

The Organization for an international Geographical Indications Network (oriGIn)

rue de Varembe 1, 1202 Geneva – CH

Identification number in the register: 2292357633-53

oriGIn contribution to the Green Paper on

“Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products”

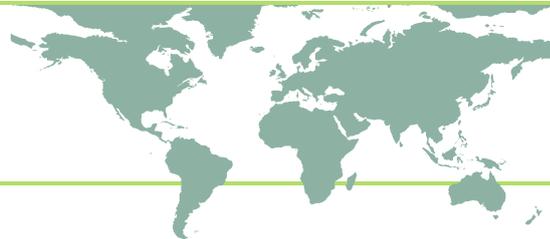
The Organization for an International Geographical Indications Network (oriGIn) is an international network of geographical indications (GIs), representing 350 organizations and over two-million producers from some 40 countries (<http://www.origin-gi.com>).

oriGIn advocates for a more effective legal protection and enforcement of GIs at the national, regional and international level and promotes the recognition of the fundamental role of origin products in the sustainable development of local communities.

Question 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.

The results of the *Study on geographical indications protection for non-agricultural products in the internal market*, published by the EU Commission in 2013 showed the potential of non-agricultural GIs in the EU.

Nevertheless, the lack of a harmonized legal framework at the EU level is detrimental to the protection of non-agricultural GIs. The different levels of GI protection for non-agricultural products are a serious burden for producers and for consumers. On the one hand, producers lack a tool to communicate the product characteristics and production attributes to consumers and buyers. The absence of a unitary title of protection for non-agricultural GIs in the EU does not facilitate a common understanding nor a recognition of the value and uniqueness of non-agricultural products bearing a GI. Consumers can be easily misled. On the other hand, without a coherent and transparent set of rules there is not a uniform protection of non-agricultural GIs as an intellectual property right in the Union. Thus, the enforcement is very costly for producers.



A common and single protection system would enable producers to pursue a consolidated protection strategy which would allow to save costs, get a much speedier protection for the GI name. Furthermore, non-agricultural GIs could be included in the EU GI policies and be part of free trade agreements negotiated by the EU with third countries. In the current situation, EU producers have to bear any cost for protection and promotion of their GIs.

Question 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?

There can be no doubt that enhanced and harmonized EU GI protection will have positive economic effects in the internal market as the experience of the existing EU Quality Schemes proved.

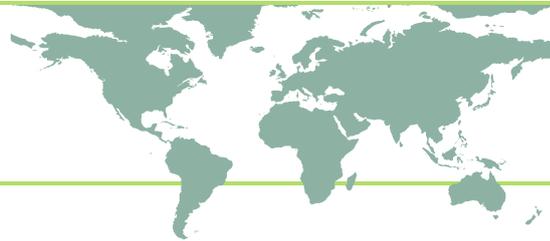
The EU GI protection for non-agricultural products will not only strengthening the local anchorage of production on long term but also re-launch a sector challenged by increasing misappropriations and imitations and attract investments by offering a better return (GIs for agricultural products provide a price premium estimated to be around 2.3 times). Producers will have a competitive advantage to better place their products on the market as well as a legal tool to reduce losses due to counterfeit products increasing their revenues.

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

The establishment of a new system will require adjustments but we do not see possible negative effects on the EU economy. As a matter of course, free-riders (also EU based ones) could not benefit anymore from the unlawful use of certain GIs. However, this is a question of fair practice and behaviour and consumer protection.

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

EU Consumers are familiar with the GI concept and consider GIs as a guarantee of quality and traceability for which they are ready to pay more. A harmonized system would clearly benefit consumers. It will help to prevent fraudulent use of GIs in the market place and will provide



consumers an assurance that the products originate from the region they believe and that the product has the expected characteristics and represents the values that are linked to the GI in question reducing risk of deception.

Question 5: Do you see potential negative consequences for consumers?

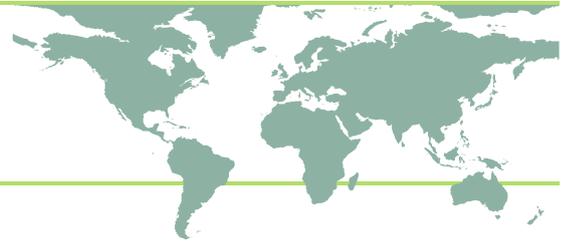
We do not see negative consequences. It has been seen in the agricultural sector that the protection of agricultural GIs has led to increased competition between similar classes of products and the development of new names and brands. Greater competition between similar classes of products avoids monopoly profits.

