

EUROPEAN

COMMISSION

**SUMMARY REPORT**

**Feedback on the inception impact assessment on EU-wide protection of geographical indications for non-agricultural products**

# Introduction

*This document provides a summary of the feedback the European Commission received following the publication of the Commission’s Inception Impact Assessment of an* *EU-wide initiative on geographical indications for non-agricultural products. It does not represent the Commission’s official position, nor does it bind the Commission in any way.*

This report covers input from citizens, administrations, business associations and other organisations (‘stakeholders’) about the Commission’s intention of assessing the impact of an EU-wide initiative on geographical indications for non-agricultural products. Initially the roadmap for this impact assessment was open for feedback for 4 weeks (30 November 2020 – 28 December 2020). However, following requests from stakeholders, the feedback period was extended an additional 3 weeks, for a total of 7 weeks (30 November 2020 – 18 January 2021).

Most of the responses were submitted through the Commission’s ‘Have Your Say’ online platform. One confidential submission was sent by e-mail and not published on the platform, at the stakeholder’s request.

The European Commission received 70 submissions directly on the platform, 1 of which was a double submission. Submissions originated from 14 Member States and 2 non-EU countries (Switzerland and the United States). The participants can be broken down into 37 business associations, 15 public authorities (including 8 regional/local authorities), 9 companies, 3 non-governmental organisations, 2 individual EU citizens, 2 other stakeholders as well as 1 academic/research institution.

# General feedback on the relevance of the proposed initiative

Overall, there is broad support for an EU initiative establishing a protection regime for geographical indications (GIs) for non-agricultural products.

Among the stakeholders in favour of an EU initiative, most say they prefer a specific (*sui generis*) protection system. Several stakeholders, however, stress that an EU initiative should meet certain conditions. For example, they suggest an initial period for protection of a registered GI that is of limited duration, with the possibility of renewing the protection if it needs to be extended. This would ensure that the EU’s GI regime only covers GI registrations that are actually in use.

There is no consensus as to whether the Commission should follow a cross-sectoral approach encompassing different product categories. According to one stakeholder, a cross-sectoral approach would allow more products to be protected and be less difficult to implement. Two stakeholders argue instead that the scope of protection of non-agricultural GIs should follow a sectoral approach, establishing specific rules for all the different product categories.

In contrast, several stakeholders oppose an EU initiative on the protection of GIs for non-agricultural products. Generally, they point out that GIs are not suited for the protection of non-agricultural products, as the link between products and their geographical origin is more based on human factors (e.g. know-how, tradition) than on natural factors (e.g. soil, climate).

Specific arguments for and against the initiative are summarised in the next section.

# Overview of the main issues raised by stakeholders

*Regulatory fragmentation*

Many stakeholders point out that the current regulatory framework within the EU is fragmented. The protection of GIs in the Member States is either based on trademark laws, unfair competition laws or *sui generis* systems. Several producers of geographically rooted products underline that the regulatory fragmentation makes the protection and enforcement of their rights in the internal market difficult and costly. Producers have to take various approaches to protect their rights in different countries (e.g. unfair competition, trademark registration).

A range of stakeholders, especially producers, complain that they have to compete with producers who pass off their products as being authentic. In addition, producers face the problem that third parties register trademarks to monopolise the use of GIs.

As a result, it is argued that not having a proper legislative framework suitable for non-agricultural GI protection is currently resulting in substantive legal uncertainty. This deficiency leads to significant barriers for the right holders – notably the producers of industrial and handicraft products – preventing them from effectively protecting and enforcing their rights against infringements both in and outside their national borders.

*Impact on SMEs*

According to some contributions, GIs for non-agricultural products could be an advantage for SMEs by giving them greater visibility among consumers and eventually increasing their customer base. This would also protect those crafts that risk disappearing with economic crises and generational change. Also, it is argued that GI systems contribute to a collective structuring of production and marketing processes. Especially small producers might benefit from the resulting breadth of protection, economies of scale and purchasing power available, which they would not otherwise get.

*Impact on regional economies and jobs*

Several stakeholders, including regional authorities, point out that the products eligible for GI protection are mainly produced by small businesses located often in rural areas. Many traditional craft industries closed, especially because they relocated to non-EU countries, leaving local crafts people redundant and much of the craftsmanship and ‘know-how’ forgotten.

