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Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
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Results of the public consultation

(15 July - 28 October 2014)

and public conference

(19 January 2015, Brussels)

on the Green Paper

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

(COM(2014) 469 final)

This information document prepared by the European Commission services aims to reflect factually the views expressed by the respondents to the public consultation and the participants to the public conference. It does not set out any official position of the European Commission.

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1. EXECUTIVE SUMMARY

A public consultation on the European Commission’s green paper *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*¹ was held between 15 July and 28 October 2014. The aim was to collect stakeholders’ experience of existing geographical indication (GI) protection at national and EU level, and their views on the merits of a unitary GI system for non-agricultural products for the whole EU. The green paper also posed technical questions as to possible options for such extended protection.

¹ http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8254

In total, 136 responses were received from stakeholders in 27 countries. Producers were best represented, followed by EU Member State governments and public authorities, lawyers and academics, and consumers.

The main outcomes from the public consultation can be summarised as follows:

- A clear majority of respondents see a need for action at EU level and identify tangible benefits in economic, consumer protection and cultural terms.
- Many respondents stress that the nature of a relevant link between the territory and the product concerned should be assessed carefully, given that there is not necessarily a physical connection (as in the case of agricultural products).
- A broad majority believe that only a system based on registered GIs can provide the necessary legal certainty and ensure effective enforcement of rights.
- There is broad consensus that any new system should take into account the experience gained with the existing EU GI system for agricultural products, while seeking improvements where appropriate.
- Many respondents underline that a new system should be easily accessible for all producers and feature fast and efficient procedures.
- Many addressed the relationship between GIs and trade marks, and called for clear rules on their coexistence.

2. BACKGROUND AND SCOPE

In its 2011 Communication *A single market for intellectual property rights*,² the Commission proposed that a thorough analysis should be conducted of the existing legal framework for GI protection for non-agricultural products in the Member States, and its implications for the single market.

An external study on geographical indications protection for non-agricultural products in the internal market,³ carried out in 2012 and published in March 2013, concluded that the legal instruments currently available to producers at national and European level are insufficient. The Commission organised a public hearing on 22 April 2013 to discuss the results of the study and provide a platform for a broad debate on the need for more efficient GI protection of non-agricultural products at EU level.

On 15 July 2014, the Commission published a green paper on *Making the most out of Europe's traditional know-how*, which explored the possibility of extending EU-level GI protection to non-agricultural products and invited stakeholders to respond to various questions by 28 October 2014. A public consultation on the paper took the form of an online questionnaire, containing 45 questions. The Commission presented the results of

² http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf.

³ http://ec.europa.eu/internal_market/indprop/docs/geo-indications/130322_geo-indications-non-agri-study_en.pdf.

the consultation and discussed them with experts and stakeholders at a conference in Brussels on 19 January 2015.

The objective of the consultation and the conference was to collect stakeholder's views on:

- current forms of protection at national and EU level and the potential economic, social and cultural benefits of improved GI protection in the EU for non-agricultural products; and
- options for EU-level GI protection for non-agricultural products as regards the scope of protection and substantive requirements, procedural aspects and implementation.

The target audience was broad, ranging from citizens to consumer associations, individual companies to producers' organisations, distributors to public authorities, legal practitioners to international organisations, and other relevant stakeholders.

This document provides an overview of the contributions received and the outcome of the conference.

3. RESULTS OF THE PUBLIC CONSULTATION

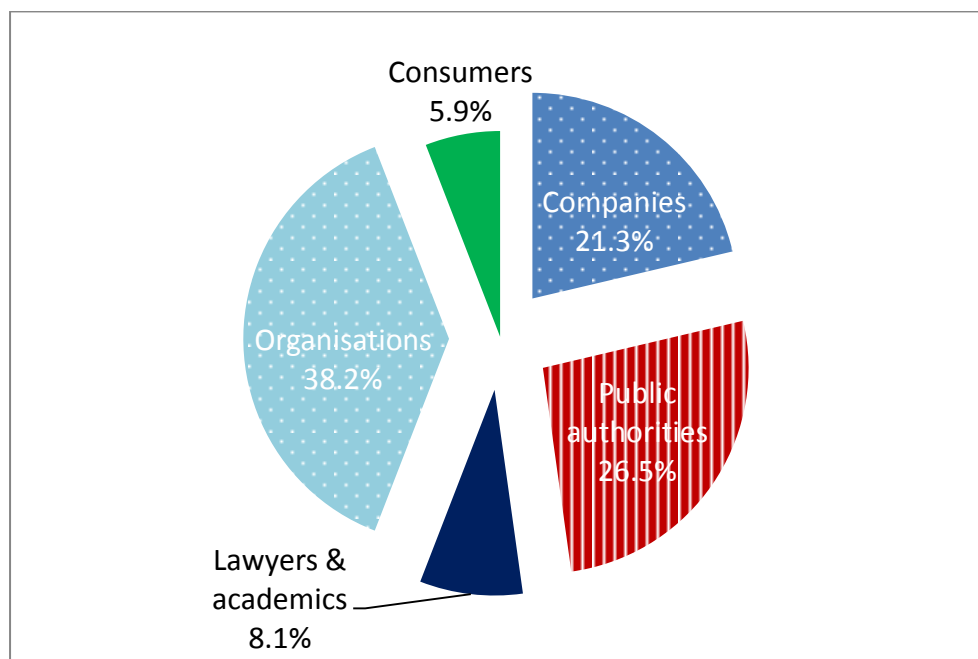
3.1. Overview of respondents

The Commission received 136 responses to the consultation. The respondents can be classified in the following main categories:

- **producers** (individuals and associations or organisations);
- **consumers** (citizens and consumer associations);
- **public authorities** (local, regional and national authorities in Member States and non-EU countries); and
- **lawyers and academics** (including practitioners and researchers).

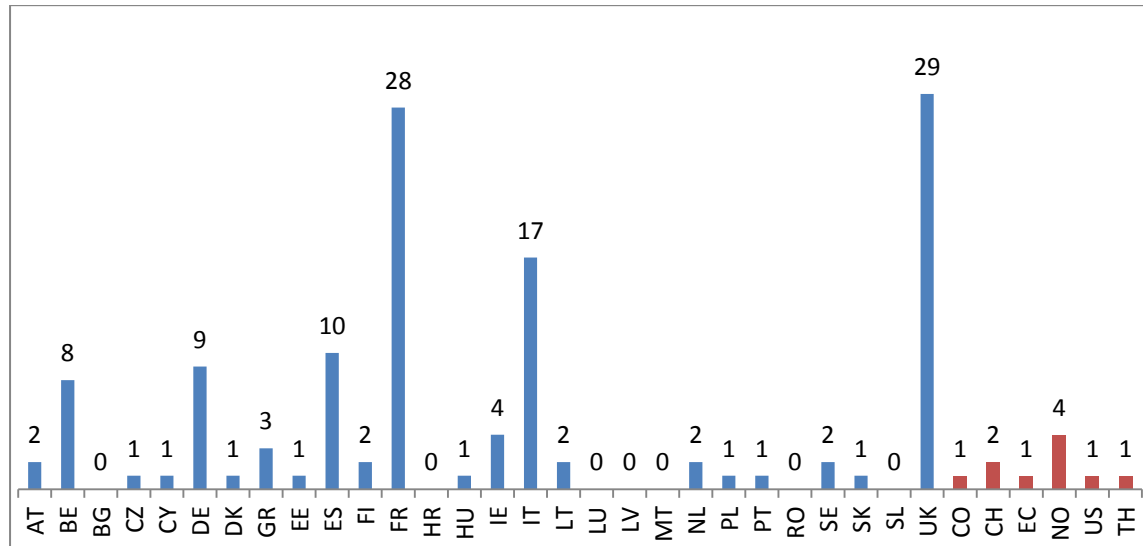
The **biggest group of respondents was producers (59.5%)**, followed by public authorities (26.5%), lawyers and academics (8.1%) and consumers (5.9%).

Graph 1: Contributions by stakeholder category



Contributions were received from stakeholders in 21 Member States and six non-EU countries⁴, including one EEA member (see Graph 2).

Graph 2: Contributions by country



Responses from the UK (29), France (28), Italy (17) or Spain (10) accounted for the majority. Of the 136 respondents, 61 were from the 15 Member States that currently have *sui generis* systems of GI protection for non-agricultural products⁵ and 65 from the remaining Member States. The response rate for the latter group of Member States is therefore higher than that for the former.

⁴ Columbia, Switzerland, Ecuador, Norway, the United States and Thailand

⁵ See green paper, footnote 11, p.8.

3.2. Stakeholder feedback

Three stakeholders asked that their submissions be treated confidentially. All other responses have been published on the Commission's website.⁶

A majority of replies were supportive of some improvement of the current situation, i.e. further action at EU level and potentially GI protection for non-agricultural products.

3.2.1. GIs in the EU: state of play

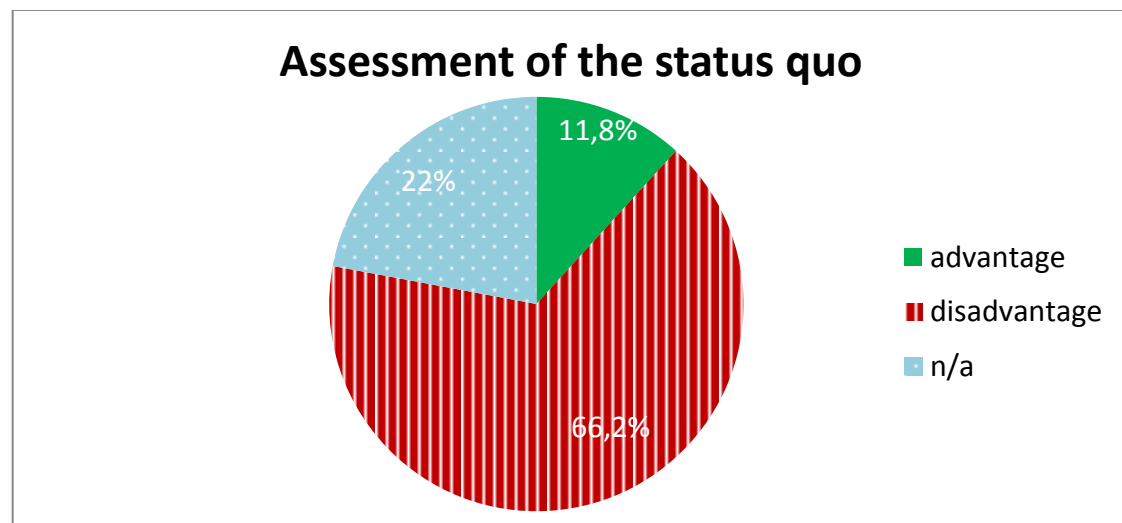
3.2.1.1. Assessment of status quo

Questions:

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.

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

Stakeholders were asked to give a general evaluation of the current system for protecting GIs for non-agricultural products in the EU.



A large majority of respondents in all categories see current protection arrangements as insufficient, too complicated, too diverse and too expensive. The differences in Member States' legal arrangements (especially as regards criteria for protection, registration procedures and enforcement) are widely seen as creating legal uncertainty and not necessarily leading consumers to associate local references with added value. In the absence of (accurate) information, the possibility of consumers being misled by imitations being passed off as GI products is a source of general concern. A majority pointed to the

⁶ http://ec.europa.eu/internal_market/consultations/2014/geo-indications-non-agri/contributions_en.htm.

costs, for producers running their business in more than one Member State, of bringing parallel actions against imitators. A considerable number stress that the diversity in the current system creates internal imbalance which slows down EU trade in GI products.

