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ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE
OF REGIONS**

on agricultural product quality policy

Impact Assessment Report

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IMPACT ASSESSMENT REPORT FOR A COMMUNICATION ON AGRICULTURAL PRODUCT QUALITY POLICY

PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

Lead DG: DG Agriculture and Rural Development (AGRI)

Other services involved: SG, SJ, ENV, ENTR, TRADE, MARE, REGIO, SANCO, MARKT, RTD, COMP, DEV, ECFIN, TAXUD

Agenda Planning references:

Green Paper on agricultural product quality: 2008/AGRI/008;

Communication on agricultural product quality policy: 2009/AGRI/003.

Preparation of the Impact Assessment (IA) on agricultural product quality policy was conducted with an ad-hoc Inter-service Group made up of representatives of interested Directorates General and Commission Services. Work on the IA was carried out from October 2008 to March 2009, during which the ISG met 4 times.¹

Stakeholders were extensively consulted, particularly in the period from the first conference on food quality certification schemes on 5-6.2.2007 (Brussels) to the second conference on 12-13.3.2009 (Praha). All relevant target groups — farmers, processors, retailers, traders, consumers, general public, third countries — contributed, in particular during the Green Paper consultation (see below). Main results and positions expressed have been taken into account throughout the Impact Assessment process and are referenced section 4 of this report.

1.1. Consultation of stakeholders

The work presented in this Impact Assessment is the result of several years of consultations in the field of quality policy for agricultural products.

- In 2004, in the context of the **pilot project** on ‘quality assurance and certification schemes for integrated supply chain management and the opportunity of a Community legal framework for protection of such schemes’, funded by the European Parliament (EP), a **Stakeholder Hearing** was organised on 11/12 May 2006 in Brussels by DG JRC/IPTS and DG AGRI. It was conducted on the basis of a set of panels, each one representing a given stakeholder category: farmers/producers, traders, food processors, certification bodies, catering and retailers, as well as consumers. The report of the stakeholders hearing is available in Annex E.2.
- A conference entitled ‘*Food quality certification schemes: adding value to farm produce*’ was organised by the Commission on 5-6.2.2007. Four workshops relating to different aspects of the Food Quality Certification

¹ See Annex E.1 for note of meeting.

schemes as well as a plenary session were organised. The main conclusions of this conference are available in Annex E.3.

- A **survey** to evaluate the socio-economic impacts of the registration under the EU quality schemes was organised in 2007 by DG AGRI. All producer groups of products registered as geographical indications (PDO, PGI) and traditional specialities guaranteed (TSG) were invited to contribute to an online questionnaire. In total 143 replies were received. The main results of this survey are presented in Annex E.4.
- The Commission undertook in a declaration² on 20.3.2006, to conduct a **policy review** of the operation of the PDO-PGI Regulation and its future development, covering all aspects of the policy that Member States, the Commission and stakeholders may wish to raise. A seminar meeting with some Member States and stakeholders organised by Swedish national authorities on 2.10.2007, discussions in the Standing Committee. and Round Tables organised by stakeholders (*O'Connor* and *Insight*) between March and July 2007 in Brussels constitute the basis of this policy review.
- Three meetings of the **Advisory Group on Quality of Agriculture Production** (composed of socio-economic interest groups representing organizations throughout the EU involved in the agri-food chain) took place during the Impact Assessment process. The two first focused on the Green paper consultation (24.11.2008, 2.12.2008) and the third (25.2.2009) mostly focused on the problem definition and the policy options developed in this impact assessment.
- In order to close the Green Paper consultation process, a **high-level Quality Policy Conference**³ was held by the Czech presidency on 12-13.3.2009. The Commission presented a summary report of the views expressed in the Green Paper. Debates and conclusions⁴ will also be taken into account in the final draft of the Communication.

1.2. Online public consultation and website

A wide Stakeholder consultation covering all aspects of the quality policy took place through a Green Paper on agricultural product quality policy. The Green Paper described clearly and concisely the current situation on the different topics covered and raised mainly open questions targeted on the issues.

The consultation was open from 15.10.2008 until 31.12.2008. Eleven weeks were allocated for responses, which is compatible with the minimum period established by the Commission for consultations. The on-line questionnaire

² Issued in the context of the recast of adoption of Council Regulation (EC) No 510/2006 on geographical indications; Addendum to the Draft Minutes – 2720th meeting of the Council of the European Union (Agriculture and Fisheries) held in Brussels on 20 March 2008 (7702/06 ADD 1).

³ <http://www.qpc.cz/index.php?lchan=1&lred=1>

⁴ <http://www.qpc.cz/speakers-presentations-and-conclusions>

was available on the *Your Voice* website and, uniquely among current Commission Green Papers, the questionnaire was made available in all official languages. New web pages on quality were developed on the DG AGRI website to present the Green Paper, make it available on-line in all EU languages and propose background information and documents.⁵

Considerable efforts were made to promote it and generate debate during national and regional conferences and numerous others DG AGRI's Advisory Groups. For an indicative list of events related to Green Paper, please refer to Annex E.5.

560 contributions were received and acknowledgement was provided to each of them. The feedback of the Green paper consultation is provided by means of the summary report published mid-March 2009⁶. The opinions expressed are summarised and presented in Annex E.6.

⁵ http://ec.europa.eu/agriculture/quality/policy/index_en.htm

⁶ http://ec.europa.eu/agriculture/quality/policy/consultation/contributions/summary_en.pdf

1.3. Impact Assessment Board opinion

The draft Impact Assessment report was submitted to the Impact Assessment Board (IAB) on 4 March 2009. The IAB held a hearing on the subject on 25 March which was followed by the submission of the detailed opinion on 30 March 2009.

In particular, the IAB asked to clarify the scope and focus of the planned initiative, streamline the presentation and assessment of individual options and clarify the value added of quality labelling and certification schemes. The IAB also asked to be more specific as regards the potential lack of consistency between the different EU schemes.

The author DG followed these recommendations by substantially redrafting the relevant chapters, especially those on policy context and problem definition as well as analysis and comparison of options. A section describing in detail the possible inconsistencies of the EU measures as well as a section on overall policy coherence and synergies between preferred options were added. The presentation of different options was harmonised and the overall presentation of the report was improved. Information on the economic significance of different quality measures was included. Evidence on consumer preferences concerning "place of farming" labelling was added.

After re-submission the IAB pointed out that the effectiveness of the complete package of preferred options should be better assessed and that some inconsistencies in the presentation of the preferred options in sections 6.1 and 6.5 should be corrected.

The author DG added a table on linkages between the preferred options and corrected the presentation of sections 6.1 and 6.5.

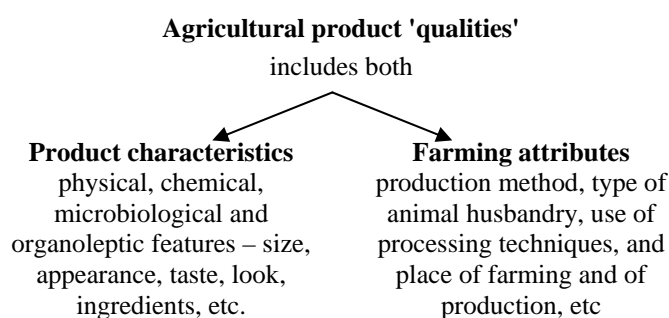
2. POLICY CONTEXT, PROBLEM DEFINITION AND SUBSIDIARITY

2.1. Policy context

Farmers must be able to identify and meet the demands of their customers if they are to retain a fair share of the value added. This is partly a question of the expertise and skill of the farmer in creating the product. But is it also a matter of successful communication of the production methods and product qualities to the supermarket buyer and to the consumer. EU agricultural product quality policy is designed to facilitate farmers in taking on this challenge (Box 1).

Aims of agricultural product quality policy:

- farmers get a **fair return** for the qualities of agricultural product;
- farmers can react to consumer demand for **value-added** product qualities;
- labelling terms are defined to let **consumers identify qualities** of product



‘**agricultural product**’: as defined in Annex I to the Treaty.

Box 1. Aims of quality policy and definitions

Relation to Common Agricultural Policy (CAP)

Many of the financial instruments of the CAP are designed to assist farmers orient their production towards meeting quality outcomes. Quality objectives are thus an integral part of the CAP. The subject of the current exercise, however, is the non-financial measures, particularly labelling and certification instruments that are used in marketing to describe agricultural product qualities.

‘Baseline’ standards

The starting point for EU agricultural product quality is the minimum farming requirements, or baseline standards. These are the farming rules and standards demanded by society and followed by all EU farmers (See Box 2)⁷.

⁷ See also Annex A(I), especially Appendix I.

- Hygiene and safety: basic requirements set out under the General Food Law (2002) listing the obligations for food and feed producers;
- Animal nutrition rules, laying down in particular prohibited materials, prohibited practices, and labelling requirements for the feed;
- Animal welfare and transport, including general welfare rules applicable to all farm animals and specific conditions for certain species;
- Plant health rules, including the approval and use of plant protection products, designed both for safety and environmental care;
- Animal health rules regulating the approval and use of veterinary drugs, outlawing for example anabolic drugs (hormones, and beta-agonists);
- Environmental compliance: Some 20 environmental measures, mainly directives, regulating farm activities in order to protect biodiversity, water quality, and soil.

Box 2. Main fields of EU farming requirements

The application of these baseline requirements is guaranteed through official controls. In addition, some stakeholders (retailers, processors and some farm organisations) have developed private farm assurance schemes that certify compliance with standards set at or slightly above the official baseline standards. Farming requirements that do not impact on product hygiene and safety⁸ are applied only within the borders of EU Member States. They ensure that EU farmed product has met minimum societal demands for farming standards and EU farmers should be able to communicate this to buyers and consumers.

‘Differentiation’ characteristics and attributes

In addition, the EU is renowned for its high quality food products having specific product characteristics or farming attributes that distinguish them in the marketplace, in particular those labelled under registered geographical indications.

Environmental sustainability

Pressure to demonstrate environmental sustainability comes both directly from the marketplace and, particularly via demands from the Parliament, from civil society. Specific private logos and schemes have been developed to demonstrate to consumers that product has the farming attributes of environmental protection in many environmental fields, from protection of rainforest, biodiversity and national park protection, to ‘low carbon’ claims. The Commission has also launched such initiatives, the most significant of which is the Organic farming labelling scheme.

Instruments of quality policy can be used to enhance environmental sustainability. By communicating to consumers the environmental farming attributes and characteristics of product at the point of sale, consumers can be made more aware of environmental inputs and can direct their purchases to favour sustainable production.

⁸ Product hygiene and safety standards are applied equally to product placed on the EU market irrespective of where in the world the agricultural product has been farmed.

A number of schemes do not target environmental sustainability, but may have positive impacts (some schemes supporting traditional production have this effect), and some schemes may have negative environmental externalities (for example, if production increases beyond capacity).

Instruments of agricultural product quality policy

The response of EC to the quality challenge has been to develop a variety of instruments concerning the marketing of agricultural products that guarantee product characteristics and farming attributes:

- **marketing standards** and product directives, laying down agricultural product identity (e.g. definitions of ‘drinking milk’, ‘fruit juice’, ‘wine’), classification of products (class, size ...), origin and place-of-farming labelling, and defining certain ‘reserved terms’⁹ that indicate value-adding characteristics and attributes, such as farming method.
- **EU agricultural product quality schemes**. Six schemes are in operation: for geographical indications¹⁰ (three schemes; see also Box 3), traditional specialities guaranteed¹¹, organic farming, and product of outermost regions. The content of these latter two schemes are not examined in this impact assessment report¹². Two further EU schemes are under development: extending the *Ecolabel* to foodstuffs¹³, and an animal welfare labelling scheme¹⁴;

⁹ Examples of ‘reserved terms’ include ‘free range’ eggs, ‘traditional rosé’ wine and ‘extra virgin’ olive oil. These terms can only be used to describe product in conformity with the definition laid down in legislation.

¹⁰ ‘geographical indication’ refers both to the ‘protected designation of origin (PDO)’ and the ‘protected geographical indication (PGI)’. See also Annex B, § 1.1 The legal framework.

¹¹ See Annex C, § C.1 Introduction.

¹² The EU scheme for organic farming has only recently been reformed and the scheme identifying specific product of outermost regions is a relatively new scheme.

¹³ COM (2008)451final: Proposal for a Regulation of the European Parliament and the Council on a Community Ecolabel scheme

¹⁴ Agenda Planning: 2009/SANCO/037, Communication on Animal Welfare labelling.

Geographical indications are names that describe a product that owes its identity to the place in which it is produced. Three schemes operate:

- Wines: commenced in the 1970s by protection of names notified by Member States to the Commission. As part of the 2008 reform of the wine CMO, a Community register was established. A separate scheme for aromatised wines also exists.
- Spirits: an EU system was also created in 2008, replacing a list of spirit names protected under earlier spirit drinks legislation.
- Agricultural products and foodstuffs: this registration scheme was created in 1992. The system has been modified most recently in 2006 when the legislation was recast to simplify procedures including for 3rd country applicants, clarify the role of Member States, and encourage the use of the EC symbols.

Box 3. EU geographical indications schemes

In addition, numerous **private and national (and regional) certification schemes** have been developed. These include food assurance certification schemes (guaranteeing ‘baseline’ standards have been met), and food quality certification schemes that ‘differentiate’ product on the market by highlighting value-adding product characteristics and farming attributes to buyers and consumers.

Box 4 shows a rather random selection of logos and labelling devices that may be found in the marketplace. They include logos for EU agricultural product quality schemes, for private and national schemes, and labelling terms from marketing standards, such as classes, product definitions, value adding ‘reserved terms’, and labelling of the place of farming or production. Each one has in common that it conveys an item of information about product characteristics or farming attributes from the farmer to the buyer or consumer.

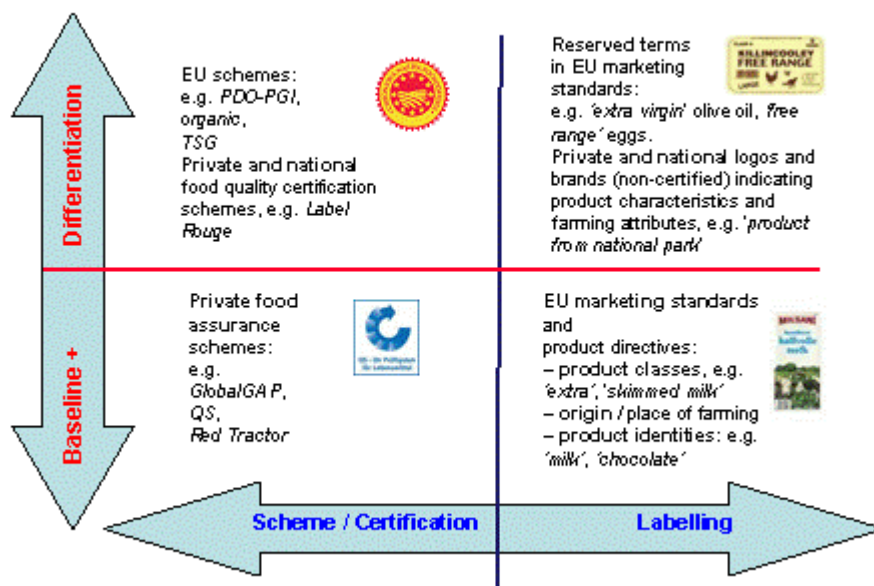


Box 4: Logos and labels showing information about agricultural product qualities

For a **basic typology**, the measures can be divided in two ways (see Box 5), although the divisions are not strict and there are overlaps:

- ‘certification type’ and ‘labelling type’. **Certification type** schemes are used for relatively complex farming requirements that are typically contained in a detailed specification. Compliance is checked frequently (e.g. annually) by a certifier or equivalent, and the process is relatively costly to implement. The **labelling type** measures normally identify straightforward characteristics and attributes and are left to self-declaration by operators. Public authorities enforce the measures on a risk-based approach.
- ‘baseline’ and ‘differentiation’. **Baseline measures** show compliance with basic requirements, whether the legal minimum or just above. They include labelling showing origin and product classifications. **Differentiation measures** guarantee the presence of a value-adding characteristic or attribute.

Types of measure



Box 5. Typology of quality and assurance certification schemes and marketing standards

Rearranging the schemes and logos in Box 4 above according to the typology in Box 5, it can be seen (Box 6) that the **EU quality schemes** are all certification-differentiation type, while **EU marketing standards** are labelling-type measures, covering both differentiation and baseline information. **Private sector schemes** include baseline-certification schemes that assure product has been farmed and produced in line with basic requirements, and differentiation-certification schemes. In addition, there are

private logos and brands (labelling type) also passing information about specific product qualities, but which are not supported by certification.



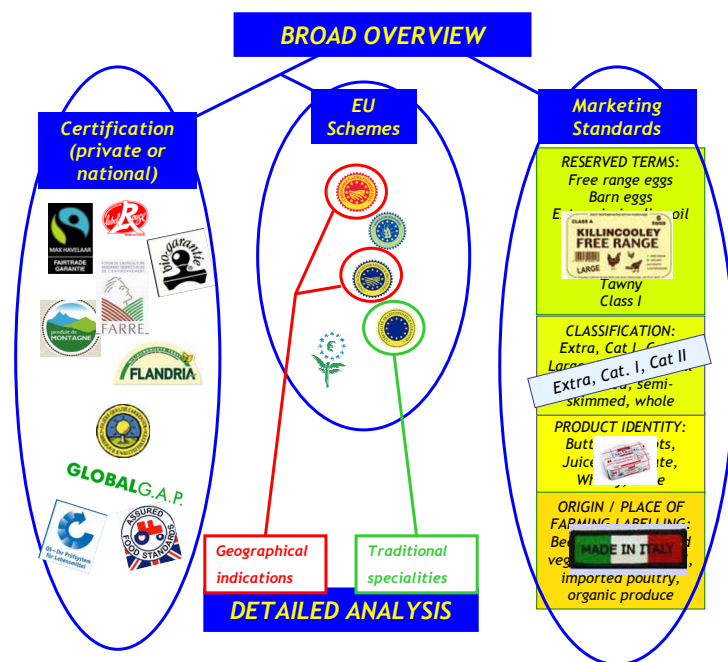
Box 6: Logos and labels arranged according to certification/labelling and baseline/differentiation

Scope of Impact Assessment

The diagram in Box 6 presents a broad picture of the field of agricultural product quality policy. Until now, this policy has not been considered as a whole, while the EU schemes and measures have also evolved fairly independently of each other. This assessment comprises a broad analysis of the main types of instrument and detailed assessment of two EU schemes (see Box 7, and for a schematic representation, Box 8).

- **Marketing standards:** broad overview analysis, focussing on the process by which marketing standards are developed;
- **Current EU quality schemes:**
 - detailed analysis of the EU **geographical indications schemes**. This follows a 'policy review' process launched in 2006 and a policy evaluation completed in 2008;
 - detailed analysis of the EU **traditional specialties** scheme, also following a review process begun in 2006;
 - *no analysis of the EU organic scheme*, which has only recently been recast (2007).
 - *no analysis of the EU outermost regions scheme*, which is a recent scheme.
- **Private, national and new EU certification schemes:**
 - broad overview analysis of the operation of **private and national schemes** in the single market, following from a research project begun in 2005 and the Food Quality Certification conference in 2007.
 - **Candidates for new EU schemes:** broad overview analysis, focussing on the process by which new EU schemes could be developed.

Box 7: Scope and depth of coverage of Impact Assessment



Box 8: Coverage of the impact analysis on the policy field of agricultural quality policy

Economic significance of agricultural product quality measures

There is great variety in the market share covered by quality terms and instruments. Compulsory measures (for example origin labelling for beef & veal, fruits & vegetables and some others), by definition cover 100% of the relevant market or sector, while voluntary measures vary widely in their degree of uptake (see Box 9).

Type of measure	Compulsory / voluntary	Economic importance
Marketing standards		
– Beef and veal		
○ Traceability	Compulsory for beef and veal	EU production: 7.9 million tons in 2006, EU-25
– Fruit and vegetables, excluding potatoes		
○ Indication of the country of origin	Compulsory for fruit and vegetables	EU production: 104 million tons, average 2003-2005, EU-25
– Milk		
○ Category according to fat content	Compulsory for drinking milk	EU production: ca 41 million tons in 2006, EU-25
– Eggs		
○ Place of production (producer code) and production method must be labelled	Compulsory for in-shell eggs	EU production: 6.9 million tons in 2006, EU-25
– Poultry		
○ Indication of the country of origin	Compulsory for imported fresh	0.05 million tons of poultry meat imported

poultry meat by the EU-25 in 2006, compared to 10.9 million tons produced in the EU-25

Type of measure	Compulsory / voluntary	Economic importance
Marketing standards (continued)		
– Honey		
○ Indication of the place of production	Compulsory for all honey marketed in the EU	EU production: 174,000 tons in 2005, EU-25 EU imports: 149,000 tons in 2005, EU-25
– Olive oil		
○ Indication of the country of production (from 1.7.09)	Compulsory	EU production: ca 1.9 million tons in 2005/2006, EU-25
– Wine	Compulsory	EU production: 175 million hl (2005-2006 campaign, EU-25)
– Sugar	Compulsory	EU production: 18.5 million tons in 2004, EU-25
– Hops	Compulsory	Ca 50.000 tons in 2007, EU-27
– Fruit juice	Compulsory	EU production: 11.7 billion litres in 2007, EU-27
– Coffee extracts, fruit jams, jellies, and marmelades, cocoa and chocolate products, spreadable fats and Spirit drinks	Compulsory	

Example of sectors without marketing standards

– Cereals		EU production: 292 million tons in 2008/2009, EU-27
– Pigmeat		EU Production: 21.4 million tons in 2006, EU-25

EU quality schemes

– Geographical indications (PDO/PGI)		821 names of agricultural products registered; 356 spirit names and about 2000 wine names. In 2006, roughly 18% of the cheese produced in France had an origin registration and the turnover of registered-origin milk products is estimated to account for €2.1 billion (INAO). In Italy, PDOs and PGIs accounted for 25% of overall food product turnover in 2003. 50% of EU wine production (169 million hl) is marketed under PDO (DG AGRI, 2007)
	Voluntary	
– Traditional specialities (TSG)		Only 20 names registered (insignificant economic impact).
	Voluntary	

Type of measure	Compulsory / voluntary	Economic importance
		EU quality schemes (cont)
- Organic farming		In the EU-27, on average 4.1% of agricultural area was under organic farming in 2007 (BÖLW 2009), led by Austria with 11.7%. In Germany, the biggest market for organic products in the EU (5.3 billion € in 2007 = one third of the overall EU market for organic products), the share of organic food in overall food turnover was 3.2% in 2007 (BÖLW 2009).
	Voluntary	As regard producer prices, organic milk prices were 17% higher than non-organic milk ones in 2006 (EU-15 - Farm Accountancy Data Network, EU- Dairy farms economics- 2008 report, Annex II) while organic eggs producer prices were 53% higher than free range eggs prices and 134% higher than cage eggs producer prices (in 2008, DK - Jordbrugets prisforhold 2008, Fødevareøkonomisk Institut, Serie C nr. 93).
		Private and national certification schemes
- Baseline (assurance) schemes		GLOBALGAP now has 92000 certified producers worldwide; sales of fresh fruit & vegetables to supermarkets in the EU are assumed to be 80-100% GLOBALGAP certified
	Voluntary	70% of the UK area under potatoes is covered by the Red Tractor scheme and 100% of potatoes sold in supermarket are covered by the scheme Assured combinable crops scheme covers about 85% of arable crops traded in the UK
- Differentiation schemes		The QS scheme (DE) has a market share of around 67% in the German pork market.
	Voluntary	Around 350 schemes in the EU (2007 estimate). Widely differing economic importance, e.g.: Label Rouge (FR) accounts for 30% of overall poultry production in France. For whole chicken, the Label Rouge share even amounts to 56%. Neuland (DE) covers 200 producers and a market share of around 0.05%

Box 9: Economic significance of different quality measures

2.2. Problem definition

2.2.1. Overall problem: asymmetric information

The problem in the marketplace is that, except in very marginal circumstances (e.g. on-farm shops), farmers are not able to communicate directly with buyers and consumers about the product characteristics and

farming attributes of agricultural products purchased¹⁵. The reverse is also true, that consumers cannot address their questions and concerns directly to farmers. If consumers express a strong desire for certain information, provided the market is functioning properly, the retailers should insist that the information is given. However, consumers' demands are not always clear (see Box 10).

According to a Eurobarometer survey conducted in 2005, the most important 'levers' identified by consumers when buying food were quality (42%) and price (40%). However, the term 'quality' was not defined and, as is pointed out in the Eurobarometer survey, a number of the other elements in the question are quality-related.

Even excluding the global category of quality, it can be seen that 'production method' and 'origin' are quite low down in terms of priority (9th and 10th) after 'appearance', 'taste', 'health', 'family preference', 'habit' and 'food safety'.

Further research cited in the Commission's impact assessment report on general food labelling issues highlights that, when consumers are prompted about origin or production method labelling, much stronger support is forthcoming. The number of consumers considering origin labelling important is 78% (and higher) according to studies in Nordic countries and 80% in the UK, etc.¹⁶

Concerning production method, studies on animal welfare and concerns over pesticide residues indicate that, as with origin, when prompted, consumers declare information on these elements to be of far greater importance than is apparent from an unprompted list of most-important factors. This was illustrated in relation to animal welfare in Special Eurobarometer 229 'Attitudes of consumers towards the welfare of farmed animals'¹⁷ which found '[a] slight majority of citizens of the European Union (52%) state that they never or very rarely think about the welfare and protection of animals when they buy meat, compared to 43% who state that they consider animal welfare most or some of the time when purchasing meat. 43% is of course extremely high compared with the 7% of consumers who spontaneously mentioned production method (any production method) as a factor in their purchases.