Conversely, these stakeholders take the view that the introduction of national *sui generis* systems has had a positive impact on employment, particularly in rural and underdeveloped regions. An EU-wide approach could help diminish the relocalisation of European industries and help to keep skilled jobs in disadvantaged regions.

These stakeholders also stress that an EU initiative would contribute to the development of tourism in the producers’ regions by giving them more visibility and enhancing their reputation.

*Consumer choice*

Certain stakeholders take the view that the protection of GIs makes it easier for consumers to identify products linked to a geographical area. The role of origin in the purchasing decision is becoming increasingly more important, as consumers want to know the story behind products, their origin and how they are produced.

Also, the fact that GIs usually receive support and input from their domestic government authorities could help boost consumer confidence in the authenticity and quality of such products.

*Administrative burden and efficiency*

Several stakeholders say they support an EU protection regime, provided it is cost-efficient. One stakeholder would like the role of determining quality requirements and enforcing GIs to be assigned to local entities. Two other stakeholders stress the role technology could play in creating an efficient registration system and enabling authentic information to be shared between supply chain actors, from producer to consumer. In particular, they suggest exploring the potential of blockchain, the use of remote sensing data and artificial intelligence.

However, the concern is also voiced that a new EU GI protection system would lead to more costs and inefficiencies. Accordingly, harmonisation of regulations in the internal market can lead to substantial costs on several levels. These include not only direct costs for developing new bureaucracies or demolishing old structures, but also costs arising from a loss of the advantages of system competition.

In this context, one stakeholder suggests that before expanding the GI protection to non-agricultural products, it would be beneficial to first make some improvements to the current GI protection for agricultural products, including the possibility of centralising both legal actions and investigations.

*Innovation*

The feedback reveals different opinions on the effect of GIs on innovation. On the one hand, stakeholders argue that intellectual property rights represent strong incentives for local producers to innovate in a way that is respectful of local traditions. They point out that traditional craft producers use new technology in process, design and marketing to maintain the original quality and uniqueness of their products. Finally, GI protection would not entail a reduction in competition, as consumer choices would still be determined by elements other than GIs and quality (such as affordability, brand, material, style).

On the other hand, five stakeholders are of the view that such protection would be detrimental to free competition. In contrast to other IP rights such as patents, restricting competition would not be justified in order to promote innovation.

*Trademark and unfair competition laws*

There is no consensus whether trademark and/or unfair competition laws are suited to protect GIs for non-agricultural products.

On the one hand, certain stakeholders think that trademark laws do not ensure adequate protection. They argue that a GI *sui generis* system implies mandatory monitoring of the quality requirements, whereas trademark offices do not check whether products meet the quality requirements set by certification marks. Also, it is pointed out that trademarks have a different function and legal nature (including collective and certification marks) than GIs. Experience with trademark systems has shown that such systems are less effective, far more costly for the producers and more exposed to potential threats from free riders. As a result, reforming the trademark system to accommodate the needs of producers of authentic products would not be sufficient.

On the other hand, some stakeholders took the view that GI protection of non-agricultural products could be achieved by developing trademark legislation, more specifically legislation on collective or certification trademarks. In particular, such an approach would be cost-effective, as the costs would be borne by the individual beneficiary of the protection.

In that context, it is argued that local producers could be better protected by developing EU legislation on misleading market practices. Also, one stakeholder refers to Article 6(1)b of the Unfair Commercial Practices Directive[[1]](#footnote-1), which states that when a commercial practice contains false information on not only the commercial but also the geographical origin, it is considered a misleading action.

*International trade*

On one side, various stakeholders take the view that the lack of an EU-wide protection regime is a disadvantage in international trade negotiations. By creating a new EU-wide form of protection, GIs for non-agricultural products could be included for protection in free trade agreements.

They also point out that, despite its accession to the Geneva Act, the EU is not in a position to register GIs for non-agricultural products from non-EU countries via the Geneva registration system. Also, the EU cannot use the Geneva registration system to ask for protection of EU GIs for non-agricultural products in third countries.

An EU-wide protection system would not only mean more European authentic products available in the internal market, but it would also make it easier to export them to non-EU countries.

On the other side, one respondent argued that geographical protection of non-agricultural products could effectively block the importation and marketing of legitimate non-EU products labelled with legitimate trademarks, common product names, and accurate indications of company or product origin, as well as legitimate trade names, among other legitimate indications.

1. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market. [↑](#footnote-ref-1)