNER (ConPolicy) who could not join due to sickness and instead would present her part on the behavioural experiments via voice recording. She then introduced the outline of the presentation before handing over to her colleague.

2.1 Presentation of research methods

Mr. Frithjof MICHAELSEN (VVA) gave an overview to participants of how the study team arrived at 25 products after drafting a longlist of over 300 products. The goal of selecting products was to avoid a purely theoretical research and instead to allow for practical consideration. The products should however not be seen as representative, but as reflecting different types of products and IP protection schemes. In order to facilitate comparison, the 25 products were grouped along five categories (knives, jewellery, lace, porcelain & ceramics and furniture). The products are from ten different Member States.

Thereafter, Mr. Michael FUENZIG (Ecoyrs) presented the approach to analysing the producer perspective. A literature review provided the theoretical framework for the analysis. There is a wealth of literature, however there are some gaps: the majority reflects only on GI protection for agricultural products and often the literature does not look into causal links between the protection mechanism and potential outcomes. As a second step, the contractor interviewed almost 100 producers and stakeholders from municipalities, regional development agencies, and similar across the 25 products. This second part was extremely interesting as it showed the large differences between clusters. Some like Solingen have huge production facilities, while others are mainly individual artists.

Mr. MICHAELSEN continued by presenting the approach to the Mystery shopping. The aim of this task was to see how easy customers could distinguish authentic products from non-authentic ones. Authentic is defined here as products that use their geographical link in marketing and are in fact produced in the region, while non-authentic ones are defined as those that falsely claim to be from the region. The study team visited 102 stores, which varied a lot in their set-up. Some were small tourist shops, others were dedicated stores by producers only selling their brand and others were part of larger department stores. The information gathered in the mystery shopping was then put into research

protocols and a database to systematically compare type of products and shops. As a final step, for each product a product fiche was developed which will be part of the final report.

Thereafter, Ms. KETTNER's recorded presentation focused on the behavioural experiments. In it she presented the six different stages of the experimental set-up. She also highlighted the scope: interviews were held in 6 countries with about 500 participants each that were equally distributed across gender and ages. These respondents, replied to various questions on products for each of the five product categories. In these they tested willingness to pay for authentic and non-authentic products, how well consumers could identify authentic products, how often they could be misled and how a GI label or trademark would change their responses.

After the presentations, stakeholder had the chance to ask questions to the contractor.

Ms. Audrey AUBARD (Association Française des Indications Géographiques Industrielles et Artisanales) wondered why no online markets were considered in the mystery shopping. In response, Mr. Igor TARANIC (VVA) explained that these were looked into when doing the preliminary research and selecting the final 25 products. This will also be covered in the final report. Ms. Malwina MEJER (DG GROW) added that the European Commission decided to not include this in the scope of the study as authenticity is difficult to identify online and would complicate the research. However the Commission is aware that much fraud is happening on online markets.

On a question by Mr. Luc HENDRICKX (UEAPME), Mr. FUENZIG elaborated on the selection of stakeholders for interviews. He explained that this was product specific, but that there was a clear focus on regional and local stakeholders over national ones. Ms. RZEPECKA added that interviews were focused on producers and in addition on other stakeholders that could provide supporting information.

Mr. Bernard O'CONNOR (NCTM O'CONNOR) requested some clarification on the concept of willingness to pay. The study team chose to measure it via surveying consumers, however prices depend also on producers and their need to cover costs. Mr. TARANIC explained that the study team also collected some evidence on this from the producer interviews.

On a question by Mr. Andrea ZAPPALAGLIO (Max-Planck-institute for Innovation and Competition, Germany) on setting up samples and considering legal specifications, Mr. FRITHJOF explained that one of the main criteria for selecting products was the legal framework in countries and to have some representation of different legal specifications.

Ms. Karin DRDA-KÜHN (Kultur und Arbeit e.V., Germany) stressed the importance of cultural tourism in many regions and the potential benefits this sector could have from GI recognition. Mr. FUENZIG agreed and noted that this was considered in the producer interviews, but benefits are very product specific.