Box 10. Consumer demand for prompted and unprompted factors

Consumers will not necessarily demand information about product that corresponds to particular farming methods, place of farming, or that meets certain production requirements, but consumers do appreciate relevant information, if it is made available in a credible form. Thus for matters such as farming method and origin, market forces alone cannot be relied on by farmers who want to better communicate this information. At the same time, if the information were given, it would assist consumers in making their choices.

The problem is thus the result of a classic example of market players trying to deal with **asymmetric information**. At its simplest, the farmer has information about the place of farming, the product characteristics, and the farming attributes that the buyer does not have. If the farmer cannot convey the qualities of the product to the satisfaction of the buyer, the latter will not

¹⁵ See OECD document Appellations of origin and Geographical indications in OECD Member countries: economic and legal implications, OECD, 2000. See also D. Rangnekar "The Socio-Economics of Geographical Indications" 2003.

¹⁶ Impact assessment report on general food labelling issues, 30.1.2008, SEC(2008) 92, pp. 21-22.

¹⁷ http://ec.europa.eu/food/animal/welfare/euro_barometer25_en.pdf

be inclined to pay the fair price; on the other hand if the purchaser trusts blindly that the qualities are present he is vulnerable to unscrupulous sellers trying to dupe the purchaser into buying product that in fact does not possess the desired qualities. Buyers are not willing to be fooled (twice) and so if the information asymmetry persists, the price, even for the genuine value-added product, will tend to fall to the commodity value – and in theory to zero if purchasers cannot trust that minimum requirements have been met.

The picture is more complex with the intervention between the farmer and the consumer of the retailer – who also initially lacks the level of knowledge about product that the farmer has. On the other side, the retailer in its relation with the consumer is able to provide or withhold information from the consumer about the product characteristics and farming attributes, and in this case the farmer is unable to influence that provision of information.

The response of farmers towards retailers, and retailers towards consumers, is to **signal** the qualities of the product. By credibly transmitting information about the product, the seller can rebalance the information asymmetry – and reassure the consumer that the product is genuine. For example, a farmer may present his product as having the attribute of ‘organic’ and demand a higher price. But not every farmer can write ‘organic’ on the invoice and secure the premium: the credibility must be provided by organic certification – and the credibility of the certifier itself backed up by accreditation, EU legislation, Member State listing and official inspection. Armed with this (reliable) information, the retailer can confidently pay the premium price and is now in a position to credibly rebalance the information asymmetry towards the consumer. Relying on its reputation (a supermarket’s most valuable asset) and an organic logo or label claim that is respected by the consumer, the supermarket can signal the special attribute of the product and secure a premium price at retail level also.

Retailers do not only wait for farmers to come forward with initiatives to rebalance information. They also **screen** for qualities by, for example, asking for tenders, specifying product characteristics or farming attributes or by reference to marketing standards. This induces farmers to reveal their information about the product qualities and so rebalance the asymmetry. A particularly important screening mechanism that emerged in the 1990s has been to require farmers’ product to be certified according to an assurance scheme that conveys the credible information that the product has been produced in accordance with basic legal requirements and good practice. Consumers are not normally in a position to be able to screen.

Labelling protocols also allow screening. For example, all eggs must be labelled under the marketing standard according to their method of production, and all beef must be labelled with the animal’s place of birth, raising and slaughter¹⁸. This forces information normally the preserve of the seller into the public domain and so also invested with the purchaser, who

¹⁸ Both egg production method labelling and beef place of farming labelling are obligatory. See Annex A(i) § 2.3.

then has confidence to purchase in possession of the shared information. Credibility is provided in this case by the application of a legal requirement.

In the case of optional reserved terms, such as production method of poultry meat, or place of farming of pigmeat¹⁹, there is no legal requirement for the information to be given. In these cases, sellers will be more likely to share information, such as ‘free range’ or a local or renowned place of farming, they see as adding value or which are essential to consumers’ decisions to purchase at the price demanded. For other product, the retailer may choose to not share the information, either reasoning that it is not significant for the buyer, who does not as a rule demand it²⁰ (and therefore it is irrelevant to information asymmetry), or that concealment is preferable to sharing of information seen as less positive. This is a dangerous strategy if the consumer, on finding out that the product does not exhibit the characteristics or farming attributes or was not farmed in the place assumed, feels duped. And, whether or not the consumer feels deceived, the farmer, believing that the information is significant, is ultimately frustrated that the consumer could not make his purchase decisions in possession of that information.

If communication is not successful a number of problems result:

- For all product, the buyer may be unaware of or misunderstands the product characteristics and farming attributes. This undermines the potential for the consumer to select and pay for the product characteristic and farming attribute. As a result the farmer is unlikely to receive a fair return for those characteristics and attributes.
- In the case of high value adding characteristics and attributes, the farmer may not be able to access the potential higher returns;
- The choice of product available to consumers will fall below potential.

A particular problem arises in **communicating benefits of basic farming requirements**. These requirements are applied to all farmers in the EU in order to meet societal expectations. As such, they should represent a strength for EU agriculture and a selling point. However, at the point of sale, information relating to baseline farming standards is almost absent. This makes it almost impossible for consumers to connect product with the efforts put in by EU farmers in meeting farming requirements on animal management, environmental care and good farming practice in general. More product is labelled for consumers with an origin statement. According to a UK survey, about 2/3 product is labelled with origin (just over 1/3 voluntary and just under 1/3 compulsory)²¹.

¹⁹ The ‘mentions valorisantes’ of poultry meat and place of farming of pigmeat are optional.

²⁰ See Box 4 above and Annex A(i) § 2.1.

²¹ 2005 study: 69% of product carried an explicit origin statement; of which 54% were given voluntarily.

Two options are possible: (a) to communicate directly compliance with baseline farming standards and (b) to communicate place of farming. To what extent is there a demand for these options? (see Box 11)

"Complies with EU requirements"

(a) Compliance with basic farming requirements (i.e. those set out in Box 2 above) refers to a wide range of farming activities. There is clearly a demand for this information since the private sector has responded with a number of farm 'assurance' schemes, which certify that agricultural product has been farmed in accordance with baseline standards — as interpreted and laid down in a specification. Demand for this broad certification comes mainly from retailers and processors since these schemes are primarily 'business-to-business' schemes that do not convey information to consumers. Some schemes do have consumer logos and thus a level of consumer recognition, but for a substantial proportion of certified product, the certification is only communicated to the processor or to the retailer, and not to the consumer. For the product sold to consumers under an assurance scheme logo, there is also a question whether the consumer understands that the product is certified to baseline requirements (including due care, etc.) or whether the consumer infers a 'value added' characteristic.

"Farmed in EU"

(b) Demand for place-of-farming from consumers is more clear. In repeated surveys, a high proportion of consumers (over 60% in surveys in the UK, France, Nordic countries), when asked specifically want to know origin or place of farming. The product for which 80% of consumers think origin labelling is most important is meat, particularly the meat ingredient in prepared foods (UK, Nordic countries). However, 'unprompted' surveys return the result that only a very low proportion of consumers spontaneously mention origin as an important factor in making purchases (fewer than 10%). Research in Ireland (2003) reported, however, that most consumers assumed the meat they were buying was of national origin, implying that consumers might not spontaneously refer to origin labelling because they make reasonable assumptions about origin, not because they do not care. The reasons why consumers want to know the origin or place of farming of agricultural product vary from 'food nationalism' to perceived concerns about the product standards in other countries, and specific reputations for foodstuffs from certain countries.²²

Box 11: Demand for labelling of baseline standards and place-of-farming/origin

Therefore:

- When consumers focus on origin labelling, there is consistent, explicit demand to know where food was farmed or produced;
- In the absence of a specific focus on origin labelling, consumers do not spontaneously mention origin, although there is some evidence that this is in part because they make assumptions that the food is of national origin.

²² Research summarised in 'What consumers want, a literature review', March 2007, UK Food Standards Agency.

WTO requirements must also be followed (Box 12).

Any labelling of place of farming must be WTO compatible and not be motivated by a desire to impede imports. International comparisons show that country or origin labelling, usually combined with place of farming clarifications, is being introduced in some leading OECD economies (Australia, US, ...) and indeed is recommended for conformity with many international standards (e.g. UN/ECE fruit and vegetable standards; Codex cheese standards).

Is it preferable from an international perspective to require imported product to be labelled as place of farming "non-EU" or "country"? If this is really an issue, the choice could be given, to label the country of the place of farming or alternatively 'non EU'. Likewise within the EU, the requirements could be a choice between 'EU' and 'member state' place of farming. In the recently adopted olive oil labelling, while EU producers will have to identify the place of harvest as well as the place of pressing, for imported olive oil, 'origin' according to the non-preferential rule was adopted.

Box 12: Place of farming labelling: WTO considerations

The **underlying drivers** of the problem are the constantly changing and evolving factors that influence market demand, such as:

- Recession, increasing the search for low priced or good value products;
- Food scares, resulting in need to strengthen confidence in hygiene and safety processes;
- Concerns about biodiversity loss, creating demand for products from farming systems that protect biodiversity;
- Climate change, leading to a desire from consumers to take action in their food purchases to reduce carbon footprint;
- Animal welfare campaigns raising consciousness and demand from consumers for high animal welfare products.

Farmers and producers may respond to these factors, but in the absence of effective communication, the information asymmetry vis-à-vis retailers and then consumers, will quickly lead to difficulties.

As far as farmers/producers and consumers are concerned, **second-level drivers** can also be identified. These are caused by the reaction of the processors/traders and retailers to the underlying drivers. The second-level drivers of retailers (and processors) include:

- Need to protect reputation, and minimise liability exposure, in the face of food scares or criticism from specific stakeholders (animal welfare, environmental protection, etc.), leading to development of quality assurance schemes, and a reluctance to reveal information perceived as diminishing the value of a product (such as compliance with minimum requirements);
- Need to keep prices down by using bargaining power with suppliers and by maintaining flexibility in supplies. The resulting complexities of trade can lead to processors and retailers being unwilling or unable except at

excessive cost, to trace and label the place of farming or other farming attributes of agricultural ingredients of product.

While these actions are responses by processors and retailers to the underlying drivers, for farmers and producers they operate as drivers of the changing market demand.

2.2.2. *Problem of coherence of EU measures*

The diverse instruments that comprise agricultural product quality policy have in common that they assist farmers and producers overcome information asymmetry and communicate with buyers about the qualities of the product. Two new EU schemes are in development (extending the *Ecolabel* to foodstuffs and a scheme for *animal welfare*) and others are proposed by stakeholders, particularly in the environmental sphere. Council has asked the Commission to look at labelling options in the complex area of *Carbon footprint*, and stakeholders have proposed EU schemes for high-nature-value farming; climate change; integrated farming; mountain products; and water labelling. On 2.3.2009, the Commission launched a 'Retail Forum' designed to 'promote more sustainable consumption', including in the food sector, by involving stakeholders (although no immediate reference was made to farmers) in initiatives to improve the provision of sustainability information to consumers.²³

The existing **EU labelling schemes** have developed independently and in general without coherence. This point was highlighted in the Conclusions to the Czech Presidency High Level Conference on the Future of Agricultural Product Quality Policy, 13.3.2009, which included in its conclusions: "*The Conference noted that a number of EU schemes are currently being developed and called for coherence to be ensured.*"²⁴ The current multiple developments of EU schemes and policy in this area brings the potential for inconsistencies:

- The proposal to extend *Ecolabel* to foodstuffs is in co-decision procedure. The overlap with the organic farming scheme has been raised in the Parliament and in responses to the Green Paper on agricultural quality policy. Sustainability and environmental care are central features of the organic farming method. In addition, the organic farming regulation

²³ IP/09/339, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/339&format=HTML&aged=0&language=EN>

A week earlier, an 'Inter-branch food group' was launched by stakeholders (farming unions, suppliers, agricultural traders, food and drink producers and packaging suppliers) with the aim of bringing some transparency and coherence to the emerging number of environmental claims, Press release, 26.2.2009, 'Key food chain partners to launch sustainability roundtable', CIAA, Confederation of the Food and Drink Industries in the EU,

http://www.ciaa.be/asp/documents/detailed_doc.asp?doc_id=863

²⁴ *Information from the Presidency on the outcomes of the Conference.* <http://www.qpc.cz/>

protects the term ‘eco’ exclusively for product of organic farming²⁵, although the *Ecolabel* Impact Assessment asserted, wrongly, that “Companies wishing to write ‘bio’ or ‘organic’ on food must meet EU standards to do so. No such standard exists for green claims like ... ‘eco’.”²⁶ The text went on to argue for application of the *Ecolabel* to food in part based on this misapprehension. Under a revised proposal, the extension to foodstuffs will be subject to a report in 2011, which will specifically address the opportunity for introducing the *Ecolabel* for foodstuffs. One ‘solution’ to be considered is that only organic product would qualify for the *Ecolabel*, which at the very least implies a certain duplication of the labelling message, if not potential for consumer confusion.

- A future animal welfare scheme will overlap to an extent with the organic farming scheme, given that animal welfare is an integral element of organic farming. The services concerned are in close coordination to ensure a compatible and coherent outcome.
- Work on any EU carbon labelling scheme or indicators is not far advanced. Given that Council has flagged the link to *Ecolabel*, similar overlaps with the Organic scheme may be anticipated.

Concerning **marketing standards**, these have been developed by sector according to need, leading to a number of differences, for example:

- Obligatory place-of-farming for some sectors (e.g. wine, beef, fruit and vegetables, honey), but not others (e.g. lamb, dairy products, some processed products)
- Obligatory production method labelling for in-shell eggs, but not for poultry or pigmeat.
- Protection of traditional terms in wine sector, but not in other sectors.
- Lack of horizontal reserved terms applicable to several sectors.

The single CMO²⁷, Regulation (EC) No 1234/2007, allowed for some legal discrepancies to be remedied. However, a number of minor inconsistencies, particularly between compulsory and optional measures, remain.

Concerning **private and national food quality certification schemes** in general, in addition to the present Communication:

- The Commission (DG TRADE) has presented a Communication on fair trade schemes (which follows a similar line as in the present document);

²⁵ Article 23, Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products

²⁶ Commission Staff Working Document accompanying revised Community Ecolabel award scheme (2008), page 24.

²⁷ CMO: Common Market Organisation.

- DG SANCO will bring forward a Communication on Animal welfare labelling covering the operation of private animal welfare schemes contemporaneously with the present exercise;
- DG MARE is reflecting on the need for sustainable sea fisheries labelling (also referred to as ‘Ecolabelling’) and the opportunity for a new EU scheme in 2009.

Finally, policy coherence must also take account of **general policies of the EU** and notably the single market, competition issues, including fair competition for producers, and not misleading consumers.

2.2.3. Complexity and other problems in current measures

Marketing standards, including place-of-farming labelling

The development of marketing standards is characterised by inflexibility of compulsory rules that cannot be adapted quickly to changing market needs, and burdens on farmers in complying with standards that may not be needed by buyers. Marketing standards have historically been developed sector-by-sector and comprise detailed, complex rules, although their incorporation within the single CMO in 2007 has provided a framework for coherent development in future. Marketing standards, and particularly the defined ‘reserved terms’ and ‘place of farming’ labelling requirements, are a primary means for overcoming problems of asymmetric information.

Overall, therefore, current marketing standards address some of the information asymmetry questions, but not in a coherent or comprehensive way and rules are complex.

Geographical indications

Geographical indications are not widely recognised by consumers. Neither the terms ‘protected designation of origin’ and ‘protected geographical indication’, nor the EU logo are widely used on packaging. Only 8% of EU consumers can recognise or distinguish the EU logos. In addition, there are a number of problems of essentially a technical nature, such as divergent application of controls.

The three different schemes, which have differing procedures, control mechanisms and protection provisions, leads to considerable complexity and potential incoherence in implementation. A number of ambiguities exist in the extent of intellectual property protection provided under the legislation.

Geographical indications address the key part of the information asymmetry — the purchaser can be sure that the protected name describes the authentic product, and that the name cannot be used to describe imitation product. However, other means are needed to fully inform the purchaser about the specific characteristics of the product and only a few consumers can recognise the symbol implying the EU communication as a marketing strategy is not successful.

Traditional specialities

Since 1992 only 20 names have been registered as traditional specialities guaranteed. The scheme as conceived is too complex and difficult to implement.

For the few products on which it is used, the scheme guarantees authentic product is described by "TSG". However, the 20 names registered in comparisons to several thousand in national lists illustrates that it is not useful in overcoming the bulk of information asymmetry concerning traditional products.

Private and national certification schemes

Private and national certification schemes have the potential to fill all information asymmetries and the diversity of schemes address many issues. However, there remain threats to the single market, questions on transparency of schemes (and the credibility of the claims), and burdens on farmers, particularly where they have to join several schemes.

2.2.4. Conclusion

As can be seen the problem of **information asymmetry** is only addressed to an extent by current EU schemes and initiatives. However, no doubt in reaction to this problem, a variety of initiatives addressing mainly 'single issue' subjects (climate change; animal welfare; fair trade; sustainability) are in train. The diversity of these initiatives contributes to the **coherence problem** and there is a danger of an uncoordinated approach to agricultural product quality policy measures, resulting in confusion for stakeholders and consumers and policy inconsistencies. Current EU marketing standards and inflexible to operate and EU schemes **excessively complex**.

2.3. Who is affected by the problem and to what extent?

The parties affected by asymmetric information and communication failure are farmers and producers who will be unable to realise the benefit of the product characteristic or farming attribute, and consumers who are not aware of the attribute of the product and cannot exercise their choice in any confidence. For traders and retailers a communication failure may represent a lost opportunity for additional return. The problem is diminished by the extent to which the communication is successful through labelling under a marketing standard or certification scheme or required by law.

The problem of asymmetry of information affects every product, since initially the producer has complete information, and the buyer has none, about the agricultural product's characteristics and farming attributes. The measures and schemes discussed here go some way to rebalancing the information.

Farmers are affected by marketing standards in the sense that they deliver products that respect requirements set by trading partners as well as marketing standards. This conditions their production process and farm management. Marketing standards may prevent the placing on the market of a product that is new, innovative but for which EU marketing standards have

not made provision yet. Alternatively, the marketing standard may prevent the retail sale of products that are basically safe to consume but do not reach the minimum requirements laid down in the EU marketing standard. The characteristic sought after is in fact set below the marketing standard – either because the purchaser values the ‘anti-attribute’ on the basis that *‘de gustibus non disputatum est’* – or because the low quality is countered by good value, i.e. the price is lower than the quality is poor.

For geographical indications, farmers and producers of agricultural products having an intrinsic link with geographical origin are the main population concerned by the problem. They are concerned as they invest in order to comply with the rules of the specifications (rules on production, labelling, conditioning and establishment in the delimited area), sustain costs of control before placing the product in the market, sometimes cost of joining an association, and are affected by procedures in registering names.

Beneficiaries/right-holders of intellectual property rights of geographical indication are concerned by any lack of enforcement of their rights. Other operators for which the right of use a name has been limited or denied (long procedures, legal uncertainty) are also affected.

Producers who wish to market traditional agricultural products or foodstuffs are affected adversely by the failure of the TSG scheme. It could be assumed that mainly (artisan) small-scale producers/processors (SMEs) that use traditional method of production and/or ingredients in production of local/regional specialities do not opt for TSG registration because of its complexity.

Farmers and producers are affected by all schemes that require them to produce according to certain standards and procedures, regardless of whether these are communicated to consumers or not.

The impact of private standards on **farmers and producers in developing countries** has been discussed in a number of publications and international fora. Two perspectives are described in a 2005 Worldbank report²⁸, identifying standards as ‘catalysts’ or ‘barriers’.

Consumers are affected by obligatory marketing standards in a positive sense in so far as the product quality is what they seek, the labelling information is useful for purchasing decisions, and they do not want the product or information that is excluded from retail view by the marketing standard. They are affected negatively if there is an impact on price from, e.g. labelling requirements, or if desirable product is excluded from sale.

Consumers are the final users of the product bearing value adding terms, including geographical indications, traditional specialities, and private and national differentiation schemes. The schemes should provide useful reliable information to assist purchasing decisions and pay a price premium. Consumers who are interested in purchasing traditional foods are unlikely to be able to find with any frequency the 20 TSGs on the market, even less with

²⁸ See Annex D, § 2.2(c).

TSG indication or a logo on the label. They may however rely on private or national labels claiming traditional production.

Consumers are directly affected by schemes which are communicated to the general public by way of a label or logo. These represent the vast majority of differentiation schemes as well as some assurance schemes. In a 2005 study conducted for DG SANCO²⁹, many consumers claimed that, while they welcome as much information as possible on the product, they experience the following problems (amongst others): Confusion between ‘real’ and ‘objective’ information and advertising and ‘marketing-type’ information; difficulty in locating the genuinely useful aspect one is looking for; suspicions of there being information missing, such as ingredients or additives not mentioned.

Food processors, traders and retailers may also be prevented from marketing new and innovative product by the lack of responsiveness of marketing standards. Official marketing standards may form the basis of private requirements. For enterprises without sufficient reach to impose their private standards, recourse to EU-level and indeed global standards, should facilitate trade.

Other actors in the food supply chain (processors, traders, retailers) are affected to the extent that their operations need to be certified as well. Quite often, certification schemes cover the whole food supply chain and thereby have an impact on all actors in the food supply chain. However, the extent to which this represents a burden depends amongst others on the degree of concentration at the particular chain level.

Public authorities are first of all concerned as marketing standards are laid down by the legislator and enforced by public authorities. In addition, there are several international intergovernmental forums where marketing standards are discussed and where the EU and/or the Member States are represented (in particular *Codex Alimentarius*, but also for specific commodities UN/ECE³⁰, OECD, OIV³¹, etc...).

Member States and public authorities are concerned with the administrative burden of implementing the EU schemes (geographical indications and traditional specialities), both processing applications, oversight of controls on the production process (or direct public inspections), and policing of the marketplace.

For private certification schemes, the public authorities have a minimal role, confined only to administration of the national accreditation authority.

²⁹ OPTEM 2005; http://ec.europa.eu/consumers/topics/labelling_report_en.pdf
³⁰ United Nations Economic Commission for Europe.
Site for agricultural quality standards: <http://www.unece.org/trade/agr/welcome.htm>
³¹ International Organisation of Vine and Wine,
<http://www.oiv.int/uk/accueil/index.php>

2.4. How would the problem evolve without a change in policy?

The agri-food retail sector is highly innovative and competitive. If the problem of sharing information outlined is one that affects consumer demand, there is every chance that market forces will drive a response. If one retailer can secure an advantage by communicating better to consumers about the farming standards, requirements and place of farming of agricultural product, then the innovation will spread to others.

However, in the absence of there being a significant market demand for this kind of information, and the evidence is that consumers do not rate production method or place of farming as important factors in unprompted surveys, greater transparency and information sharing is unlikely to be required.

In the four policy areas the following evolution in the problem may be expected:

- | | |
|---|---|
| Marketing standards | <ul style="list-style-type: none">– Current situation would continue, that is ad hoc development of EU marketing standards including sectoral origin labelling.– Public marketing standards will continue to trail commercial practices, therefore needing a constant updating.– Moreover duplication of standards by private actors will continue. |
| Geographical indications | <ul style="list-style-type: none">– as added value and profit will not be equally distributed along the chain, the revenue of produces could weaken.– increase in the number of applications submitted by Member States and third countries as well registrations– continued existence of four legal frameworks (including aromatised wines) and three registers could lead to confusion for users, producers, consumers and third country partners.– In some Member States, the geographical indications systems will remain unknown to some producers because of inadequate information. |
| Traditional specialities | <ul style="list-style-type: none">– very few names would be applied for and registered.– scheme continue to be unknown. |
| Private and national certification schemes | <ul style="list-style-type: none">– currently observable trends in the development of certification schemes would continue:– performance in the market will continue to be the main determinant of success or failure.– Schemes will come and go according to how well retailers see they meet consumer demands, how much more consumers are willing to pay for certified goods and how expensive scheme participation is for farmers and producers (i.e., whether they can derive economic benefit from scheme participation). |
| <i>Differentiation schemes:</i> | <ul style="list-style-type: none">– Whether the overall number of differentiation schemes is likely to rise is difficult to predict.– However, without a change in policy, there won't be any significant changes in the way these schemes operate.– Greater transparency and clarity of the claims made may or may not be in the interest of scheme owners, but the growing debate around these schemes and the greater |

	attention given to these issues in the media may have a positive influence.
<i>Assurance schemes</i>	<ul style="list-style-type: none"> – The issue of consumer confusion arising from different schemes covering similar objectives is being taken up by initiatives such as the ISEAL Code of Good Practice, which claims to be the international reference for setting credible voluntary social and environmental standards. – the proponents of currently existing schemes claim to have already embarked on a significant degree of harmonisation. GLOBALGAP's predecessor EurepGAP replaced a range of different retailer standards for good agricultural practices.
New EU schemes	<ul style="list-style-type: none"> – could be proposed in an ad-hoc manner, depending on political priorities at any one moment.

