

ASSEMBLY OF THE PORTUGUESE REPUBLIC

European Affairs Committee

Opinion

COM(2014)469

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 – Text with EEA relevance [**COM(2014)469**].

PART I – INTRODUCTORY NOTE

In accordance with Article 7 of Law No 43/2006 of 25 August on monitoring, assessment and pronouncement by the Assembly of the Republic in the context of the process of European Union construction, as amended by Law No 21/2012 of 17 May, as well as the methodology of scrutinising European initiatives approved on 8 January 2013, the European Affairs Committee received 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 – Text with EEA relevance [COM(2014)469].

Given its subject matter, the above-mentioned initiative was referred to the Committee on Education, Science and Culture, which analysed it and approved the report annexed to and forming an integral part of this Opinion.

PART II – GROUNDS

1 – This initiative concerns 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*.

2 – The initiative under examination states that, in today's globalised world, the range of products offered to the consumer is almost unlimited.

In order to make an informed choice, consumers need to gather and compare information on the price and characteristics of an increasing number of goods.

The price and the basic features of a product may not be the sole deciding factors. Consumers also look for ways to identify authentic, original quality products, and expect that the quality and specific features advertised provide the qualities that they value, for which they are often willing to pay a premium.

3 – It is also mentioned that, to achieve this, the reputation and/or given quality features associated with products due to their particular origin may be crystallised in what is termed a 'geographical indication' characterising the product.

Geographical indications (GIs) are indications that identify goods as originating in a country, region or locality where a particular quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, for example Bordeaux (wine) or Vetro di Murano (glass).

4 – It is further stated that GIs are self-evidently relevant to agricultural products, foodstuffs, wines and other alcoholic beverages, where their geographical origin is linked with qualities stemming either directly from the soil or climate (e.g. wines) or from a combination of natural factors and traditional processing methods applied in the region (e.g. Bayerisches Bier).

5 – However, the use of GIs is not limited to agricultural products. A GI may also highlight specific qualities of a product that are due to human factors found in the product's place of origin, such as specific manufacturing skills and traditions. This is the case, for instance, for handicrafts, which are generally handmade using local natural resources and usually embedded in the traditions of local communities.

6 – It is therefore important to point out that the European Union is rich in such authentic, non-agricultural products, based on traditional knowledge and production methods, which are often rooted in the cultural and social heritage of a particular geographical location, e. g. *Český křišťál* (Bohemian crystal), Scottish tartans, *Marmo di Carrara* (marble) or *Meissner Porzellan* (porcelain).

All these products form part of Europe's traditional knowledge and skills, and so are important to its cultural heritage and contribute to the cultural and creative economy. They also have a considerable economic potential, if the right conditions of their exploitation are met. Innovation and technological progress are instrumental in making the best out of local expertise and heritage.

7 – In this context, it is important to state that the EU is bound by rules on protecting GIs under the agreement on trade related aspects of intellectual property rights (TRIPS), which applies to all 159 members of the World Trade Organisation (WTO), and covers both agricultural and non-agricultural products.

In all WTO member countries, GIs have to be protected to avoid misleading the public as to the origin of goods and to prevent unfair competition. WTO members are allowed to use different legal instruments to achieve this.

8 – The document also notes that, at EU level, unitary GI protection is currently provided for wines, spirit drinks, aromatised wines and for agricultural products and foodstuffs.

There is currently no harmonisation or unitary GI protection in place for non-agricultural products at EU level. Instead, national legal instruments apply, resulting in varying levels of legal protection across Europe. Non-agricultural producers who wish to protect a GI throughout the EU need to ensure that they have separate protection in each Member State, which does not seem to be in line with the objectives of the internal market.

9 – The Commission also identified the issue in its 2011 Communication *A Single Market for Intellectual Property Rights*¹ and proposed a thorough analysis of the existing legal framework for GI protection of non-agricultural products in the Member States, and its implications for the internal market.

10 – The study on geographical indications protection for non-agricultural products in the Internal Market ('the Study') was commissioned to follow up on this in 2012².

11 – The study, published by the Commission in March 2013, takes the view that existing legal instruments available for producers at national and at 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 wide debate on the need for more efficient GI protection of non-agricultural products at EU level.