Finally, Mr. HENDRICKX mentioned that is important to consider the context when doing behavioural experiments as some products require different motivation for consumers to be willing to buy them before considering their willingness to pay. Mr. TARANIC replied that this was partially considered as respondents were also asked questions to provide more context for their potential motive to buy.

2.2 Presentation of the findings of the study

Mr. TARANIC introduced the second session on the conclusions from the study. The findings are presented first by workstream and then by research question. Regarding the **mystery shopping**, he summarised that with one exception shops did not advertise geographical origin on the outside of shops. Inside the shops, presentation though differed normally between authentic and non-authentic products. Often authenticity was signalled by the logo of the producer. Most shops did not try to mislead and were open about differences between non-authentic and authentic products. However, there were 12 cases where similar names, logos or the presentation of authenticity certificate were used in a misleading way. There were no question from the audience.

The results from the **behavioural experiments** were according to Ms KETTNER the following: willingness to pay changes only between authentic and non-authentic products for medium and high price products, especially for experienced customers. There is no clear positive effect from GI or

trademark labels. The attributes mostly associated with authenticity are traditional skills, handmade, the company logo, the origin and the quality, while factory made products are not seen as authentic. Overall, if there is enough information, consumers generally are able to identify authentic products, however this can be a threat in case of misleading information.

It was questioned how the researchers dealt with the variety of products and the differences in typical consumers, which affects also willingness to pay. Mr TARANIC explained that screening questions established the background of respondents allowing the team to correct for this. Ms. AUBARD asked in this regard to include in the final report the willingness to pay according to certain consumer profiles.

The European Commission acknowledged that there are large differences between consumer groups and their behaviour. The study has different profiles to allow some comparison, but it was not possible to consider every aspect.

Ms. DRDA-KÜHN remarked that her organisation did similar research on domestic products and willingness to pay. She mentioned that the presentation confirmed their results. Ms. RZEPECKA explained that the research design was created by ConPolicy and then implemented by a market research company which has consumer panels for such research.

Upon a question by Ms. Cecilia NAVARRA (EPRS), it was explained by Ms. MEJER that in the set up of the experiments the GI and trade mark label solely conveyed authenticity, but simply added to the information that was already provided.

Mr. Muiris KENNEDY (The Design & Crafts Council of Ireland) inquired if GI would support premium pricing. According to the contractor, there were no observable price effects in the experiment, but that in some producer interviews (e.g. Solingen) price increases were observed.

Mr. FUENZIG presented then the outcomes of the **producer analysis**. One aspect noted was the difficulty in identifying the territorial link for non agricultural products as well as the difficulty for some producers to agree on a common product standard. Ultimately, producers have to agree on a lowest common denominator, which had the effect that in one case some producers relied more on their own brand name over the regional name. Setting these standards can also stifle innovation if set without any further considerations. Finally, GI protection can have secondary benefits from the cooperation between producers, from higher visibility and reputational benefits for the region. However, the need for cooperation can be a barrier and GI protection is sometimes seen as controversial internationally.

Ms. AUBARD stressed that there is a choice in setting standards and that from their experiences in France, GI protection properly done can account for innovation. Moreover, cooperation is needed anyway and can be beneficial for a cluster. Finally, complexity of enforcement is an issue across all IPR tools and not only GI. Mr. FUENZIG clarified that there is not much disagreement. Standards can be restrictive, but indeed they do not need to be. The point is to be aware of that when designing them.

Mr. O'CONNOR added that reputation is another possible geographical link besides traditional skills and raw materials. In addition, the question of ownership of the GI is important. Someone needs to own it for proper enforcement. Finally, certification trademarks are something that should be considered too. Mr. FUENZIG agreed that reputation is also a possible link, however it is difficult to define. And indeed GI protection is not cost-free, the required resources might pose an insurmountable challenge for some clusters. Regarding ownership, he explained that the collective structure of GI would allow any individual user to take enforcement action. Unfortunately, there were no producers relying on certification trademarks, so there is no information on them.

