

## “Brexit”:

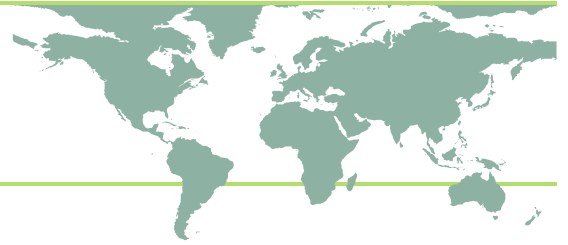
### Implications for GIs and principles for a balanced agreement

#### I. Background

oriGIn is the global alliance of Geographical Indications, which counts among its members 500 associations from 50 countries, including some of the most famous European Protected Designations of Origin (PDO), Protected Geographical Indications (PGI) and Geographical Indications (GIs). oriGIn advocates for the effective protection of GIs at the national, regional and international level.

oriGIn is following the negotiations between the European Union (EU) and the United Kingdom (UK) concerning the UK withdrawal from the EU (“Brexit”). oriGIn welcomes the opportunity to provide comments to the authorities of the EU and the UK and supports the efforts of both sides to reach a balanced agreement.

This paper aims at highlighting the implications of “Brexit” for a specific kind of IPR regulated at the EU level: GIs (to simplify the reading, GIs will be used here to cover the concepts PDO, PGI and GIs, as defined by EU Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs, EU Regulation No 1308/2013 establishing a common organisation of the markets in agricultural products, EU Regulation No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and EU Regulation No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products). Likewise, the paper identifies some core principles that in our view should be followed by the UK and the EU to ensure “Brexit” reduces as much as possible any legal uncertainty for GIs beneficiaries (groups such as the Scotch Whisky Association, the Stilton Cheese Makers Association, the Comité Champagne and the Consorzio Prosciutto di Parma) as well as consumers, both in the UK and the EU. The application of these principles will ensure GIs continue to thrive.



## II. Brexit implications for GIs

First of all, oriGIn agrees with the statement made by the EU Commission in its position paper that *“the holder of any intellectual property right having unitary character within the Union and granted before the withdrawal date should, after that date, be recognized as the holder of an enforceable intellectual property right in relation to the United Kingdom territory, comparable to the right provided by Union law – if need be on the basis of specific domestic legislation to be introduced”*.

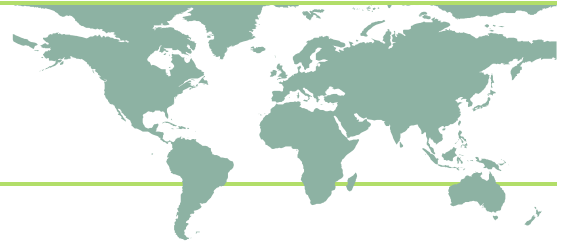
The UK will have to introduce a GI framework incorporating separate chapters for spirits, wine and foodstuffs which maintains each sector’s specificities, establish a GI register which incorporates domestic GIs and all GIs currently protected in the EU and provide a facility for recognizing new domestic and foreign GIs in future.

As several UK GIs are protected in foreign countries via bilateral agreements concluded by the EU, this issue will have to be also addressed by the “Brexit” negotiations as well.

## III. Principles to minimize legal uncertainty

In achieving the above-mentioned objectives, some core principles should be followed to reduce as much as possible any legal uncertainty for GIs beneficiaries.

- a. Maximum retention of rights for GI beneficiaries: the level of protection currently enjoyed by UK GI beneficiaries in the UK, in the EU and in foreign markets (as well as the one enjoyed by EU GIs beneficiaries in the UK) should not be diminished. In this respect, the EU’s robust protection for GIs, which provides strong legal means to fight infringements, has proved to be an important factor for the economic success of EU GIs, including UK ones.
- b. Minimum burden and costs for GI beneficiaries: in this respect, a transitional period of at least 2 years, is required to help GI groups and businesses to adapt to the new rules and plan their strategies.



- c. Minimum disruption of trade: an open trade policy will be crucial. The UK and the EU should conclude a comprehensive trade deal. Likewise, solutions should be found for the UK to continue to benefit from existing EU trade deals, in particular with respect to the recognition of UK GIs in foreign countries as well as market access and tariffs' reduction for such GIs.

To be able to achieve principle a. (Maximum retention of rights for GIs beneficiaries), the UK needs to establish a domestic framework for GIs similar to the one provided by the EU, in particular with respect to technical requirements (GI product specifications and technical files) as well as obligations in terms of controls and level of protection. Without such technical requirements (which are at the core of the GI scheme) and obligations in terms of controls, UK GIs cannot be protected in the EU. Provided that existing EU technical requirements and obligations in terms of controls are reproduced in the UK legislation, the current UK GIs protected at the EU level should continue to enjoy such protection, with no further action to be taken by GIs beneficiaries. Likewise, EU GIs should automatically be protected under the new UK legislation.

Even if providing the same EU level of GI protection is not necessarily a condition for foreign GIs to be protected in the EU, the UK must provide such level of protection internally. First of all, such protection has so far been enjoyed by both UK and EU GIs. Moreover, robust GI protection has proved to be an important factor for the economic success of EU GIs, including UK ones. Finally, such a level of protection will facilitate the recognition of UK GIs in third countries, either through future bilateral agreements to be concluded by the UK or via direct registrations in such countries to be requested by the legitimate GI beneficiaries.

Moreover, the UK domestic framework for GIs should provide for a GI registry (legal certainty) and maintain the current EU specificities for sectors (food, wines and spirits). In this respect, it would be appropriate to introduce in the UK law a specific chapter for non-agricultural GIs. First of all, several such UK GIs are waiting for the possibility to obtain recognition and meaningful legal tools to fight infringements. As the EU is acceding to the Geneva Act of the WIPO Lisbon Agreement, it is expected to introduce a European system for the protection on non-agricultural GIs. Such option in the UK legislation will facilitate future relations with the EU. Finally, regulating non-agricultural GIs at the national level will also help future free trade negotiations the UK might embark upon with third countries, such as India and China, which have a strong offensive interest on non-agricultural GIs (current free trade agreements normally include a chapter on IPRs and a sub-chapter on GIs).