'There is uncertainty as to whether a non-agricultural GI is protected and if protected, which elements are protected and what the scope of protection is'

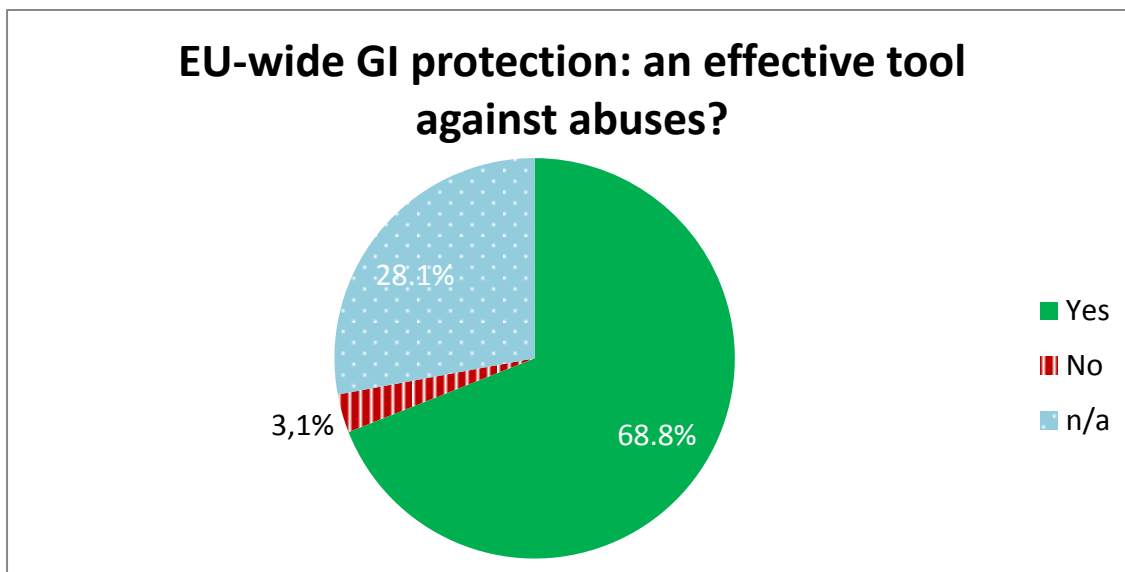
'The costs of simultaneous actions against infringers result quite high for rightholders'

Some respondents consider that protection at national level is sufficient. A few public authorities argue that the current EU harmonised trade mark system could be enhanced by introducing collective and certification marks. They question the need to act at EU level, arguing that producers may feel obliged to apply for registration and prevented from freely moving their business, while consumers could be confused by an additional EU label. In general, they warn that a new system could prove costly for consumers, burdensome for producers and Member States, and possibly favour protectionism.

3.2.1.2. Challenges

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

These two questions elicit stakeholders' views as to how effective a new EU system could be against abuses.



Answers to **Q9** show clearly that stakeholders are generally convinced that a new system would be an effective tool. In addition, a majority of respondents comment that a new

system would increase legal certainty, which would allow better joint action against abuses and limit imitators.

'... harmonised EU protection (...) would (...) act as a welcome deterrent to bad faith labelling and imitation. Current local or national GI protections cannot offer this level of protection and certainty, and the pressures on many companies having to defend themselves on a case-by-case basis from attacks on their brand could risk putting them out of business if this is not addressed. In the case of (...), defence of our brand from (...) abuse is using up valuable funding we had put aside for funding our apprenticeship scheme.'

'There is a need for legislation which would give sufficient legal means to punish non-compliant and profiteers from everywhere in the world.'

'The agricultural system has helped a great deal to reinforce controls and has significantly reduced the cost of application for producers. From practical experience we know that such protection will help producers to protect their GIs from unlawful activities.'

On **Q10**, the vast majority of respondents are of the opinion that clear rules, e.g. on product specifications, would protect competitors against an over-reach of GIs.

'...products which do not come under the geographical indication are often sold at a lower price as they do not have the same quality characteristics. They could therefore continue to have their own market.'

'We do not believe that the provisions in existing GIs limit competition, because those meeting the quality, standards and provenance criteria can join the associations/companies covered by the system. Our current concern is more 'under-reach' than 'over-reach' of GI.'

3.2.1.3. Need for action — pros and cons for business, consumers, society; international considerations

Questions:

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?

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

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

5. Do you see potential negative consequences for consumers?

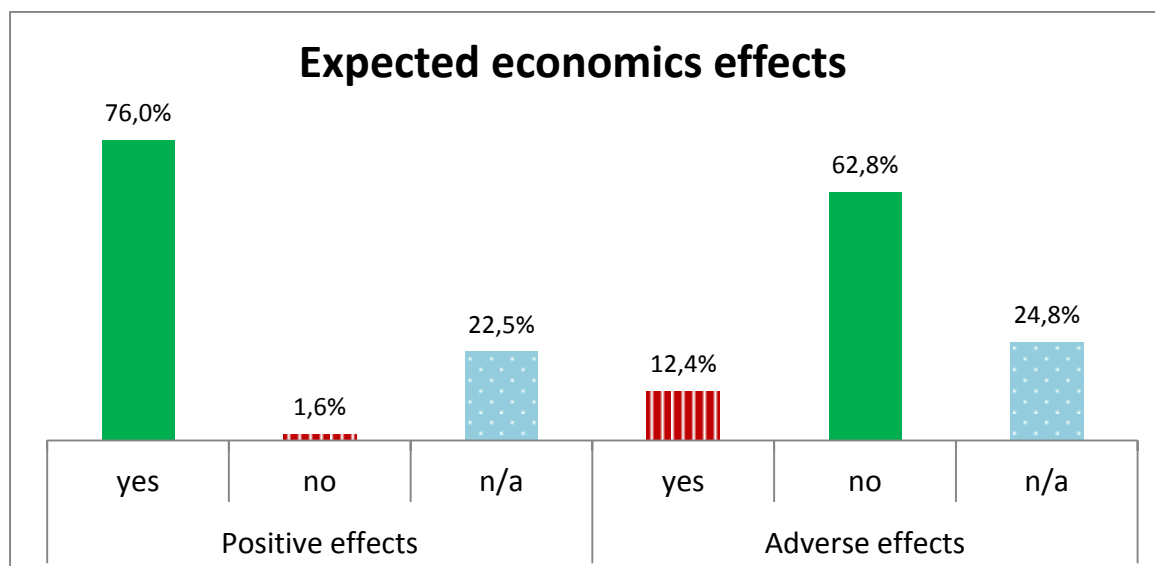
6. Do you see potential benefits or disadvantages of harmonised EU GI protection for non-agricultural products on EU trade relations with third countries? If so, where?

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.

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

These questions in the first part of the green paper address, from different angles, the pros and cons of a possible extension of GI protection at EU level.

Economic effects



The first green column on the left shows that a vast majority of respondents see economic benefits in a possible future system and a majority reject the idea that it might have an adverse economic effect.

In general, a majority of stakeholders (including almost all producers) see benefits for the EU economy and expect a positive impact on competition. Many reasons are stated:

- ✓ getting rid of the unfair competition caused by counterfeiting and imitation would increase activity around GI protected products and boost sales. This would enhance competitiveness and the profitability of resources invested;
- ✓ advantages for products in the same category but not covered by the GI are also expected through spill-over benefits from the invigoration of the GI products;
- ✓ protection at EU level would improve competitiveness with products from other regions;
- ✓ many consider that a success similar to that which followed the establishment of a system in the agricultural sector is to be expected for non-agricultural products;
- ✓ a new system would help maintain production in economically fragile and vulnerable areas and underpin economic development policy;
- ✓ a new system could help producers access promotion funds, investment aid and facilitate better access to trade fairs.

On the downside:

- ✗ others, especially public authorities, stress that more research is needed, in particular a thorough impact assessment of costs and benefits;
- ✗ the system must be designed so as to prevent an extension of GI protection increasing obstacles to trade or having a negative impact on international trade negotiations, which could close off future market-access opportunities for emerging businesses;
- ✗ it is important to ensure that any extended system of GI protection does not restrict international trade or limit competition;
- ✗ a possible greater administrative burden (due to a need to change rules) might lead to higher costs for Member States (*inter alia* in enforcing GI rights);
- ✗ the level of protection may be too low or too high for some states;
- ✗ the precise rules on compliance might prove burdensome for stakeholders;
- ✗ one public authority considers that producers may feel compelled to apply for registration and prevented from freely moving their business;
- ✗ trade mark owners may be negatively impacted.

'Yes, purchasing a genuine bona fide UK sourced material undoubtedly has a positive effect on local and UK economy. Every purchase made of a UK sourced product secures employment at a local level, helps retain a UK manufacturing skill base, and contributes towards providing the financial resources required for future investment'

'A harmonised EU GI protection will help to revitalise productions of origin products which originated in regions of EU but whose production was later delocalised, with a loss in the quality'

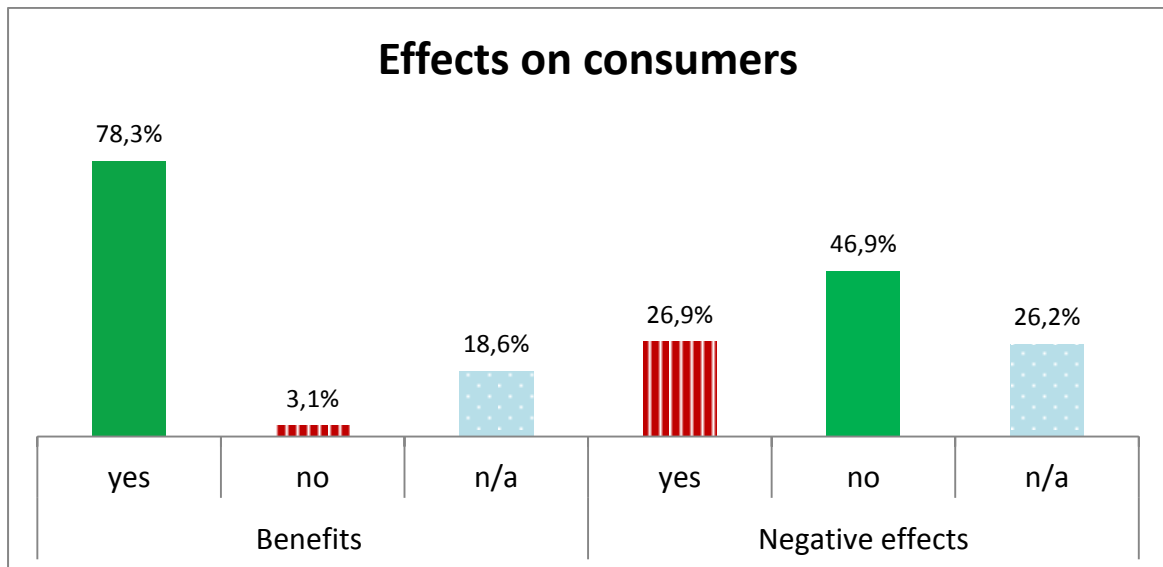
Words of caution: A new system could ...