Campaigns should be envisaged to building general awareness and favourable quality perceptions of the new quality scheme for non-agricultural GIs and a possible new label to avoid any confusion in the consumers' mind. A label – if implemented – should be voluntary for the producers.

Question 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?

International treaties providing protection to GIs do not differentiate between agricultural and non-agricultural products, both covered. In this context, the extension of GI protection to non-agricultural products will make the EU legislation more coherent with the international legal framework and will strengthen the EU action to promote the GI concept. Most of the countries across the world already protect non-agricultural GIs in their legislations, including some relevant market with who the EU is negotiating bilateral agreements. A perfect example is the case of India, where 2/3 of GIs are for non-agricultural goods, mainly in the area of textile. For those countries, the absence of harmonised EU GI protection for non agricultural products is a big concern as their GIs can not be protected in the EU, which is often a major export market.

From a trade perspective, extending GI protection to non-agricultural products would facilitate the EU in trade negotiations making also the EU Quality Schemes more attractive to trade partners. Furthermore, a better protection will improve the market access of EU non-agricultural GI products to third countries. In this context, a harmonized EU GI system will set a uniform code of promotion



and protection for third countries facilitating also the understanding of consumers and stakeholders from other countries on protected names while seeking registrations or while exporting to the EU.

Question 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.

GI products are deeply rooted in the cultural heritage of local communities and are expression of traditional knowledge and know-how transmitted over generations. In this context, the extension of EU GI protection to non-agricultural products will help to valorise and preserve the knowledge reflected in the eligible products and therefore European traditions as well as the diversity of cultural expressions.

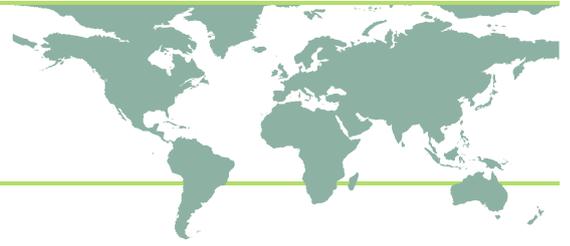
Question 8: Would such protection contribute to building social capital in the areas of production?

The GI system for its own specificities foster community level interaction increasing cooperation among economic actors encouraging the development of related economic activities: tourism, cultural initiatives (museums, festivals), commercial events (specific fairs, exhibitions). By involving local community and institutions, a GI product can increase productivity and add value to the economic system in the production area.

A harmonised EU legislation would help not only to protect the names which are facing misuses from imitations of lower quality products, but also to consolidate the associations of producers, the supply chain, together with the support of local authorities, in a inclusive way, because all the territory to which the name refers is concerned.

Questions 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.

From practical experience of our network, we know that harmonized EU GI protection for non-agricultural products will help producers to defend their GIs against infringers. The EU GI scheme



for agricultural products (Regulation EU n.1152/2012) ensures a strong level of protection to GIs and with the *ex officio* protection assigns to public authorities a clear active role in the enforcement of GI derived rights in the internal market. It helped tremendously to improve controls and reduced significantly the cost of enforcement for producers.

Considering that non-agricultural GI producers are almost SMEs with scarce resources, harmonised EU GI protection would undoubtedly respond to their need of protection and enforcement.

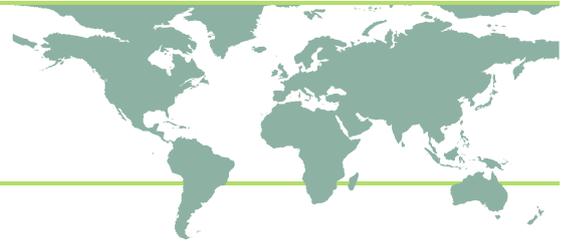
Question 10: How could competing producers protect themselves against an over-reach of GIs?

GIs represent a small percent of the production in a defined sector, competition is not at stake. In the market, the scenario for an over-reach of GIs is not realistic.

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

The existing legal means available present limits and seem not to be a valid alternative to the extension of the EU GI protection to non-agricultural products.

The different national and regional protection systems are cumbersome and make it difficult for the stakeholders to enforce their GI derived rights in the internal market. Unfair competition and consumer protection laws are difficult to be enforced in practice. The Community trademark system, the only Intellectual property tool available at the EU level, because of its specificities, make it difficult for producers to get protection (i.e. the name can be considered descriptive) and proved to be too costly for SMEs that represent most of non-agricultural GIs producers. Moreover, the trademark system, does not require any examination by a public authority as to the existence of a link between a product its quality or reputation and a specific place of origin, thus there is no guarantee for the consumers.



Question 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?

