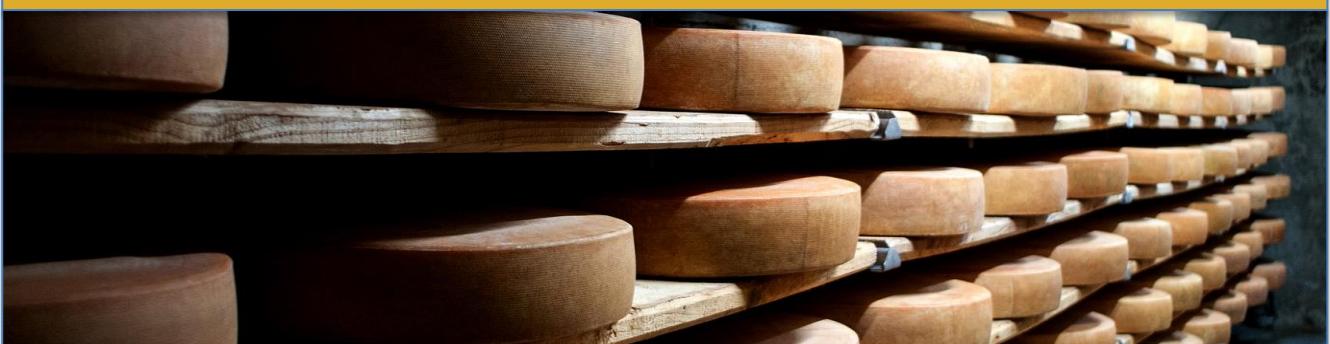


EXECUTIVE SUMMARY

PROTECTION AND CONTROL OF GEOGRAPHICAL INDICATIONS FOR AGRICULTURAL PRODUCTS IN THE EU



DECEMBER 2017

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DISCLAIMER

This report is based on data provided by the EU Member States' national authorities that have competence for quality policies of agri-food, and on complementary information from open sources. The information given is in no way intended to be an audit on national systems of control, nor an assessment on effectiveness of performance.

PROTECTION AND CONTROL OF GEOGRAPHICAL INDICATIONS FOR
AGRICULTURAL PRODUCTS IN THE EU MEMBER STATES

December 2017

EXECUTIVE SUMMARY

This report is the result of a study on protection and controls of agricultural geographical indications, for which the EU Commission, Directorate-General for Agriculture and Rural Development (DG AGRI) requested the collaboration of the EUIPO's European Observatory on Infringements of Intellectual Property Rights. The main objective of the study is to provide better knowledge of the landscape of the control and protection systems for geographical indications (GIs) in the 28 EU Member States, through the mapping of all the competent authorities and procedures in place, including enforcement measures against infringements.

The report provides a general overview and description of each national control system for foodstuffs and agricultural products, wines, spirit drinks and aromatised wine drinks. In addition, a guide is attached with a comprehensive inventory of all national competent authorities (CAs) and control bodies (CBs), together with the relevant contact data, as well as some useful information for GI users to help them in seeking better protection against infringements.

The study has been conducted on the basis of desk and field research carried out in order to collect a consistent set of information. This research activity started with the preparation and submission to the 28 EU Member States of a common 'data collection scheme', which aimed to gather structured information on the functioning of the control and protection systems for GIs within the European Union.

Following this extensive research activity, all of the data returned was then gathered, assessed and organised in this report. Hence, not only the overall coverage achieved, but also the structure and the level of detail of the information reported strongly relies on the extent of each Member State's contribution. In detail, out of 28 Member States, 23 provided information for this survey. Therefore, the remaining 5 Member States are not included in the report.

Despite a harmonised reporting structure based on a single research scheme applied to all of the Member States, the information provided is diverse in terms of level of detail and extent, as well as sometimes uneven in covering the different areas of interest. This reflects the high heterogeneity in the approach the Member States have adopted to implementing controls — although still under the umbrella of the common EU legal framework. Of course, the diverse economic value of agri-food GIs in each national economy (both in terms of domestic production and general consumption of high quality products) also plays a role in this. Some clear examples are:

- control procedures are not always specifically designed for verification of GIs (more often they are merged within the general system of national controls on safety of food and feed), and resources are not always accordingly assigned to them;
- the enforcement apparatus for GIs only includes national measures to be enacted *ex officio* in some cases;
- the administrative sanction systems against unlawful users are diversely detailed in terms of types of infringement and in providing for precautionary measures and remedies;
- different types of criminal offence only specifically address the infringement of rules on indications of origin of food products in some cases.