Mr. ZAPPALAGLIO appreciated the work done as it matches many of the findings in his own research, however some aspect such as the need for collective action should be seen as a strength of GI. Furthermore, exclusion of producers can also be a problem with GI protection.

Finally, stakeholders asked for some other related issues that were out of scope of the study, such as bilateral trade agreements facilitating enforcement and the link to the circular economy.

After this presentation by workstream, the study team presented the **results by research questions**:

1. A combination of several protection regimes seems to slightly reduce the availability of non-authentic products and misleading commercial practices. This applies in particular to combinations including GI protection;
2. *Sui generis* GI protection slightly limits the availability of the non-authentic products and misleading commercial practices.
 - a. It might increase the consumers' confidence in the products offered on the market.
 - b. It increases the level of information that consumers receive about the product.
 - c. In addition, *Sui generis* GI protection can help building the product's reputation.
3. The positive impact of *Sui generis* GI protection is primarily felt in three areas.
 - a. First, geographical indications have an impact on cooperation and coordination, providing several benefits to the cluster of producers
 - b. Second, geographical indications raise the visibility of the product and the region;
 - c. Third, geographical indications can raise the willingness to pay.
4. *Sui generis* protection of geographically rooted products can have specific value for consumers and producers that other protection regimes cannot provide.
5. The results of mystery shopping indicate that combination of several protection regimes limits the availability of non-authentic products and misleading practices slightly better than application of only one protection regime. Other IP regimes than GI do not provide such a strong territorial. But with the benefits of introduction of *Sui generis* GI protection come challenges, such as costs of regional cooperation among producers and costs of enforcement of protection regimes. In this sense, some producers might prefer to continue protecting their products with trademarks, individual and collective, product certificates and other protection mechanisms.

In a final round of questions, stakeholders confirmed that the results of the study are useful to them and that they are grateful for having had the opportunity to take part in the discussions. The overall positive conclusion on GI protection was also appreciated, but the question raised during the discussions should be taken in account for the final conclusions. The concern was raised by Mr. HENDRICKX that the study should have come earlier and that GI protection might be coming to late for some traditional products. Finally, Mr. TEMMINK explained that the next steps will be to finalise and distribute the study, but that any further step depend on the new European Commission.

In the **concluding remarks**, Ms. MEJER thanked the study team for their work and all participants for their contributions. She reminded participants about the scope of the study and that it cannot answer all questions. As a final remark, she added that the researchers should provide sufficient details on willingness to pay and the behavioural experiments in the report. In addition, the producer perspective should show the full picture before aiming to design an approach to introduce a GI label.

3 Panels

In the afternoon, two panel discussions took place.

3.1 First Panel – Geographical indications as a tool for local and regional development (Moderator: Ms. MEJER)

The panellists discussed the potential of handicrafts and raw material as a tool to promote regional development. In particular, question was raised whether product specifications constrained or promoted innovation.

Mr. ZAPPALAGLIO gave an overview of the differences between GIs and trademarks. He highlighted that owners of collective trade marks had more leeway in establishing the connection between the protected product and its origin, contrary to GIs and Protected Designations of Origin (PDOs) where the link is stricter. Another difference concerns the level of protection. Contrary to trade marks, GIs are protected also when the sign is evoked ("Bordeaux-style" wine). Trade mark protection depends on the risk of confusion. Finally, trade mark enforcement is in principle private, whereas GIs provide for a "quasi-public enforcement structure". Mr. ZAPPALAGLIO stressed that any decision on whether providing uniform protection to non-agricultural GIs at the European level will ultimately depend on practical considerations, such as cost and effectiveness of the system.

Ms. Joanna REJDYCH (Boleslawiec Handicraft Cooperative, Poland) described the characteristics of Boleslawiec ceramics, including the origin of the raw materials, the design and the production process. Ms. REJDYCH highlighted the importance of exports: some companies of the cooperative export a considerable part of their production. Also, Ms. REJDYCH gave an example of product differentiation. The design of the ceramics is adapted to the preferences of the export region, e.g. Asia and US. The ceramics designs are copyright protected. The designing is innovative, e.g. using 3D graphic programmes.

