

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF INITIATIVE	EU protection of geographical indications for non-agricultural products
LEAD DG (RESPONSIBLE UNIT)	DG GROW F3 (Intellectual Property)
LIKELY TYPE OF INITIATIVE	Legislative initiative / Regulation of the Council and the Parliament
INDICATIVE PLANNING	Q4 2021
ADDITIONAL INFORMATION	https://ec.europa.eu/growth/industry/intellectual-property/geographical-indications/non-agricultural-products_en

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, problem definition and subsidiarity check

Context

Geographical indications (GIs) are names of products linked to products' geographical origin and the producers' know-how, and have the status of intellectual property (IP) rights. They identify a good as originating in a specific place (national, regional or local) where a particular quality, reputation or other characteristics are essentially attributable to its geographical origin¹. As such, GIs are part of the EU's cultural heritage and contribute to the social and environmental sustainability of the economy.

The EU has *sui generis* GIs protecting wines, spirit drinks, aromatised wines and other agricultural products and foodstuffs². However, there is currently no EU-wide mechanism to protect the qualities attributed to specific local skills and traditions relating to non-agricultural products, such as ceramics, glassware, clothing, lace, jewellery, furniture and knives. Over half the Member States have national rules providing for the specific protection of indications of geographical origin as *sui generis* rights, but these differ in many respects. Non-agricultural producers who wish to protect an indication of geographical origin throughout the EU have to seek separate protection in each Member State in which this option is available.

GIs could help consumers identifying authentic products. It has been argued that they contribute to ensuring fair competition for producers and to protecting the quality and integrity of their traditional products, crafts or processes (which are often highly skilled)³. It is estimated that the introduction of EU-wide GI protection for non-agricultural products will help producers seize opportunities to develop and

¹ See Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

² For an overview, see: https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en#geographicalindications

³ Opinion of the European Economic and Social Committee 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, paragraph 3.1)

commercialize industrial and handicraft products. It could in the longer term yield an overall expected increase in intra-EU trade of about 4.9-6.6 % of current intra-EU exports (EUR 37.6-50 billion)⁴.

The European Commission has been called on to create a regulatory framework for the protection of geographically linked industrial and handicraft products. In 2014, a [Commission green paper](#) generated strong stakeholder support for an initiative at EU level. In autumn 2015, the Parliament endorsed an [own initiative report](#) on the possible extension of EU GI protection to non-agricultural products and called on the Commission to make a legislative proposal to that effect. On 10 November 2020, the Council adopted [conclusions on IP policy](#) and indicated that it ‘stands ready to consider the introduction of a system for *sui generis* protection of non-agricultural products, on the basis of a thorough impact assessment of its potential costs and benefits’ (paragraph 10)⁵.

In November 2019, the EU acceded to the [Geneva Act](#) of the Lisbon Agreement on Appellations of Origins and Geographical Indications⁶ (under the auspices of the World Intellectual Property Organization), which covers GIs for both agricultural and non-agricultural products. An EU instrument for non-agricultural GIs would enable the EU to take full advantage of the opportunities offered by the World Intellectual Property Organization (‘WIPO’) [Geneva Act](#).

The IP action plan adopted on 25 November 2020⁷ announces that the Commission will, on the basis of a thorough impact assessment of its potential costs and benefits, consider the feasibility of creating an efficient and transparent EU GI protection system for non-agricultural products.

Problem the initiative aims to tackle

The current regulatory framework for the protection of GIs for non-agricultural products in the EU (e.g. Murano glass, Solingen cutlery, Donegal tweed, Halas lace, Macael marble, Bolesławiec ceramics, Gablonz jewellery) is fragmented. While, as indicated, over half the Member States have established national *sui generis* protection systems with different characteristics, others use only trade-marks and/or rules on unfair competition to protect their intangible assets⁸. Within the internal market, there is also no cross-border system of (mutual) recognition of national protection systems. At EU level, producers can certify the origin of their products using a collective or individual trade mark. However, using a trade mark does not enable producers of industrial and handicraft products to certify the link between quality and geographical origin according to pre-determined EU-level standards.