2.5. Does the EU have a right to act?

The issues which may give rise to action touch on various policy areas of Community competence. These include trade policy; consumer policy; environmental policy; development policy; competition policy; internal market policy; food and feed safety policy (including labelling and animal welfare policy). First and foremost, however, agricultural policy is concerned. EU farming requirements and rules for the placing of agricultural products and foodstuffs on the internal market and ensuring the integrity of the internal market are matters of Community competence (Titles I and II of Part Three – Community Policies – of the Treaty establishing the European Community, and in particular Article 37 thereof).

No option described in this Impact Assessment conflicts with the EU Charter of Fundamental Rights.

2.6. Should the EU act?

In respect of agricultural product quality policy, the main problems that warrant EU action are:

- to address information asymmetry, for example if a term describing a product quality is used in a way to cause unfair competition and to mislead consumers;
- to restore and maintain coherence of EU measures and initiatives;
- to reduce complexity and simplify schemes.

- Marketing standards and place-of-farming labelling**
 - integral part of the Common Market Organisation for most agricultural products. EC action is therefore only way to make adjustments in standards.
 - For the specific issue of indicating the origin or place of farming, national rules could lead to a fragmented approach. Origin and place of farming can be determined in many ways.
- Geographical indications**
 - to uphold intellectual property rights and law.
- Traditional specialities**
 - to protect traditional identities throughout the single market (which the scheme has not done)
- Private and national certification schemes**
 - in general there is no role for the EU in the operation of private and national schemes unless they operate against the Community interest.
 - While several ongoing attempts are aiming at harmonising the existing approaches, the development of an agricultural quality policy which would include a policy line on certification schemes for agricultural products and foodstuffs is within the remit of the Community. However, given the existence of EU legal frameworks for the single market, competition, and on misleading the consumer, a new legislative framework governing food quality certification schemes does not pass the necessity test and soft-law options should be looked at first with a view to better implementing existing provisions and policy.
- New EU schemes**
 - there is a need to address opportunity for direct EU action needs in future in a coherent way rather than ad-hoc as different schemes are proposed.³²

2.7. Identification of policy issues

One aim of bringing together the currently disparate instruments that make up agricultural product quality policy into a single analysis was to see how to improve coherence and bring synergies to the development of policy. The analyses have shown the following potential links across the policy:

- ‘reserved terms’, which are an instrument under marketing standards, could be appropriate as an option for the development of the traditional specialities scheme, or as an alternative to demands for new EU quality schemes;
- the problems identified in relation to private and national certification schemes are equally risks for the EU quality schemes, and a common framework could be considered;

³² See also Annex D, § 4.3.2: Developing new stand-alone EU schemes for specific policy areas.

- the issue of considering the correct policy response to the rising number of candidates for new EU quality schemes can be addressed across the board
 - from the perspective of private and national schemes, from that of existing EU schemes, and from the angle of reserved terms under marketing standards.

In examining the policy objectives (Section 3), options (Section 4) and analysis (Section 5), the issues will be divided as follows (*See also Box 8, supra*):

- Policy issue 1: Marketing standards, including place of farming labelling
- Policy issue 2: Geographical indications
- Policy issue 3: Traditional specialities
- Policy issue 4: Private, national and new EU certification schemes

3. OBJECTIVES

3.1. General objective

To enable farmers and producers to meet consumer expectations for product characteristics and farming attributes and communicate them effectively, ensuring:

- farmers and producers get a fair return reflecting the agricultural product quality;
- farmers and producers can react to consumer demand for value-added product characteristics and farming attributes;
- consumers can rely on labelling terms to identify agricultural product characteristics and farming attributes.

3.2. Specific objective

The specific aims of the proposed Communication on agricultural product quality policy are:

- To improve problems of communication between farmers and buyers and consumers arising from asymmetric information about the qualities of agricultural product;
- To increase coherence of EU agricultural product quality policy instruments;
- To reduce complexities for farmers and producers, and consumers.

3.3. Operational objectives for strategic orientations

The operational objectives, which are at the level of determining the strategic orientations of policy are to elaborate during 2009 strategic orientations for policy development covering the four issues:

Policy issue	Operational objective
Policy issue 1: Marketing standards, including place of farming	<ul style="list-style-type: none">- To facilitate flexible adaptation of standards- Simplify standards and reduce burdens on operators- Maintain a minimum level of quality requirements- Establish terms of reference to obtain fair return for value-added qualities
Policy issue 2: Geographical indications	<ul style="list-style-type: none">- To reduce control burden on public authorities- to ensure clearer information regarding the products specific characteristics linked to geographical origin, enabling consumers making more informed purchase choices.- to ensure a single approach at EU level for a system of protection of names for products with specific qualities linked to geographical origin and simplify the Community schemes on geographical indications.- to ensure uniform enforcement - throughout the EU - of the intellectual property rights stemming from the registration of product names both of the EU.- to improve incomes of farmers and ensure that the system contributes to rural economy.
Policy issue 3: Traditional specialities	<ul style="list-style-type: none">- to ensure the most appropriate instruments are used for identifying and protecting traditional specialities and to achieve the specific objectives, by simplifying or replacing the existing scheme;- to make EU instruments coherent and consistent across agricultural product quality policy, to reduce divergent procedures and inconsistencies and to clarify confusing legislative provisions.
Policy issue 4: Private, national and new EU certification schemes	<ul style="list-style-type: none">- to ensure that private and national certification schemes uphold the proper functioning of the internal market, that transparency is increased, the potential for consumer confusion is reduced, and duplication and overlap of requirements is diminished.- to ensure that any proposals for new EU quality schemes are coherent and consistent across agricultural product quality policy.

4. POLICY OPTIONS

4.1:	<i>Marketing standards</i>
4.2:	<i>Geographical indications</i>
4.3:	<i>Traditional specialities</i>
4.4:	<i>Private, national and new EU certification schemes</i>

4.1. Policy issue 1: Marketing standards

During detailed analysis two options were considered and then discarded after technical screening, namely:

- introduction of an **EU logo indicating compliance with EU requirements**³³, which was raised in the Green Paper. The logo would be used on all agricultural product and food that had been produced in line with EU farming requirements. However, it would present considerable technical obstacles and was opposed by almost all stakeholders. The main problems and difficulties are:
 - Need for certification and traceability, without which the logo would not have credibility, but which would increase costs and burdens on farmers considerably;
 - Application to imported product would be complex as the logo would be used on 3rd country product that met equivalent requirements, irrespective of the legislative rules applicable in the 3rd country;
 - The identification of EU requirements at farm level is difficult to determine, given that many rules are applied by directive and subject to implementation by national authorities — who sometimes add requirements.
- **No EU action: abolition of marketing standards.** Complete removal of marketing standards from Community legislation does not seem an appropriate way forward. As it leaves "the field unoccupied" it is possible that divergent, national marketing standards may be introduced. Such could have serious and negative consequences for the functioning of the internal market and the smooth disposal of agricultural goods on the market. All stakeholders supported continuation of marketing standards (although simplified).

MARKETING STANDARDS, Option 1.1. Status quo plus: simplification.

Simplification of marketing standards means a harmonisation of standards where possible, harmonisation of common elements across different sectors including public control arrangements, removal of obsolete provisions and drafting in line with the latest legal drafting principles. In this option, neither the process nor the content related difficulties would be substantially addressed.

³³ See Annex A(i), § 4.1.2.

Stakeholders say (farming sector and industry):

- maintaining the current status is the optimal solution.
- keep current approach for the benefit of both producers and consumers. Stakeholders should be more involved in the decision making process.

MARKETING STANDARDS, Option 1.2. Replacement of specific EU marketing standards, by a general base standard.

This option foresees complete removal of specific marketing standards from Community legislation, accompanied by a new general standard, applicable to all products. This will avoid the need for Member States to introduce national rules, which could lead to a fragmentation of the single market. Products in compliance with UN/ECE or Codex standards would be considered to be in compliance with the general base standard.

Stakeholders say (farming sector and MS authorities):

- Minimum marketing standards must be set at EU level.
- Recent reform of fruit and vegetable standards is a good example to follow.
- If there is compliance with common, general standards of hygiene and product safety, the marketing standards can be left to self-regulation.

MARKETING STANDARDS, Option 1.3. Combined approach

Mirroring the New Approach for setting conformity standards for industrial products, this option comprises essential requirements or base standard in legislation (as in Option 1.2) and technical specifications in standards agreed by stakeholders using a standards setting body (the CEN framework).

Stakeholders say (farming sector) :

- The option of using a stakeholder standards-setting body (like CEN used for industrial standards) is worth exploring.
- Producers should be involved in the drafting of marketing standards.

MARKETING STANDARDS, Option 1.4. Develop use of reserved terms

Lay down clear definitions, identities, classes, sizes, which have to be respected if used at the stage of placing on the market and are voluntary for producer/operators. Reserved terms are suitable for simple single-issue claims (e.g. 'farmhouse', 'free range', and particularly if the 'traditional specialities' scheme instrument is discontinued, the term 'traditional'). The new legal framework of the single CMO provides a logical platform in which to reserve terms that apply to more than one CMO sector.

Stakeholders say (farming sector, NGOs):

- The sector would not communicate on negative aspects.
- Farmers to be given more freedom to classify their products to avoid industrialisation.
- It would be possible as soon as the rules are decided at EU level and uniformly applied.
- Producers will be weakened vis-à-vis retailers.
- It should however not mislead consumers.

MARKETING STANDARDS, Option 1.5. Extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product

Extend compulsory labelling of the place of farming to agricultural product sectors, according to sector-by-sector analysis of needs. Labelling of EU/no-EU and/or Member State/Third country to be considered especially in light of WTO considerations.

Stakeholders say:

- Farming groups generally favoured compulsory place-of-farming labelling, mostly at country-level rather than EU/non-EU, but in general thought it had to be considered sector-by-sector; "not realistic for all product" said several, but there was a general view that beef labelling requirements should be extended to all meat.
- Individuals, including farmers, were generally in favour of origin or place of farming labelling, but almost unanimously preferring 'country' rather than 'EU/non-EU'. One exception was a respondent who argued for EU/non-EU to 'prevent national market protection by Member States'.
- Several NGOs thought 'EU' too broad to carry meaning to consumers and a smaller territory was needed to convey information such as food tradition and distance travelled.
- Representatives of processors were strongly, though not unanimously, opposed to obligatory place-of-farming labelling. Few retailers responded, one view was that it is feasible for raw products and very-lightly processed, but loses value for processed products.
- Similar divisions were evident from stakeholders consulted on the options retained in the Quality Policy Advisory Group on 25.2.2009. Industry underlined in particular the difficulties of indicating origin for highly processed and mixed foods, such as bread, beer and pate made with a mixture of meats, and place of farming of animal feed (in respect of meat products). Support for place of farming labelling (at country level) was most pronounced from farming groups and consumer representatives, as well as an animal welfare representative.

4.2. Policy issue 2: Geographical indications

During detailed analysis³⁴ a number of options were considered and then discarded after technical screening. These include:

- Action through a general **Directive**, delegating to Member States the task of identifying and protecting geographical indications, with legal effect at EU level. This option presents a low consistency with one of the objectives of the policy, i.e. to have a harmonised application throughout the single market.
- **Co-regulation** and **self-regulation** options need the involvement of non-governmental organisations, social and economic partners. The highly fragmented representation of that interest and the economic and legal dimension of the problem are structural limits that make those options low in terms of effectiveness and efficiency in comparison with the other options.

³⁴ See Annex B, § 4 and in particular § 4.11.

- **No action at Community level (abolition)** would lead to a greater risk of market failure as to the non harmonised level of protection and mechanisms to ensure it. In absence of a mechanism of mutual recognition between Member States, operators willing to have their product names protected in the EU would face 26 different systems. Products circulating in the EU may risk misuse, usurpation, etc. outside the country which grants them protection. In addition the diversity of action by the Member States would lead to a multiplication of regional/local labels and therefore creating more confusion among consumers.
- **International rules option through Lisbon Agreement** would be impossible to apply in a short term, as an international negotiation to adhere to WIPO would be needed as well as some amendments on definitions. In the longer-term, however, this option should not be ruled out.

GEOGRAPHICAL INDICATIONS, Option 2.1. Status quo plus: Simplification of PDO/PGI schemes and streamlining existing procedures

The legal text could be clarified without changing the current legal architecture and time taken to process applications at EU level further reduced.

Sub-option 2.1.1 Merging PDO and PGI definitions

More radical simplification could be achieved by merging the two geographical indication types: the narrower ‘protected designation of origin’ and the broader ‘protected geographical indication’. In effect, the protected designation of origin would be abolished and existing registrations become protected geographical indications. This option would reverse recent policy of enhancing the difference between the two types.

During the **Quality Policy Advisory Group** on 25.2.2009, consumers and farmers representatives expressed strong views against this option that would, in their view, undermine current geographical indications systems. Nevertheless, during Green paper consultation, some academic organisation and other respondents underlined difficulties to understand differences between the 2 definitions, and asked for more clear distinction between the PDO and PGI definitions, or even advocated for a merge.

Sub-option 2.1.2 Creation of a single instrument for registering wines, spirits, and agricultural product and foodstuffs

Creation of a single regulation would enable policy to become more coherent, for example by using similar criteria and procedures for registrations. A single register, whether or not in 3 parts, could be created, while retaining the specificities of each type.

An overwhelming majority of respondents (majority of Members states and regional authorities, farming organisations and individuals for farming sector, some consumer organisations) during the Green Paper consultation expressed views in favour of a gradual harmonisation and simplification of the 3 systems, while keeping their specificities. Respondents related to wine and spirit sectors, insisted in keeping the specificities while expressed fear to end up with the lowest common definitions.

Sub-option 2.1.3 Allow national system of protection of geographical names

This option would consist in allow national systems of protection of names to be set up in parallel to EU geographical indications. Protection of those names would then only apply as to the national market. In parallel, it would be possible to introduce trade (volume and value) criteria as a precondition for registration of names in EU registers.

This option is supported by a minority of Member States

GEOGRAPHICAL INDICATIONS, Option 2.2. Abolish current sui generis PDO/PGI system at EU level and replace by existing trademark system

The level of protection of geographical indications would be the one ensured by TRIPS, but the legal means to apply it (protect names) would only apply (exclusive system) through the Community trademark system (Council Regulation (EC) No 40/94 on the Community trademark³⁵). The definition of designation of origin will disappear, as same definition of geographical indications will apply to every Member State (TRIPS definition of geographical indication).

For a majority of respondents to the Green Paper (most Members states, farming organisations, processing and retail organisations) geographical indications *sui generis* system and trademarks system are not alternatives but two distinct instruments in nature that should co-exist. Utility of trademark system was mentioned by some respondents from regional authorities to protect small productions who can not apply for PDO/PGI because they consider the system expensive or even as preliminary protection step (for example as collective trademark). In addition, during the **Quality Policy Advisory Group** on 25.2.2009, consumers and farmers representatives expressed against that option that would undermine current geographical indication systems.

GEOGRAPHICAL INDICATIONS, Option 2.3 Clarifying PDO/PGI rules

The system in place could be clarified and improved by taking into account the results of stakeholder consultations. This could be done through modification of the current regulations and by drafting guidelines. Issues to be addressed include: use of geographical indications as advertised ingredients of processed products; the labelling of place of farming of raw materials used in a geographical indication product; the rules for ensuring enforcement (in the market place, at production stages and during transit and trade prior to retail sale); the clarification as far as possible of the rights of use of protected names, including in relation to other (potential) uses on non-originating product, the coexistence with trademarks, transitional periods, and generic character of names.

This option was preferred by the **Quality Policy Advisory Group** meeting on 25.2.2009.

³⁵ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, Official Journal L 011, 14.1.1994, p. 1.

4.3. Policy issue Policy issue 3: Traditional specialities

During detailed analysis³⁶ it is apparent that '*status quo*' is not a viable option. With only 20 names registered since the scheme's inception it has clearly not met its objectives. Nevertheless, *status quo* is retained as a point of comparison for other options. The option of defining 'traditional' as a reserved term under marketing standards is raised under Option 1.4 above.

TRADITIONAL SPECIALITIES, Option 3.1: Status Quo — continuation of current scheme

This option envisages the continuation of the current scheme, which is not considered viable, but it is retained as a point of comparison to other options.

Although the importance of, and support for, the current scheme was underlined by several stakeholders from all categories in the Green Paper consultations, only a few of them (again practically all categories but national authorities) were in favour of status quo.

TRADITIONAL SPECIALITIES, Option 3.2: Simplified certification scheme

If the TSG scheme continues then it should be simplified. The current scheme provides that a name can be registered in one of two ways: either the term is protected and cannot be used on similar product, or the term is not protected and the only restriction on the use of the name is with the indication 'TSG' that shows the genuine traditional product is described. Simplification could therefore take the form of limiting the scheme to only one of these options.

Sub-option 3.2.1. TSG registration without reservation of the name

This sub-option would entail the abolition of protection of the name. Therefore the registration of a name would serve only to identify the traditional form of the product.

Sub-option 3.2.2. TSG registration with reservation of the name

In this case, the name would only be used to describe the product made in accordance with the specification.

In the Green Paper consultation, stakeholders, in particular national and regional authorities of the Member States most frequently proposed simplification of the current scheme. With this regard, the option that only registration with reservation of the name would be allowed, was preferred by several stakeholders.

TRADITIONAL SPECIALITIES, Option 3.3: protecting the term 'traditional' as a reserved term under marketing standards

Given that most of the names were registered without reservation of the name and serve only to identify the traditional speciality and not to protect the name, the introduction of a defined reserved term for 'traditional product' would be an option. This option is included under Option 1.4 above.

³⁶ See Annex C, § 4.

The definition of 'traditional' could pose technical difficulties. However, this is also the case for any option identifying traditional foodstuffs (including leaving the matter to the market) and at least one organisation has developed a workable definition.³⁷

The reserved terms option could also follow the path taken for traditional terms in the wine sector, where each term (not just the general 'traditional' concept) is protected in legislation³⁸. However, the 'traditional terms' option is considered to be excessively burdensome procedurally and has been developed in the very particular circumstances of wine labelling. Therefore as a broad-ranging instrument for strategic orientations, this option is not retained.

In the context of Green Paper consultations, various stakeholders, notably national authorities and farming organisations, most frequently proposed that a reserved term is defined as an alternative to TSG scheme.

TRADITIONAL SPECIALITIES, Option 3.4: No EU action: discontinuation of current scheme

Existing EU scheme would be discontinued and the EU would in principle not get involved by setting specific rules in regard to names of traditional products. Regulating traditional specialities and its implementation would be left to the private sector, Member States and regions. Several schemes exist currently at Member State level (see examples from Italy and Belgium³⁹) to identify traditional products and these initiatives seem to be viable.

In the context of Green Paper consultations, some but not a majority of stakeholders suggested deletion of the scheme. This view was scattered almost evenly among many categories of stakeholders.

4.4. Policy issue 4: Private, national and new EU certification schemes

A number of problems highlighted in the detailed analysis can at least partly be addressed by making better use of existing legal instruments or by building on ongoing initiatives in the private sector. Other issues however may need further action related to the way in which certification schemes operate (process) or the policy areas covered by certification schemes (content).

In the detailed analysis, a **legislative option** was discussed, consisting of legislation setting down rules or a framework for the operation of food quality certification schemes. However this was screened out on grounds of lack of efficiency, effectiveness and coherence with other EU policy objectives (e.g., simplification) as well as lack of stakeholder acceptance.⁴⁰

³⁷ See Box 8 in Annex C, § 4.2.2.

³⁸ See Box 9 in Annex C, § 4.2.2.

³⁹ Annex C, § 4.1.2.

⁴⁰ See Annex D, § 4.2.2.

PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES, Option 4.1: no EU action = status quo (plus further research)

This option is a continuation of the present situation in which the EU is not directly involved in the operation of private and national/regional certification schemes⁴¹. The EU provides a general policy framework on issues of relevance to certification schemes (internal market rules; competition rules; consumer information and labelling requirements) but no specific legislation.

This option would include **further research** to gain a better understanding of the nature and extent of the problem.

Farmers' associations in a stakeholder hearing in 2006 expressed the view that market forces are already leading to greater harmonisation of scheme requirements. Existing EU legislation could be applied to deal with a great part of the problems, so no new legislation is needed in this area. While no EU action is not an option, interventions should be as light as possible.

PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES, Option 4.2: Develop guidelines for the operation of certification schemes (focus on process)

Development of guidelines or best-practice approaches along the lines of the following criteria: independence of certification and control; accreditation arrangements; stakeholder participation in scheme development (including from developing countries); transparency of standard setting processes and scheme requirements; the need for clarity of the relation between scheme requirements and legal minimum requirements. Schemes not in conformity with the guidelines (but in line with all other legislation) would not be prevented from operating in the EU market.⁴²

In the consultation on the Green Paper, stakeholders across all categories were of the view that EU guidelines are sufficient to contribute to a more coherent development of certification schemes.

PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES, Option 4.3: Developing new EU quality schemes for specific policy areas (focus on content)

The Commission has already developed certification schemes (or is preparing to develop them) in several policy areas.

A further option in addressing the landscape of private and national certification schemes is to develop a new EU scheme in a given subject area which would either replace all existing schemes in the policy area or serve as a reference standard for other schemes. Two EU schemes (*Ecolabel* for

⁴¹ The EU oversees certification schemes itself. These are the schemes for (a) protected designations of origin and protected geographical indications, (b) organic farming and (c) traditional specialities guaranteed. They are treated in parts II and III of this impact assessment, and further schemes are under consideration (*Ecolabel* for processed food and Animal Welfare).

⁴² See Annex D, § 4.2.3.

foodstuffs⁴³ and *Animal welfare* labelling⁴⁴) are in development⁴⁵, Council has asked the Commission to look at labelling options in the complex area of *Carbon footprint*, and stakeholders have proposed EU schemes for high-nature-value farming⁴⁶; climate change; integrated farming; mountain products; and water labelling⁴⁷. Each new scheme will have to be assessed on its own merit. It is beyond the scope of this impact assessment to analyse possible policy options for new schemes at this stage.

PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES, Option 4.4: Establish common criteria for new EU schemes (focus on process)

As an alternative to Option 4.3, and given the number of new schemes and proposals coming forward, the criteria to be applied in the decision on whether or not to establish a new EU scheme could be established. This option comprises introducing criteria to assess the need for new EU certification schemes for agricultural products and foodstuffs. Criteria would be developed in consultation with stakeholders.

Stakeholders say:

- Retailers feel that the further development of EU schemes should be in response to specific consumer demand rather than to meet different policy objectives (Retailer panel, Stakeholder Hearing, 2006)
- The majority of respondents to the Green Paper consultation (mainly representing national authorities, the farming community, trade and processing organisations) are against introducing new EU schemes (although some make specific reference to mandatory schemes and don't express their views of voluntary schemes). Some see possibilities for new schemes if certain conditions are fulfilled, and 24% of all respondents (= 50 replies) are of the opinion that new schemes are needed in certain policy areas

Illustrative list of criteria based on stakeholder views:

- Is the scheme addressing an identified priority area for EU policy?
- Is there a problem in the specific policy area that cannot be addressed (or that is caused) by private and/or national or regional initiatives?
- Would the establishment of an EU scheme in the particular policy area solve the identified problem(s)?
- Does the scheme take an integrated approach to sustainability of farming requirements or otherwise address the problem of trade-offs?
- Would the administrative costs and burden of an EU scheme be compensated by improvements in other areas (e.g. functioning of the internal market; burden on farmers/producers; consumer interests)?
- Is the proposed new EU scheme coherent and compatible with other EU initiatives in the same policy area? Could the problem be better addressed by adjusting another EU initiative rather than creating a new one?
- Is the proposed new EU scheme in line with the Community's international obligations (e.g. WTO laws) towards third country trading partners?

⁴³ COM (2008)451final: Proposal for a Regulation of the European Parliament and the Council on a Community Ecolabel scheme

⁴⁴ Agenda Planning: 2009/SANCO/037, Communication on Animal Welfare labelling.

⁴⁵ See Annex D, § 4.3.2.

⁴⁶ Ibid, § 4.3.2, Box 9

⁴⁷ Ibid, Annex 9

***PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES, Option 4.5:
Development of protected reserved terms corresponding to specifications***

In cases where direct EU action is justified, a lighter option administratively could be to develop **reserved term protection**. This is considered under the marketing standards heading above (Option 1.4).

5. ANALYSIS OF IMPACTS

5.1. Overall assessment of impacts

The quality policy instruments are either ‘certification type’ (geographical indications, traditional specialities, and private and national certification schemes) or ‘labelling type’ (marketing standards, including product identity, reserved terms and place of farming labelling).

5.1.1. Economic impacts

There is little information concerning the costs of these instruments that has come to light in the course of this assessment.⁴⁸ However, certain studies and information are available on certification schemes from which some data can be extracted.

(a) Certification-type measures

Farmers: Certification costs

- application procedure (one-off): for geographical indication applications, figures have been given in the range: €3000, to €900 (for a 4-page application), and €107. Some applications are free.
- compliance costs. For assurance type certification, a study in 2004 showed that since most of the obligations corresponded to legal requirements or good practice, most farmers already complied and had zero compliance costs in terms of farm buildings and equipment. In practice, some farmers incurred some building and other costs as the price of joining the certification scheme, which implied that the preceding situation was not in full compliance with minimum requirements. This gave rise to high ‘perceived’ compliance costs.⁴⁹ For differentiation schemes, costs of conversion into the system were reported for an animal welfare scheme and a general quality scheme. Upgrading buildings was the highest costs

⁴⁸ An EC-funded research project, CERTCOST: Economic analysis of certification systems for organic food and farming, is running from 2008-2011.