The new system should be consistent with the existing EU GI law and cover non-geographical names (i.e. traditional names, expressions) to avoid the exclusion of non-agricultural GIs that do not bear a geographical name. It will be important that the name is unambiguously associated to a specific product coming from a defined geographical territory.

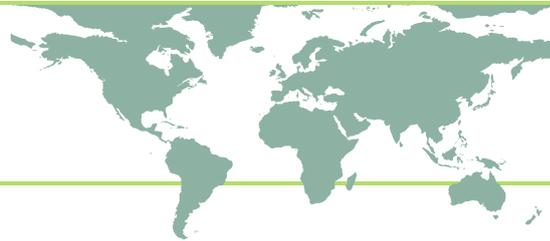
Question 13: If so, how could be the system ensure that such protection does not affect the rights of other producers?

To not affect the rights of other producers, the non-geographical name must be clearly linked to a certain region. The association filing for a non-geographical indication must be representative for the region and the product itself. The system should include provisions on the use of the protected non-agricultural GI. Any producer coming from the defined geographical area and respecting the product specification should be entitled to use the protected GI and producers located outside the designated geographical area should not be prevented to still produce and sell the good in question without the use of the protected indication.

The system should also include provisions to deal with generic terms and prior rights, notably trademarks and homonymous names.

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

The definition for GI of the Article 22.1 of the TRIPS Agreement refers to an “indication” which identify a good but does not require it to be a geographical name. Thus, indications such as symbols and contours should be available for protection when the GI definition and requirements for protection are fulfilled. Special provisions in relation to conflicts with figurative trademarks would have to be developed such that the level of protection provided by Article 13 of Regulation (EU) n. 1151/2012 on quality schemes for agricultural products and foodstuffs would be maintained also for indications.



Question 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.

There is no need to add further exceptions to those already provided in the TRIPs Agreement.

Questions 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.

The political and economic impact will be much more significant in the case of a single and harmonized protection scheme for all non-agricultural products in the EU.

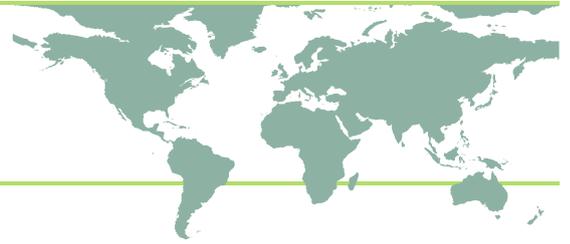
A sectoral approach would only add complexity to the EU GI system. It should be adopted one single instrument to protect non-agricultural GIs without any distinction based on product category. In this context, the new instrument should include wide criteria for protection to satisfy needs of different product categories and the competent registration authorities should be given the competence to apply those rules in a manner sufficiently flexible to accommodate different product classes.

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

We do not think that specific products should be excluded.

Question 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?

The link between the good and its designated area of origin should be strong and the tradition be provable over a significant period. The link can be constituted by the (raw) materials used, by a specific industrial or manual knowledge or by specified manufacturing operations as well as consumer expectations. By this, the product may be clearly differentiated from similar products coming from neighbouring regions.



A strong link will provide credibility to the system *vis-a-vis* consumers and other stakeholders as well as ensure local and social benefits to that area. However, some flexibility should be maintained to cover all non-agricultural products and simplify the access to third countries.

Question 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?

The implementation of the legal frameworks protecting GIs in many countries shows that the link with the geographical origin can be analysed on the basis of human factors, individually or combined with natural factors, for agricultural products and foodstuffs as well as for handicrafts.

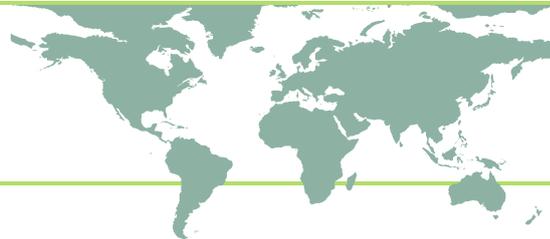
One can imagine that two categories of non-agricultural GIs can coexist as this is the case in the agricultural sector. We think, however, that it is difficult to apply the system for agricultural products as in most of non-agricultural GIs the existence of the link with the geographical origin will be based on know-how taken alone. The situation has to be scrutinized and if two categories of non-agricultural products can be clearly distinguished, two different types of GIs can be created. Differences can be accommodated in the different types of GIs: PDOs and PGIs.

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

There should not be any difference based on product category. See answer n. 16

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

GI protection should be conferred when products comply with the requirements included in their specifications. The quality and characteristics of a product should not be pre-determined by the legislator. Indeed, for certain non-agricultural products quality can be a very elastic notion and difficult to measure. The protection mechanism should be flexible enough and allow producers to rely rather on the geographic origin itself (production process, origin of the materials used etc.) of the product or, vice versa, on the inherent quality of the product.