Due to this fragmentation and legal uncertainty, producers may face a challenge when launching campaigns, registering trade marks or taking legal action⁹. Producers would have less of an incentive to

⁴ *Geographical indications for non-agricultural products — Cost of non-Europe report*, European Parliament (2019), [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2019\)631764](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2019)631764)

⁵ Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union, Official Journal of the European Union, C 379I, 10 November 2020; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2020:379I:FULL>

⁶ The Lisbon System facilitates the international protection of appellations of origin and geographical indications through one single registration procedure for a single set of fees in multiple jurisdictions. The Lisbon System is based on two international agreements: the Lisbon Agreement (1958) and the Geneva Act of the Lisbon Agreement (2015). The Geneva Act is aimed at the revision and modernisation of the Lisbon Agreement in order to help the system expand and obtain increased geographical coverage

⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2187

⁸ For an overview, see *Geographical indications for non-agricultural products — Cost of non-Europe report*, European Parliament (2019), p. 8-10 [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2019\)631764](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2019)631764)

⁹ Opinion of the European Economic and Social Committee 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), paragraph 3.3

invest in geographically linked products, to cooperate to create niche markets, and to retain unique skills that otherwise disappear¹⁰. In particular small producers could lose potential market opportunities¹¹.

The regions in which these producers operate can be peripherally located and may suffer from a lack of investment¹². Their potential for tourism can remain untapped. There could also be less incentive for preserving their cultural heritage. The initiative could help these regions attract workers and tourists with the growing interest in visiting less well-known parts of the EU.

In addition, sellers pass off their (often in third countries made) products as authentic, thereby threatening the value of the collective goodwill¹³. For producers of authentic products, this ‘free-riding’ means unfair competition, potential lost market opportunities and fewer possibilities to re-invest in production and marketing.

In the absence of appropriate EU-wide GI rules for non-agricultural products, it has been argued that consumers may find it more difficult to distinguish between authentic and non-authentic goods¹⁴. The gap in the current system would call for a more coordinated approach to ensure the appropriate use of GIs so as to guarantee authenticity, differentiate products on the market and boost the value of sales and exports. Producers regularly consider the visibility of authenticity logos as a key benefit of GIs¹⁵.

The lack of a uniform *sui generis* system of protection is also perceived as weakening the EU at global level. Non-EU countries are less likely to recognise and protect the EU’s agricultural GIs knowing that the EU cannot recognise their non-agricultural GIs in return. There is currently no possibility to get protection under the Geneva Act for EU producers who are currently unable to secure protection for non-agricultural GIs under this Act while the EU has to reject other countries’ requests for such protection¹⁶.

However, there are also counter arguments in relation to GI protection for non-agricultural products. It has been argued that by incentivising traditional production patterns, GIs reduce innovation and competition and therefore are not always helping the consumer. By overstressing the impact of “terroir”, GI protection could limit the possibilities to benefit from potential global supply chains and hence increase production costs. Furthermore, connection between quality and origin could be considered exaggerated, in particular for non-agricultural products as the local nature of non-agricultural products is more difficult to justify (mainly linked to human know-how and not to natural factors)¹⁷.

¹⁰ *Economic aspects of GI protection at EU level for non-agricultural products in the EU* (2020), p.72. In addition, the annexes to this Study show that the lack of training of future generations is a barrier to entry e.g. to create Fonseca furniture or Perpignan garnet, while certain sector had to create their own schools to retain specific skills e.g. for knitwear in Albacete

¹¹ *Economic aspects of GI protection at EU level for non-agricultural products in the EU* (2020), p. 26; <https://op.europa.eu/en/publication-detail/-/publication/c210fcc6-5463-11ea-aece-01aa75ed71a1/language-en/format-PDF/source-120480323>

¹² *Study on geographical indications protection for non-agricultural products in the internal market* (2013), p. 71 <http://ec.europa.eu/DocsRoom/documents/14897>

¹³ *Study on geographical indications protection for non-agricultural products in the internal market* (2013), p. 103: Accordingly, a majority of producers (60%) reported a small loss of revenues due to infringements (below 5% of the turnover), about 21% of the producers a loss between 5 and 30% and 12% of producers a loss between 30% and 50%

¹⁴ Cei *et al.* (2018), *From geographical indications to rural development: a review of the economic effects of European Union policy*, p. 2 (with reference to Akerlof)