⁴⁹ ‘Costs and benefits of farm assurance to livestock producers in England’, Fearne and Walters, Wye College, 2004. The report warns: ‘The assessment of costs and benefits of farm assurance to livestock producers is fraught with problems, not least due to the paucity of data in the public domain on which rational alternative market scenarios can be based.’

(up to several thousand €).⁵⁰ The total compliance costs, factoring in buildings, fixed costs and variable costs, of the Label Rouge scheme were estimated at almost 200% higher than for standard product.⁵¹

- certification costs, or annual fee for joining the scheme are in the range of 200 – 400 € per year for an assurance scheme for geographical indications. For an animal welfare scheme, pig costs of €1 per sow were given. For GlobalGap, the annual fee is in the region of €1500.
- inspection costs depend on frequency of inspections and length of inspection. Under a farm assurance scheme, pig farmers were required to have quarterly visits from vets, of between 1 and 4 hours per visit., at approx 100 € per hour. (400 – 1600 € per year). For an animal welfare scheme: €180 per year, plus €26 meat inspection⁵².
- record-keeping costs: for all certification schemes this cost in terms of management time is additional to normal farming procedures. For farm assurance, the costs was for 60-70% of farmers, between 0-5% of the farmer's time.⁵³ For geographical indications, 4% is mentioned as the administrative cost in time to the farmer.

Farmers: benefit of certification schemes:

- data on benefits is also hard to identify. However, it seems logical to assume that for the successful schemes, given they are voluntary, that the benefits must outweigh the costs. For Neuland, in 2006 data showed that certified pig prices were 20% above conventional pigs. For assurance schemes, no data on higher prices is available, but the benefit might be increased market access to supermarkets that use the assurance schemes.

Studies have shown that consumers are willing to pay more for certified products from well-known schemes than for non-certified products or those certified under lesser known schemes. For example, willingness to pay for products carrying the German QS label was found to be three times higher than for products carrying the label of a less well-known scheme⁵⁴. Another study shows that 59% of Finnish consumers are willing to pay more for information on quality and safety of beef products⁵⁵. However, it is also known that expressed willingness to pay for quality

⁵⁰ Neuland, JRC case study.

⁵¹ Label Rouge, JRC case study

⁵² JRC case studies.

⁵³ Fearne and Walters, op cit. page 42.

⁵⁴ Enneking, U. (2004). Willingness-to-pay for safety improvements in the German meat sector: the case of the Q&S label. *European Review of Agricultural Economics* 31(2), 205-223.

⁵⁵ Latvala, T. and J. Kola (2004). Consumers' Willingness to Pay for Additional Information on Food Quality and Safety. Paper presented at the 84th EAAE Seminar 'Food Safety in a Dynamic World'. Zeist, The Netherlands, February 8 - 11, 2004

attributes often does not match actual purchasing behaviour and that therefore these figures have to be treated with care.

- benefits may not be reflected in price but in access to the market.

Retailers:

No data available of costs and benefits of certification schemes.

However, the assurance schemes provide liability protection to retailers and protect (or enhance) their reputation. Potentially a high benefit and an 'insurance' scheme.

Operators in developing countries:

Costs and benefits of participating in the GLOBALGAP (formerly EurepGAP) assurance scheme to operators in developing countries have been estimated for Kenya, Zambia and Uganda⁵⁶. In general, the studies conclude that small-scale growers need external support (by donors or exporters) to be able to afford certification, costs of which in the case of Kenya are in the range of 636 GBP for establishment and 175 GBP per annum to maintain. In Zambia, establishment costs per grower even amounted to 4664 GBP for initial investment and 938 GBP per annum for maintenance costs. In Uganda, the study concludes that an export company would have to sell an additional 53 tonnes of horticultural products to break even (18 % more for a company exporting 300 tonnes per annum). Farmers would have to increase their production by about 0.1 to 0.3 acres to compensate for additional costs through higher net income.

(b) Labelling-type measures

Costs

For labelling obligations, the EU project on baseline measurement and reduction of administrative cost (ENTR/06/061) looked at food safety information obligations, including labelling of foodstuffs and found that the food labelling obligations under Directive No 2000/13/EC carried an administrative cost of €630 million.

Changing a food product label for meat in England in accordance with Commission Directive 2001/101/EC⁵⁷ has been estimated to cost a typical shop in the region of 50-150 GBP and can be offset by incorporating such changes as part of the normal label redesign cycle⁵⁸.

The European Association of Craft, Small and Medium-sized Enterprises (UEAPME) in a statement on the Commission proposal for a Regulation of the European Parliament and of the Council on the provision of food

⁵⁶ Analysis available on www.agrifoodstandards.net

⁵⁷ This directive amended Directive No 2000/13/EC.

⁵⁸

<http://www.food.gov.uk/foodindustry/regulation/ria/ria2003/foodlabelling2003riafinal>

information to consumers (COM(2008) 40 final)⁵⁹ puts the cost of changing a label at €6.

On the issue of country of origin labelling (COOL), a study conducted in the US on raw food labelling estimates cost increases in the range of 0.01 % for poultry meat and 0.64 % for fish. On the other hand, an Australian study covering different raw products within processed food shows cost increases on average of 1.4 % for the implementation of extensive labelling requirements, while a study from New Zealand comes up with a medium estimate of 0.48 %⁶⁰.

Mandatory labelling measures impose costs on all foods in the supply chain, from producers to food retailers. As a result, all consumers would pay for the labelling system, including those who are indifferent to such labels.

Voluntary labelling of certain foods satisfies the consumer segment that is interested in such information. Because such labels only apply to products targeted to these consumers they could reduce the overall cost of the system and possibly lead to more appropriate labels.

Benefits

There are no known studies that try to estimate the benefits of labelling-type measures for agricultural product quality⁶¹ in quantitative terms. These would depend to a large extent on the issue addressed by the labelling measure and consumers' preferences (expressed for example through their willingness to pay a premium for the information in the case of voluntary labelling).

5.1.2. Social impacts

Consumers are the main beneficiaries from certification and labelling schemes. They enable the consumer to share the information that without the scheme would be in the exclusive domain of the farmer (or retailer). This in turn allows them in confidence to make a purchasing choice.

The consumers benefit will be greatest the more they have valuable information on which to make purchase decisions.

5.1.3. Environmental impacts

There are no general environmental impacts from certification and labelling schemes. However, for schemes that are aimed directly at environmental issues, the environmental value can be substantial as it allows consumers to align purchasing decisions with the environmental outcome.

⁵⁹ http://www.ueapme.com/docs/pos_papers/2008/080805_pp_labelling.pdf
⁶⁰ Figures cited in DG SANCO Impact Assessment on General Food Labelling Issues, COM (2008) 40 final
⁶¹ Studies have been done showing the benefits of improved nutritional labelling in the US, Canada, Australia and New Zealand.

5.1.4. Burdens on public authorities

Private certification schemes: practically no cost, except for oversight of accreditation authorities.

EU schemes and national schemes: if implemented by private scheme, no cost; if implemented by public authority, cost will be quite high, but recoverable from fees, if the authority wishes.

Protection of Intellectual Property Rights: The existing EU schemes for PDOs and PGIs put a burden on public authorities in the EU Member States linked to the application procedure (including objections), monitoring and enforcement. In Belgium (Wallonia), the application process has been estimated to cost 10,000 € per request, a similar figure is given by the UK, while Hungary estimates 390 € application. In terms of staff, 0.3 FTE work on PDO/PGI-related matters in Wallonia while Germany employs two persons (although not full-time), Greece has two full-time staff plus seasonal help, Hungary has 6 FTE and Sweden estimates 0.7 FTE to deal with PDOs and PGIs. Several other countries state that it is impossible to separate out the costs or staff time dedicated to the scheme (e.g. IT, DK, ES). At EU level, there are currently 25 full-time persons involved in processing PDO/PGI and TSG applications.

Labelling requirements: relatively low cost. If controls are integrated with food law controls, they can be carried out on a risk basis. At the leading French market at Rungis, the number inspectors working on fruit and vegetable marketing standards has reduced from 25 to 5 in the last 10 years.

5.2. Qualitative impacts by measure

5.3:	<i>Marketing standards</i>
5.4:	<i>Geographical indications</i>
5.5:	<i>Traditional specialities</i>
5.6:	<i>Private, national and new EU certification schemes</i>

5.3. Policy issue 1: Marketing standards

	Advantages	Drawbacks
Option 1.1: simplification.	<ul style="list-style-type: none"> + A simplified and coherent framework. + more transparent; easier to develop. 	<ul style="list-style-type: none"> – It does not address the issues identified; no increase in flexibility for example, not a reduction of administrative burden for farmers and operators.
Option 1.2: Replacing specific by general standard	<ul style="list-style-type: none"> + A very lean legal framework, which allows for the placing on the market of ugly or innovative products. + It is likely to lead to a reduction in administrative burden to farmers. 	<ul style="list-style-type: none"> – The general base standard may not necessarily function as a ‘quality target’ in some markets. – consumers may see less information available systematically.
Option 1.3: Combined approach	<ul style="list-style-type: none"> + The combined approach rests on the voluntary nature of the marketing standards (beyond matters set in the baseline legislation). It provides a mechanism to develop trading rules and standards that the stakeholders can agree and has been shown to work in non-agricultural sectors. It is compatible with continued fruitful development of international standards, which is important for the international aspect. 	<ul style="list-style-type: none"> – articulation with the GFL structure needs to be assured – the farming sector may simply be too fragmented to be able to staff the technical committees; – other attempts to find industry agreement on technical issues in the agriculture sector have shown that consensus can be difficult.
Option 1.4: Reserved terms	<ul style="list-style-type: none"> + Its optional or voluntary character, as farmers can pick and choose from the ‘reserved terms’ menu; they will have more flexibility in their operations. It provides a tool to farmers to obtain a reward for adding value to a product. + light administrative burden and low compliance costs (no certification); + effective to protect single-concepts + viable alternative to failed 	<ul style="list-style-type: none"> – Reserved terms are laid down by the legislator, which is a process that may take some time. – Operators will not communicate on negative aspects. – only useful where the term is simple to define; – legislation can be slow to develop new terms; – avoids logo fatigue / allows marketing managers to develop own design and identity of product.

	TSG scheme.	
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	Advantages	Drawbacks
Option 1.5: Place of farming labelling	<ul style="list-style-type: none"> + Enables farmers to communicate easily to consumers with information they wish to know. + Impact on costs modest (about 0,1%, but data unreliable and costs vary according to type of product.) + enable consumers to take purchasing decisions on basis of place of farming (which is a significant desire in prompted surveys) + SME farmers and producers of single ingredient processed agricultural product will be able to better communicate the place of farming with the consumers. + Public authorities: provided inspections of place of farming labelling are integrated into existing control structure, the impact on control authorities will be modest. + Consumers and households: place of farming labelling will enable consumers to be informed about the farming attributes and requirements more easily. + Transparency: the labelling will contribute to better information to the public. Labelling of place of farming may give some consumers useful information on production style, climate, and (possibly subjective) information about the quality of the product. + As one aim of the labelling of place of farming will be to make better known the environmental compliance efforts that farmers achieve, provided this is successful, then the benefit to the environment in terms of better understanding of environmental requirements will be significant 	<ul style="list-style-type: none"> - Sectoral requirements are diverse, giving a patchwork approach. This implies that sectoral needs will have to be taken into account. - Member State label may be difficult to apply in sectors integrated across single market (e.g. milk.) - Impact on processors will be negative insofar they need to frequently alter labels as a function of purchases. For multi-ingredient processed product, the difficulties of identifying the place of farming of all, or the main, ingredients could be formidable and will add costs. - Identification of place of farming of every significant ingredient could be too costly. - only country or regional labelling has resonance, and EU/non-EU label is not regarded as specific enough to convey useful information. - For processed goods, if the labelling requirement results in a price increase, consumers would lose. - Negative impact on SME processors that use a diversity of sources and have to relabel frequently. However, this impact will be slight.

5.4. Policy issue 2: Geographical indications

	Advantages	Drawbacks
Option 2.1: Streamlining procedures	<ul style="list-style-type: none"> + Harmonisation of delays between the three systems + reduction of delays would have positive impact on the efficiency of business planning. 	<ul style="list-style-type: none"> – reduce transitional periods granted at national level
Option 2.1.1: Streamlining procedures and merging 2 definitions (PDO and PGI)	<ul style="list-style-type: none"> + It would bring EU GI definition closer to TRIPS definition + it would make it easier negotiations with 3C on protection + it would help providing consumers a clearer message on products' characteristics linked to geographical origin 	<ul style="list-style-type: none"> – two different types of geographical origin (PDO-PGI) originally introduced to reflect existing national experiences=>likely difficult implementation – inconsistent with recent graphic differentiation of PDO and PGI symbols – inconsistent with recent wine reform – it would drive down the intensity of the link between product and geographical origin – For PDO producers: - cost to change the logo; - perceived demotion of status, - may revert to national symbols.
Option 2.1.2: Streamlining procedures and merging 3 registers (wine, spirits and agricultural products)	<ul style="list-style-type: none"> + Ensure coherence among EU rules on protection of geographical names + in line with better regulation and simplification + a single register would be consumers –friendly and easy for operators and administration use + a single legal act and a single register would contribute to a better enforcement + merging would support EC negotiation position in DDA on extension of protection beyond wines and spirits + opportunity to extend environmental concerns currently spelt out in wine regulation to agricultural products . + Synergies in registration procedure and communication campaigns 	<ul style="list-style-type: none"> – need for preserving some specificities of the 3 systems. – risk of complex legal framework

	Advantages	Drawbacks
Option 2.1.3: Streamlining procedures and create national protection systems for geographical names	<ul style="list-style-type: none"> + reduce Commission burden of approving names at EU level + possible reduction of administrative burden for small businesses producing “micro GIs” + possible positive effect on local employment + possibility - within the EU framework - to address at national level specific concerns (e.g. environmental) 	<ul style="list-style-type: none"> – could fragment the single market – current system was created to avoid recurrent problems related to non-harmonised national systems – definition of trade criteria would be difficult – risk of consumer confusion (proliferation of national logo) – may increase complexity as to the introduction of a new form of national intellectual property right – unequal treatment of producers of MS that would not put in place national protection systems. – solutions may increase control burdens.
Option 2.2: Abolish PDO/PGI and develop Community TM system (possible Community certification mark)	<ul style="list-style-type: none"> + lower administrative burden for public authorities as to the preparation of applications and enforcement + shorter delays for registration procedure + clear identification of ownership 	<ul style="list-style-type: none"> – limited level of protection – registration fee + periodical renewal fee – higher cost of market surveillance – enforcement only through private action – problematic transition to a purely TM system – if specific rules on a Community certification mark are to establish, need for amendment to trademarks Regulation – not supported by majority of MS – affects bilateral treaties with 3C – risk of regional uneven take-up
Option 2.3: clarifying PDO/PGI rules	<ul style="list-style-type: none"> + resolve current ambiguities + in line with Commission declaration of 30.3.2006 + supported by majority of MS + better market transparency and consumer information + improvement quality of applications 	<ul style="list-style-type: none"> – solutions not evident for some controversial issues: – certain solutions may increase administrative and control burdens – risk of complex legislation

5.5. Policy issue 3: traditional specialities

	Advantages	Drawbacks
Option 3.1: Status quo	<ul style="list-style-type: none"> + option supported by Member States + no change for registered names and those applied for registration 	<ul style="list-style-type: none"> – problems persist – few names continue to be registered – as a consequence the objectives would not be achieved
Option 3.2: Simplified certification scheme	<p>Sub-option 3.2.1: <i>TSG registration without reservation of the name</i></p> <ul style="list-style-type: none"> + TSG scheme simplified, especially in regard to control arrangements and registration procedure 	<ul style="list-style-type: none"> – products not corresponding to the specification could still be produced/marketed under registered name therefore ambiguity/confusion would not be eliminated – few names continue to be registered thus achievement of policy objectives questionable – problematic for registered names and those applied for registration with reservation of the name
	<p>Sub-option 3.2.2: <i>TSG registration with reservation of the name</i></p> <ul style="list-style-type: none"> + scope for simplification of TSG scheme seems rather limited + only products that correspond to the specification could be produced/marketed under registered name so no more ambiguity/confusion for producers and consumers 	<ul style="list-style-type: none"> – few names continue to be registered thus achievement of policy objectives questionable – problematic for registered names and those applied for registration without reservation of the name

	Advantages	Drawbacks
Option 3.3: Protecting the term 'traditional' as a reserved term under marketing standards	<ul style="list-style-type: none"> + establishment of clear framework by defining optional term 'traditional' + authenticity of traditional product would be guaranteed to producers and consumers + low administrative burdens (i.e. no certification) 	<ul style="list-style-type: none"> - names not registered (and lacking EU recognised via. a logo etc.) at EU level - problematic for registered names and those applied for registration - far from certain if definition of a term would be such to identify 'real' traditional products (plus question of proper implementation/control). In other words, not adequate term could result in more harm (e.g. not really traditional product bearing the denomination would certainly erode/jeopardise real traditional products being produced and marketed) than 'doing nothing' - not coherent approach if other voluntary terms like 'authentic' would not be regulated horizontally at the EU level .
Option 3.4: No EU action	<ul style="list-style-type: none"> + scheme not successful, need for EU action not shown so traditional specialities would be managed only at Member States/regional/local level 	<ul style="list-style-type: none"> - fragmentation of Single Market, consumer confusion possible - problematic for registered names and those applied for registration

5.6. Policy issue 4: Private, national and new EU certification schemes

	Advantages	Drawbacks
Option 4.1: Status Quo	+ Allows further research to fill information and data gaps before further action is taken	- Not all problems are likely to be addressed by private sector initiatives (transparency, clarity of claims ...)
	+ Preferred by many stakeholders	- Lack of coherent policy
	+ Relies on ongoing initiatives in the private sector to develop in a positive way	- fails to address issues of threats to single market, anti-competitive situations, and consumer confusion
	+ Builds on existing measures without the need to define new ones	

Expected net impact: negative (situation will deteriorate with respect to consumer confusion, functioning of the internal market and burden on farmers)

	Focus on process	
Option 4.2: Voluntary guidelines for certification schemes (private, national, EU)	+ option preferred by many stakeholders	- less legally binding than regulation, therefore possibly less effective;
	+ may achieve an outcome if combined with incentives for adoption, such as linkage under rural development quality measures and promotion funding;	- guidelines perceived as 'weak' response, compared with regulation;
	+ will enable 'best practice' schemes to be identified.	- scheme owners may resent / suspect EU involvement;
	+ EU shows it is engaged in key issue affecting farmers.	- owners and participants of non-compliant schemes may face adjustment costs
	+ in line with Commission objectives for better regulation, simplification and reduced administrative burdens	
	The definition of common criteria for the operation of certification schemes will have a positive impact on:	
+ the functioning of the internal market and competition		
+ mutual recognition and harmonisation of schemes, thereby reducing the burden on farmers		
+ transparency and consumers' ability to understand and trust the claims made by schemes		
+ stakeholder involvement (incl. from developing countries) in scheme development		

Expected net impact: positive (situation will improve with respect to consumer confusion, functioning of the internal market and burden on

farmers)

	Advantages	Drawbacks
Option 4.4: Develop policy criteria for new EU schemes	+ consolidate coherent approach and avoid ad-hoc development of inconsistent schemes; contribute to good administration principles	
	+ diminish risk of developing confusing schemes in marketplace.	– reduce flexibility and opportunity for ad-hoc scheme development
	+ explicit inclusion of compatibility check with WTO rules	
	+ explicit inclusion of sustainability criteria	
Expected net impact: positive (situation will improve with respect to consumer confusion and functioning of the internal market; it will remain unchanged with respect to farmers' burden)		

	Focus on content	
Option 4.3: New stand-alone EU schemes	+ harmonised concepts and terms in the policy area covered by the new scheme (prevent incoherent developments and improves functioning of the internal market)	– risk of administrative burden at EU level; compatibility with WTO rules needed;
	+ current reality: new schemes requested by various interest groups; 2 new EU schemes in process of creation.	– uncertain impact on consumers' choice and confusion and on competition (depends on the model followed);
		– unclear impact on existing schemes;
		– risk of policy incoherence.
Expected net impact: unclear, depending on the particular new EU scheme to be introduced. Can only be judged on a case-by-case basis.		

Option 4.5: Develop protected reserved terms (see option 1.4 above)	+ Its optional or voluntary character, as farmers can pick and choose from the 'reserved terms' menu; they will have more flexibility in their operations. It provides a tool to farmers to obtain a reward for adding value to a product.	– Reserved terms are laid down by the legislator, which is a process that may take some time.
	+ light administrative burden;	– Operators will not communicate on negative aspects.
	+ effective to protect single-concepts	– only useful where the term is simple to define;
		– legislation can be slow to develop new terms

Expected net impact: positive (situation will improve with respect to consumer confusion and functioning of the internal market; it will remain unchanged as regards farmers' burden)

6. COMPARING THE OPTIONS

<i>Symbols used in comparative assessment</i>	=	-	0	+	++
	Strong disadvantage compared with status quo	Moderate disadvantage compared with status quo	Status quo or no benefit/ disadvantage compared with status quo	Moderate benefit compared with status quo	Strong benefit compared with status quo

6.1. Policy issue 1: Marketing standards

<i>Option 1.1.</i>	<i>Status quo plus: EU marketing standards – simplification.</i>
<i>Option 1.2.</i>	<i>Replacement of specific EU marketing standards, by a general base standard.</i>
<i>Option 1.3.</i>	<i>Combined approach.</i>
<i>Option 1.4.</i>	<i>Develop use of reserved terms</i>
<i>Option 1.5.</i>	<i>Develop place of farming labelling</i>

Comparison with objectives (see Annex A(ii), § A(ii).6 and Annex A(i), § A(i).6)

<i>Options</i>	Option 1.1 <i>Status quo plus: simplification</i>	Option 1.2 <i>Replace by general base standard</i>	Option 1.3 <i>Combined approach</i>	Option 1.4 <i>Develop use of reserved terms</i>	Option 1.5 <i>Develop obligatory place of farming</i>
<i>Objectives</i>					
General objective (quality policy) POLICY ISSUE 1: MARKETING STANDARDS	0	-	++	++	+
<i>Enable farmers to meet consumer expectations for product characteristics and farming attributes</i>		The absence of detailed marketing standards will not prevent the process of satisfying consumer expectations, provided other mechanisms are used. Otherwise, consumers may not be able to identify product qualities they seek.	Using a standards-setting-body (composed of stakeholders) to develop detailed marketing standards will provide opportunity for terms and labels needed in the market to be adopted.	Adoption of reserved terms where needed can facilitate meeting consumer expectations for product qualities.	Extending place-of-farming to more product sectors will reduce scope for failing to meet consumer expectations.

Specific objectives (quality policy) POLICY ISSUE 1: MARKETING STANDARDS

<i>Options</i>	Option 1.1 <i>Status quo plus: simplification</i>	Option 1.2 <i>Replace by general base standard</i>	Option 1.3 <i>Combined approach</i>	Option 1.4 <i>Develop use of reserved terms</i>	Option 1.5 <i>Develop obligatory place of farming</i>
<i>Objectives</i>					
<i>Reduce information asymmetry</i>	0	-	++	++	+
		By removing detailed prescriptive labelling terms and product classes, there is wide scope for information to not be successfully conveyed in the marketplace. However, assuming other mechanisms are used, the information asymmetry may not deteriorate.	Provided the standards-setting-body is able to develop the terms needed in the marketplace, information asymmetry should be reduced. Furthermore stakeholders should ensure that detailed standards are developed where they are needed.	Adoption of reserved terms where needed can facilitate the flow of information about product characteristics and farming attributes.	For some consumers and in some product sectors (especially meat), place-of-farming is a key element of information. By extending compulsory indications, the information will have to be conveyed to the buyers and consumers.
<i>Improve coherence of EU measures</i>	0	+	-	+	+
		Adoption of basic standards and abolition of detailed standards will allow for considerable increase in coherence between marketing standards.	By reflecting wide stakeholder views, the standards-setting-body is likely to adopt disparate standards in different sectors.	Development of sector-specific reserved terms will follow the same level of coherence as today. However, some opportunity for improved coherence in developing horizontal terms applicable to several sectors.	Moderate improvement in coherence of EU measures possible by reducing current inconsistencies of place-of-farming requirement across different but linked sectors (such as meats).
<i>Reduce complexity</i>	0	+	-	0	-
		Abolition of detailed standards will allow for considerable increase in coherence.	Complexity could increase given the wide stakeholder (and therefore divergent interests) participation. However, simplification could be an aim of some market		For operators dealing with multi-ingredient products place of farming would increase complexity.

operators who will seek to ensure reductions in complexity.

Option 1.4 (develop use of reserved terms) is expected to show the best results vis-à-vis the objectives, especially as to the general objective of the quality policy and reduction of asymmetry of information issue.

Option 1.2 (replace by a general standard) also shows good results, specially against coherence and complexity reduction objectives, as well as operational objectives like administrative burden reduction. Nevertheless, it fails in addressing the objective of reduce asymmetry of information. Option 1.3 (combined approach) does not address coherence and reduction of complexity objectives.

Option 1.5 (develop obligatory place of farming) addresses the key objective of reducing information asymmetry, but increases complexity for processors of multi-ingredient products.