'...lead to uncertainty about continued use in existing marks'

'...slow down innovation (in case an overly detailed product specification is in place)'

'...exclude some the smaller enterprises who cannot afford to produce goods to the precise product specification requirement of a GI place'

Effects on consumers



A large majority of respondents consider that domestic and international consumers would benefit from GI protection since:

- ✓ they will get better information on products, in particular as regards their origin and characteristics, including raw materials;
- ✓ GI protection would generally be seen as a label signalling superior quality *vis-à-vis* non-GI products, so consumers will be better informed about the choice they have on the market;
- ✓ by helping consumers to identify products and reassuring them that they actually come from the region in question and have the expected characteristics, an effective system is widely seen as reducing the risk of deception, educating consumers and preventing the fraudulent use of GIs;
- ✓ consumers would have a better understanding of what a GI is.

'consumers could be able to make an informed choice and asses the quality-cost-benefit of a product'

'GI, taken as a rating system for the various production districts, is above all an instrument making it easier for consumers to recognise quality. This encourages the cultural growth of the market, with average consumer behaviour geared to a more

'It would remove unfair competition from lower value materials that are being miss-sold as higher value products and put more control into the hands of the consumer regarding selection.'

'the consumers should be made aware of the origin of the product and should not be misled into believing that a product is made in their region when it was in fact manufactured elsewhere(...).'

On the other hand:

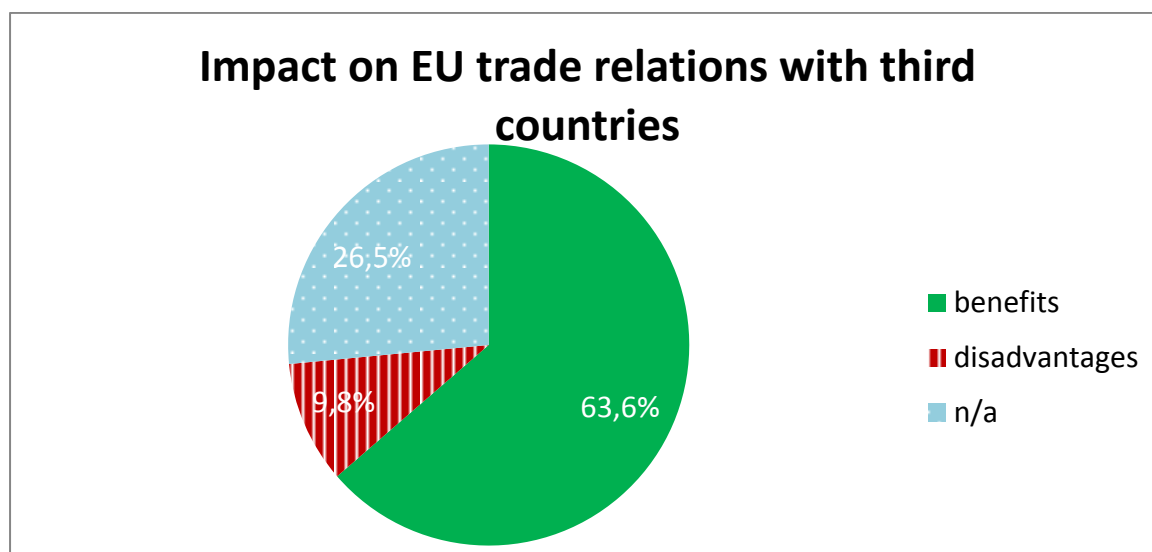
- ✗ one public authority suggests that the benefits of GI protection are limited for consumers who already appreciate and look for traditional products, since they are usually likely to know what they are buying and do research before making a purchase;
- ✗ consumers may appreciate being able to choose from a variety of products produced in different places but with equivalent characteristics;
- ✗ one respondent stresses that diversity of supply offers the best consumer protection;
- ✗ several others highlight that consumers already benefit from existing legal instruments;⁷
- ✗ higher prices are the most frequently cited possible negative effect for consumers;
- ✗ other effects mentioned are:
 - a risk of shortage of certain products;
 - a risk of a particular product disappearing if protection is granted too easily (need to enable certain products to save on innovation);
 - the possibility of consumers being confused by a plethora of EU marks and seals;
- ✗ one public authority mentions that GI protection can give the impression that a product has undergone particularly stringent checks by the public authority when this is not necessarily the case.

Others counter these comments by arguing that:

- ✓ EU-level GI protection in the agricultural sector has led to increased competition between similar categories of product and to the development of new names and brands;
- ✓ in any event, consumers can opt to buy other products and not pay the higher price;
- ✓ greater competition between similar classes of product eliminates monopoly profits.

⁷ Among the example mentioned were the rules applying to trade marks, legislation relating to unfair competition and consumer deception, the unfair Commercial practices Directive (2005/29) .

Impact on trade relations with third countries



As can be seen from the graph, a majority of stakeholders expect a positive impact on trade relations with third countries. Only four expect negative effects, while around a quarter do not answer the question.

The effect mentioned most frequently, in particular by producers, is that GI products would more easily penetrate non-EU markets and thus increase their market share. Many base this argument on the premise that EU products are usually valued in third countries.

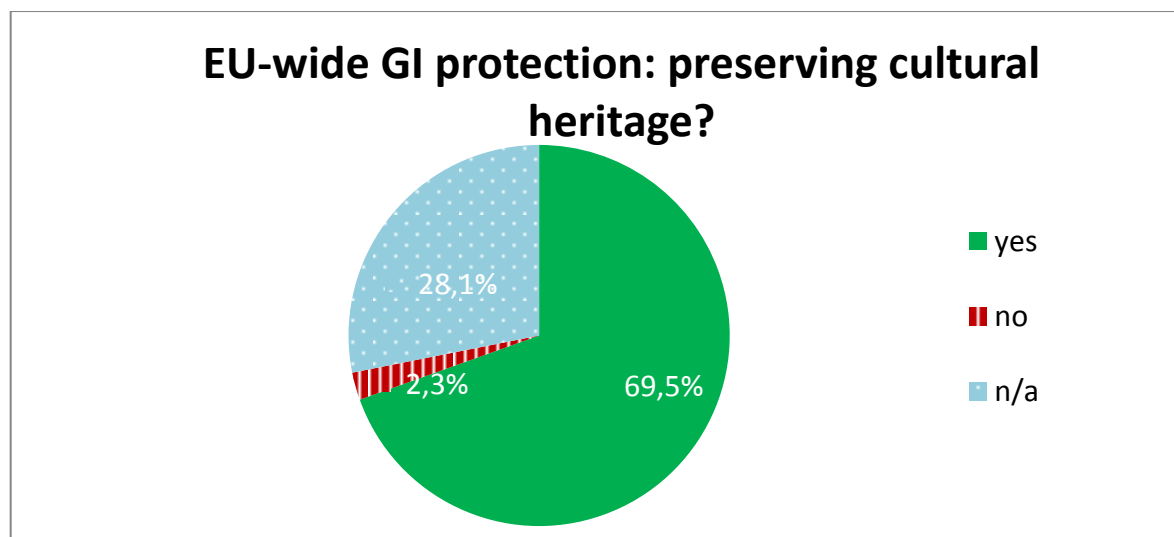
Many consider that a new system would allow non-EU products to be granted GI protection in the EU. Consequently, EU-level GI protection for non-agricultural products is widely seen as a tool to facilitate EU trade with third countries that have GI protection but, unlike the EU, do not differentiate between agricultural and non-agricultural products (this includes many African, Asian, Latin American and Caribbean countries; two thirds of Indian products are covered by non-agricultural GIs). Also, this would encourage non-EU producers to use similar standards, promote the GI approach in international (e.g. WTO and WIPO) negotiations and facilitate the negotiation of international trade agreements.

Some consider that this would bring EU legislation more into line with the international legal framework, while two respondents warn of negative reactions from third countries whose legal systems do not provide separate protection for GIs but include this under their trade marks systems (e.g. Australia, Canada and the United States).

Two public authorities stress that, in view of the low level of interest in some Member States, trade negotiations are not a sufficient reason for introducing a new system in the internal market and that other solutions could be explored, such as the possibility of third countries (e.g. Peru and Columbia, in trade agreements with the EU) protecting their GIs according to the laws and regulations applicable in each Member State.

'The Lisbon Agreement for the protection of appellation of origin is not limited to any kind of good and GIs in TRIPS agreement are also available to any kind of goods. Therefore many countries have implemented GI systems for any kind of good (India, Thailand, Brazil, Indonesia, West Africa, Vietnam, Colombia ...) and have registered more and more GIs for non-agricultural goods. A perfect example is the case of India, where 2/3 of GIs are for non-agricultural goods, mainly in the area of textiles. For those countries, the absence of harmonised EU GI protection for non-agricultural goods is a big concern as their GIs cannot be protected in the EU, which is often a major export market, as for example the GI 'Kashmir Pashmina shawl'. Third countries then complain and see less interest in the bilateral free trade agreements proposed by the EU, as their non-agricultural GIs cannot be included in the list of GIs to be protected in the EU. Such third countries might then try to find other markets for their non-agricultural GI products. A harmonised EU framework would then bring lots of benefits to trade between the EU and third countries.'

Effect on cultural heritage



A majority of respondents answer **Q7** in the affirmative, considering that harmonised GI protection for non-agricultural products at EU level would help preserve products' traditional cultural and artistic heritage. Many recognise that preserving traditions and skills passed down through generations is a key objective of GI protection. One public authority particularly stresses this point by showing how important it is to have the required skills, to be a respected craftsman or simply to be associated with the product and how the pride thus instilled strengthens cultural identity. GI protection is seen by many contributors as a tool whereby producers can communicate the merits of their products, and more generally promote and safeguard cultural diversity and the diversity of cultural expression. One contributor insists on the advantages of decoupling cultural heritage from public subsidies. The transmission of 'know-how' to younger generations and the need to avoid the risk of losing skills are often highlighted.

Two contributions consider that the traditional cultural and artistic heritage reflected in GI-eligible products cannot be preserved by harmonising the protection of

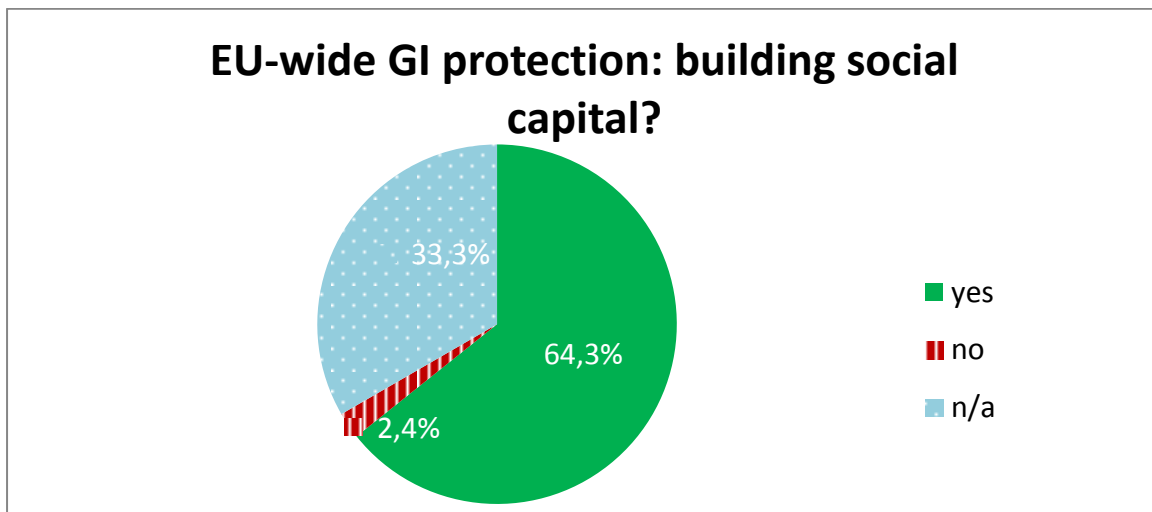
non-agricultural GIs alone: it needs to be accompanied by other measures, such as informing consumers, promoting access to protection and producers acting on the market after registration.