Although it is not the aim of this work to assess the efficiency and the effectiveness of the various national systems in place, nevertheless, the picture resulting from the survey and the different national approaches allow for some general considerations.

DELEGATION OF CONTROLS

All Member States have a system in place to ensure official controls on GIs.

As emerged from the information gathered, official controls before GI products are placed on the market are often delegated to private or public CBs — an option provided for by the EU regulations. In particular, the Member States in which the central authorities delegate controls — or at least parts of them to CBs are: Austria, Belgium, Bulgaria, Croatia, Denmark, France, Germany, Italy, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom.

ACCREDITATION OF CONTROL BODIES

With few exceptions, the rules of accreditation of the delegated CBs as established at EU level are generally respected. In line with EU regulations, national accreditation bodies apply ISO/IEC 17065:2012 ('Conformity assessment — Requirements for bodies certifying products, processes and services'). It should be noted that this standard replaced the EN 45011 standard, originally required by Regulation (EU) No 1151/2012 for agricultural products and foodstuffs¹, and by Regulation (EU) No 110/2008 on spirits², as from 2012. The new ISO/IEC standard 17065:2012 is indeed required by Regulation (EU) No 251/2014 for accrediting CBs for aromatised wine drinks³.

GENERAL ADMINISTRATIVE ORGANISATION

As far as general administrative organisation is concerned, it is possible to identify one central administration in the Member State, usually at ministerial level, in charge of the overall coordination and supervision of the control system. In some Member States, different administrations have a role per product sector; one example is Bulgaria, where quality policies are shared between the Ministry of Agriculture (food and wines) and the Ministry of Economy (wines and spirits). In some other Member States, different ministries supervise controls on production and surveillance of the marketplace respectively (France and Spain are two examples).

The national administrative structure influences significantly the distribution of competences.

As regards federal/regional countries, roles and responsibilities for quality policies and official controls on GIs are shared differently between national and local level in Austria, Germany, Belgium and Spain.

In Austria, the central authorities are responsible for drafting legislation establishing the responsibilities of the CAs and for the general coordination of the system, whereas at regional level, the State Governors implement the federal food policy by following the instructions issued by the CAs.

¹ 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, OJ L 343, 14.12.2012, p. 1.

² Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, OJ L 39, 13.2.2008, p. 16.

³ Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and protection of geographical indications of aromatised wines and repealing Council Regulation (EEC) No 1601/91, OJ L 84, 20.3.2014, p. 14.

The system is also highly decentralised in Germany, whereas implementation of controls required by EU provisions is the competence of the *Länder* (Federal States).

Similarly, powers in Spain have been transferred to the 17 regional Autonomous Communities and the 2 Autonomous Cities of Ceuta and Melilla. As a result, there are 20 'central' authorities in Spain, one for each of the 19 autonomous governments, and one at the national level for 'supra-autonomous' GIs, that is to say, GIs involving territories of more than one Autonomous Community/City.

The situation is similar in Belgium, where controls over production are decentralised to the three 'regions', with the state coordinating surveillance of the market through the Ministry of Economy.

CUSTOMS

The competent public authorities designated for official controls and the delegated CBs are almost exclusively in charge of the official controls on GIs. It must be noted that with reference to the role of customs, with the exception of Italy, the United Kingdom and Ireland, no specific task is assigned to them beyond their competences and legal obligations under Regulation (EU) No 608/2013 on enforcement of IPR at the borders⁴. As regards the United Kingdom, customs are one of the designated CAs for spirits, wines and aromatised wines both for controlling production and the market, whereas in Italy and Ireland they are among the CAs for controlling GI spirits. The Italian experience is noteworthy, as customs ensure tax and IP compliance in the spirit sectors in a unique verification cycle, namely through optimised use of their laboratories, which are highly specialised in alcoholic substances.

RESOURCES

Challenges were faced during research when looking for specific information on the actual control procedures carried out by CAs and CBs in several Member States. With regard to aggregated data on control procedures in the food chain, specific information on laboratories and resources involved in controls on GI products were not available in several Member States.