POLICY ISSUE 1: MARKETING STANDARDS — Comparison with effectiveness, efficiency and consistency (see Annex A(ii).6 and Annex A(i).6)

<i>Options</i>	Option 1.1 <i>Status quo plus: simplification</i>	Option 1.2 <i>Replace by general base standard</i>	Option 1.3 <i>Combined approach</i>	Option 1.4 <i>Develop use of reserved terms</i>	Option 1.5 <i>Develop obligatory place of farming</i>
Objectives					
Effectiveness (how well will it solve the problems (information asymmetry; coherence; complexity)?)	0	+	+	+	+
		Gains from simplification; reduces burden to farmers, operators and national authorities considerably. Benefit to information flow dependent on other avenues being used by stakeholders	A stakeholder-driven standards-setting body should be able to deliver on the problems.	simplification provides flexibility to farmers and operators with regard to the employment of marketing standards and creates tools for obtaining a fair return on added value products	As consumers will have place-of-farming indicated on more products, gains are present for information flow and coherence; some risk of increased complexity for operators.
Efficiency (is this the most we can get for the money?)	0	0	0	+	+
			The cost of operating a standards-setting body would need to be investigated in detail	As the option is capable of scoring positively on most of the objectives it represents an efficient option.	Place-of-farming for basic agricultural product, especially crop-derived product, is a simple mechanism.
Consistency (is it in line with other Commission objectives and	0	+	+	+	0
		The option is very consistent with the other Commission objectives, in particular the	Recourse to a standards-setting body is in line with better	coherent with better regulation and simplification objectives, as well as with the increased	May increase consumer information; obligatory regulation is not in line with

strategies?)

objectives of better regulation
and simplification. regulation policy

market orientation, which was
a substantial element of the
2003 CAP Reform.

simplification if applied to
products for which the
traceability is complex.

Option 1.4 (develop use of reserved terms) score the highest on effectiveness, efficiency and consistency. Option 1.2 and 1.3 also present high effectiveness and consistency, while option 1.5 scores well in effectiveness and efficiency especially for basic agricultural products.

In the light of analysed of the options in comparison with the defined objectives, as well as against consistency, efficiency and effectiveness for the preferred option aiming at **developing use of reserved terms (option 1.4)**, particular attention should be paid to reduce complexity and maintain coherence with other EU measures.

Although option 1.2 (replace by a general standard) shows good results, it presents a drawback by not addressing the objective of reduction of information asymmetry. **Option 1.3 (combined approach)** shows a weakness when trying to seek improvement of coherence of EU measures, as well as assessing efficiency, which is related to the need to investigate in detail the operation of using a standard setting body (CEN). It is however fully consistent with general objective of the quality policy as well as reduction of the asymmetry of information.

Option 1.5 (develop obligatory place of farming labelling) presents gains for information flow and coherence. Although there are some difficulties for multi-ingredient products, it is an efficient option to reduce information asymmetry, especially for basic agricultural products.

The preferred options are thus option 1.4 (development of use of reserved terms); subject to future investigation, option 1.3 (combined approach); and, especially for basic agricultural products, option 1.5 (develop obligatory place of farming labelling).

6.2. Policy issue 2: Geographical indications

<i>Option 2.1.</i>	<i>Status quo plus: Simplification of PDO/PGI schemes and streamlining existing procedures:</i>
	<i>1) Merging PDO and PGI definitions;</i>
	<i>2) Creation of a single register for wines, spirits, and agricultural product and foodstuffs systems</i>
	<i>3) Creation of national systems to protect geographical names.</i>
<i>Option 2.2.</i>	<i>Abolish current sui generis PDO/PGI system at EU level and replace with current Community trademark system</i>
<i>Option 2.3.</i>	<i>Clarifying PDO/PGI rules</i>

Comparison with objectives.

<i>Options</i>	Option 2.1 status quo plus (streamlining)	Option 2.2 Replace geographical indications with trademark system	Option 2.3 Clarification PDO/PGI rules			
<i>Objectives</i>	Option 2.1.0 status quo	Sub-option 2.1.1. merger PDO/PGI definitions	Sub-option 2.1.2. merger wine, spirits, agricultural products	Sub-option 2.1.3. creation of national systems		
General objective (quality policy)	0	-	0	-	-	+
POLICY ISSUE 2: GEOGRAPHICAL INDICATIONS		As it would decrease the information on product characteristics of PDO.		As it would increase the number of (national/regional) schemes and subsequently increase confusion among consumers	As the TM system is a general instrument; less specificity in the communication of farming attributes	Labelling of place of farming for PGI would enhance communication
<i>Enable farmers to meet consumer expectations for product characteristics and farming attributes and communicate them effectively</i>						

Specific objective (quality policy) POLICY ISSUE 2: GEOGRAPHICAL INDICATIONS

<i>Options</i>	Option 2.1.0 status quo	Option 2.1 status quo plus (streamlining)			Option 2.2 Replace geographical indications with trademark system	Option 2.3 Clarification PDO/PGI rules
<i>Objectives</i>		Sub-option 2.1.1. merger PDO/PGI definitions	Sub-option 2.1.2. merger wine, spirits, agricultural products	Sub-option 2.1.3. creation of national systems		
<i>Reduce information asymmetry</i>	0	- as the information transmitted on quality of the product would decrease	+ As the information would be uniform for all the registered PDO and PGI	- As it would create a new figure using geographical names that may confuse information concerning registered PDO/PGI's.	- As it would not be possible to use a common logo for registered PDO/PGI	+ As for the agricultural product, GI's information on origin of raw materials would be available.
<i>Improve coherence of EU measures</i>	0	- As it would be contrary to recent decision to create PDO and PGI concepts figure in wine; it would be contrary to differentiation of PDO logo.	++ As the coherence between different sectors would be fully achieved	- No check of new national criteria with EU principles on intellectual property rights and geographical indications	- Fully coherent with existing trademark provisions. Nevertheless the scope of protection would decrease, and this risk to be incoherent with bilateral agreements	+ Will clarify other EU provisions applying to the PDO/PGI (rights of other users of names, as trademark holders, harmonisation enforcement)
<i>Reduce complexity</i>	0	- On one hand only one definition would exist in EU legislation. On the other, national figures corresponding to PDO would continue to exist in some MS, du the long tradition in use.	+ As it would reduce from 3 to 1 the existing systems of GI's	- Complexity would increase as rights existing in internal market (EU) and national level might conflict	+ As the sole instrument to grant protection to GI's would be the existing trademark system	+ Complexity of rules could be reduced with further clarification in the present GI system.

As to general and specific objectives, option 2.3 (clarification of rules) and 2.1.3 (merge wines, spirits and agricultural products) show to better reach the objectives.

Although option 2.2 (replace with a trademark system) addresses the objective of reduction of complexity, it would not come to a reduction of information asymmetry, neither improve coherence with some international commitments.

The options to create a national registration system (option 2.1.3) as well as merging the definitions of protected designation of origin and protected geographical indication (2.1.1) do not address the general objective of quality policy and present drawbacks as to the objectives to reduce asymmetry and complexity and maintain coherence.

POLICY ISSUE 2: GEOGRAPHICAL INDICATIONS — Comparison with effectiveness, efficiency and consistency (see Annex B, § B.6)

<i>Options</i>	Option 2.1 status quo plus (streamlining)				Option 2.2 Replace geographical indications with trademark system	Option 2.3 Clarification PDO/PGI rules
<i>Objectives</i>	Option 2.1.0 status quo	Sub-option 2.1.1. merger PDO/PGI definitions	Sub-option 2.1.2. merger wine, spirits, agricultural products	Sub-option 2.1.3. creation of national systems		
Effectiveness (how well will it solve the problems (information asymmetry; coherence; complexity)?)	0	+ A single identity will improve coherence and reduce complexity, but information will be reduced by deleting the 'PDO' category	+ A higher coherence between the 3 systems; further simplification	- Complexity will be increased	0	+ Better information to consumer; reduce complexity
Efficiency (is this the most we can get for the money?)	0	0	+ As cost advantages would be created of merging the 3 systems	0	0	0
Consistency (is it in line with other Commission objectives and strategies?)	0	- Incoherent with recent creation of PDO/PGI in wine system	+ In line with simplification strategy	- Against EU harmonised framework.	0	+ Consistency with current legal frameworks

Sub-option 2.1.2 (streamlining procedures and merger wine, spirits and agri-products into a single system and register) and option 2.3 (clarification PDO/PGI rules) score the highest on effectiveness, efficiency and consistency.

The analysis shows that **option 2.3 (clarification of PDO/PGI rules)**, and **option 2.1.2 (merging of wine, spirits and agricultural products systems)** will address the objectives proportionately, and at the same time present high effectiveness and consistency. Nevertheless analysis would be needed to further address efficiency in option 2.3.

6.3. Policy issue 3: Traditional Specialities

- Option 3.1: *Status Quo*
- Option 3.2: *Simplified certification scheme*
- Sub-option 3.2.1: *TSG registration without reservation of the name*
- Sub-option 3.2.2: *TSG registration with reservation of the name*
- Option 3.3: *Protecting the term 'traditional' as a reserved term under marketing standards*
- Option 3.4: *No EU action*

Comparison with objectives

<i>Options</i>	Option 3.1 <i>status quo</i>	Option 3.2 <i>Simplified certification scheme</i>	Option 3.3 <i>Protecting the term 'traditional' as a reserved term under marketing standards</i>	Option 3.4 <i>No EU action</i>
<i>Objectives</i>				
General objective (quality policy)	0	+	+	0
<i>POLICY ISSUE 3: TRADITIONAL SPECIALITIES</i>				
<i>Enable farmers to meet consumer expectations for product characteristics and farming attributes and communicate them effectively</i>		While impacts depend on how the scheme would be simplified, assuming a larger take-up than the status quo will better met the general objective.	Option would enable consumers to identify such products and to not be misled by unwarranted uses of the 'traditional' indication.	

Specific objective (quality policy) Policy issue 3: Traditional Specialities

<i>Options</i>	Option 3.1 <i>status quo</i>	Option 3.2 <i>Simplified certification scheme</i>	Option 3.3 <i>Protecting the term 'traditional' as a reserved term under marketing standards</i>	Option 3.4 <i>No EU action</i>
<i>Reduce information asymmetry</i>	0	+	+	0
		Depending on a number of the registrations and the economic importance of the products with registered names in the future.	The achievement of this specific objective would depend on the extent the term is used on the labels of traditional products.	
<i>Improve coherence of EU measures</i>	0	0	+	0
			Establishing a coherent framework for reserved terms would achieve this objective.	
<i>Reduce complexity</i>	0	+	+	+
		A simplified scheme would, by definition, be less complex	Replacing certification scheme by simple labelling device, easily understood and applied, would reduce the complexity.	Abolishment of the scheme would reduce the complexity.

Option 3.3 addresses the general objective of quality policy as well as the specific objectives of asymmetry of information, reduction of complexity and coherence. Option 3.2 also tackles those objectives, although only to a limited extent as to the coherence objective. This could nevertheless be balanced following the choice of options to be developed in the 4th policy issue of this paper (see 6.4).

Although option 3.4 (abolition of the scheme) addresses the complexity question (through the abolition of the scheme) no instrument would be available to fill the general objective of the quality policy and to reduce information asymmetry and address coherence with other EU measures (i.e. option 4.2 develop guidelines for the operation of certification schemes).

Comparison with effectiveness, efficiency and consistency (see Annex C, § C.6)

<i>Options</i>	Option 3.1 <i>status quo</i>	Option 3.2 <i>Simplified certification scheme</i>	Option 3.3 <i>Protecting the term 'traditional' as a reserved term under marketing standards</i>	Option 3.4 <i>No EU action</i>
Effectiveness (how well will it solve the problems (information asymmetry; coherence; complexity)?)	0	+	+	0
		Simplification of the existing scheme will improve coherence and consistency and, assuming a far greater up-take, increase information flow.	As a reserved term, applicable to all agricultural product, the concept would be coherent and simple, and given a greater take up than the current scheme would increase information to consumers.	
Efficiency (is this the most we can get for the money?)	0	+	+	0
		Certification scheme would be more efficient than current excessively complex scheme. However, certification continues to be a burdensome process.	This labelling option is not demanding therefore could bring positive effects.	
Consistency (is it in line with other Commission objectives and strategies?)	0	+	+	+
		Simplification is coherent with the Better Regulation objective.	coherent with Better Regulation. Positive for Improving farmers' incomes, and objectives of CAP.	Abolition of the scheme could be considered to be coherent with the better regulation objective.

Option 3.3 (protecting the term "traditional" as a reserved term under marketing standards) scores high effectiveness, efficiency and consistency. Option 3.2 (Simplification of the certification scheme) also shows effectiveness and consistency (both related to the simplification aspects of the option) although efficiency would depend on the type of implementation of the certification scheme.

In the light of the analysis carried out, the **preferred options are option 3.3 (protecting the term "traditional" as a reserved term under marketing standards), followed by option 3.2 (simplification of the certification scheme).**

6.4. Policy issue 4: Private, national and new EU certification schemes

<i>Option 4.1:</i>	<i>No EU action = status quo (plus further research)</i>
<i>Option 4.2:</i>	<i>Develop guidelines for the operation of certification schemes (equivalent to a voluntary standard)</i>
<i>Option 4.3:</i>	<i>Developing new stand-alone EU schemes</i>
<i>Option 4.4:</i>	<i>Developing criteria for new EU quality schemes for specific policy areas</i>
<i>Option 4.5:</i>	<i>Developing protected reserved terms</i>

Comparison with objectives (see Annex D, § D.6 Table 5)

<i>Options</i>	Option 4.1 <i>no EU action = pure status quo</i>	Option 4.2 <i>Develop guidelines for the operation of certification schemes</i>	Option 4.3 <i>Develop new stand-alone EU schemes</i>	Option 4.4 <i>Develop criteria for new EU quality schemes for specific policy areas</i>	Option 4.5 <i>Develop protected reserved terms</i>
<i>Objectives</i>					
General objective (quality policy)	0	++	+	++	++
PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES	(baseline scenario)	Significant improvements expected in addressing the general objective through guidelines developed and agreed by stakeholders, addressing issues of transparency, participation, independence, etc.	Improvements expected in addressing the general objective, but dependent on the particular scheme at hand	Significant improvements expected in addressing the general objective through agreed criteria for new EU schemes, taking explicit account of issues related to policy priority, subsidiarity, sustainability, and reduction of burdens	Significant improvements expected in addressing the general objective through common definition of terms and concepts, in particular for simple single-issue claims (e.g. 'farmhouse', 'free range').
<i>Enable farmers to meet consumer expectations for product characteristics and farming attributes and communicate them effectively</i>					

Specific objectives (quality policy) POLICY OPTION 4: PRIVATE, NATIONAL AND NEW EU CERTIFICATION SCHEMES

<i>Options</i>	Option 4.1 <i>no EU action = pure status quo</i>	Option 4.2 <i>Develop guidelines for the operation of certification schemes</i>	Option 4.3 <i>Develop new stand-alone EU schemes</i>	Option 4.4 <i>Develop criteria for new EU quality schemes for specific policy areas</i>	Option 4.5 <i>Develop protected reserved terms</i>
<i>Objectives</i>					
<i>Reduce information asymmetry</i>	0 (baseline scenario)	+	+	+	++
		Guidelines are aimed at reducing information asymmetry between farmers and consumers in certification schemes	New EU schemes are new tools for communicating product and process attributes to consumers	Criteria for new EU schemes are aimed at reducing information asymmetry in policy fields addressed by EU schemes	Greater clarity and consistency in the use of terms on product labels and in certification schemes
<i>Improve coherence of EU measures</i>	0 (baseline scenario)	+	-	++	++
		Guidelines provide a coherent EU approach to certification schemes	Without criteria, new EU schemes are likely to develop in an ad-hoc manner	Criteria will bring a coherent approach to the development of new EU schemes	By providing common definitions of concepts and terms, reserved terms will contribute to coherence of EU measures
<i>Reduce complexity</i>	0 (baseline scenario)	++	-	++	++
		Guidelines reduce complexity of currently existing schemes in the market place	Without criteria, new EU schemes can increase complexity; however, if they replace existing schemes, they can also reduce complexity	By being developed in a coherent policy framework, new EU schemes will reduce complexity of existing measures	By providing common definitions of concepts and terms, reserved terms will reduce complexity of existing measures

Options 4.2 (guidelines) is expected to have a positive impact on all problem areas identified. In particular, they reduce the complexity of existing schemes in the market place by providing a framework for benchmarking and mutual recognition.

Option 4.4 (criteria for new EU schemes) also scores well, particularly in relation to improving the coherence of EU measures and reducing complexity.

Option 4.5 (reserved terms) is particularly suitable for reducing information asymmetry, improving the coherence of EU measures and reducing complexity for simple single-issue claims (e.g. ‘farmhouse’, ‘free range’)

Options 4.3 (new EU schemes) without establishment of criteria to ensure coherence fails to adequately address the objectives of improving coherence of EU measures and reducing complexity.

Comparison with effectiveness, efficiency and consistency (see Annex D, § D.6 Table 6)

<i>Options</i>	Option 4.1 <i>no EU action = status quo</i>	Option 4.2 <i>Develop guidelines for the operation of certification schemes</i>	Option 4.3 <i>Develop new stand-alone EU schemes</i>	Option 4.4 <i>Develop criteria for new EU quality schemes for specific policy areas</i>	Option 4.5 <i>Develop protected reserved terms</i>
<i>Objectives</i>					
Effectiveness (how well will it solve the problem?)	0 (baseline scenario)	+ Guidelines coupled with an incentive mechanism (financial and/or publicity) can be effective in addressing the problems.	0 Assist in reducing consumer confusion and improving functioning of the internal market but are not likely to reduce farmers' burden	+ Common criteria for EU schemes would improve transparency and coherence, thereby reducing consumer confusion.	+ Addresses consumer confusion through greater clarity and consistency, and improve the free movement of goods in internal market
Efficiency (is this the most we can get for the money?)	0 (baseline scenario)	+ Voluntary guidelines don't require a costly register and control mechanism.	0 EU scheme can be very costly. On the other hand, private certification bodies can be used to limit costs.	+ Criteria would not be costly or time-consuming to establish. Coupled with a high effectiveness, efficiency will also be high.	+ Reserved terms do not require a certification mechanism. Controls can be combined with other official controls.

Consistency	0	+	0	+	+
(is it in line with other Commission objectives and strategies?)	(baseline scenario)	Voluntary guidelines are in line with Commission objectives for better regulation, simplification and reduced administrative burden.	Every new EU scheme would have to be assessed on a case-by-case basis. Common criteria for their development are needed.	Establishing common criteria for EU schemes is clearly in line with objectives of coherence, consistency and simplification.	This option is in line with Commission objectives for simplification and reduced administrative burden.

Option 4.2 (guidelines), Option 4.4 (criteria for new schemes) and Option 4.5 (reserved terms) show efficiency, effectiveness as well as consistency, compared to the present situation.

Following the analysis, the **recommended options are 4.2 (guidelines) and 4.4 (criteria for new schemes), which are combinable.** They address the general objective of the quality policy, as well as the specific and operational objectives defined. For option 4.4 the question of reduction of burdens for farmers shall be seen in the light of a voluntary adhesion of the schemes. Option 4.5 (develop of use of reserved terms), which scored very high in all criteria, is dealt with in the marketing standards policy issue (see under 6.1, option 1.4 develop use of reserved terms).

6.5. Overall policy coherence and synergies between preferred options

In section 2.1 under "scope of impact assessment" one aim of the current exercise was to bring together the different policy instruments and measures that make up quality policy under a coherent framework. The table below (Preferred options) shows how the preferred options from Section 6 above contribute to the **overall policy approach**, the **synergies** created between different instruments, and legal and procedural **clarifications** identified.

	Policy	Preferred options
Overall policy approach	towards private and national certification and schemes	Option 4.2: guidelines for operation of certification schemes
	to ensure coherence in development of new EU schemes	Option 4.4: criteria for new EU schemes
	coherent development of EU marketing standards	Option 1.3: combined approach (replacing marketing standards by a general standard and developing detailed rules in a CEN)
	greater use of 'reserved terms' (from marketing standards)	Option 1.4: Develop reserved terms for horizontal quality labels (such as 'low carbon') Option 3.3: Protect 'traditional' as a reserved term (as replacement for traditional specialities scheme)
Synergies	common use of certification systems for similar schemes	Option 2.1.1: streamlining procedures for geographical indications scheme and merging wine, spirits and agricultural products and foodstuff registers into one system Option 2.3 : Clarification of PDO-PGI rules
	coherent implementation of obligatory place-of-farming labelling	Option 1.5: place of farming labelling on sector-by-sector approach

Table: Preferred options

All the selected options are combinable and together represent a complete package for the development of agricultural product quality policy.

Linkages of the selected options across the four policy domains are shown in the table (Linkages) below. The main synergies concern the greater use of 'reserved terms' (a marketing standards mechanism) in particular as a possible replacement of the traditional speciality scheme; and the adoption of guidelines for private and national schemes that can also apply good practice for scheme operation to the EU schemes. The criteria for new EU schemes should have the effect of preventing inconsistencies for existing marketing standards and EU schemes. Within the thematic areas, it is worth also underlining the linkages arising from the proposed common certification systems for similar schemes in the geographical indications area; and proposed coherent implementation of obligatory place-of-farming labelling across marketing standard sectors.

Options	Marketing standards	Geographical indications	Traditional specialities	Private, national and new EU schemes

<i>Option 1.3: combined approach</i>	X			
<i>Option 1.4: reserved terms for horizontal quality labels</i>	X		Linkage: protect "traditional" as reserved term in marketing standards	Linkage: proposals for new schemes could include reserved terms
<i>Option 1.5: place of farming labelling</i>	X	Linkage: will apply to PGIs if raw material from different place than PGI		
<i>Option 2.1.1: streamlining geographical indications scheme and merging</i>		X		
<i>Option 2.3 : Clarification of PDO-PGI rules</i>		X		
<i>Option 3.3: Protect 'traditional' as a reserved term</i>	Linkage: use of marketing standard mechanism		X	
<i>Option 4.2: guidelines for operation of certification schemes</i>		Linkage: guidelines also to apply to EU scheme	Linkage: guidelines also to apply to EU scheme	X
<i>Option 4.4: criteria for new EU schemes</i>	Linkage: will avoid inconsistent labelling initiatives from new schemes	Linkage: will minimise inconsistency with existing scheme	Linkage: will minimise inconsistency with existing scheme	X

Table: Linkages

The preferred options for each policy issue have been selected based on their contribution to the specific objectives of reducing information asymmetry, increasing coherence of EU measures and reducing complexities for farmers and producers, and consumers. They were evaluated according to their effectiveness, efficiency and coherence with other EU policies. Common principles applied to all options relate to simplification, reduction of administrative burdens and transparency. It is therefore expected that the overall package of options presented above presents the most effective and coherent approach to agricultural product quality policy across the various policy issues.

7. MONITORING AND EVALUATION

This impact assessment is in the context of setting out strategic orientations in a Communication, so in the immediate future, the test of progress will be whether or not these orientations are developed and adopted.

For the progress of policy itself the following core progress indicators are proposed provisionally and will be developed during preparation of each initiative.

Policy area	Possible progress indicators	Data gathering Monitoring and evaluation arrangements
	The number or percentage of farmers participating in more than one certification scheme and the magnitude of the associated cost and burden	External study
Certification and quality schemes in general	An updated inventory and classification of certification schemes operating in the EU market	External study, requested for 2009-2010
	Degree of uptake of the guidelines for private and national schemes	Periodic assessment (2-yrs) based on sample of schemes listed on Commission database of schemes
	Degree of uptake of the guidelines for EU quality schemes	Annual assessment
Marketing standards , including horizontal reserved terms	Study of marketing of produce covered by general standard	External study , periodic. e.g. each 5 years
	Number of cross-sectoral reserved terms approved in marketing standards	Monitoring of legislation
	Use of reserved terms in the market; use of 'traditional'	Periodic survey (external)
Place of farming or production method	Sectors applied to and estimated value of output sold at retail	Annual data monitoring; (data available internally in Agri).
Geographical indications	Study of economic value of GIs in the marketplace	External study
	Length of time for processing registration applications	Data recorded by Commission
Traditional specialities	Marketing of traditional agricultural products	External study



EUROPEAN COMMISSION
DIRECTORATE-GENERAL JRC
JOINT RESEARCH CENTRE
Institute for Prospective Technological Studies (Seville)
Sustainability in Agriculture, Food and Health

Report on the Stakeholder Hearing

(30/11/06)

DG JRC/IPTS

*“This report contains the minutes of the Hearing,
recording issues raised by the participants with reference to the objectives and any
conclusions reached, as well as all presentations made.”*

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List of abbreviations

B2B: Business-to-Business
B2C: Business-to-Consumer
BRC: British Retail Consortium
CEJA: European Council of Young Farmers
CELCAA: European Liaison Committee for the Agricultural and Agri-Food Trade
CIAA: Confederation of the Food and Drink Industries in the EU
CIES: Food Business Forum
COPA/COGECA: Committee of Professional Agricultural Organisations in the European Union - General Confederation of Agricultural Co-operatives in the EU
DG: Directorate-General
DG AGRI: Directorate-General for Agriculture and Rural Development
EFAC: European Federation of Associations of Certification Bodies
EU: European Union
EurepGAP: Euro Retailer Group for Good Agricultural Practices
FIC: Fédération des Industriels de la Charcuterie
GAP: Good Agricultural Practice
GFSI: Global Food Safety Initiative
GMP: Good Manufacturing Practice
HACCP: Hazard Analysis Critical Control Point
IAF: International Accreditation Forum
ICQM: International Conference of Quality Managers
IFS: International Food Standard
IFSI: International Feed Safety Standards
IIOC: Independent International Organisation for Certification
IOP: Institute of Packaging
IPTS: Institute for Prospective Technological Studies
IQNet: International Certification Network
ISO: International Organization for Standardization
JRC: Joint Research Centre
LRF: Federation of Swedish Farmers
MEP: Member of the European Parliament
NFU: National Farmers Union
NGO: Non-Governmental Organisation
PDO: Protected Designation of Origin
PGI: Protected Geographical Indication
QAS: Quality Assurance and certification Scheme
QS: Qualität und Sicherheit, Germany
SA: Social Accountability
SME: Small and Medium-sized Enterprises
TRIPS: Trade-Related Aspects of Intellectual Property Rights
TSG: Traditional Speciality Guaranteed
UGAL: Union of Groups of Independent Retailers of Europe
WHO: World Health Organization
WTO: World Trade Organization

Introduction

In 2004 the European Parliament (EP) decided to fund a pilot project on “quality assurance and certification schemes for integrated supply chain management and the opportunity of a Community legal framework for protection of such schemes”.