A very small number of respondents argue that GI protection may have a negative impact on traditional cultural expression by preventing its wider use or use for educational purposes, whereas some scientific, technical and medical traditional knowledge might be better protected by patents or the like, and other means exist to protect traditional knowledge. On this point, the example is given of a *sui generis* law protecting farming practices in Portugal.

'The recognition at the European level of products made according to local cultural and artistic traditions can only boost the desire to maintain those traditions and to adapt them to the 21st century market. This has been seen in relation to agricultural GIs.'

'Without GI protection, a part of our local region's history will disappear.'

Effect on social capital



Over a third of respondents did not reply to **Q8**. All those that did answer the question, consider that the production of GI-protected products contributes to social cohesion, as GI protection:

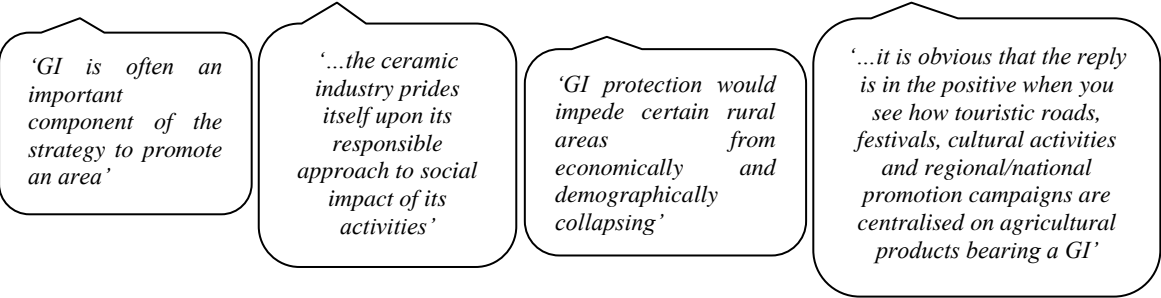
- ✓ promotes the formation of networks of cooperation among producers and between producers and local stakeholders, public bodies and tourist organisations; and
- ✓ supports small-scale rural production by eliminating overproduction and maintaining artisanal and traditional production methods, thereby increasing rural income, employment and population.

The creation of a new system of GI protection is thus seen as boosting producers' competitiveness and creating new links between actors in the geographical areas in question, which in turn would strengthen social capital. It was highlighted that GI products are very often at the heart of regional policies and strategies. Harmonised GI

protection can be used as an economic policy instrument for supporting local development (e.g. stabilising local populations, creating jobs and stimulating tourism) and raises the profile of the entire region and the awareness of all involved in the production chain (e.g. as regards a neutral impact on the environment). Increased demand for products from demographically disadvantaged regions could help to maintain social structures and stem the flow of people moving to metropolitan areas. A healthy manufacturing tradition requires the maintenance of skills through apprenticeships and specific education, which is seen as positive for the local economy and the people who live there. Respondents also believe that this naturally enhances innovation and investment in new technologies.

Other stakeholders argue that the very existence of the conditions for the recognition of a GI means that social capital has already been created in the territory concerned, i.e. it is a prerequisite rather than a consequence. Some recognised, however, that GI protection may increase social capital by strengthening the relevant rules and regulations. In addition, some argue that GIs should be combined with policies to support traditional activities. One public authority stresses that other means of protecting GIs, i.e. trade mark laws, already contribute to building social capital.

‘SRB members have developed a training programme and qualification, which is recognised worldwide, based on over 100 years of experience in skills training. (...) However, our ability to fund this training programme is being put under pressure by the high cost of defending the SRB trademark from attack, which is draining approximately 70% of the fund. GI protection would help us to defend our products and allow us to invest SRB funding in positive initiatives such as extending apprentice training rather than negative, but necessary, trademark defence. This training allows us to develop a new generation of skilled craft jobs, and contribute to employment in our area and beyond, thus stimulating wider economic growth and prosperity.’



3.2.2. Options for GI protection at EU level

3.2.2.1. Objectives and criteria for protection

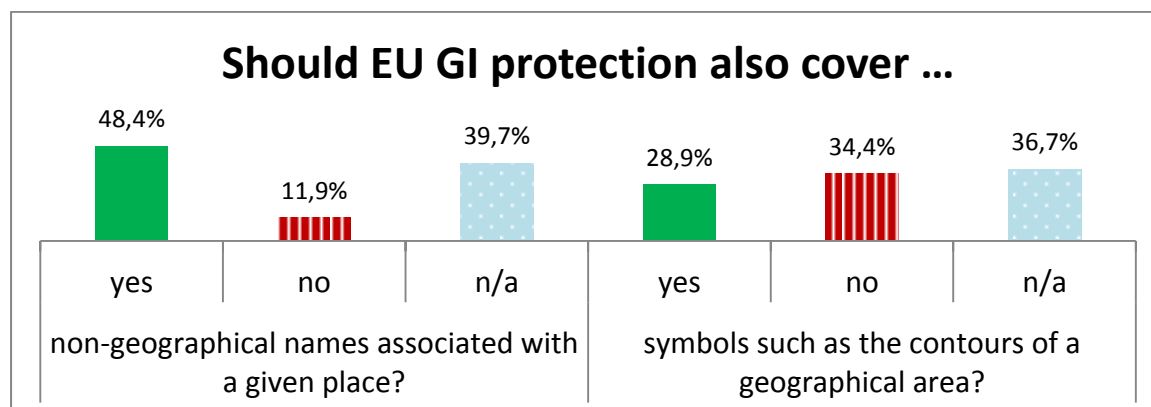
What label: names and symbols?

Questions:

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?

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

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



The majority of respondents who answer **Q12** are of the opinion that, in order to allow more businesses to make use of the protection, a GI for non-agricultural products should cover non-geographical names that are unambiguously associated with a given place. It is stressed that, to avoid confusing consumers, such names should be clearly linked with a given geographical territory and should not be generic. Any new system should be consistent, in that respect, with the existing GI system for agricultural products.

'Yes, if the name is unambiguously associated with a given geographical territory ...'

'No, because such names are particularly susceptible of causing legal uncertainty as to the existence of a clear geographical link ...'

In order not to affect the existing rights of other producers (**Q13**), the link with the area must be unambiguous, unmistakable and non-generic. This would need to be ensured through detailed checks by a specialised and independent (preferably public) body before registration. An objection mechanism would be needed to ensure that affected third parties could raise their concerns and invoke prior rights. Also, it should be possible to cancel GI rights to ensure that only those terms for which there is an actual need and continuing justification stay on the register. Some respondents propose introducing

a ‘prior-use clause’ to make sure that producers who can prove long-standing use of a name are not adversely affected by the registration. In certain cases, this should extend to refusal to grant GI protection.

‘...there should be also nothing to prevent the production of a given type of product not made in accordance with the specifications as long as there is no free-riding on the protected name ...’

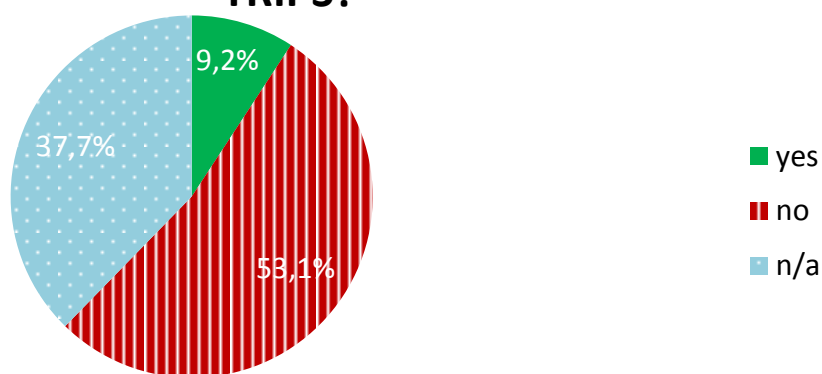
According to certain respondents, the protection of symbols such as the contours of a geographical area (Q14) could be envisaged under certain conditions, e.g. the existence of a clear and precise link with a given geographical territory and no risk of confusion for consumers. However, a greater number are against this, because administrative areas do not usually correspond to the geographical area of the GI product (which may even straddle borders). In addition, protecting the contours of a geographical area is not part of the EU’s established approach and would diverge too far from the agricultural GI system. Symbols other than names would also blur the distinction between figurative trade marks and GIs, and thus endanger their effective coexistence.

What indications should be excluded from GI protection?

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.

Need to add exceptions to those provided in TRIPS?



A majority of respondents (53.1%) are of the opinion that the exceptions to GI protection provided in the agreement on trade related aspects of intellectual property rights (TRIPS), i.e. generic terms, conflicting prior trade mark and certain cases involving homonymous geographical indications, are sufficient. It is stressed, however, that rules on generic and homonymous terms that apply in the EU agricultural GI system should be followed. It is also proposed that names conflicting with the name of a plant variety or an animal breed

so as possibly to mislead the consumer, and names contrary to public order, be excluded from protection.

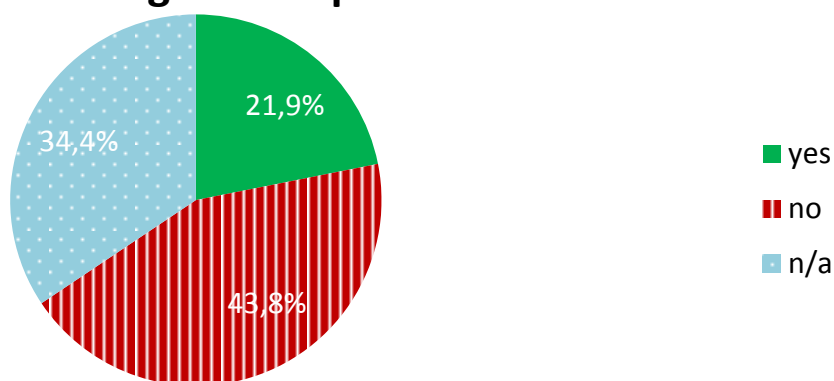
3.2.2.2. To what should GI protection apply? (cross-cutting vs sectoral approach)

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.