¹⁵ *Economic aspects of GI protection at EU level for non-agricultural products in the EU* (2020), p. 78

¹⁶ The EU cannot secure protection for EU non-agricultural GIs in third countries using the Lisbon/Geneva route because in the absence of EU level protection to be granted to a GI, there can be no EU registration to start with in the international system. The EU also has to refuse protection of third country non-agricultural GIs because such protection is not available at EU level

¹⁷ See, for instance, Swedish Enterprise, *Memorandum – Non-agr GI and Intellectual Property*, 9 March 2020, at https://www.svensktnaringsliv.se/bilder_och_dokument/4uy7mj_sngifinalpdf_1005341.html/BINARY/SNGIFinal

Basis for EU intervention (legal basis and subsidiarity check)
<p>EU intervention could be based on Article 118 of the Treaty on the Functioning of the EU, which establishes a legal basis for the creation of EU intellectual property rights to provide uniform protection throughout the Union.</p> <p>The problem cannot be solved by the Member States alone, as they are unlikely to establish equal protection for authentic industrial and handicraft products throughout the EU. The lack of an EU-wide protection regime makes it difficult or impossible to protect authentic products on the basis of national GI titles¹⁸.</p> <p>The problem would be effectively solved at EU level. An EU initiative could create a framework for equal conditions of trade in all Member States.</p> <p>This would also enable the EU to fully benefit from the opportunities offered by the international system of appellations of origin and GIs.</p>
B. Objectives and policy options
<p>The general objectives of an EU initiative would be to:</p> <ul style="list-style-type: none"> • explore the possibility of creating an internal market for geographically linked industrial and handicraft products by establishing an efficient and unified regulatory framework for their protection; and • maximise the opportunities for EU producers that arise from the EU's accession to the Lisbon system. <p>For producers, the specific objectives would be to:</p> <ul style="list-style-type: none"> • improve the competitiveness of producers (often vulnerable SMEs) by facilitating a fair return on their investment in high-quality and innovative products; • retain unique skills that otherwise disappear; • curb unfair competition from operators 'free-riding' on the reputation of such products; and • provide incentives to work together on product specifications ensuring high quality and innovative production and marketing methods. <p>For individual regions, the specific objectives would include:</p> <ul style="list-style-type: none"> • preserving economic activities and skilled jobs in often less-developed rural regions; • strengthening industrial ecosystems by providing incentives for investment in new production capacities; and • promoting the preservation of know-how as an important part of EU heritage and thus adding to the attractiveness of EU regions for tourism. <p>For consumers, the specific objective would be to:</p> <ul style="list-style-type: none"> • provide reliable information on authentic geographically linked non-agricultural products. <p>The main policy options under consideration at this stage are the following:</p> <ul style="list-style-type: none"> ➤ do nothing; ➤ voluntary measures (e.g. a Recommendation) to establish protection for non-agricultural products at national level; ➤ harmonise national protection systems for GIs for non-agricultural products;

¹⁸ See for example the contributions of the Association Pierre de Bourgogne and the Association Porcelaine de Limoges to the 2020 IP Action Plan Roadmap

- create a single protection system for non-agricultural products based on a *sui generis* IP right at EU level; and
- reform the trade mark system so as to accommodate producers' need to market their products as guaranteeing a certain quality linked to their geographical origin, e.g. on the basis of certification or collective trademarks.

C. Preliminary assessment of expected impacts

Likely economic impacts

The initiative will help producers seize opportunities to develop and market industrial and handicraft products. In the longer term, EU-wide GI protection for non-agricultural products could yield an overall increase in *intra-EU trade* of about 4.9-6.6% (€37.6-50 billion)¹⁹. Predictions are that a uniform system could boost employment in the regions by 0.12-0.14% and create 284 000-338 000 new jobs in the EU as a whole²⁰.

Many of the producers affected are based in less-developed and/or rural regions. The initiative should strengthen industrial ecosystems such as textiles and tourism by incentivising cooperation between producers on the one hand and between producers and public authorities on the other. As a result, less-developed and rural regions should particularly benefit.

As many of the operators are small producers of industrial and handicraft products, SMEs in particular should benefit from the GI protection.