The Directorate-General for Agriculture and Rural Development (DG AGRI) entrusted to the Directorate-General Joint Research Centre / Institute for Prospective Technological Studies (DG JRC/IPTS) to carry out the pilot project with the aim to provide an exploration of the different approaches to a European-wide framework for the development of quality assurance and certification schemes (QAS) managed within an integrated supply chain.

The project is based on a set of specific studies and a consultation of stakeholders' representatives. Further information on the project can be found on its website (<http://foodqualityschemes.jrc.es>).

In this framework, the European Commission (DG JRC/IPTS in collaboration with DG AGRI) organised a Stakeholder Hearing on 11/12 May 2006 in Brussels, with the main objective of completing the findings previously obtained.

The Hearing was conducted on the basis of a set of panels, each one representing a given stakeholder category: farmers/producers, traders, food processors, certification bodies, catering and retailers, as well as consumers. The Commission (DG JRC/IPTS) invited a number of associations/organisations to participate in the Hearing and requested them:

- to select their panel members, taking into account that their panel should not exceed a total of seven persons and should be representative of the EU 25 and of all food sectors dealing with QAS. Additional organisations could also be proposed within the limits of seven members as well as of the geographical and sectoral coverage;
- to jointly identify the panel spokesperson, to be the panel contact person for further communication with the Commission and to make the panel presentation at the Hearing;
- to jointly organise their panel presentation within the allocated time.

A panel of academic experts on food quality schemes has also been set up to ensure that pending issues were addressed and that statements were substantiated.

Catering and consumers representatives were unfortunately unable to take part in the Hearing¹. The consumers panel had thus to be cancelled.

The final membership of the panels was as follows:

Farmers/Producers

CLARKE David, Assured Food Standards, NFU - COPA/COGECA

FIEDLER Marc – CEJA

RYDBERG Ingrid, LRF/Sigill Kvalitetssystem AB, LRF - COPA/COGECA

TOZZI Luigi, Confagricultura - COPA/COGECA

VAN OORSCHOT Frank, LTO - COPA/COGECA

¹ The Commission (DG JRC/IPTS) would welcome any relevant input from EU-level catering and consumer organisations that could be included in the study at a later stage.

Traders

BUTTNER Christina, Verein für Kontrollierte Tierhaltung e. V. - CELCAA
COOLS Romain, EUROPATAT - CELCAA
MOEHRKE Axel, DOLE FRESH FRUIT EUROPE - CELCAA
VAN DER LINDEN Arie, The Greenery - CELCAA
VILANOVA AMAT Mar, ANECOOP S. COOP - CELCAA
VON DER CRONE Caspar, Gibier et Détail - CELCAA

Food processors

LAAN Willem-Jan, UNILEVER - CIAA
REY Yves, Danone - CIAA
ROSIERS Marc, SUBEL - CIAA
SERGENT Sophie, Groupe Aoste/CLITRAVI - CIAA
VAN SADELHOFF Henry, ADM - CIAA

Certification bodies

ABI RACHED Georges, Moody Certification France - EFAC
ADAMCIK Patrick, DNV - IIOC
FRANCOIS Fabienne, BVQI - IIOC
MIKULASKOVA Marta, CQS Auditor - IQNet
ROBERTS Simon, Product Authentication Inspectorate - EFAC

Retailers

FOCHESSATI Monica, Selex Gruppo Commerciale s.r.l. - UGAL
FRANCONY Laurent, Système U - UGAL
GARBUIT Nigel, EUROHANDELSINSTITUT E.V. - Eurocommerce
GRAY Alisdair, BRC - EuroCommerce
LABATUT Denis - UGAL
LEGLISE Pascal, Carrefour - EuroCommerce
ROGGE Alexander, FCD - EuroCommerce

Experts

ARAGRANDE Maurizio, University of Bologna (I)
BURRELL Alison, University of Wageningen (NL)
DRIES Liesbeth, University of Leuven (B)
GELLYNCK Xavier, University of Ghent (B)
GENTILE Enrica, University of Bologna (I)
MANCINI Maria Cecilia, University of Parma (I)
SCHNEIDER Andreas, CEPS (B)
SOLER Louis-Georges, INRA (F)
THEUVSEN Ludwig, University of Göttingen (D)
TRAILL Bruce, University of Reading (UK)

Each panel had received a [background paper](#) (common to all panels) and a [list of questions](#) (specific to each panel) drafted by the Commission (DG JRC/IPTS). The questions put to each panel are listed in the table below:

<div style="text-align: center;">PANELS</div> <div style="text-align: center;">SPECIFIC QUESTIONS</div>	Farmers/Producers	Traders	Food processors	Certification bodies	Retailers/Catering	Consumers
How would you describe the roles of supply-chain stakeholders in developing and managing QAS?	√	√	√	√	√	√
Can you provide a brief assessment of the main costs and benefits for stakeholders of the present state of QAS in Europe? Are QAS achieving their intended aims in the supply chain?	√	√	√	√	√	√
What is the main impact of QAS on competitiveness, employment and sustainable development, in particular in rural areas?	√	√	√	√	√	√
In your opinion, what are the most important quality attributes that should be covered by QAS?					√	√
To what extent do you consider that QAS effectively contribute to providing consumers with reliable information?						√
What is the present impact of QAS on vertical and horizontal relations between supply-chain stakeholders?	√	√	√	√	√	√
To what extent do you believe that QAS are turning into compulsory private standards?	√	√	√		√	
To what extent do QAS in which your sector participates also involve farmers/producers? What are, in your view, the main reasons for not involving them?		√	√			
To what extent are small-scale producers, whether or not organised in groups, able to attain adequate bargaining power by means of the mechanisms considered to ensure fair and reasonable conditions of contract with larger entities in the chain?	√		√		√	
What are the most important drivers of change for the development of QAS?	√	√	√	√	√	√
How do you envisage the future development of QAS in Europe?	√	√	√	√	√	√
In particular, do you believe that endogenous trends will push towards rationalisation of QAS (e.g. mutual recognition and benchmarking)?	√	√	√	√	√	√
<p>In the light of the main challenges that you have identified, to what extent do you believe that an EU-wide framework for the development of QAS would help in addressing those challenges? In particular, what is your opinion with respect to the following options concerning QAS:</p> <ul style="list-style-type: none"> - No intervention at EU level - Regulation of mutual recognition and benchmarking - Standardisation of existing quality assurance schemes/general implementing rules - European registry of quality assurance logos - European logo confirming compliance with EU regulations - Further development of existing EU schemes - Other options 	√	√	√	√	√	√

At the Hearing, each session was structured as follows:

- Presentation by the representative (spokesperson) of each panel with the following format: general position on food quality schemes, comments on the background paper, answers to the specific questions and any additional statements from panel members.²
- “Question and Answer” session from the expert panel to the stakeholder panel.
- “Question and Answer” session from the Commission and other participants in the Hearing to the panel.

The present report is based on both the [panels' presentations](#) made at the Hearing and the [contributions](#) received after the event. Furthermore, the report draws on the discussions carried out at the Hearing between each stakeholder panel and the expert panel as well as the whole audience³.

The report first addresses the objectives of the Hearing – as defined by DG AGRI – for each stakeholder category. It then describes stakeholders' opinion regarding other specific issues such as the drivers of change for the development of QAS or the future development of QAS in Europe. It also assesses the extent to which an EU-wide framework for the development of QAS would help in addressing the main challenges identified. The report ends with concluding remarks summarising the key issues discussed at the Hearing.

² In the case of the farmers/producers panel, two presentations were given as the organisations concerned were unable to designate a single spokesperson to represent the whole panel.

³ The Hearing audience consisted in 90 [participants](#), including representatives of stakeholders, public authorities, the European Parliament and the Commission.

A. Objectives of the Hearing

1. GENERAL ASPECTS

1.1. Types of quality elements that consumers may wish to know about

No additional information could be gathered during the Hearing as no consumer representatives were able to attend the event.

1.2. Range of food quality assurance and certification schemes in place or feasible

FARMERS:

Some members of the farmers panel (COPA/COGECA) stated that the Food Quality Schemes project is a very important study for them and that the background paper shows a good understanding not only of quality assurance and certification schemes (QAS) but also of their complexity. They supported the idea that farmers producing to higher standards should retain a fair share of the added value.

According to several members of the farmers panel (COPA/COGECA), the important thing is that the QAS are feasible, take account of the structure of agriculture and do not create unnecessary or excessive additional burdens. Regardless of participation in a QAS, every link in the food chain must fulfil legal requirements. Compliance with legal standards is therefore a basic requirement for every QAS.

According to the same panel members (COPA/COGECA), consumers' growing need for food safety and for transparent and traceable production and handling processes had resulted in comprehensive, strict legislation (on food safety, traceability, residues, labelling, the environment and animal welfare). With the introduction of QAS, the agri-business sector and the food industry have taken on voluntary obligations with a view to achieving higher product quality and added value.

Moreover, European producers are subject to binding legislative standards which are stricter than international standards. It is essential for producers that existing legislation is harmonised within the EU in order to have fair competition. Beyond that, the EU has to ensure that imports comply with EU food law and related legislation.

In addition to market orientation and showing concern for consumers' wishes, future efforts must ensure that as it costs farmers more to deliver quality they must also retain the added value.

TRADERS:

The traders panel represented agri-food traders from several sectors – eggs, poultry and game; nuts, spices and dried fruits; sugar; flowers and bulbs; dairy products; cereals, oilseeds, animal feed, oils and fats, and olive oil; potatoes; tobacco processors; wine; livestock and meat; flowers; fresh fruit and vegetables (Freshfel) – but with common concerns. Indeed, in 1979 agricultural and agri-food traders identified the need to set up CELCAA to address issues of general interest, such as the common agricultural policy (CAP), trade negotiations, trade mechanisms, customs issues, food safety and veterinary and phytosanitary issues. Over time general issues have grown in importance, hence the need for cooperation between

sectoral trade organisations. Furthermore, representation of agricultural and agri-food traders' interests vis-à-vis partners in the food chain is crucial in view of the vertical integration.

Agri-food traders stated that they support independent standards for good production practices and supply-chain activities and certification thereof.

Traders expect QAS/certification to:

- Contribute to moving towards sustainable production and high quality.
- Prevent consumer health scares through due diligence.
- Help industry to comply with legislative requirements and avoid legal problems and litigation.
- Optimise management and traceability from field to fork.
- Keep the supply base diverse with fair competition.
- Protect the reputation of brand or private labels.
- Become more flexible and help implement innovations.
- Link tracking and tracing to competitive supply-chain activities.

Traders described what they see as the consequences of the current situation. According to them, risk increases as legal requirements are interpreted differently. This leads to more standards and more complexity (i.e. different expectations and different ways of interpretation and implementation). Certification to individual standards does not guarantee business. Competitive differentiation does and this is based on actual implementation of good practices all along the supply chain. Finally, implementing and auditing different standards with key overlapping codes of practice is not cost-effective but increases costs. The present proliferation of standards has negative effects on suppliers which have to bear extra costs to implement several QAS. Certification against the standards is costly and a necessary but insufficient prerequisite for business. Some requirements of the different QAS partly overlap but their implementation may differ slightly from scheme to scheme, pushing up the cost of meeting them all.

Traders have the following expectations regarding future demands of QAS:

- Move towards more simplified systems.
- Determine common responsibilities and critical control points.
- Promote harmonious implementation of auditing/certification of standards and legislation.
- Encourage mutual recognition/benchmarking and harmonisation of good practice and management systems for efficient global trade.
- Push authorities and owners of standards to promote confidence in good practice for a fresh, safe and sustainable supply of food.

FOOD PROCESSORS:

Food processors pointed out that there is a wide variety of QAS with diverse characteristics within the supply chain. However, they believe that the distinction between food safety and food quality requirements is essential in order to address the industry's role in QAS:

- Food safety, all along the food chain, is a fundamental and non-competitive prerequisite before a product may enter the market. The industry does not compete on food safety. Food safety is a joint responsibility shared by all the stakeholders in the food chain and requires their combined efforts.
- Quality requirements are a private affair and can provide a competitive advantage. The market dictates food quality and it is the responsibility of the industry.

Regulatory requirements concern mainly food/feed safety, but also consumer information, the environment and/or animal welfare. They are based on strict Community legislation (general food law and related legislation) or, in its absence, on national regulatory requirements. They are mandatory and should not be a competitive issue. Quality requirements on the other hand, unless based on vertical legislation such as the requirements for jam, honey or chocolate, are supplementary to the requirements imposed by law, with some exceptions (biological and measurable quality, organic production and PDO/PGI). They relate, for example, to taste, texture or means of production. They are additional and voluntary and are a competitive issue for the industry.

According to food processors, a QAS includes both:

- a normative document: a set of requirements which enables stakeholders to guarantee compliance with what is laid down;
- a certification process: an independent verification process.

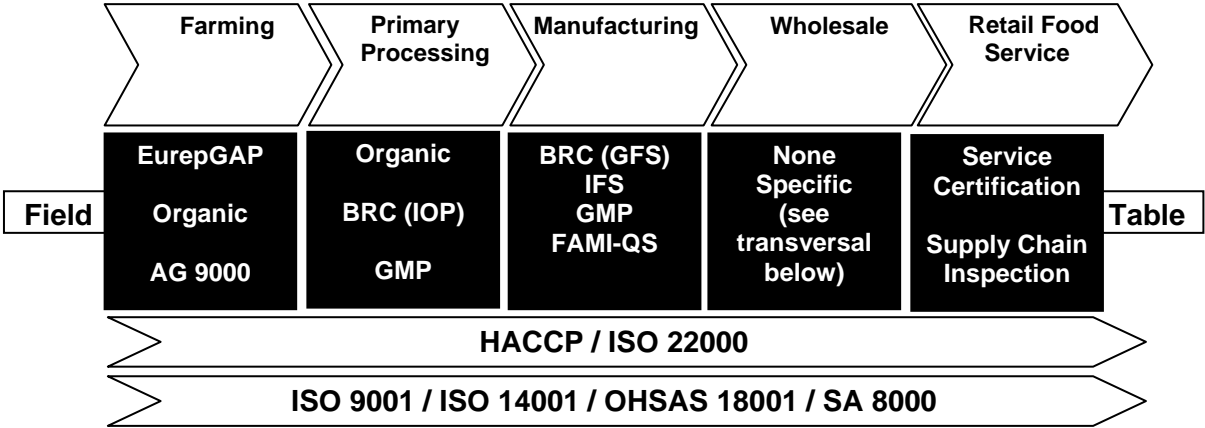
Requirements also have to be laid down for certification bodies.

Apart from these schemes, the industry has developed and is continuing to develop initiatives aimed at further improving the safety and quality of products. These initiatives are an integral part of the in-house policy of companies and are not certified.

Food processors stated that currently a large number and variety of schemes are being developed by the industry (Business-to-Business (B2B), Business-to-Consumer (B2C); including farmers or not; certification of food safety and food quality requirements). QAS implemented in companies are a good example of the integrated approach.

CERTIFICATION BODIES:

Certification bodies’ representatives presented the “farm to fork” approach, which is covered by several standards, some duplicating others:



The standards of the agri-food system may be classified into two categories: horizontal and vertical. The first may be applied by each player in the food chain and, if applied by all stakeholders in the food chain, certification against the standard gives the consumer guarantees from farm to fork. The second category includes standards for individual activities (e.g. agricultural activities, processing, etc.). Combined implementation of the first and second category of standards could lead to overlaps.

The intended goal is “certified once, accepted everywhere” (IAF and GFSI).

RETAILERS:

Retailers presented the two broad categories of schemes: B2B and B2C. The main points raised are summarised in the table below:

<u>B2B</u> e.g. Post-farmgate (BRC/IFS), Pre-farmgate (EurepGAP)	<u>B2C</u> e.g. Label Rouge, Fair trade, Organic
<ul style="list-style-type: none"> - Focus on verification of practices: Good Agricultural Practices (GAP), Good Manufacturing Practice (GMP) and QMS/HACCP - Mainstream product offering 	<ul style="list-style-type: none"> - Focus on product differentiation - Usually forms part of a retailer's niche market offering
<ul style="list-style-type: none"> - Applied globally (open and inclusive) - Common base for safe, lawful product (BRC/IFS) and, in addition, for sustainable product (EurepGAP) - Pre-competitive between retailers - Not visible to consumers 	<ul style="list-style-type: none"> - National or regional application - Focus on differentiating quality attributes, e.g. provenance, organoleptic, etc. - Offers potential competitive advantages for retailers - Visible to consumers
<ul style="list-style-type: none"> - For retail-label products (own brands) - Part of supplier partnership agreements and/or commercial contracts 	<ul style="list-style-type: none"> - Offered by retailers to increase choice (market segmentation) - Branded offering: Usually no retail input to product development
<ul style="list-style-type: none"> - B2B schemes have fallen in number over the last 10 years, as a result of the trend towards rationalisation in the retail sector 	<ul style="list-style-type: none"> - B2C schemes have increased in number. This reflects the increased market segmentation and product differentiation in Europe

1.3. Roles of stakeholders in the supply chain and of the public authorities in managing the different schemes

FARMERS:

The association of young farmers, CEJA, sees the role of supply-chain stakeholders in developing and managing QAS as a positive factor.

In April 2006 CEJA held a seminar to discuss various aspects of “made in the EU – a concept of development”. By the end of the event Europe’s young farmers had drawn up a joint declaration identifying three main topics to proceed with, including, among other things, the need to strengthen alliances between all stakeholders in the food chain, and stating:

“There can be no doubt that we, the European young farmers, need to become better at producing for the market, and this is exactly why we need to get in better touch with the market! This is why we want to create alliances with all stakeholders in the food chain to identify what citizens and consumers want and how they want it. We need to create synergies in order to re-establish the connection between people and places, and this is why CEJA propose to establish a working group with all representatives in the food chain.”

We need to look into the possibility of elaborating - in collaboration with trendsetters, environmentalists, consumers, the food industry and the retail sector - concrete projects, that reinforce collaboration between enterprises and markets and between enterprises and society, both capable of supporting entrepreneurial strategies that go hand in hand with what consumers and citizens want.

We would especially like to discuss with consumer organisations how best to re-establish connections between people and places. A debate that we would also like to have with the industry and the retail sector, but here including also a debate on how better to distribute the value added along the food chain.”

Other members of the farmers panel (COPA/COGECA) considered that QAS are developed and implemented in accordance with the needs of the market. They also stated that it is very important that all stakeholders are able to participate in the development of a QAS. But this raises the question of who are the stakeholders, particularly in schemes that will be used in wider geographical areas. Farmers' representatives must be fully involved in QAS that set criteria for farm production.

TRADERS:

In traders' opinion, QAS are effective and useful only when stakeholders have an opportunity to provide input (e.g. in the form of expertise). The structure of various QAS differs markedly, as does the extent of stakeholder involvement. In addition, in a few QAS stakeholders play some role in technical committees and other such bodies. Consequently, stakeholders have some influence over the standard and its requirements. Traders believe that they must motivate suppliers to comply with QAS and offer effective management solutions to ensure that involvement in QAS brings competitive advantage to suppliers.

FOOD PROCESSORS:

According to food processors, one stakeholder in the supply chain takes the lead in development of each QAS, based on its own interest. However, it is essential to involve in development of the scheme all stakeholders within the supply chain who will apply it. This helps to create confidence and commitment from different stakeholders in the supply chain.

Audits are the responsibility of accredited external and independent bodies.

CERTIFICATION BODIES:

Certification bodies pointed out that for some standards not all stakeholders in the food chain segment are included in the working groups.

According to them, the various schemes in horizontal food chain segments should be harmonised and the number of schemes for each food chain segment should be reduced. The first step should be mutual recognition between similar schemes.

RETAILERS:

Retailers work together with their suppliers to establish, maintain and improve standards. This may be perceived as an imposition on other stakeholders in the supply chain or look as if the retailers are the catalysts. Indeed, they have kick-started many QAS but have been increasing involvement of the supply side in those schemes. For example, EurepGAP was initiated by retailers but now 50% of its board and technical committees are retailers and 50% suppliers, who could be producers, farmers, growers, exporters or importers. This is quite unique

because all those stakeholders are nominated and elected to those positions by their industry peers. Retailers stated that they try to be as open and as transparent as possible and that they respect participation by stakeholders.

Moreover, according to retailers, standard-owners are working with them to reduce duplication of audits. In their view, it is very important to ensure consistency for the consumer and that the whole chain is assured. This is done by means of amalgamation and inter-operation of the EurepGAP pre-farmgate standard and the BRC and IFS post-farmgate standards. Certain key components must, of course, be in place, such as a rigorous international accreditation system. As a consequence, retailers have worked very closely with accreditation and certification bodies to ensure the integrity of that process.

2. BENEFITS FOR CONSUMERS AND STAKEHOLDERS IN THE SUPPLY CHAIN, FOR HOLDERS OF INTELLECTUAL PROPERTY RIGHTS AND FOR SUSTAINABLE DEVELOPMENT OF RURAL AREAS

FARMERS:

According to members of the farmers panel (COPA/COGECA), the main benefits of QAS for primary producers are:

- market access;
- greater market segmentation;
- possibility to profile their products which may command a premium price;
- since most QAS take EU legislation as their base, participation in such schemes ensures that producers comply with EU legislation;
- improved production/product quality and improved efficiency for the farmer/producer, which may provide management tools.

Moreover, members of the farmers panel (COPA/COGECA) stated that if a QAS is developed by all stakeholders, it will then be tailored both to the users and to the market and will provide a useful tool for all stakeholders in the food supply chain.

According to young farmers (CEJA), some QAS create a number of new opportunities, for instance higher prices or sales and new marketing channels, especially if a fair deal is struck between the different stakeholders on how to share surpluses.

TRADERS:

In the opinion of traders, QAS provide a means of gaining/maintaining market access by satisfying the demands of retail and improving the organisation and technical capabilities of the supplier. QAS are also a way to have a more customer-oriented approach to trade. They improve effective awareness, prevention and control in raising food quality. QAS allow superior crisis management options and greater brand protection. QAS increase liability for suppliers.

FOOD PROCESSORS:

According to food processors, the main benefits of QAS are to:

- Maintain and increase consumers' confidence (e.g. development of QAS following food crises in recent years).
- Add value to products.
- Improve the production process.

- Provide documented proof in cases of product liability.
- Reduce the cost of controls: Supervision of compliance with safety and quality requirements can be delegated by the public authority to certified private auto-control systems: in Belgium, in the context of the International Conference of Quality Managers (ICQM) initiative and the delegation of controls, combi-audits are being developed to avoid duplication of controls.
- Provide the necessary transparency on the market for consumers and distributors.

CERTIFICATION BODIES:

According to certification bodies, the benefits of QAS are safety - as more and more agri-food standards are focusing on safety and hygiene, e.g. the EurepGAP, BRC and IFS standards - plus sustainability and consumer confidence.

Certification bodies think that QAS have achieved their purpose, namely access to clients and the European market.

RETAILERS:

According to retailers, over the last few years there has been significant harmonisation of B2B requirements, leading to fewer standards and fewer duplicated audits now. For example, one of the primary goals of BRC/IFS is to decrease the number of audits and associated costs. In addition, B2B QAS are, in retailers' opinion, a consequence of EU regulation and supplement action taken by regulators. B2B schemes help and verify compliance with regulations and provide suppliers with clear criteria for market access. B2B QAS obey transparent rules and are non-discriminatory.

Retailers also stated that B2B standards remain fundamental for opening markets in developing countries. They described the Kenya EurepGAP case (Source: Horticultural Development Centre. USAID, Kenya. October 2005) where:

- fob value is expected to increase by 16.6% in 2005,
- smallholder income was the highest ever recorded in 2005,
- up to 40% was saved on pesticide costs.

KenyaGAP – equivalent to EurepGAP – allows interpretation of criteria for small-scale farmers, compliance with national and international legislation, local acceptance and international buyer recognition as it facilitates trade.

3. COSTS AND SHORTCOMINGS FOR CONSUMERS AND STAKEHOLDERS IN THE SUPPLY CHAIN, IN TERMS OF COSTS OF MANAGING THE SCHEMES AND COSTS OF THE FINAL PRODUCT, AND FOR STAKEHOLDERS IN THE SUPPLY CHAIN, IN TERMS OF REGULATORY BURDENS

FARMERS:

According to young farmers (CEJA), QAS have the disadvantage of considerable costs to the farmer (in terms of increased administration and control). Farmers bear a relatively heavy burden due to their small size compared with the other stakeholders later in the supply chain, for instance retailers. According to young farmers, signing into a QAS is relatively expensive for individual farmers and is risky, especially when the QAS is new, as the brand might not be recognised by consumers, who are confused about the different schemes existing.