The survey clearly indicates that many Member States make use of the procedures, resources and tools put in place for the implementation of official controls on food and feed safety as established by Regulation (EC) No 882/2004⁵ to undertake their control obligations for GIs at the same time. Provided that this organisational model proves successful in some Member States in terms of use of available resources, it can be considered acceptable. However, as stated before, this approach did not allow for GI-related data to be collected on some of the topics of the survey, such as assigned resources and staff training, as well as the risk analysis criteria and planning methodology applied.

Furthermore, the obligation set forth by EU regulations on GIs to specifically inform the European Commission about official control plans on GIs and related results in separate sections of the Multi-Annual National Control Plan (MANCP) and relevant annual reports on food and feed safety under Regulation (EC) No 882/2004 is not always fully respected.

⁴ Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003, OJ L 181, 29.6.2013, p. 15.

⁵ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, OJ L 165, 30.4.2004, p. 1. It should be noted that, in the course of this survey, this regulation was replaced by Regulation (EU) 2017/625 of the European Parliament and the Council of 15 March 2017, on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, OJ L 95, 7.4.2017, p. 1.

NATIONAL ENFORCEMENT MEASURES

Administrative sanctions

When it comes to national enforcement measures, it is noteworthy that Member States comply with the general obligation to provide for an administrative sanction system for GI users that do not respect product technical specifications (including precautionary measures) in the form of fines and marketing or processing prohibitions. Categorisation and classification of administrative fines are diversely provided for by the national systems, from very detailed (Italy, Poland, Spanish local legislation, *inter alia*) to more generic.

Ex officio protection

Although not corresponding to any legal definition, the notion of *ex officio* protection refers to the general obligation established by EU regulations on GIs for Member States to take appropriate administrative and judicial steps to prevent or stop the unlawful use of protected names that are produced or marketed in their national markets. These measures aim to ensure better protection of registered names throughout the European Union (in addition to the planned official controls for the names registered by national users) with actions undertaken without any prior claim or request having been made and in particular to grant protection in a Member State's market to users from another Member State.

As regards *ex officio* protection of GIs, significant data was only available from a few jurisdictions within the European Union (*i.e.* Italy, France, Germany, Spain, Latvia, Croatia, Poland, Romania and Hungary).

How Member States implement the *ex officio* measures is something left to their own initiative. However, the lack of concrete measures may hamper effective enforcement of GI rights.

Apart from the implementation of administrative and penal sanction systems, most Member States appeared reluctant to provide details on additional initiatives or provisions for enforcing GIs. Nevertheless, some good examples come from some of the countries with the most GIs, such as Italy, where a specific body has been appointed by law for *ex officio* protection, and some successful actions are taken on a permanent basis, such as control over e-commerce and specific cooperation agreements with major e-commerce platform providers.

Criminal law

The criminal legal protection system is also fragmented, albeit to a lesser extent. The majority of EU Member State's legislation provides for specific criminal sanctions in cases of infringements of GIs, while in Belgium, Greece, Hungary, Latvia, Lithuania and the Netherlands, general criminal offences and penalties that are envisaged in cases of infringement of intellectual property rights apply.

Civil law redress

Furthermore, as far as civil enforcement is concerned, many Member States have several legal tools such as trade mark law, unfair competition and consumer protection laws, which provide users and consumers with efficient remedies.

COOPERATION

As part of the enforcement systems, information was also sought on cooperation measures among Member States to ensure infringement cases are effectively followed up at EU level. Interestingly enough, almost all of the Member States analysed mentioned the European Commission's EU Food Fraud Network and the Rapid Alert System for Food and Feed (RASFF) as the platforms for exchanging information and alerts on cases affecting GIs. In this context, the Administrative Assistance and Cooperation (AAC) system — an IT tool for the handling of administrative assistance — has also been quoted as a tool for cooperation on GI cases (Spain, Lithuania, Italy, France, the Czech Republic, Bulgaria, and Austria).

As previously mentioned, a 'Guide for Public Authorities and Economic Operators' is annexed to the report on the national systems, which contains contact details and practical information about remedies. Additionally, this work will be followed by an appendix containing a compilation of the good practices identified in the course of the survey, as a complementary source of information and inspiration for public authorities and control entities in the Member States, to help them fine-tune their respective procedures and possibly improve their performance. The preparation of this appendix is ongoing at the time this report is being released, in collaboration with the European Commission DG Agriculture and Rural Development and national experts from the public and private sectors. It is expected to be published by the end of the current year.

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Avenida de Europa 4,
E-03008 – Alicante
Spain

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