Mr. KENNEDY took the view that GI protection at EU level would be an advantage for trade and bolster regional and handicraft sectors. Mr. KENNEDY highlighted the innovativeness of these sectors. Innovation takes place regarding design, production and marketing (online distribution). Examples: Donegal tweed weaving developed from handwoven to power looms, Connemara marble is designed by 3D design modelling, one of the companies was among the first ones to use the Internet to sell jewellery in the US. In Mr. KENNEDY's view, the lack of intellectual property protection at EU level harms the traditional handicraft sectors. Counterfeiting, in particular online, puts local business and thus the development of skills at risk. GIs could play an essential role in developing a story behind the producers important for craft tourism. The protection through GIs would create a kind of "patriotism" with a positive impact on the production and the distribution of products.

Ms. DRDA-KÜHN explained that many local producers had prejudices regarding intellectual property and doubted its benefits. In particular, they lacked awareness of the advantages of GI protection. Ms. DRDA-KÜHN recommended to promote initiatives on raising awareness on GI protection training and sharing of best practices. Furthermore, Ms. DRDA-KÜHN stressed the value of bringing producers of traditional handicrafts and the tourism sectors together as well as gaining the support from employees' associations. Ms. DRDA-KÜHN called for a study demonstrating the added value of a GIs, a wide-ranging social media campaign accompanying for a pilot project on the development of local handicraft.

Following the panel discussion, Ms. AUBARD stressed the need of EU protection with regard to the high amount of export of the protected products. Ms. AUBARD indicated that in France, the introduction of a GI system promoted local industries and had resulted in young people returning to rural areas.

Ms. Covadonga PERLADO DIEZ (Spanish trade mark office) explained that, in Spain, producers often registered both a GI and a trade mark. GIs were registered as a trade mark when they included not only a word but an added figurative element.

Mr. THÉVENOT-MOTTET indicated that in Switzerland, a geographical name could not in principle be protected by a trademark. Therefore, it was difficult to directly compare the level of protection of trademarks and GIs. In Switzerland, a geographical trademark could be obtained. It had to be based on a *Sui generis* GI.

3.2 Second Panel – The challenges of monitoring rules on GI protection for non-agricultural products (moderator: Mr. TEMMINK)

The panel addressed the control and monitoring of rules protecting geographical indication for non-agricultural products. It was not to cover the enforcement itself (fight against counterfeiting).

Ms. Muriel SIRO (European Intellectual Property Office) gave an overview of EU trade mark protection through individual, collective and certification trade marks. Ms. SIRO highlighted that each kind of trade mark serves a different purpose: individual and collective trade marks indicate the commercial origin of a product or service, whereas certification trade marks serve as a guarantee for specific characteristics of the products. Certification trade marks amount only to about 1% of all trade mark applications. The EU trade mark regulation prevents the certification of a geographical origin. Collective trade marks may describe the geographical origin of goods and services, as long as they maintain a distinctive element. If the collective mark describes the geographical indication of the goods and services it covers, the regulations of use must contain the specific authorisation for anyone whose goods and services originate in the geographical area in question to become a member of the association that owns the mark. Trade mark holders have to control themselves the compliance with the regulation of use, otherwise they risk losing the trade mark. However, the revocation of a trade mark is rarely brought directly before the EUIPO on grounds of non-compliance with the regulation of use. Most commonly, proof of use is required during opposition procedures and it is not given correctly,

determining the revocation of the trade mark. In fact, trade mark holders must use their marks after 5 years from registration, otherwise the genuine use of the trade mark can be challenged.