There will also be an impact on the EU's international trade. Of the relevant non-agricultural GI-products analysed in a 2013 study²¹, 16% were sold only on the national market, while 84% were sold on EU and/or international markets. In particular, industry clusters such as knives/cutlery and high-end products in luxury segments such as jewellery and precious stones are more likely to be export-oriented²².

Likely social impacts

The initiative may give producers of authentic industrial and handicraft products incentives to train and retain new recruits, and to take on skilled workers.

Many of the non-agricultural products concerned are part of the EU's cultural heritage, which should thus benefit from greater visibility and protection under a *sui generis* system of GI protection.

Likely environmental impacts

Many consumers attach importance to the impact of their consumption on the environment. The initiative may give producers incentives to maintain high-quality and environmental-friendly geographically linked products (using more advanced techniques e.g. to elaborate marble or textiles).

Likely impacts on fundamental rights

¹⁹ *Geographical indications for non-agricultural products — Cost of non-Europe report*, European Parliament (2019), p. 23

²⁰ *Geographical indications for non-agricultural products — Cost of non-Europe report*, European Parliament (2019), p. 35

²¹ *Study on geographical indications protection for non-agricultural products in the internal market* (2013), p. 143.

GI protection for non-agricultural products — Cost of non-Europe report (2019), p. 14

²² *Economic aspects of GI protection at EU level for non-agricultural products in the EU* (2020), p. 69

<p>The initiative may empower producers to protect their rights against unfair competition from operators trying to ‘free-ride’ on the reputation of regional products. Therefore, it may have a positive impact on fundamental rights such as the right to property and the right to an effective remedy.</p>
<p>Likely impacts on simplification and/or administrative burden</p>
<p>The initiative could give rise to a new regime of GIs with the status of IP rights. Registering and enforcing IP rights entails costs and (administrative) burden for businesses and (national and EU) authorities.</p> <p>On the other hand, the burden could be offset by a one-stop procedure at EU level, offering blanket protection and simplifying the acquisition and enforcement of IP protection throughout the EU.</p>
<p>D. Evidence base, data collection and ‘better regulation’ instruments</p>
<p>Impact assessment</p>
<p>An impact assessment will be prepared in Q3 2021 on the basis of available and forthcoming studies on specific aspects of non-agricultural GI protection.</p>
<p>Evidence base and data collection</p>
<p>2009 Study on The protection of geographical indications for products other than wines, spirits, agricultural products or foodstuffs (Insight consulting, OriGIn and Agridea, November 2009)</p> <p>2013 Study on geographical indication protection at EU level for non-agricultural products in the internal market</p> <p>2014 Green paper and public consultation</p> <p>2015 Opinion of the European Committee of the Regions — Extending geographical indication protection to non-agricultural products</p> <p>2019 Report on The cost of non—Europe on a sui-generis GI system for non-agricultural products</p> <p>2019 Max Planck Institute analysis, Sui generis geographical indications for the protection of non-agricultural products in the EU: Can the quality schemes fulfil the task?</p> <p>2019 Study on Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU</p> <p>Study on <i>Monitoring and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU</i> (ongoing, publication in 2021)</p>
<p>Consultation of citizens and stakeholders</p>
<p>The main stakeholders affected are the producers of industrial and handicraft products (in particular SMEs), individual regions, industry associations, SME intermediaries, cultural heritage associations, consumers, the public at large and the Member States.</p> <p>Stakeholders’ views have been gathered, in particular through a 2013 survey, a 2014 public consultation, a 2016 workshop on the ‘contribution of non-agricultural geographically rooted products to regional inclusive economic development’ and a 2019 workshop at which the <i>Study on economic aspects of GI protection at EU level for non-agricultural products in the EU</i> was presented and discussed.</p>

In the context of this impact assessment, an **additional consultation** of stakeholders will be carried out, focusing on concrete options for the future. Replies will be possible in all 23 EU languages. The main communication channel will be the “Have your say” portal on the Europa website.

DG GROW also considers organising targeted events (workshops or conferences) to discuss aspects of the main policy options in more detail.

Will an Implementation plan be established?

Depending on the outcome of an impact assessment, the Commission will prepare an implementation plan with regard to the implementation of the EU wide protection system in the Member States.