According to other members of the farmers panel (COPA/COGECA), the main costs of QAS are:

- inspection costs,
- costs for complying with standards (although these could often be seen as investments);
- costs for increased administration.

In addition, some members of the farmers panel pointed out that producers exporting to a country where buyers have their own QAS are often forced to have certification under several QAS. This increases the production costs for farmers.

Finally, some members of the farmers panel stressed the overlap between private and public control. Checks and audits by government bodies are seen as duplicating the audits in the private-sector QAS. According to these representatives, duplication of audits could be reduced if government bodies were to recognise private audits under certain conditions.

TRADERS:

Traders believed that the major problem with QAS lies in the high financial implications of gaining certification, notably in primary agriculture. In this case, the existing schemes (QS and EurepGAP) can be prohibitive for medium-sized and small growers, because all the growers in a small or medium-sized cooperative have to be audited separately as if they were independent growers.

In addition, joint certification to cover multiple producers in producer organisations is essential but not always possible. Another disadvantage of QAS is that suppliers need to be certified by many schemes to maintain their relationships with various retailers. Specific requirements could then be duplicated if there is more than one certification process. Traders added that it is a lengthy process for any stakeholder to gain acceptance under a scheme and become fully certified. Moreover, many costly systems must be put in place to ensure overall compliance, e.g. improved tracing and tracking or new management systems. Compliance with QAS raises clients' and consumers' expectations and complexity to unachievable levels due to more and more complicated and detailed codes of practice. Finally, there is limited focus on providing management or technical solutions to achieve compliance.

This depends on the QAS. In particular, the BRC standard is a quite balanced mix between compliance and focus on quality management to provide a step-by-step system for improvement.

However, the situation regarding primary agriculture standards is not the same. According to traders, QS and EurepGAP – option 1 are compliance systems. In these systems, auditing is performed individually in a yearly pre-arranged visit. The producer does not have to implement a quality management system with tasks, responsibilities and schedules for verification and internal audits. In addition, EurepGAP is not vertically integrated and, in order to guarantee something to the consumer, the whole chain should be considered.

Traders think that a primary production QAS should favour introduction of a quality management system. The general benefits of quality management systems for any product or service should be obvious; besides, in primary production they could favour grouping farmers and growers, their technical improvement – since more technical expertise will be needed –

and the necessary concentration of the primary sector into stronger organisations that can deliver what the clients and consumers require more efficiently.

Some traders also believe that the private and public sectors overlap. According to them, overlapping is not a problem in itself. Instead, the problem remains that the public sector is not using private systems to make sure that the private sector is working in accordance with the legislation and rules. In traders' opinion, the public sector should use private systems when they are solid and good.

FOOD PROCESSORS:

According to food processors, when suppliers have to comply with different standards, it leads to unnecessary costs and duplication of effort. Implementation of QAS and adaptation of management structures generate fixed costs, which place a burden on SMEs. Companies also face inspection costs. SMEs are not the only ones affected by the proliferation of QAS and, hence, of controls. Companies with different facilities have to certify each of their plants.

CERTIFICATION BODIES:

Certification bodies think that the main costs of QAS are, first, accreditation, approval for each scheme and qualification of auditors and, second, maintenance of such approval. They also consider that the main costs for suppliers are implementation, certification and certificate maintenance.

Certification bodies see duplication of audits as a problem (as it makes them lose clients) rather than a way to make more money. They are therefore willing to improve the situation, for example by participating in working groups and helping to harmonise everything. Certification bodies also pointed out that two schemes, such as BRC and IFS, may be very alike but still each require different reporting.

RETAILERS:

According to retailers, the EU is a single, internal market, but food legislation is not fully harmonised. Different operators who are subject to different provisions implement or interpret the same legislation in different ways. In this case, these operators are normally trying to obey what is imposed nationally, but there are differences from one system to another.

For example, BRC is driven by the national legal environment in the UK and that is what makes it different from the IFS used by German and French retailers.

4. IMPACT OF VARIOUS SCHEMES ON COMPETITIVENESS, EMPLOYMENT AND SUSTAINABLE DEVELOPMENT

FARMERS:

According to farmers' representatives QAS are a means of diversification, which should help to strengthen the competitiveness of all stakeholders involved. If the diversification is successful they can even become a tool to increase employment in the local area.

Members of the farmers panel commonly agreed that, if suitable criteria are included, QAS could become a vehicle to deliver the environmental dimension of sustainable development.

According to young farmers, a distinction should be drawn between citizens and consumers. The sustainability criteria (for instance, cross-compliance) concern public goods produced by farmers from which all citizens benefit but which are not remunerated by the market. For example, keeping soil in good shape for future generations is a public issue in the interest of everybody. National consumer surveys show that not all consumers are willing and/or able to pay higher prices for products fulfilling sustainability criteria.

Even though QAS can be a good tool to increase transparency along the food chain, helping the consumer to make a more informed choice at the point of sale, the debate on production identification and production methods should never be a private-sector issue. As a result, CEJA suggested that discussions on the future development of use of QAS in the EU must be accompanied by discussions on what kind of European agricultural policy is needed in the future to help farmers meet the costs arising from fulfilling certain environmental, animal welfare, food safety, public health and other requirements.

TRADERS:

For traders, the impact could be very positive. However, some recent trends in primary-sector QAS worry them. QAS and “private traceability databases” are trying to provide a data service to retailers that competes with the traceability service which many exporters, SMEs and cooperatives are already able to provide. Besides, some requirements of these systems exceed the legal traceability requirements and could compromise both the know-how and privacy of producers and suppliers. The potentially compulsory use of such systems damages traders’ position as suppliers to retailers and imposes service monopolies on them, pushing up costs.

In addition, traders stated that in the long term these developments will favour continuation of the current fragmentation of primary production and food production in general in the EU, instead of professionalism and a certain degree of concentration in the primary sector.

Traders believe that the competitiveness of small suppliers is reduced if several certifications are needed, as small suppliers in rural areas may not be able to cover the costs, while large suppliers improve their competitiveness as a result of QAS.

Often the links between QAS and sustainable agricultural practices are clouded when not all aspects of sustainability, i.e. environmental, social and economic improvements, are included on the checklists.

Traders have to ensure that suppliers comply with the requirements on social accountability, environmental and economic assurance schemes (e.g. SA8000, ISO 14000, Fair Trade, etc.). Traders need assistance with identifying indicators of sustainability and converting expectations into action.

FOOD PROCESSORS:

The food industry has to respond to increased consumer demand for value added and quality products. Maintaining constant quality is essential to keep consumers' approval and, in the longer run, for the performance of the company. Hence, QAS can contribute to increasing competitiveness.

Certain QAS aim to raise the general level of farming practices. Some of them are large-scale initiatives including a number of agricultural sectors at national level, others remain sectoral

(e.g. the Danone programme on good practices for fruit). Thanks to such schemes promoted by the industry, farming practices are progressing and producers are able to improve their productivity and profitability.

CERTIFICATION BODIES:

Certification bodies, in turn, consider that QAS have an impact on both environmental and social aspects.

RETAILERS:

According to retailers, both B2B and B2C standards are beneficial to rural communities. They believe there is evidence that both are providing employment and benefits to rural communities as B2B standards are used at production level and at small manufacturers' level, for example in the production of lightly processed agricultural products in rural communities. In the case of farmhouse cheeses, the milk will go from a small farmer to a small creamery. Such farmers could be certified if they are supplying a major retailer. Equally, the processing facilities are likely to be certified as well. Such farmers and small manufacturers are actually benefiting, gaining market access to the major chains for their regional and local produce by using those standards.

5. EXTENT TO WHICH SMALL-SCALE PRODUCERS, WHETHER OR NOT ORGANISED IN GROUPS, ARE ABLE TO ATTAIN ADEQUATE BARGAINING POWER BY MEANS OF THE MECHANISMS CONSIDERED TO ENSURE FAIR AND REASONABLE CONDITIONS OF CONTRACT WITH LARGER ENTITIES IN THE CHAIN

FARMERS:

According to members of the farmers panel (COPA/COGECA), some existing systems include arrangements to cater for small-scale producers. But when the QAS of a purchaser in one country is imposed on a small-scale producer in another country it can be difficult for small-scale farmers to attain adequate bargaining power. One view amongst some of the COPA COGECA experts was that compliance with the legislation should be sufficient for small-scale producers to gain access to the market, without additional requirements in a QAS.

According to CEJA, small-scale producers – which make up a large proportion of farmers – lack sufficient bargaining power vis-à-vis larger entities in the chain, in particular organised distributors. Producers are able to build up adequate bargaining power if their label is very strong.

FOOD PROCESSORS:

Regarding food safety, the industry wishes to combine stakeholders' efforts and expertise in order to reduce the number of overlapping QAS. It is easier for SMEs to enter horizontal and large-scale QAS.

Food processors think that mutual recognition and combination of audits should be further developed in order to reduce the number of audits. Therefore, according to them, public access to the different normative documents could be useful. Once a database is available where everybody can consult each other, it might be possible to reduce the number of audits and for the whole control to be run by a single audit which checks different points.

The improved transparency of QAS requirements should be a great help to SMEs.

Moreover, according to food processors, it must be remembered that the benefits of QAS also lie in process improvement, including innovation, and possible reduction of controls.

RETAILERS:

Retailers consider that both B2B and B2C schemes are applicable to large and small-scale producers.

They think that it is very important to group small-scale farmers together (e.g. producer cooperatives or group certification) as this has two advantages: first, it reduces the fixed costs of certification and also it brings small-scale farmers into a supported mechanism, where they can buy imports along with other producers and have access to grants. Small-scale farmers can also gain access to the market more easily.

B. Other issues addressed

1. WHAT IS THE PRESENT IMPACT OF QAS ON VERTICAL AND HORIZONTAL RELATIONS BETWEEN SUPPLY-CHAIN STAKEHOLDERS?

FARMERS:

Young producers (CEJA) believe that horizontal relations could be improved by greater collaboration between producers within the same QAS. Regarding vertical relations, QAS have had a positive influence on relations between farmers and the industry, especially at local/regional level. Relations with retailers and consumers still have to be improved.

Other members of the farmers panel (COPA/COGECA) think that QAS support the network between stakeholders in the food chain. QAS make information about the producer available to the next customer and thus bring transparency to the supply chain.

According to some members of the farmers panel (COPA/COGECA), horizontal relations could, in particular, improve and grow stronger if producers within the same QAS act together. In any event, horizontal relations provide peer pressure and self-regulation to protect the reputation of the industry and to help recovery after loss of confidence in some sectors following crises.

In their opinion, vertical relations in the supply chain are strengthened very much by QAS. The main advantage is a more direct relationship with other stakeholders in the supply chain and a more direct link to retail and the consumer. This is one essential advantage of QAS. At the same time QAS provide warranty and encourage “due diligence”, thereby allowing the supply chain to function effectively. They also provide useful product differentiation to supply specific consumers.

TRADERS:

Traders believe that vertical integration allows a better focus on customer demands. They are worried that third parties providing services to retailers may end up competing with suppliers. They pointed out that it should not be adequate for a QAS organisation to compete with food-chain stakeholders. QAS and “private traceability databases” could be detracting from traders' service tools to increase loyalty on the part of their clients/retailers. Finally, traders believe that horizontal integration improves the chances of suppliers working together and sharing relevant best practice.

Traders also consider that QAS have certainly increased the chain approach over the last few years. For example, in the potato sector, the actual trade is certainly only surviving and positioning itself for the future thanks to this chain approach. For instance, a pre-packer of potatoes for the fresh market is merely at the level of the fruit and vegetable sector in one way, but can also be a supplier of the processing industry. In some companies, traders are still playing an important role in gathering part of the product, the raw material which is needed for the processing industry.

In the future, traders believe that the distance between traders and farmers/producers will tend to narrow and to disappear as growers incur traders' costs and traders enjoy growers' benefits. Traders are also involved in implementing QAS in cooperatives.

FOOD PROCESSORS:

According to food processors, QAS make relations between stakeholders easier.

On the food safety side, food processors believe that QAS obviously improve vertical relations but also horizontal relations. Indeed, negotiations between stakeholders are under way in certain sectors and Member States: harmonisation of “Good Manufacturing Practices” within the French “Fédération des Industriels de la Charcuterie” (FIC); “Integrated Chain Quality Management” (IQCM) in Belgium where different standards were harmonised into one QAS; IFSI (International Feed Safety Standards) in the feed industry where QAS in four Member States have been harmonised in a common scheme since January 2006; and participation by some food companies in the GFSI (Global Food Safety Initiative).

Food processors also stressed that quality requirements are related to the individual company and depend on supplier/client relations. Collaboration is therefore directed more towards vertical than horizontal relations.

CERTIFICATION BODIES:

According to certification bodies, QAS have an impact on horizontal relations between supply-chain stakeholders as standards are used in the whole sector of industry.

2. TO WHAT EXTENT DO YOU BELIEVE THAT QAS ARE TURNING INTO COMPULSORY PRIVATE STANDARDS?**FARMERS:**

According to members of the farmers panel (COPA/COGECA), one trend common to many countries is that, as a result of food scandals, increased global trade and a larger share of retailers’ own brands, retailers are driving the development of QAS, e.g. to ensure food safety and product quality. Compliance with these standards is often a prerequisite for supplying products to the market. Producers who export to a country where buyers have their own QAS are often forced to have certification under several QAS.

There is a common trend in the Member States: young farmers (CEJA) believe that, as a result of the concentration of retailers and the processing industry, private standards are being imposed as a tool to increase traceability along the chain. It is doubtful that this is a healthy development. CEJA is in favour of increasing traceability on the market, but this traceability must be transmitted to the consumers, including when it comes to identifying the origin of all food products.

It is commonly known that QAS have highly diverse focuses and targets, and that a number of schemes include certain production method requirements that leave young farmers a little perplexed. They fear that one day some politicians/citizens might consider that these schemes will be able to take over from the common agricultural policy as a tool to compensate for certain higher-cost production methods.

TRADERS:

Traders believe that QAS are turning into compulsory private standards. According to them, expectations amongst traders and suppliers are high. Heavy reliance on QAS is being developed to reduce risk and liability. In addition, participation in such schemes has become obligatory to satisfy the demands of the retail sector. Many retailers have varying requirements, with the result that traders and suppliers need multiple certification.

FOOD PROCESSORS:

According to food processors, to meet suppliers' requirements giving specific guidance on good practice and compliance levels, a large number of retailers require certification against their own standards. As a consequence, producers who want to trade products are sometimes forced to comply with three or four different "compulsory" private standards. Comparing these individual standards, it can be seen that the bulk of the requirements are at least similar and often identical. The industry's distinction between regulatory requirements and commercial (or quality) requirements could contribute to strengthening QAS and limiting the specific requirements imposed by individual standards.

RETAILERS:

Retailers stressed that only regulatory standards are truly compulsory. B2B schemes define requirements to assist in meeting regulatory standards; they translate legal requirements into more precise measures. B2B schemes are an important step towards a "level playing field" for all sources of supply.

Comparing B2B and B2C schemes, retailers raised two points:

- "Bargaining power" should not be confused with the universal need for standards.
- Both B2B and B2C products are subject to commercial negotiations within an open market economy.

3. TO WHAT EXTENT DO QAS IN WHICH YOUR SECTOR PARTICIPATES ALSO INVOLVE FARMERS/PRODUCERS? WHAT ARE, IN YOUR VIEW, THE MAIN REASONS FOR NOT INVOLVING THEM?

TRADERS:

According to traders, the principal basis of QAS is dictated by the retail sector which must respond to consumer concerns and perceptions. But farmers and researchers are involved in evaluation, establishment and implementation of many QAS. The extent to which farmers are involved in QAS varies between schemes, but they are generally well represented.

FOOD PROCESSORS:

Food processors consider that the relationships with farmers depend on the chain they are in. In some sectors primary producers are included and fully involved in development of QAS. In others, where the processing industry has numerous suppliers, participation by farmers is less frequent.

RETAILERS:

Retailers send personnel to producers to help them to organise and to develop products, particularly with the growth of own-label products. According to retailers, there is considerable contact between them and their producers and suppliers. Retailers tend to use these resources in terms of business development, to help producers comply and form groups. They are sometimes deployed in a perhaps slightly different way, which many retailers would see, and many suppliers see, as being pro-active to generate business between the parties.

As an example, 50% of EurepGAP's board consists of retailers. The remaining 50% are farmers, growers, importers and exporters selected through a democratic process of nomination and election by their peer groups. That means that they are represented both at

policy level on the board and also in the sector committees which actually set the standards. Stakeholders are therefore involved in the policy-making and in the standard-setting sides of EurepGAP.

4. WHAT ARE THE MOST IMPORTANT DRIVERS OF CHANGE FOR THE DEVELOPMENT OF QAS?

FARMERS:

According to young farmers (CEJA), some of the most important drivers of change for the development of QAS are market conditions, such as consumers asking for more information about how and where the product has been produced and processed. Other drivers, in their opinion, are food scandals which have put more focus on food safety, encouraging the development of food safety legislation and policy. QAS can be a useful tool to help governments control, among other things, cross-compliance rules. Due to the concentration and shift of power in the food chain, a number of new QAS have unfortunately been imposed on farmers, even though officially voluntary. QAS can also be a tool to increase diversification and, as a result, increase the competitiveness of each of the partners involved in the market.

Other members of the farmers panel (COPA/COGECA) see market conditions as the main drivers of change for the development of QAS. Indeed, consumers are expressing the need for more information about how and where production takes place. Another driver is legislation/policy. The new EU food hygiene legislation clearly highlights the need for producers to have adequate QAS in place in order to guarantee safe food. QAS systems checked independently may provide a useful tool for government controls. QAS can also be used as a management tool for producers to increase efficiency and product quality. Finally, technological developments might permit rather than drive change.

TRADERS:

In the view of traders, the retail sector responds to demands made of it by consumers and pressure groups. With regard to drivers of change for the development of QAS, many factors come into play:

- Preferred suppliers, expectations, lower transaction costs;
- Inter-changeability of suppliers;
- Socio-demographics and consumers – retailers respond to change;
- Technology – more virtual trading, with less contact between suppliers and retail;
- Legislation.

Some traders also think that many schemes were born because there were problems in the past: it was not clear to customers what was safe and what was not, especially in the case of imports, where national legislation may differ. New schemes may then have been created to avoid this uncertainty.

FOOD PROCESSORS:

Food processors pointed out the following drivers of change behind the development of QAS:

- Consumer confidence, including food scares;
- Competitive advantages;
- Management tool for improving processes within global production systems;
- Documented product liability;
- Reduction of costs regarding audits.

CERTIFICATION BODIES:

According to certification bodies, the two main drivers of change for future development of QAS are to reduce duplication in the same segment of the food chain and to lower costs by combining or reducing the number of audits and harmonising schemes.

RETAILERS:

Retailers consider the following elements as drivers of change when considering B2B schemes:

- Loss of consumer confidence from the late 1980s;
- Change in regulatory framework (HACCP, self-control obligation, GMP and GAP);
- Retailers are legally the “producer” of retail-label products;
- Globalisation of production and retailing;
- Retailers work together with their suppliers to establish, maintain and improve standards;
- Costs (decrease of costs – “audit tourism”);
- Retailers are directly challenged by civil society and the media.

5. HOW DO YOU ENVISAGE THE FUTURE DEVELOPMENT OF QAS IN EUROPE?

FARMERS:

Some members of the farmers panel (COPA/COGECA) believe that QAS will be widespread and generally used in the future. The future development of QAS will lead to more market segmentation and to a higher-quality performance on the part of the total supply chain. They also think that, in the future, QAS should stay autonomous, dynamic and market-oriented, based on a legal framework and, if needed, interconnected through mutual recognition.

For young farmers (CEJA) the future development of QAS depends largely on the different stakeholders’ willingness to collaborate, giving each partner the possibility to develop in the QAS. They are convinced that farmers are willing to sign in and to make an effort to provide better quality products, and that they have to become better at producing what the market wants. But development of QAS will depend, to a large extent, on acceptance of each partner in the chain, with each partner being respected, and profit shared, in the process.

TRADERS:

Traders stressed that the number of requisites is increasing, but sometimes the increase is not focusing enough on improving the quality management system. According to traders, some QAS are merely compliance systems. These developments may exhaust SMEs. The effort put into multiple certification can also be great, curbing the level of resources allocated to product development, research and innovation or other technical activities improving competitiveness.

According to traders, the following developments in QAS will occur in Europe:

- Improvement in systems to reflect new emerging trends;
- Greater pressure on SMEs to survive;
- Less finances available for companies to spend on product development/research and innovation; reduced competitiveness of the sector.

FOOD PROCESSORS:

Considering the costs entailed in QAS, food processors see a need for rationalisation of QAS, focusing on implementation of legal requirements. The number of such schemes, in the context of B2B, should decrease (or has already decreased). Transparency about the requirements will enhance this trend.

On the other hand, food processors also believe that development of schemes which focus on differentiating quality attributes responds to consumer demand and reflects the important product differentiation in the EU.

CERTIFICATION BODIES:

Certification bodies think that there will be greater acceptance in the short term through standardisation or mutual recognition. In the medium term, there should be a smaller number of schemes in each segment of the food chain.

RETAILERS:

Retailers see an ongoing process of harmonisation of QAS on a free market, with some initiatives (such as checklists) already in progress and gaining pace.

6. IN PARTICULAR, DO YOU BELIEVE THAT ENDOGENOUS TRENDS WILL PUSH TOWARDS RATIONALISATION OF QAS (E.G. MUTUAL RECOGNITION AND BENCHMARKING)?

FARMERS:

In the opinion of some members of the farmers panel (COPA/COGECA), wherever there is an overlap, rationalisation is needed to avoid confusion, administrative burden and costs. To some extent market forces can achieve this.

Young farmers' representatives (CEJA) consider it obvious that overlaps should be avoided, especially in relation to legislation. Rationalisation and simplification are important tools to reduce confusion, administrative burden and costs.

TRADERS:

Traders do not believe that endogenous trends will push towards rationalisation of QAS but think that so far the opposite is taking place. On the one hand, competition between QAS is already taking place, but this is not bad, since monopolies are always dangerous. On the other, different QAS and retailers' own QAS – e.g. Tesco's Nature Choice – will be required by supermarkets to gain ground in the competition on food safety or in the perception consumers may have about the safety of the foods they sell.

Traders also think that increased competition could reduce the number of QAS. The number remaining will be a function of economies of scale, public/private support, the integrity of the QAS, etc. According to traders, the retail sector is continuing to demand certification against

own-scheme requirements as well as schemes with wider participation. There is also a need to reduce use of food safety as a competitive advantage.

FOOD PROCESSORS:

Food processors provided examples of industry-driven harmonisation: GMPs within the FIC, IFSI, IQCM in Belgium and SAI Platform (see point B.1).

In food processors' opinion, retailers have already begun harmonisation and convergence between B2B QAS. Certain food companies (e.g. Danone) are taking part in the GFSI.

RETAILERS:

Retailers believe that further harmonisation and convergence will take place without intervention. In fact, harmonisation of QAS is already in progress.

According to them, the number of B2B schemes has been reduced in the last 10 years. For example, 31 retail members are now using the pre-farmgate EurepGAP scheme in their supply chains. Previously, those retailers were either using or developing their own pre-farmgate standards. Rather than 31 different standards and 31 potentially different audits, there is now a high degree of harmonisation and this is the result of hard work. Retailers think the same can be said for the post-farmgate standards: each retailer either had or was developing its own post-farmgate manufacturing standard. As a result, these standards have been dramatically reduced over the last 10 years to two core standards which really represent the European market and much more.

B2C schemes have actually increased in number and this reflects the market segmentation and product differentiation within Europe. Many types of consumer exist and the segmentation is extremely detailed. B2C schemes respond to those different consumer requirements. They have increased in number; retailers do not necessarily see that as a bad thing if these schemes are fulfilling a need. Retailers think that B2C will thrive and succeed where it meets consumer requirements.

7. IN THE LIGHT OF THE MAIN CHALLENGES THAT YOU HAVE IDENTIFIED, TO WHAT EXTENT DO YOU BELIEVE THAT AN EU-WIDE FRAMEWORK FOR THE DEVELOPMENT OF QAS WOULD HELP IN ADDRESSING THOSE CHALLENGES?

In particular, what is your opinion with respect to the following options concerning QAS:

- No intervention at EU level.
- Regulation of mutual recognition and benchmarking.
- Standardisation of existing quality assurance schemes/general implementing rules.
- European registry of quality assurance logos.
- European logo confirming compliance with EU regulations.
- Further development of existing EU schemes.
- Other options.

FARMERS:

Young farmers (CEJA) expressed the following opinion on the proposed options:

- No intervention at all at EU level is not an option.
- There is definitely a need to ensure mutual recognition and benchmarking. This is needed not only to make the EU work better as a single market but also as a way to make farmers' efforts better known abroad. A first step in this direction could be for the EU to press for mutual recognition of PDO (Protected Designation of Origin), PGI (Protected Geographical Indication) and TSG (Traditional Speciality Guaranteed) within the WTO TRIPS Agreement.
- Young farmers have no objection to developing a European registry of quality assurance logos, allowing the European Commission continuously to monitor development of QAS with greater transparency (as proposed in the report). Such a tool might not become "the" reference for the consumer, but – if published on the internet – it could help to provide an overview to all interested parties of what kind of logos already exist and, perhaps, be the beginning of something really innovative.
- Young farmers think that, rather than developing an EU logo confirming compliance with EU regulation at this stage, the EU should start to develop a communication campaign explaining the EU standards required to obtain CAP support, both within and outside the EU, making citizens aware of the main objectives of EU policy.