Mr. Antoine GINESTET (Institut National de la Propriété Intellectuelle, INPI, France) highlighted that the French law on the protection of GIs for non-agricultural products defines the defence bodies i.e. “organismes de défense et de gestion”. The law imposes the private nature of such entity; in practice, they are often associations or syndicates. Their tasks include regrouping a representative set of producers, drafting the regulation of use (“cahiers des charges”) and collectively defend the GI. INPI has a supervisory function. In principle, the control functions have been delegated to the private sector. So far, 8 GIs have been registered, 2 are pending and more than 30 GI projects are present at various stages of development. Mr. GINESTET stressed the benefit of the GI for local businesses, since they can flexibly adapt to local contexts. Examples: With the protection of Porcelaine de Limoges, more ceramic painters moved back to Limoges. For the Burgundy stone, there was a previous collective trade mark which proved to be inefficient. In contrast, GIs are more efficient and less costly for producers. Mr. GINESTET concluded that GIs are a powerful instrument to develop business around traditional products.

Mr. Adrien TRUCAS (CERTIPAQ, France) indicated that CERTIPAQ is a certification body accredited by the INPI and controlled by the “Comité français d'accréditation (Cofrac)”. CERTIPAQ concluded contracts with the control and defence bodies “organismes de défense et de gestion” defined under French law. Producers approach CERTIPAQ and ask to be controlled. The key-tool that ensures fairness and effectiveness of controls is the ‘control plan’, which the INPI needs to validate. The control plan contains references to the GI product specifications, determines the scope of control and regulates measures for cases of non-compliance. In case of non-compliance, operators must provide evidence of implementation of corrective measures within one month from the control, otherwise the certification is suspended. If no corrective actions are implemented within six months, CERTIPAQ withdraws the certification. In terms of costs, the defence organism bears the cost of the control-plan and the single producer bears the cost of the control itself. CERTIPAQ works with 170 control and defence bodies and controls more than 300 products specifications. The main challenge for CERTIPAQ was to work outside the food and agriculture sectors. The producers too, had to learn what the certification provided by CERTIPAQ consisted of. Until now, producers had been used to control the production process rather than the quality of the product itself.

Mr. Gianluca GALIMBERTI (Mayor of the City of Cremona, Italy) stressed that the ancient tradition of Cremona's violin making is of crucial importance for the economy of the city. Currently, Cremona's violin heritage has two layers of protection: the national collective trade mark and the UNESCO heritage recognition. With regards to the collective trade mark protection, the regulation of use sets forth that crafters need to be established in Cremona for at least 5 years and that violins need to be hand-made according to certain ethical principles dictated by the specifications. The weaknesses of this collective trade marks lies in its lack of representativeness (only 55 handcrafters out of 167 have joined the consortium) and in the lack of minimum amount of production. Only 7% of the violin production from Cremona is produced according to the regulation of use of the collective trade mark. Ms. Benedetta UBERTAZZI (Legal counsel for Cremona Liuteria, Aggregate Professor of EU Law at the Milan-Bicocca University, Italy) explained that, from a legal point of view, the regulation does not impose that the entire production of violins meets the regulation's requirement, so producers are free to produce non-compliant violins, as long as they are not sold under the trade mark. Mr. GALIMBERTI stressed that the crucial element in Cremona's violin making is the traditional know-how combined with the community of the city of Cremona. For this reason, GI protection would represent the most suitable legal instrument for Cremona's case, as it would merge the territorial aspect with the community aspect. Mr. GALIMBERTI stated that Cremona would be ready to serve as a European pilot project for non-agricultural GI protection.

Mr. O'CONNOR took the view that best controllers are the producers, since they protect their reputation. On the other hand, Mr. O'CONNOR stressed the need for a public control. The public element is what differentiates GIs from trademarks, the idea being to recognise publicly a community and its tradition. Mr. O'CONNOR stressed the importance of GIs in view of international aspect, particularly regarding obligations resulting from TRIPs. Finally, Mr. O'CONNOR observed that EU legislation about food GI has seen a change of perspective over the decades. In the first version of the regulation, recitals pointed out that the objective was the freedom of movement of goods, whereas now (last version of the regulation dated 2012) the focus has shifted to preservation of the cultural and gastronomic heritage.