Question 22: How could such benchmark be defined?

As already said, we think that it will be difficult to establish clear quality criteria for all non-agricultural products. If a producers association chooses to rely on quality standards for their GIs, it should be specified in the product specifications.

Question 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.

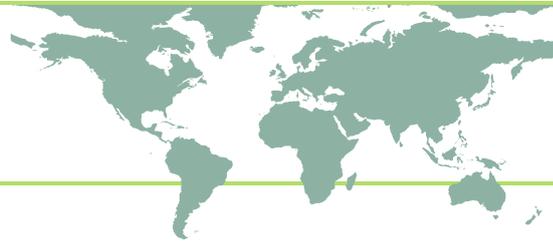
A monitoring system of official controls has to be established to ensure the verification of compliance with the specification of the protected GI during the whole period of protection. It will add value and enhances the reliability and trust of the system.

Question 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?

The characteristics of the products has to be defined in a product specification to be included among the requirements for grant GI protection. A provision to allow amendments to the product specification after registration should be also included to ensure the possibility to adapt the product to future needs and not limit innovation.

Question 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.

In order to be consistent with the TRIPs Agreement, “quality, reputation or other characteristics” should be the minimum conditions required for granting GI protection. However, from our point of view, it is not necessary to fulfill all the elements mentioned. It is likely that most non-agricultural GIs will seek registration on the basis of reputation linked to processing methods or manufacturing skills as the raw materials often come from other places. However the law should not limit the possibility to refer to, or base an application on, other qualities and other characteristics as new GIs must have a chance to get protection as well.



Question 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.)

The product specification must be as detailed as possible to allow any manufacturer seeking to comply with the specification the ability to do so. Minimum requirements, could be established to uniform the content and avoid excess or limits of information. It should provide relevant information on the geographical area, the link with the product, the description of the product, its characteristics and method of production, parties involved.

Question 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?

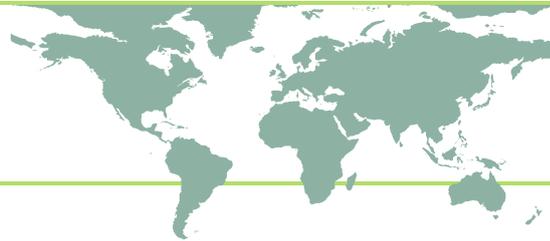
Harmonization or approximation of Member states laws would be difficult as their provisions differ significantly. A single EU-level protection system is required to secure a uniform legal protection for non-agricultural GIs at the EU level. However, to be consistent with the EU GI System, it is important that the new instrument to protect non-agricultural GIs will be open to non-EU GIs, allowing also non-EU based stakeholders to apply for a protection of their GIs in the EU.

Question 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.

The new EU system should exclude parallel national sui generis systems for protection of non-agricultural GIs to guarantee that all non-agricultural GIs registered at the EU level meet the same requirements and enjoy the same level of protection. Nevertheless, despite the differences, current sui generis national laws could be taken into consideration in designing the new system to evaluate commonly shared features.

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

To be consistent with the EU legislation on GIs, a registration should be mandatory to secure intellectual property rights protection to a non-agricultural GI. The main advantage of a register is



that stakeholders can rely on an official title. Therefore, an EU register for non-agricultural products should be established.

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

The main costs of a GI are related to the set-up of the GI system (establishing producer groups, product specifications, and controls) and not in the registration itself that, as in the case of the current EU GI system, can be free of charge. However, a system with registration requiring the payment of a fee will add a cost. Indeed, to ensure coherency within the EU GI System, it would be always preferable a system with registration that would guarantee legal certainty and facilitate the implementation.

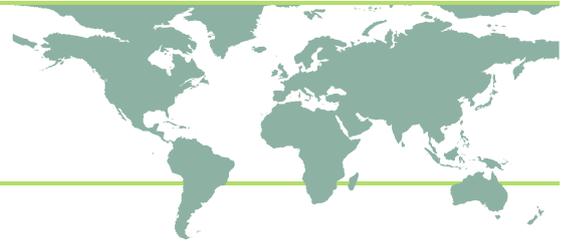
Question 31: Do you think the registration process should involve a national element, e.g. checking compliance with product specifications, indicated geographical area, quality, reputation etc.?

For a comprehensive and transparent procedure, non-agricultural GIs should be registered only at the Union Level. However, it would be desirable including a national element to deal with examination of applications and compliance with common requirements to simplify the EU registration process. It is indeed difficult for the EU to assess the existence of a link to the origin for products whose reputation is very local.