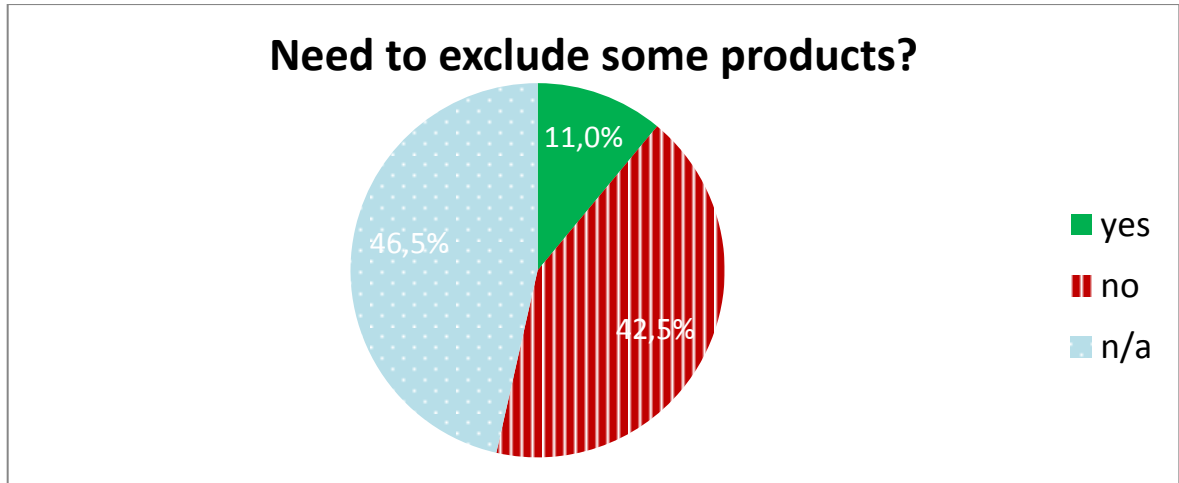
17. Do you think some products should be excluded from GI protection at EU level? If so, please specify.

Need to differentiate depending on categories of product ?



A majority of those who replied to **Q16** are of the opinion that there is no need for a sectoral approach and that a single general system should be introduced. In their view, what counts is not the category of a product but the existence of a link between its quality/reputation and its geographical origin. Such a link can be assessed in the same way for all products, using human and/or natural criteria. Moreover, as the beneficiaries of the system would be predominantly small and medium-sized enterprises with regional roots, the arrangements should be as clear and simple as possible. A sectoral approach would only add complexity and create additional costs. It would also be difficult to agree on an exhaustive list of categories of products eligible for GI protection. In conclusion, a simple system covering different categories of product would be easier for authorities to manage, for producers to use and for consumers to understand, and thus have greater political and economic impact.

Some advocated a sectoral approach, however, on the basis that the range of products that could be protected by non-agricultural GIs is much broader than that covered by the agricultural GI system. Each category of product has specific features to be identified and safeguarded. Only a sectoral approach would ensure that the many substantial differences between non-agricultural products (e.g. between raw materials and processed products consisting of a range of raw materials) are duly taken into account.



On **Q17**, the vast majority of those who express an opinion are of the view that there is no need to exclude certain non-agricultural products *a priori* from GI protection. Some respondents argue that such exclusion could even be open to WTO challenge. On the other hand, it is suggested that goods could be excluded from protection if their production or use is contrary to public order, morality, national or EU legislation and international treaties, e.g. ivory carvings.

3.2.2.3. Link between product and territory

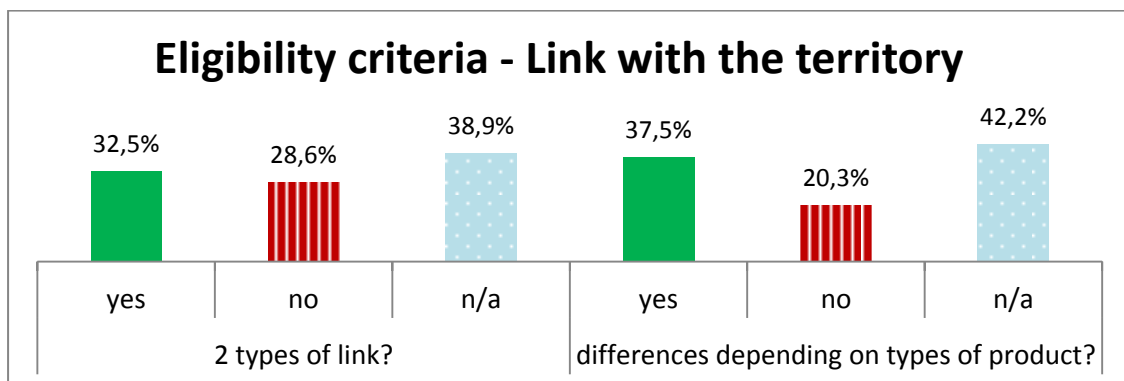
How strong should the link with the territory be?

Questions:

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?

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?

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



The replies to **Q18** stress that, unlike that for agricultural products, the GI link for non-agricultural products does not derive primarily from the raw material used, but very

often from the method of production, traditions and know-how. The focus should therefore be on the human resource factor. Many respondents suggest that, as regards the link with the territory, the factors in the agricultural GI system, i.e. specificity, reputation or special characteristics linked to the territory, should be followed as closely as possible. Opinions vary, however, between those in favour of a very strong link with the territory, with all raw materials originating and all stages of production being carried out in the designated area, to those advocating a looser link, with at least one production stage taking place (and the raw materials not necessarily originating) in the area.

'The stronger the link, the greater the credibility of registrations. Ideally, protection should be restricted to products where the raw materials and manufacture originate in a given area ...'

'At least one of the production, processing or finishing stages must take place in the area, while raw materials may come from another region ...'

Some respondents indicate that tradition (over a significant period of time) and a close link between the product and history, society and the environment should also be demonstrated before protection is granted.

The next question (**Q19**) focused more specifically on the strength of the link between the product and the territory. Here, the replies are more polarised (and over a third of respondents took no position).

The arguments put forward in favour of two types of link (PDO and PGI) stressed that, for greater consistency between the schemes, the agricultural GI system should be followed. In addition, the variety of non-agricultural GI products is very broad — from those with a very strong link with the territory (e.g. stone and marble) to others for which the link is based on methods of production, know-how and human factors. In that case, having two types of links would make it easier to reflect the character of the link.

Others believe that the existing system is overcomplicated and confusing for consumers. They argue that PGIs alone would be enough, especially because only few types of product use raw materials from the concerned geographical area. In addition, this option would facilitate the conclusion of trade agreements as commercial partners very often do not differentiate between PDOs and PGIs and apply only one definition of a GI.

The discussion on differentiated protection for different kinds of product was continued in the answers to **Q20**. Many respondents (42.2%) do not have specific views on this issue, leaving the question for further consideration. The majority of those who express an opinion are of the view that differentiation should be introduced depending on the type of product, especially taking into account the provenance of raw materials (local or otherwise) and product history and specificities.

'(...) some regions attach value not only to production but also to the tradition of vocational and artisanal training. This may result in artisanal traditions from the region deliberately being shared with persons who then work using these traditions and knowledge in other locations.

An example of this (...) is the Mittenwald as a centre for violin production. The technical school there for violin production, combined with placements in local businesses, aims to pass on artisanal traditions to violin-makers on the training course who will work in other regions afterwards.

There would be a possibility here of organising the geographical indication label in two grades. The first grade could be for products which come directly from the region (...). The second grade could be for products which are crafted in a very individual manner by people who have learned their trade in that region and respect the set quality criteria for products with the geographical indication when making the product.

A related provision for such labelling in two grades would have to be established by the association which applies for protection (... which ...) could then decide itself whether it attaches such importance to the training and sharing of skills (...) that it wishes to allow persons who complete the training to benefit in part from the geographical indication (...).

This advantage would not be offered on an arbitrary basis, because use of the second grade designation would also be subject to corresponding criteria (training in the region, compliance with quality standards)'.

Quality and product specification

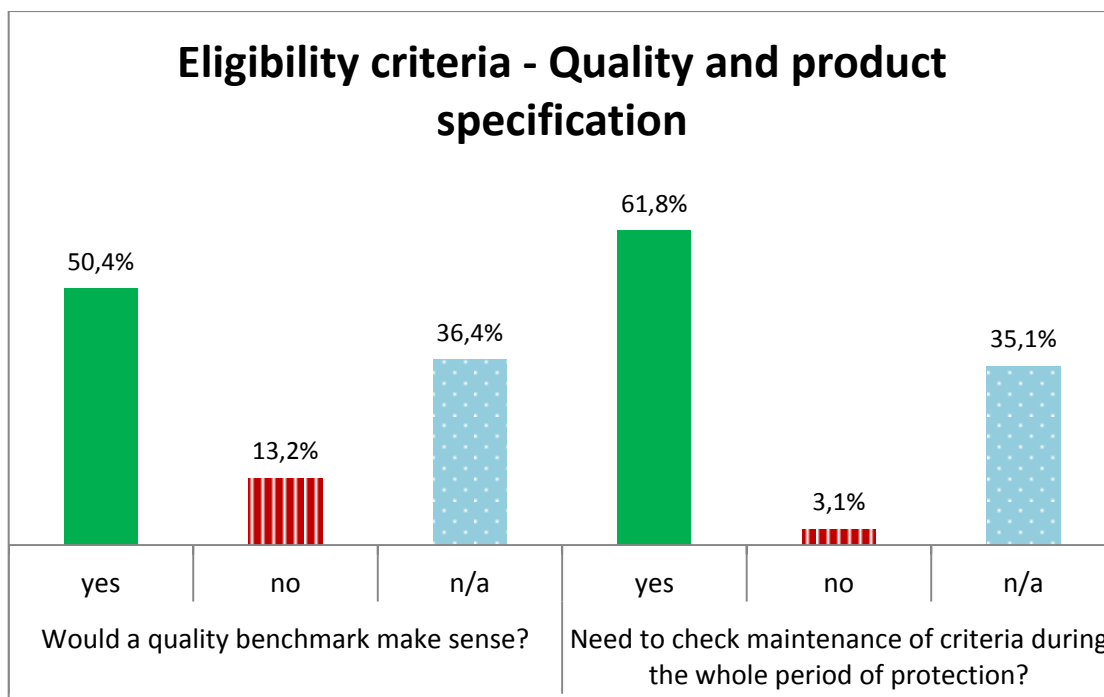
Questions:

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

22. How could such benchmark be defined?

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.

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?



There was broad support for introducing a quality benchmark for products for which GI protection is sought (**Q21**). For some respondents, this is indispensable, as the demand for most GI products would not be there ‘if quality and high level craftsmanship were not in the DNA of the product’. They see such a benchmark as crucial to protecting genuine quality craftsmanship from third parties seeking to benefit from association with the GI without meeting these high standards.

Others are of the opinion that quality could be a condition for protection, as under the existing GI system for agricultural products, but that the quality requirements should be set in the product specification by the association applying for protection, and not by the legislator. The requirements should not be overly restrictive (minimum quality) so as to allow innovation and limit administrative burden.

Those against introducing a quality benchmark argued that:

- ✘ it would be extremely difficult to define and measure quality for certain products;
- ✘ over-regulation could destroy the very aspects that should be protected, i.e. creativity and high quality in the detail, and limit the number of protected products (names);
- ✘ there is no need to define quality, because the mere granting of GI protection stimulates greater consumer interest and increases competition between products with the same GI. Product quality is pushed upwards as a result of producers’ interest in maximising output;
- ✘ GI products are often more expensive as a result of the production methods and they can only remain attractive to consumers if they offer high quality.

As regards setting a quality benchmark (Q22), the majority are of the opinion that it would be difficult to establish clear quality criteria or one definition for all non-agricultural products. It is suggested that this should be left in the hands of producers or their associations, who would describe it in the product specifications, leaving scope for innovation and creativity (see above). Such a definition could include, for example, a description of materials used, the manufacturing process, technical and visual characteristics of the final product and even traditional, cultural and artistic heritage.