Many of the stakeholders taking part supported the study's call for better GI protection of non-agricultural products at EU level.

¹ http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf

² The study was conducted prior to the accession of Croatia to the European Union and does not cover it.

12 – In light of the results of the Study and the outcome of the public hearing, the Commission therefore decided to pursue its analytical work through this Green Paper, which aims to consult with all stakeholders in the broadest possible manner on whether there is a need, in the EU, to increase GI protection for non-agricultural products and, if so, what approach should be taken.

13 – Lastly, it should be said that the report presented by the Committee on Education, Science and Culture was approved and fully reflects the tenor of the initiative. This therefore serves to avoid repetition of analysis and consequent redundancy.

PART III – OPINION

In the light of the information set out above and the report of the relevant committee, the European Affairs Committee's opinion is as follows:

1. There is no need to carry out an assessment of the principle of subsidiarity inasmuch as the initiative is not of a legislative nature.
2. This concludes the scrutiny of this initiative.

Palácio de S. Bento, 7 January 2015

Rapporteur
(Paula Gonçalves)

President of the Committee
(Paulo Mota Pinto)

PART IV – ANNEX

Report of the Committee on Education, Science and Culture

ASSEMBLY OF THE REPUBLIC

Committee on Education, Science and Culture

Opinion

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

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PART I – INTRODUCTORY NOTE

In accordance with Article 7 of Law No 43/2006 of 25 August 2006 regulating the monitoring, examination and issuing of opinions by the Assembly of the Portuguese Republic in the context of the process of EU integration, as amended by Law No 21/2012 of 17 May 2012, the European Affairs Committee asked the Committee on Education, Science and Culture to issue a report on COM (2014) 469 – 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.

PART II – GROUNDS

This initiative seeks to launch a wide debate on whether there is a need, in the EU, to increase GI protection for non-agricultural products, and if so what approach should be taken.

At EU level, unitary GI protection is currently provided for wines, spirit drinks, aromatised wines and for agricultural products and foodstuffs, and yet, 'A GI may also highlight specific qualities of a product that are due to human factors found in the product's place of origin, such as specific manufacturing skills and traditions. This is the case, for instance, for handicrafts, which are generally handmade using local natural resources and usually embedded in the traditions of local communities'.

According to the GREEN PAPER, 'there is currently no harmonisation or unitary GI protection in place for non-agricultural products at EU level and non-agricultural producers who wish to protect a GI throughout the EU need to ensure that they have separate protection in each Member State, which does not seem to be in line with the objectives of the internal market.'

The Commission identified the issue in its 2011 Communication *A Single Market for Intellectual Property Rights* and proposed a thorough analysis of the existing legal framework for GI protection of non-agricultural products in the Member States, and its implications for the internal market.

To that end, in 2012 it commissioned the study on geographical indications protection for non-agricultural products in the Internal Market, and then published it in March 2013. That study takes the view that 'existing legal instruments available for producers at national and at European level are insufficient.'

In light of the results of the Study and the outcome of the public hearing, the Commission decided to pursue its analytical work through this Green Paper.

The Green Paper puts a number of questions to stakeholders in identified areas:

– Making the most out of GIs: potential benefits from extending EU GI protection to non-agricultural products: 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?

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?
- 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?
- 11) What do you think of current alternatives to harmonised protection for non-agricultural GIs?
– Options for GI protection at EU level:
- 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?
- 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.
- 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.
- 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.

- 21) Would a quality benchmark make sense for non-agricultural products?
- 22) How could such a 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?
- 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}.
- 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.
- 29) If a new system were to be developed, do you think there should be a registration process to protect a non-agricultural GIs?
- 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.?
- 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?
- 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?
- 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?
- 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?

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.

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?

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?

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.

Lastly, the Green Paper provides for a subsequent stage: the Commission invites all interested parties to contribute by responding to the questions set out in it by 28 October 2014.

PART III – CONCLUSIONS

In light of the foregoing, the Committee on Education, Science and Culture considers its examination of this initiative to be complete. Pursuant to Law No 43/2006 of 25 August 2006, this Opinion must be forwarded to the European Affairs Committee for the appropriate purposes.

Palácio de S. Bento, 3 October 2014

Rapporteur

President of the Committee

(Maria José Castelo Branco)

(Abel Batista)