Question 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?

Producer groups should be at the basis of the application for protection. The collective approach helps to set production requirements in a fair manner with the contribution of all producers involved in the production in a defined area.

However, the definition of the “group” in Regulation (EU) n. 1151/2012 on quality schemes for agricultural products and foodstuffs uses the phrase “mainly” in relation to the composition of the



group. This approach should be maintained as: a) it allows flexibility in the EU and b) it caters for the fact that there is a governmental or semi-governmental presence in many third country GI systems for protection.

Question 33: Should individual producers be allowed to apply?

Individual producers could apply as an exception under certain circumstances (i.e. if they are the only representatives for the product), without any prejudice to the principle that producers coming from the defined area and complying with the product specification can use the protected name.

Question 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?

To create a reliable system is essential to include an objection process to a GI registration. Opposition procedure should be opened to any natural or legal person having a legitimate interest.

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

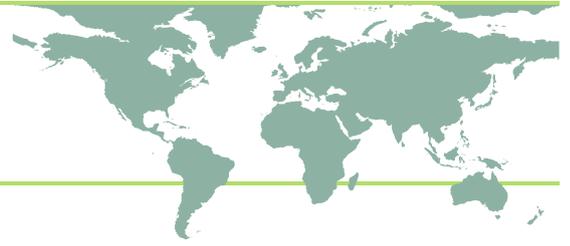
It could require the payment of a fee for registration and modification of specifications to commit applicants and cover administrative costs. The fee should not be prohibitive for small producers.

Question 36: What level of registration fee would you consider to be fair?

One-off fee reasonably priced.

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

To ensure coherence within the EU GI system, the scope of protection for non-agricultural GIs should reflect the Art 13 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.



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

Stakeholders should benefit from a high protection standard for their GIs. There is no reason why the protection standard should not be similar to the one granted for agricultural products with special additional provisions in relation to signs or symbols reflecting geographic origin.

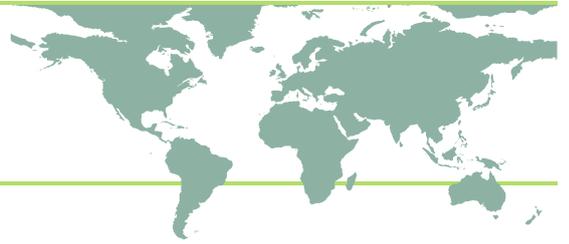
Question 39: Would you prefer a system to monitor and enforce non-agricultural GI rights that was exclusively private, public, or a combination of public and private? Please explain, taking into account, if possible, the effectiveness and costs of action to enforce rights.

An effective system to monitor and enforce non-agricultural GIs should be based on synergies between public and private. As many times producers might not have the resources and funds to take care of this aspect and dilute their rights.

Actually, the burden for enforcing non-agricultural GIs protection falls completely on the right-holder. Given their inherently public nature, the protection of non-agricultural GIs must be *ex-officio*. The implementation of this public enforcement measure for agricultural GIs proved its effectiveness in terms of costs and time. Private enforcement can complement by entitling GI groups to monitor the use of their GI in trade and inform the competent authorities on infringements, as well as take legal actions.

Question 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?

Traditionally, a GI protection should not be limited in time as it is supposed to protect cultural heritage and knowledge that can be clearly linked to a geographical area. The duration of protection for non-agricultural products should be without fixed limit as long as the condition for the GI protection remain. It would also be consistent with the existing EU GI law.



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

A cancellation procedure should be included to enhance the credibility of the system. The reasons for a cancellation have to be clearly specified in the legislation (i.e. the product does not comply anymore with the requirements for protection, the corresponding product specification).

Question 42: Who should be allowed to apply to cancel the GI?

Any natural or legal person having a legitimate interest.

Question 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?

A cancellation process should be introduced with the same terms and conditions as for agricultural GIs.

Question 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)?

The specificities of the two IP rights have to be considered as well as the coherence of the EU GI System and IP legislation. Furthermore, apply the general IP principle to non-agricultural GI products will establish a different level of protection with respect to the one enjoyed by EU agricultural GIs.

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

Bringing in mind that a GI is a public/collective right which also reflects a consumer protection principle, it should prevail in certain circumstances but it is essential to establish under what circumstance will a GI take precedence over a trademark and vice versa and make it clear whether the two can coexist. In this context, the provisions on the relationship between trademarks and GIs included in the Regulation (EU) n. 1151/2012 on quality schemes for agricultural products and foodstuffs are a good balance and should be extended to non-agricultural products.