Many respondents express strong support for checking that the specific characteristics, quality and origin of a GI are maintained throughout the period of protection (Q23). The main argument in favour of such inspections is the need to give consumers a guarantee of the products' characteristics and quality. Otherwise, standards within the production process could fall, leading to abuse of the GI system itself. The checks could be performed on a regular basis or randomly by a public authority or an independent body designated by the producers' association. Respondents underline that the control mechanism should not be too costly and burdensome for producers.

There is a broad consensus that GI protection has never meant blocking innovation (Q24). It should be possible to adapt the product specification to market needs and new technologies. The product specification should therefore not be overly detailed or restrictive. The only obligatory characteristics should be those without which the product cannot be identified as belonging to the protected group.

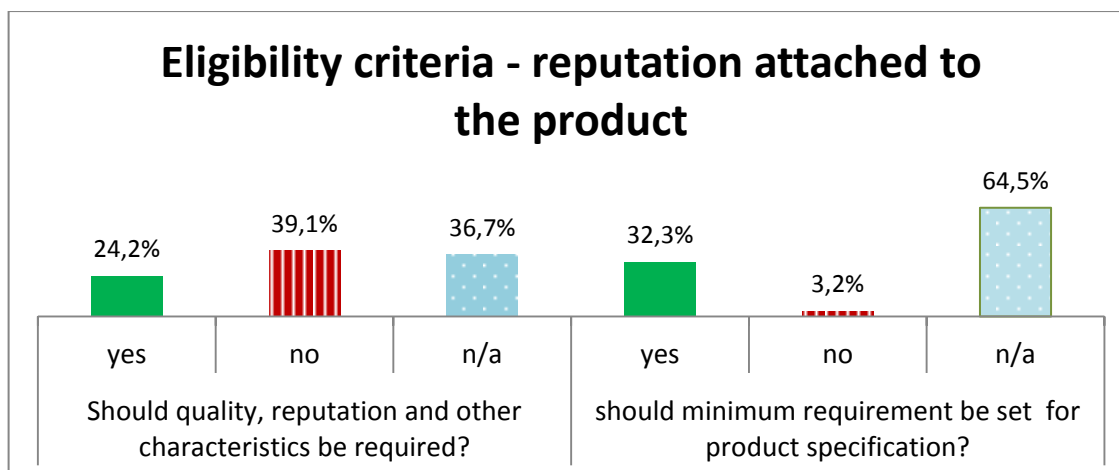
'Product specifications should include only the elements necessary to ensure the particularity/specificity of the product. If for example, the reputation of the product is based on the use of local clay, the use of this clay should be a mandatory condition for protection. If, however, the reputation is only related to the local know-how and nobody expects that the raw material comes from the geographical area, then there is no need to provide for local sourcing of clay ...'

Reputation attached to the product

Questions:

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.

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.)



Opinions on requirements as to quality, reputation and other characteristics (**Q25**) vary from those seeing reputation as an inherent feature of a GI to others who do not see the need for including it in the product specification at all:

- the former believe that GI protection is not for completely new products, but only for those that already enjoy a reputation among consumers. A reputation requirement would enhance the prestige of the GI and keep the list of GIs stable (while open to new inclusions). However, the product’s reputation would not have to be worldwide: it could be very local, even at the level of a village;
- the majority took the latter view, opting for a more open system and arguing that requiring an established reputation would be a barrier to entry to the system. Reputation could be a factor to be taken into account – along with quality and other characteristics — but should not be obligatory. These respondents argue that any other approach would run counter to TRIPS Article 22.

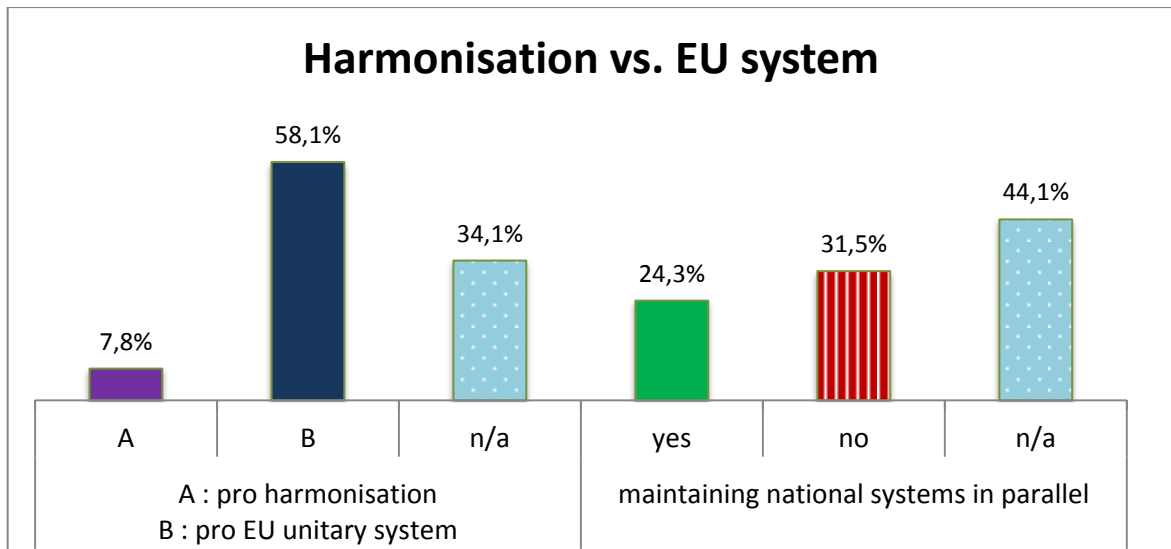
A majority of those who answer **Q26** are of the opinion that product specifications should contain only minimum requirements. Some argue that the approach should reflect Article 7 of Regulation (EU) No 1151/2012, except as regards financial aspects (budget, etc.). The most frequent elements suggested for inclusion in the product specification are name, geographical area, link between the product and its origin, raw materials, production method and steps, and quality. Other factors put forward are control and traceability mechanism, occupational health and safety, compliance with the ban on child labour and other social and environmental criteria, storage, transport, etc. Some are of the opinion that it is not feasible to establish uniform minimum requirements for all non-agricultural products and that specifications should be developed case by case.

3.2.2.4. *How to enhance protection: harmonising national laws or creating a single EU-wide system?*

Questions:

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?

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 respondents express very strong support for the idea of a single EU-level protection system (**Q27**), on the basis that:

- it would be difficult to harmonise national legislations on GIs; many Member States do not have any and putting such a system in place would be very time-consuming;
- harmonising national rules would not guarantee that the system were implemented in the same way across the EU, leading to divergences in the internal market;
- in one Member State, producers were reportedly not at all interested in GI protection at national level, but registrations started to flow once EU-wide protection became possible;
- an EU-wide system would be simpler, more effective, transparent, and user- and consumer-friendly.

It is suggested that a non-agricultural GI system should, as far as possible, be modelled on the agricultural GI system.

Views as to whether national systems should coexist with an EU one (**Q28**) are mixed:

- supporters of coexistence argue that national systems should be maintained as an additional option for producers, who could choose from a number of options for protection (as is currently the case with trade marks and designs). Some producers operate only on a local market and do not intend to expand. If national systems ceased to exist, members of the Lisbon System would not be able to fulfil their obligation to protect third countries' non-agricultural appellations of origin;
- proponents of an exclusive EU system, similar to the agricultural one, claim that coexistence would only add complexity, create a lack of clarity and increase costs. However, they acknowledge the need for transitional provisions for existing national GIs.

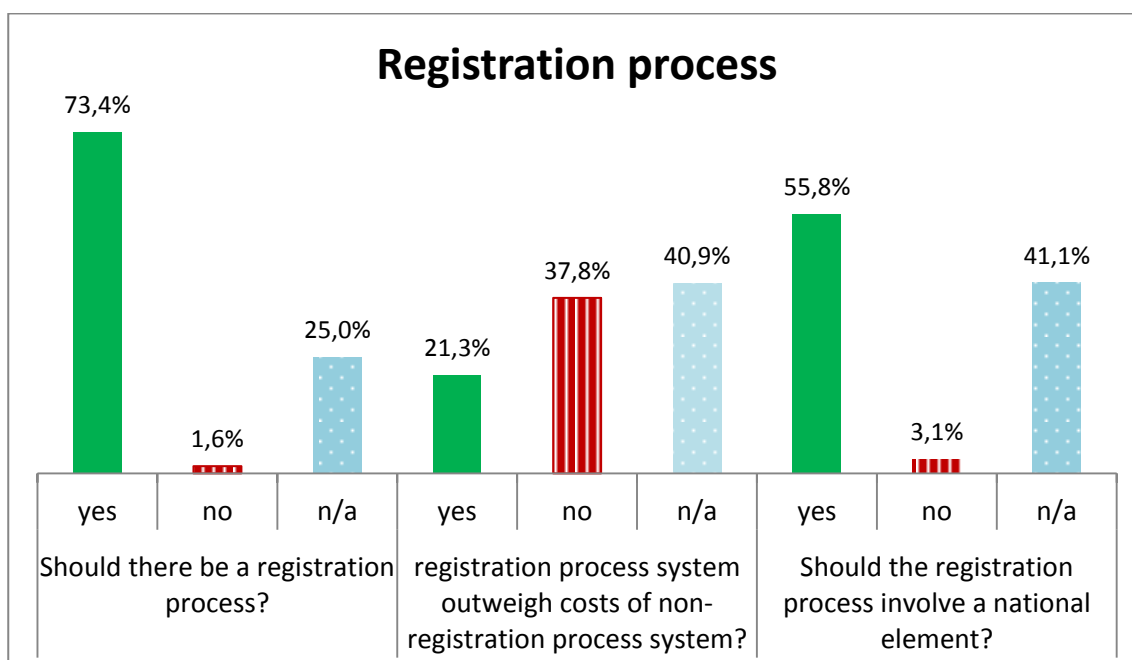
3.2.2.5. Registration

Questions:

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

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

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.?



The respondents express broad support for a registration process to protect non-agricultural GIs (Q29). In their view, this is the only way of ensuring the credibility of the system as a whole and legal certainty for GI producers and their competitors, who would have clear information as to which names are protected. The registration procedure would also allow interested parties to raise objections in defence of their existing rights. Respondents also stressed that a registered GI would be much easier to enforce. The registration process for non-agricultural GIs should draw on experience from the existing agricultural GI system.

On Q30, it was argued that, while registration should be affordable for SMEs, its costs are less important than its usefulness. In a system without registration, there would be frequent legal disputes leading to court proceedings and significant related expenditure. In other words, such a system would actually cost more as a result of legal uncertainty and the need for enforcement. In addition, respondents point out that the main costs would be

incurred in setting up the GI system (e.g. establishing groups of producers, drafting product specifications, carrying out controls) and not in having to register the GIs.

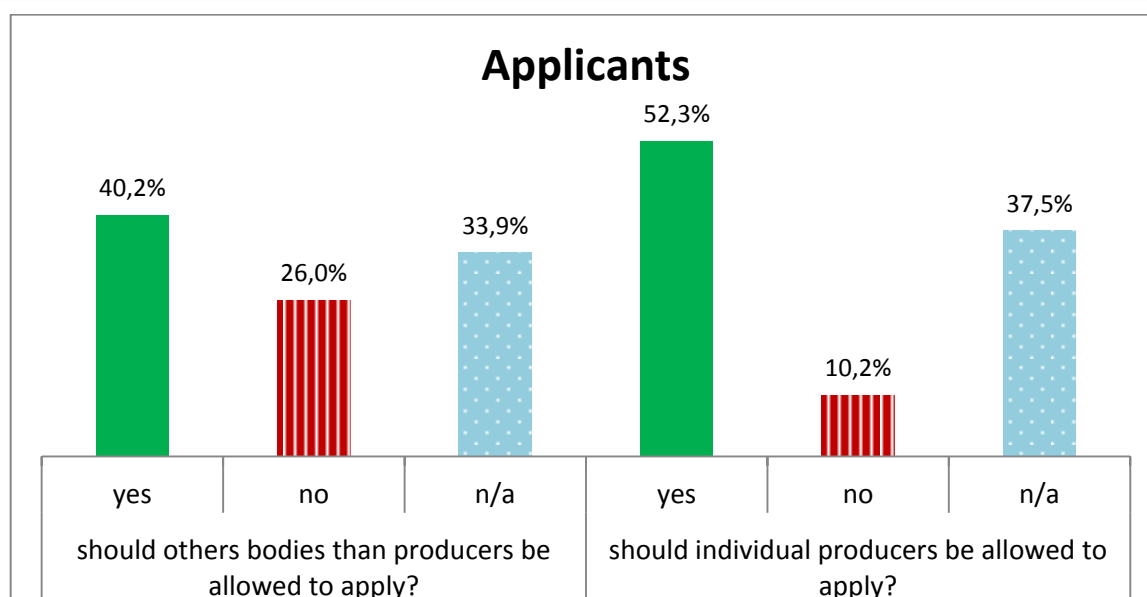
The majority see benefits in involving a national element (Q31), as national (regional/local) authorities are most likely to possess the requisite knowledge of local geography, history and culture, and the essential product characteristics. It would be difficult for the EU to exercise these tasks, but it should ensure that Member States apply uniform benchmarks when determining whether a GI is eligible for protection. Any national phase should be subject to strict deadlines in order to avoid excessive delay. It is suggested that the existing two-phase agricultural system should be followed, where possible, while at the same time exploring possibilities for simplification.

Content of the process — applicants

Questions:

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?

33. Should individual producers be allowed to apply?



There is a broad consensus that, primarily, only producers and their associations, as those best acquainted with products and manufacturing processes, should be allowed to apply for GI registration (Q32). Some argue that chambers of commerce, local and national authorities, state bodies, consumer associations, cooperatives and even international organisations, educational establishments and charities should also be able to apply. Respondents also point to a need for specific rules on the recognition of third countries' GIs, whereby the third country should designate the body that can apply for protection.

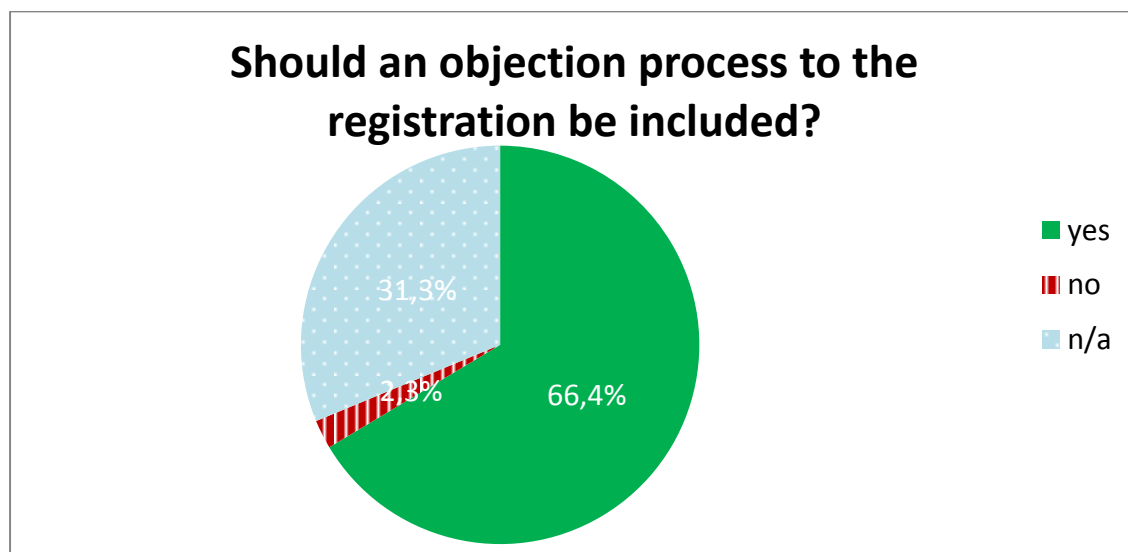
The majority of respondents support the idea of allowing applications from individual producers (Q33). It is stressed, however, that this should be viewed as exceptional and

allowed only in clearly defined circumstances, e.g. when there is only one manufacturer of the product in the region in question. The risk is that the product characteristics or geographical area might be determined to the economic advantage of one producer and others who want to join the system in the future might be excluded. Therefore, respondents stress that there should be safeguards to guarantee that the system remains open for others to join at a later stage.

Content of the process — objection procedure

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?



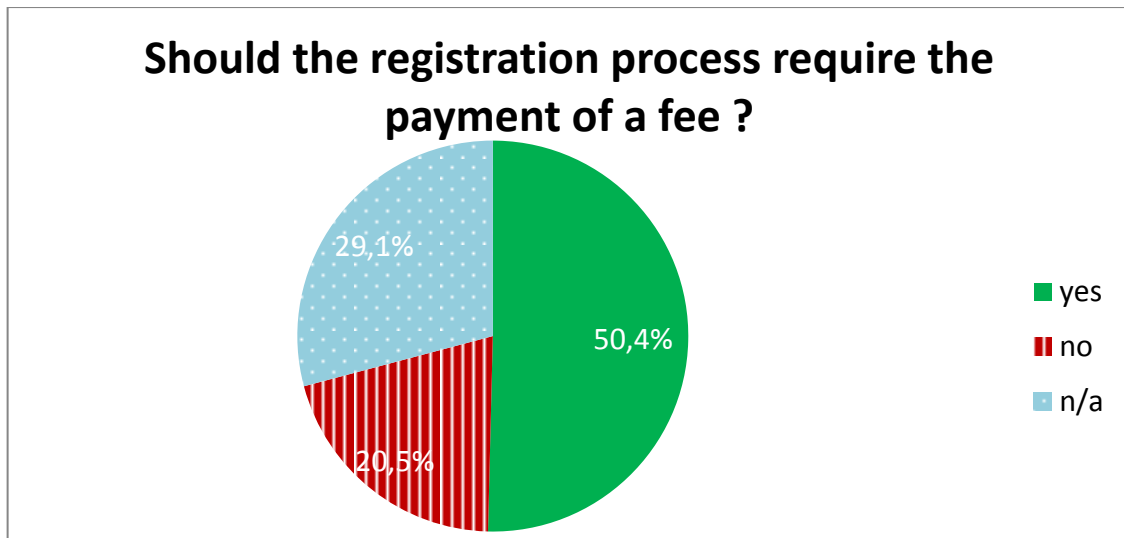
The respondents express clear support for an objection procedure (**Q34**) to ensure transparency and fairness, and allow all interested parties to raise concerns and defend their rights. Many suggest that the agricultural GI system should be taken as a model, so objections could be lodged by Member State or third country authorities or by any natural or legal person with a legitimate interest established in a third country or established or resident in a Member State other than that in which the application is made.

Content of the process — fees

Questions:

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

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



The majority of respondents opt for a registration fee to cover administrative costs and encourage serious applications only (Q35). Many underline that the fee should be affordable for SMEs, in order not to deter them from applying for protection. Some argue that the new system should not differ in this respect from the agricultural GI system (no fees at EU level). In view of the semi-public character of GIs, certain respondents call for fully free-of-charge registration and public (local/national authority) contributions.

As to the level of fees (Q36), the respondents again stress that it should not be prohibitive for small producers, but reflect the actual administrative costs of running the system. The amounts suggested range from EUR 250 to EUR 900.

3.2.2.6. *Scope of protection*

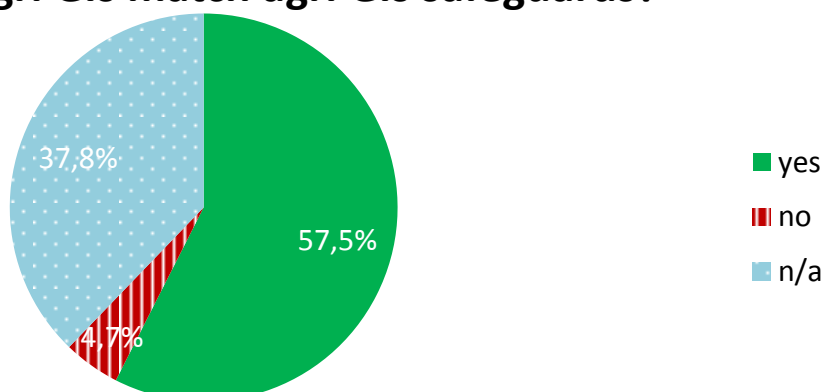
Level of protection

Questions:

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

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

Should the protection granted to non-agri GIs match agri GIs safeguards?



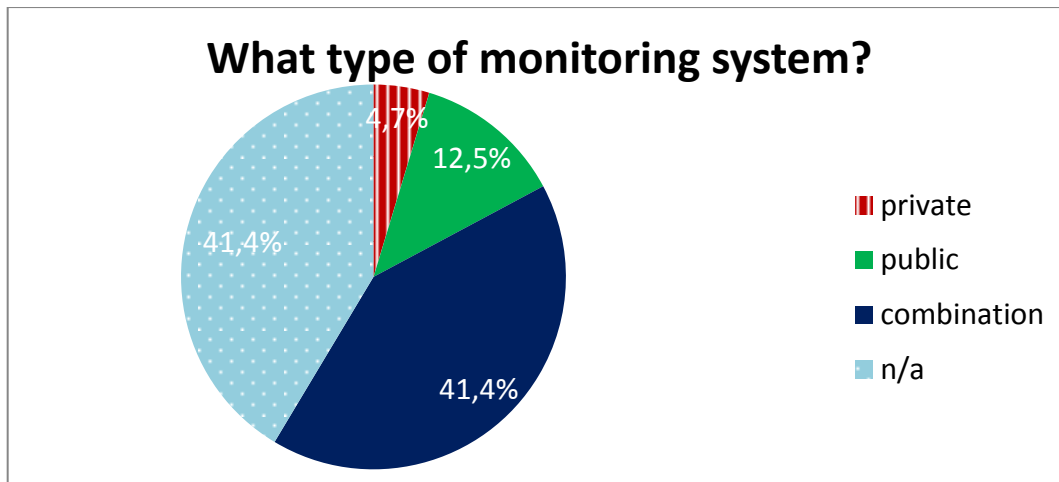
The most common answer to **Q37** and **Q38** is that the non-agricultural products should enjoy the same high level of protection as agricultural goods (see Article 13 of Regulation (EU) No 1151/2012). The respondents argue that there is no reason to treat non-agricultural GIs differently – they should be protected against any misuse, imitation or evocation, even if the true origin of the products or services is indicated or the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, etc. The protection should also cover any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product. Numerous replies indicate that non-agricultural GIs should be granted the level of protection provided for in TRIPS Article 23 (higher level of protection for wines and spirits).

On the other hand, some argue that the scope of protection should be similar to that for trade marks, which offers clear and predictable standards to reduce the likelihood of confusion, dilution and free-riding on the reputation of the protected name. In these respondents’ view, broader protection for GIs is not justified and may lead to legal uncertainty and obstacles to competition.

Monitoring and enforcing GI rights

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.



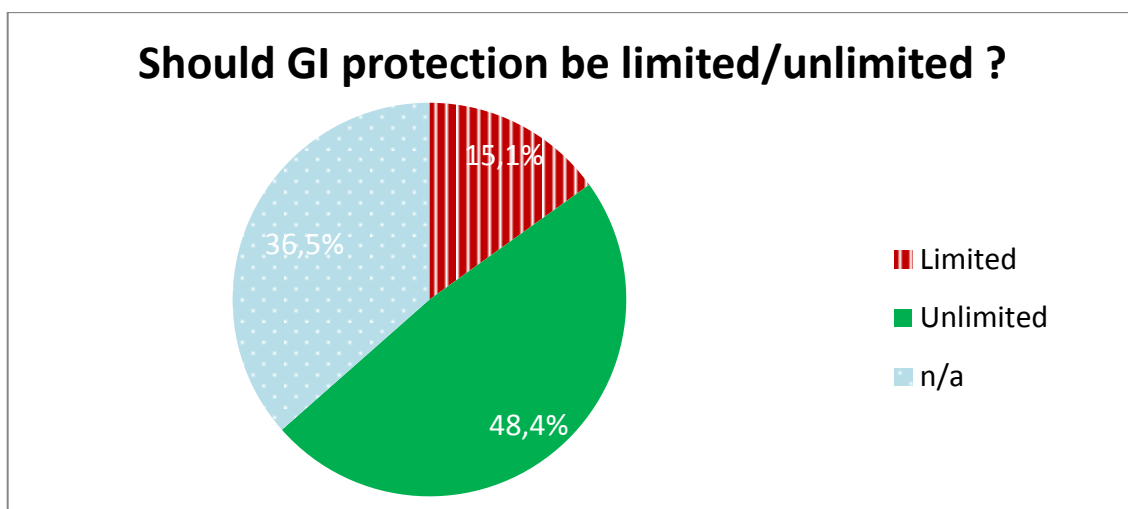
The majority of those who answered **Q39** are of the opinion that the system for monitoring and enforcing non-agricultural GI rights should be based on cooperation between public and private bodies, like the agricultural GI system, i.e. public control combined with private, impartial and independent private monitoring and enforcement (Articles 36-39 of Regulation (EU) No 1151/2012). Such a system would support producers (often SMEs) who could not otherwise afford the costs of monitoring and enforcement. The involvement of public bodies is also important because of the collective nature of the interests represented by GIs.

Others argue, however, that monitoring and enforcement should be left totally to the right holders, who have the greatest interest in protecting their rights.

Duration of non-agricultural GI protection

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?



In view of the specific legal character and role of GIs, i.e. creating a collective right the aim of which is to preserve local tradition and know-how, the majority of respondents favour protection that is unlimited in time (as is the case for agricultural GIs). It is stressed, however, that products should be protected only for as long as they fully meet the requirements of the product specifications, so regular periodic checks would be indispensable. If production were no longer carried out in accordance with the specification, the protection should cease to apply.

Other respondents suggest a limited term of protection (e.g. 10 years) with a possibility of consecutive and unlimited (10-year) extensions. In other words, the protection could be unlimited, but the right holder would need to demonstrate its interest in maintaining it.

3.2.2.7. After registration

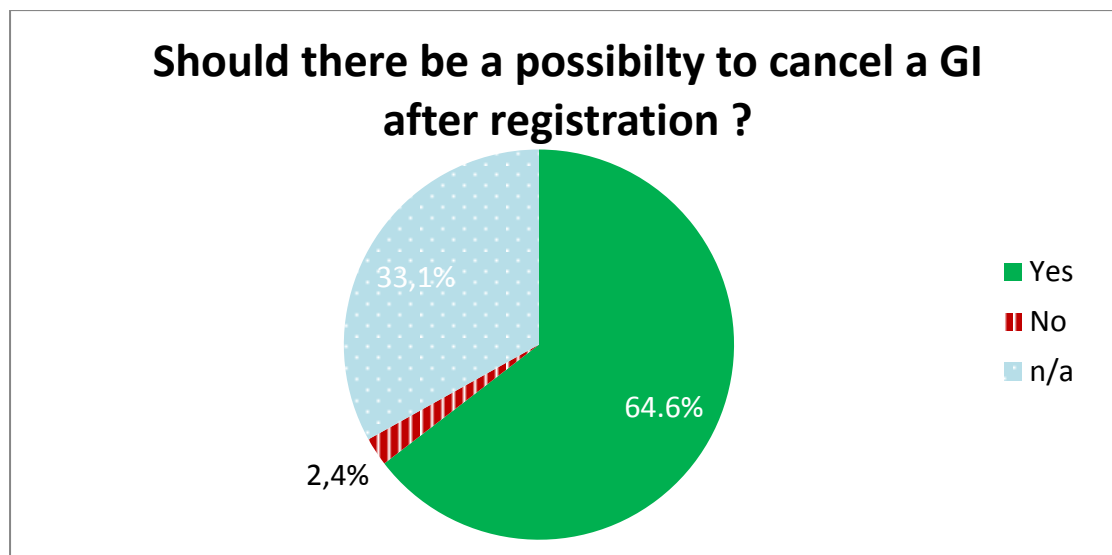
Cancellation of protection

Questions:

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

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

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?



There was broad consensus that it should be possible to cancel a GI under certain well-defined and clear conditions laid down in law (Q41). The respondents suggest that, as with the agricultural GI system, it should be possible to cancel a GI if the product or production method no longer comply with the specification or if a GI name has not been used in the market for a certain period of time. In some cases, e.g. natural stone, the

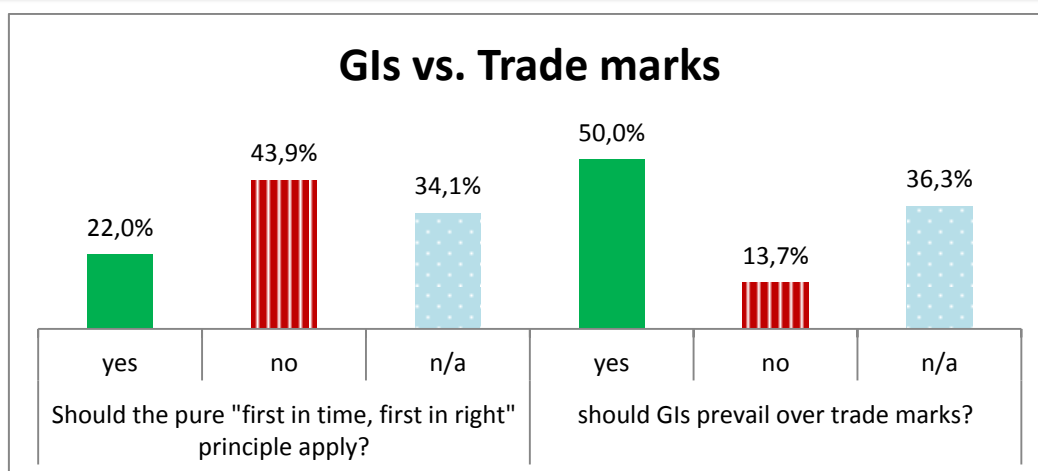
requisite raw material may be exhausted, so it is no longer possible to manufacture the product. It is also stressed that there should be protection against unscrupulous competitors seeking to cancel the GI and a right of appeal by GI producers. If the GI name is no longer being used in the market, the cancellation procedure could be simpler.

Respondents suggest a long list of entities that should be entitled to apply for cancellation (Q42): producers themselves, associations, competitors, national/regional authorities responsible for GIs, relevant EU bodies, consumer associations, chambers of commerce, third countries, etc. The majority are of the opinion that it should be possible for any natural or legal person with a legitimate interest to apply for cancellation of a GI.

The respondents who replied to Q43 are of the opinion that, for greater consistency and clarity, the cancellation procedure for non-agricultural GIs should reflect as closely as possible that for agricultural GIs.

Potential conflicts between GIs and trade marks

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



The majority of respondents who replied to Q44 are of the opinion that the pure ‘first in time, first in right’ principle (i.e. the prior right always prevails) cannot apply to trade marks and GIs. It is argued that the objectives of protection ensured by each type of intellectual property right (IPR) are different: GIs are collective (semi-public) rights which protect local culture and heritage, while trade marks are purely private.

Many respondents indicate (Q45) that the most natural approach would be that taken for agricultural GIs, whereby:

- a) a pre-existing trade mark’s reputation may prevent a GI from being registered where that could mislead consumers as to the true identity of the product;

- b) otherwise, any trade mark which has been applied for, registered or established by use in good faith before the date of application to register a GI at EU level should coexist with the registered GI; and
- c) registration of a GI should prevent registration of a trade mark which was applied for subsequently, if this would conflict with the protection granted to the GI. In such cases, national or European trade mark offices should refuse *ex officio* to register the trade mark.

Some argue, however, that GIs should not be given preferential treatment over other IPRs and the pure ‘first in time, first in right’ principle should apply.

4. OUTCOME OF THE PUBLIC CONFERENCE

A public conference took place on 19 January 2015 as a follow-up to the consultation on the green paper. There were 145 participants from the EU and third countries, representing producers, producers’ associations, national and regional authorities, international organisations, consumer protection bodies, legal practitioners and academics. Representatives of the European Parliament, the European Economic and Social Committee and the Committee of the Regions were also present and delivered supportive statements.

The aim of the conference was to present preliminary results of the consultation and discuss with stakeholders the issues that attracted most attention.

Discussions were divided into three parts:

- why?* — is there a need for action at EU level?;
- what?* — scope of protection and substantive requirements; and
- how?* — procedural aspects and implementation.

During the first part, a majority of participants made the case for enhanced and unitary GI protection for non-agricultural products in the EU. They highlighted the patchiness and complexity of the various national systems that currently coexist without guaranteeing effective protection against the deceptive use of indications of origin for non-agricultural products. Many stakeholders stressed, however, that any new system should ensure a fair coexistence of the complementary and mutually reinforcing trade mark and GI systems of protection. However, representatives from three Member State authorities expressed doubt as to the need for new arrangements and argued that the trade mark system was sufficient for non-agricultural products.

The second part of the discussion showed a broad consensus that the eligibility criteria for protection must be very clear in order to guarantee legal certainty, but also flexible enough to be applicable to all sectors without hindering innovation. The main points made related to the strength and character of the link between the product and its place of origin, and (product) quality requirements. The question was raised, for instance, whether

GI producers should be prevented from delocalising production if the specific characteristics of the product come from know-how only.

A key conclusion from the third part of the discussion was that there is strong support for formal registration of GIs. It is widely thought that this would give the system credibility and legal certainty. It was underlined that the registration process should be fast, simple and affordable for all — even the smallest producers.

The question of how closely a new system should resemble the existing EU-level GI protection system for agricultural products was raised on many occasions. Participants also debated practical aspects of national/regional authorities' involvement in registration and the design of control and enforcement arrangements.