Other members of the farmers panel (COPA/COGECA) shared CEJA's views that there is no need for an EU regulatory framework for QAS. The driving force for QAS comes from the consumer, so the schemes are market-driven in response to local and international requirements. The diversity of QAS that have evolved around Europe shows that local requirements can vary across regions, although generally built on common foundations. Regulatory intervention would lose that dynamic and create systems that were not responsive to the market with the necessary speed.

Some members of the farmers panel (COPA/COGECA) added that market forces act to eradicate some of the potential problems identified in the background paper – for example, many initiatives have prevented duplication and overlap between QAS by consolidating several QAS into one or promoting mutual recognition between QAS. It should also be remembered that competition law and market legislation are available to deal with any QAS which act anti-competitively or as barriers to trade.

The same members of the farmers panel (COPA/COGECA) believe that there are some situations where official interaction with QAS can be beneficial:

- First, the primary sector strongly supports the existing quality schemes - PDO/PGI, TSG and organic production. Of course, use of these QAS is more widespread in some regions than others, but the Commission should continue to promote these schemes and, where possible, to develop them further.
- Second, QAS can make a significant contribution to ensuring that producers meet legal requirements to produce safe food following standards on good agricultural practice. In some regions there is already direct government support under rural development programmes to help some producers to participate in QAS and this could be encouraged more widely.
- Third, the background paper refers to possible duplication of audits between QAS. There are many areas where this has been eradicated by market forces, yet producers still face a significant problem from multiple audits by regulatory inspectors that duplicate audits in QAS. Competent authorities should be allowed and actually encouraged to regard producers certified in a QAS as less of a risk than other producers. Regulatory authorities should adjust their inspection programmes accordingly to reduce inspections of certified participants in relevant QAS.
- In either case the question is does every QAS deserve support or recognition? The answer is “No”. The solution might be to develop, with industry, an EU-wide framework providing non-mandatory guidelines on organisation of a reputable QAS. This might cover requirements on:
 - Organisational structure;
 - Independent operation;
 - Equal and effective participation by all stakeholders, irrespective of their location;
 - Transparency;
 - Clearly defined technical scope of the QAS;
 - Technical competence.

Another key benefit of such a framework of guidelines might be to facilitate mutual recognition between QAS operating in the market place.

Concerning the idea of a European registry of QA logos, farmers’ representatives think that this would be very difficult to manage and question what purpose this might serve.

Finally, farmers’ representatives believe there is no need for a logo confirming compliance with EU regulations, because the law is a prerequisite and since every product will bear the logo it cannot serve any useful purpose.

TRADERS:

Traders believe that an EU-wide framework could help to solve the issues and challenges outlined above. Some aspects of the QAS may be promoted by the EU, others should be forbidden, and in general the rights of producers and suppliers should be safeguarded. In primary production, QAS should favour the good of consumers, farmers and producers in general, together with concentration of production, and should not penalise SMEs, cooperatives or any other grouping of producers.

Traders expressed the following views on the proposed options:

- Traders are not in favour of an EU QAS.
- Authorities should ensure consistent application of food safety laws across EU Member States – plus greater consumer confidence and an open trading environment.
- The EU could provide financial assistance for development of systems to improve the integrity of QAS.
- Laboratory standards, analytical expertise, innovation and technical support should be developed to help traders/suppliers to improve sustainable agricultural practices.
- The EU could assist the CIES (GFSI) with improving benchmarking and mutual recognition to reduce multiplication within schemes.
- The EU can play a role in facilitating information transfer.
- The EU could assist with developing sustainable agricultural parameters and their measurements.
- Some traders believe that the EU could provide greater support – in the form of financial and technical assistance – to assist suppliers with compliance.

QAS are welcomed by traders of agri-food products. Any crisis in the public domain has a negative impact on the food sector and traders therefore strive to minimise crises – with the help of QAS. At present, there are too many QAS and compliance costs are high. The EU should not develop its own system but could support mutual recognition exercises.

In conclusion, traders are in favour of EU intervention along the lines described above and, in particular, of standardisation of existing QAS and of general implementing rules. Not only should minimum requirements be established but also some types of requirement should be forbidden.

FOOD PROCESSORS:

In food processors' opinion, legal requirements (notably, food safety) are already regulated. Consequently, there is no need for additional legislation laying down requirements. Food processors do not consider involvement of public authorities in quality issues to be beneficial.

Food processors also consider that there is no need for standardisation of existing QAS at EU level. According to them, on the one hand the companies determine the commercial requirements. On the other, food safety requirements are based on existing EU and national legislation. Consequently, no European logo confirming compliance with EU regulations should be created.

From the industry's point of view, there is the following room for improvement within QAS:

- QAS are numerous and there is scope for industry-driven harmonisation of the process related to QAS.

The procedure should be harmonised as follows and more widely used in the EU:

- The normative document should be made available to the public, in order to ensure clarity about what “quality” is being assured. This normative document remains the responsibility of the industry.
 - Guidance on certification of implementation of the normative document. Stakeholders should agree on the certification scheme, based on a certification standard.
 - Certification should be undertaken by an accredited body.
 - The industry is willing to promote use of this process, based on a normative document and certification, for regulatory and commercial requirements.
- Individual QAS have to be transparent vis-à-vis other stakeholders in the food chain, including consumers. Supply-chain stakeholders have to make sure that the relevant information is publicly available.
Indeed, due to their proliferation, QAS may lead to confusion, discredit and loss of confidence in consumers' minds. This transparency, for which the industry is responsible, is essential for small suppliers in the context of B2B QAS and for consumers.
 - This opens the door to industry-driven mutual recognition, which will reduce the area of scrutiny through combi-audit.
 - Development of an EU database covering the existing QAS, which would include details on their criteria and certification, could promote transparency vis-à-vis consumers and other stakeholders in the supply chain.

Moreover, food processors pointed out that the industry is committed to being an active player in the further debate.

CERTIFICATION BODIES:

Certification bodies believe that the EU should work only as a facilitator of rationalisation of QAS in the form of reducing the number of schemes in each segment of the food chain and improving mutual recognition and benchmarking.

RETAILERS:

According to retailers, development of QAS in Europe is advanced and well established for both B2B and B2C schemes. They do not consider the current situation dysfunctional but regard it as an ongoing process of harmonisation in a free market. Retailers believe that market participants and consumers have a choice. Indeed, “the successful products in the

market are those meeting the consumer's needs". Segmentation of supply, by means of proliferation of QAS, widens the consumer's choice.

Regarding further development of EU schemes or the EU quality mark/logo, retailers stated that:

- Further development should be in response to specific consumer demand rather than to meet different policy objectives.
- "One-size QAS" will not fit all. Such schemes would need to be supported by all stakeholders. Retailers questioned whether the EU scheme would conflict with existing legislation and how the massive cost to promote it EU-wide would be financed.
- An EU quality mark is likely to be seen as just another logo. Moreover, retailers believe that compliance with EU regulations should not be used as a marketing tool. Creation of an EU quality mark also generates questions among retailers, such as "What will happen with products without a logo?" or "How can we prevent the reality/perception of a new barrier to trade with third countries?"

In conclusion, retailers are highly sceptical about the costs and benefits of developing an official EU quality mark.

Concerning the proposed options, retailers expressed the following views:

- How will official intervention to standardise existing QAS differ from the requirements in international norms on accreditation and certification? It could lead to loss of diversity in B2C. Will legal liability be transferred from operators to regulators?
- Regulation of benchmarking and mutual recognition: retailers think that mutual recognition is a minefield and that regulation will not improve it (cf. problems in the public sector). Moreover, certification schemes have to build confidence in their systems and are accountable directly to their stakeholders, so they must be free to set their own reasonable criteria.
- Intervention in benchmarking and mutual recognition: further harmonisation and convergence will take place without intervention. This process has already started, according to retailers, as it is a commercial imperative. B2C schemes will succeed where they meet consumer requirements.
- Other options: research has not yet identified the best practice amongst QAS, but they have been judged on how they use differentiated quality criteria. Stakeholders may wish to consider what voluntary action they could take together to facilitate dissemination of best practice amongst QAS.

C. Concluding remarks

First, stakeholders drew a distinction between **B2B and B2C schemes**. The main points raised are summarised in the table below:

<u>B2B schemes</u> e.g. Post-farmgate (BRC/IFS), Pre-farmgate (EurepGAP)	<u>B2C schemes</u> e.g. PDO, PGI, organic
<ul style="list-style-type: none"> - Focus on verification of practices - Mainstream product offering 	<ul style="list-style-type: none"> - Focus on product differentiation - Usually forms part of a retailer's niche market offering
<ul style="list-style-type: none"> - Applied globally - Common base for safe, lawful product (BRC/IFS) and, in addition, for sustainable product (EurepGAP) - Pre-competitive between retailers - Not visible to consumers 	<ul style="list-style-type: none"> - National or regional application - Focus on differentiating quality attributes, e.g. provenance, organoleptic, etc. - Offers potential competitive advantages for retailers - Visible to consumers
<ul style="list-style-type: none"> - For retail-label products (own brands) - Part of supplier partnership agreements and/or commercial contracts 	<ul style="list-style-type: none"> - Offered by retailers to increase choice (market segmentation) - Branded offering: Usually no retail input to product development
<ul style="list-style-type: none"> - B2B schemes have fallen in number over the last ten years, as a result of the trend towards rationalisation in the retail sector 	<ul style="list-style-type: none"> - B2C schemes have increased in number as a result of increased market segmentation and product differentiation in Europe

A few stakeholders thought that there should be more **communication** (in both directions) along the chain regarding the priorities and performance of QAS. Farmers especially thought that they should have more say in how QAS are designed. There was an impression that in most schemes one dominant link in the chain is setting the rules.

Farmers, traders and food processors believe that QAS are turning into **compulsory private standards** as a result of the increased global trade and the larger share of retailers' own brands. Compliance with these standards is therefore often a prerequisite for supplying products to the market. According to them, expectations on the part of traders and suppliers are high. Heavy reliance on QAS is being developed to reduce risk and liability. In addition, participation in schemes has become obligatory to meet the demands of the retail sector. Many retailers have various requirements. As a consequence, producers who want to trade products can be forced to comply with three or four different "compulsory" private standards. On the contrary, retailers stressed that only regulatory standards are truly compulsory.

Stakeholders also pointed out that the EU is a single, internal market but, at the same time, food legislation is not fully harmonised. Different operators who are subject to different provisions **implement or interpret the same legislation in different ways**. In this case, these operators are normally trying to obey what is imposed nationally, but there are differences from one system to another. For example, BRC is driven by the national legal environment in the UK and that is what makes it different from the IFS used by German and French retailers. Therefore, producers who export to a country where buyers have their own QAS are often forced to have certification under several QAS.

Moreover, when suppliers find that they have to comply with different standards, it often leads to unnecessary costs and **duplication of controls/audits**. Concerning this last issue, certification bodies agree with other stakeholder groups and see this as a problem (as it makes them lose clients) rather than a way to make more money.

In addition, several stakeholders stressed that they do **not** perceive “benchmarking” and “mutual recognition” to be exactly the same thing. So far no clear view has emerged about how they perceive the differences. However, a metaphor of marriage was used to illustrate the difference:

Mutual recognition is a bit like marriage. If I say to you, “Please will you marry me?” and you say, “No, I do not want to”, I will be very sad but there is absolutely nothing I can do about it. It is a free world, there are no such things as forced marriages. It is a choice, stakeholders have a choice.

Benchmarking processes help stakeholders to achieve equivalence between standards. In order to make benchmarking as open as possible, there should be transparency in the rules, allowing stakeholder involvement, peer review and witness assessment.

This perceived difference should be further investigated.

Furthermore, strongly conflicting views were expressed on “benchmarking and/or mutual recognition”. Certification bodies thought this was going to happen in the short run anyway. Retailers also thought this, despite their cautious attitude. So, if these two groups think it will happen, but without saying that **they** will encourage it, that leaves the question what will be the driving force behind it. Food processors say it will be “industry-driven” and expressed a preference, in the medium term, for rationalisation and fewer schemes; whereas retailers thought mutual recognition was a minefield and that progress in that direction should be “very cautious”.

Another important point that should be highlighted is the lack of, and need for, **input from consumers** as a stakeholder group. Various stakeholders said that they were only acting in the consumers’ interests and that **of course** they were doing what consumers wanted. But, unfortunately, no-one was at the Hearing to say whether or not that was how consumers see it. Without a broadly based view from consumers one important component is missing from this stakeholder consultation.

Finally, stakeholders' opinions on the **policy options** which should be pursued at EU level are summarised in the table below.

STAKEHOLDERS' OPINIONS ON OPTIONS CONCERNING QAS

Options	Farmers/Producers		Traders	Food Processors	Certification Bodies	Retailers
	CEJA	COPA/COGECA				
Intervention at EU level?	YES	YES	YES	NO	NO	NO
Regulation of mutual recognition and benchmarking	YES First step: mutual recognition of PDO, PGI and TSG within the WTO TRIPS Agreement	NO	No regulation but EU could support mutual recognition exercises by assisting CIES (GFSI) in improving benchmarking and mutual recognition	-	No regulation but EU should work only as a facilitator of rationalisation of QAS in the form of reducing the number of schemes in each segment of the food chain and improving mutual recognition and benchmarking	NO
Standardisation of existing QAS/general implementing rules	-	Non-mandatory guidelines on organisation of a reputable QAS	YES	NO	-	NO
European registry of quality assurance logos	No objection	NO	-	-	-	-
European logo confirming compliance with EU regulations	NO	NO	NO	NO	-	NO
Further development of existing EU schemes	-	YES	-	-	-	-
Other options	Communication campaign	Adjustment of inspection programmes Direct government support under rural development programmes	Consistent application of food safety laws across EU Member States Financial assistance for development of systems to improve the integrity of QAS Technical support to help traders/suppliers to improve sustainable agricultural practices Facilitate information transfer Develop sustainable agricultural parameters and their measurements	EU database covering the existing QAS	-	

FOOD QUALITY CERTIFICATION: ADDING VALUE TO FARM PRODUCE
BRUSSELS, 6 FEBRUARY 2006

CONFERENCE CONCLUSIONS

1. EU standards for food placed on the market are among the **toughest in the world**:
 - All food, whether EU-produced or imported, meets **high product standards of safety and hygiene**.
 - EU farmers and producers also adhere to detailed norms of **animal welfare, environmental protection, and labour and employment**.
 - An **EU quality label** indicating compliance with EU norms, or with a superior standard, was discussed, while questions were raised concerning its possible operation.

2. Economic evidence on **certification scheme performance** indicates that they can
 - give farmers **access** to key markets;
 - **inform** consumers effectively about food quality, origin, environmental care and animal welfare;
 - increase **efficiency** of the farm operation;
 - have **positive impacts on rural development** (tourism, infrastructure, etc.), on maintaining local culture and traditions and on enhancing social cohesion in rural areas based on initial research;
 - **reduce costs** within the supply chain through vertical integration;
 - **add value** for producers, although this effect varies from scheme to scheme;
 - **lead to price increases** in all parts of the chain, but not in all cases enough to cover additional costs;
 - **be most successful** when adequate marketing management capabilities are present.

3. However, there are a number of **concerns** about the ways in which some schemes have developed, leading to:
 - heavy and duplicative **administrative costs** and burdens;
 - competition issues and potential barriers to the functioning of the **single market**;
 - difficulties for exporters from **developing countries** (especially small-scale producers in the Least Developed Countries); and
 - stakeholder concerns about **transparency** of schemes.

These concerns must be addressed.

4. Heavy and duplicative administrative costs and burdens
 - Mutual recognition and benchmarking of basic requirement schemes have already led to an overall reduction in the number of schemes, reducing overlap and duplicative audits. This process should continue.
 - While the number of differentiation schemes continues to grow, efforts to harmonise criteria are emerging also in this area.

- Where overlap and duplication of audits occur, certifiers and retailers must get together to set benchmarks, promote recognition and banish duplication from audits and controls. Certifiers must be able to combine audits of similar schemes, and reduce the costs and time burden for farmers in so doing.
 - Farmers and first-stage processors should participate in the development and operation – if not the ownership – of certification schemes.
5. Competition and barriers to the functioning of the single market
- Authorities in the Member States and the Commission must ensure respect of single market rules and prevent collusion or abuse of dominant positions.
 - Strong market power of large retail chains can reduce benefits to farmers.
6. Difficulties for exporters from developing countries
- Private standards for imports from developing countries can improve farming efficiency, promote good agricultural practices, and stabilise business relations
 - However:
 - only the best farmers are able to be certified; the weakest may be excluded;
 - schemes may be perceived as barriers to market access;
 - stakeholders in developing countries should play a role in the development of schemes;
 - technical assistance for capacity building should be provided under aid programmes (but need to avoid creating new dependencies).
7. Transparency
- Certification scheme owners should increase transparency by **placing specifications on the internet**, making them accessible to the press and public.

* * *

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TO BE TAKEN BY THE COMMISSION***

ANNEX B: GEOGRAPHICAL INDICATIONS

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Introduction

The "geographical indication" is a type of intellectual property right that may apply to all kinds of goods.

Like trademarks and commercial names, geographical indications are distinctive signs which permit the identification of product on the market. The term "geographical indication" is found in international treaty law and is used in the context of regulatory regimes with rather varied characteristics¹. The substance of the concept is that a geographical indication (GI) is used to demonstrate a link between the geographical origin of the product to which it is applied and a given quality, reputation or other characteristic that the product derives from that origin. GIs identify a good as originating in the territory of a particular country, or region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

1.1. The legal framework: Community protection of geographical indications

Community legislation provides for *sui generis*² of protection geographical indications in respect of:

- **Wines:** commenced in the 1970s as part of the common market organisation (CMO) of wine. Member States notified geographical indications to the Commission. As part of the 2008 reform of the wine CMO³, the system was amended to adopt the principles of the regulation on agricultural products and foodstuffs (see below).
- **Spirits:** an EU system was also created in 2008⁴ following reform of the rules on definition, description, presentation, labelling and protection of geographical indications of spirit drinks. Prior to this, names were listed and protected in the spirit drinks legislation.
- **Agricultural products and foodstuffs:** a harmonised regulatory framework for GI registration in the EU was created in 1992⁵. Notwithstanding some challenges (cases in the ECJ and a 2003-2005 WTO Panel⁶) the aim of the regulation has remained the same. The system has been modified three times (in addition to adjustments in Accession Treaties): in 1997 and 2003 to introduce certain adjustments, and in 2006 when the legislation was

¹ The terms are used in various international instruments and also in domestic legislation of a number of countries, with varying definitions and legal effects. For an account of international instruments, see WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Eighth session, Document SCT/6/3 Rev on Geographical Indications: historical background, Nature of Rights, Existing systems for Protection and Obtaining Protection in other countries, prepared by the Secretariat.

² *Sui generis* is a Latin expression, literally meaning of its own kind/genus or unique in its characteristics. In law, particularly with respect to intellectual property rights, it is a term used to identify a legal classification that exists independently of other categorisations because of its uniqueness or because of the specific creation of an entitlement or obligation.

³ Regulation (EC) No 479/2008 of the Council on the common organisation of wine (OJ L 148, 6.6.2008, p. 1).

⁴ Regulation (EC) No 110/2008 of the European Parliament and the Council on spirit drinks (OJ L 39, 13.2.2008, p. 16).

⁵ Regulation (EEC) No 2081/92 of the Council on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24.7.1992, p. 1).

⁶ EC – trademarks and geographical indications (DS174, 290).

recast to introduce legislative clarifications pursuant to the WTO panel ruling and to simplify procedures, clarify the role of Member States and encourage the use of the EC symbols.

The EU has not implemented any system for the protection of geographical indications handicrafts or other processed products.

1.2. Policy context

In the declaration⁷ of the Commission issued on 20.3.2006 in the context of the adoption of Council Regulation (EC) No 510/2006 on geographical indications⁸, the Commission engaged to undertake a policy review of the operation of the regulation and its future development. According to the declaration, the review should cover all aspects of the policy that Member States, the Commission and stakeholders may wish to raise. Based on issues raised by Member States during the discussion of the regulation, the following items were identified in the declaration:

- Use of alternative instruments such as trademarks (e.g. collective or certification trademarks) to protect geographical indications.
- Scope of products covered by the Regulation with particular consideration to salt, mixed herbs, wicker products and condiments.
- Identification of the origin of raw materials in a PGI.
- Criteria used to assess the generic status of a name.
- Identification of PDO and PGI when labelled as ingredients in processed products.
- Review of the Community symbol.

Work on the policy review was commenced in 2007 and discussions held in particular in the Standing Committee on geographical indications and designation of origin and in the Advisory Group on quality. However, with the decision to launch a wider initiative on the development of agricultural product quality policy the separate work on geographical

⁷ Addendum to the Draft Minutes – 2720th meeting of the Council of the European Union (Agriculture and Fisheries) held in Brussels on 20 March 2008 (7702/06 ADD 1).

⁸ Modification of the Regulation on geographical indications (Regulation (EEC) No 2081/92) was necessitated by the findings of a 2005 WTO panel (DS174 & DS290: *European Communities — Protection of trademark and designations of origin and geographical indications for agricultural products and foodstuffs*). The Community welcomed the Panel ruling in particular as it upheld the Community's right to provide for the coexistence of geographical indications with conflicting but prior trademarks. See: 'A 2005 WTO Panel upholds EU system of protection of "Geographical Indications"', IP/05/298, 15.3.2005, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/298&format=%20PDF&aged=1&language=EN&guiLanguage=en>. The Community agreed to a reasonable period of time for implementing the results of panel concerning certain procedural changes of 11½ months expiring on 3.4.2006; the Regulation was adopted and entered into force on 30.3.2006. See also Evans and Blakeney, 'The Protection of Geographical Indications After Doha: Quo Vadis?', *Journal of International Economic Law* 9(3), 2006: <http://jiel.oxfordjournals.org/cgi/content/full/9/3/575>.

indications was halted. The *Green Paper on agricultural product quality*⁹ contains a full section on the future of the geographical indications instrument and invited stakeholder comments between 15.10.2008 and 31.12.2008.

Nevertheless, economic urgency expressed by operators and Member States, motivated the Commission to deal with two of the subjects in 2008:

- The inclusion in the scope of the regulation on geographical indications and foodstuffs of 2 more products: salt and cotton¹⁰.
- The modification of the Community symbol for a protected designation of origin by changing the colour from blue and yellow to red and yellow¹¹; this modification permits a further differentiation in the labelling between protected designations of origin and protected geographical indications.

B.2. PROBLEM DEFINITION

2.1. Problem identification

2.1.1. Objectives of present legislation

According to the preambles of the regulations covering the protection of geographical indications (Regulations (EC) No 510/2006 for agricultural products and foodstuffs, (EC) No 479/2008 for wine and (EC) No 110/2008 for spirits), the geographical indications schemes have the following objectives:

- Contributing to the diversification of agricultural production by:
 - Promoting products with certain characteristics.
 - Supporting rural economies.
 - Improving incomes of farmers.
 - Retaining rural populations.
- Ensuring fair competition between producers of products bearing indications of geographical origin by establishing a system of protection on an EU-wide basis.
- Enhancing the credibility of products having certain characteristics sought by consumers.

⁹ Green Paper on agricultural product quality: product standards, farming requirements and quality schemes, Brussels, 15.10.2008, COM(2008) 641 final, http://ec.europa.eu/agriculture/quality/policy/index_en.htm

¹⁰ Commission Regulation (EC) No 417/2008 of 8 May 2008 amending Annexes I and II to Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 125, 9.5.2008, p. 27–27).

¹¹ Commission Regulation (EC) No 628/2008 of 2 July 2008 amending Regulation (EC) No 1898/2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 173 3.7.2008 p. 3).

- Providing clear information regarding the origin of products, so as to assist consumer choice.
- Set clear, harmonised rules for different agricultural product, foodstuff and alcoholic beverage sectors according to common geographical indication principles.
- Give intellectual property rights to users of names of products particularly associated with geographical origin.

In implementation of those objectives, the EC has established a Community register for geographical indications of agricultural product and foodstuffs¹², divided into two types:

- protected designations of origin (PDOs) and
- protected geographical indications (PGIs).

For all PDOs and PGIs the EC has defined the level of protection to be ensured within the EU. Community rules define an application procedure to be followed at Member State¹³ level and at EU level, including an objection procedure enabling parties to submit objections to a proposed registration. Member States are responsible for protecting PDO and PGI rights on their territories. Finally, Community symbols for PDOs and for PGI have been created which may be used in marketing any product made in conformity with the specification of a registered PDO or PGI.

2.1.2. *Problems raised*

2.1.2.1. Rural development and problems raised justifying initial scheme for protecting geographical indications of agricultural products and foodstuffs

Alongside the completion of the internal market in the 1980s, policy makers were aware of numerous sales names, labels, designations of origin, etc. present in the market making choices difficult for the consumer. These products were manufactured in accordance with different national laws, under conditions and with quality characteristics that were not comparable. These problems were highlighted by consumers in 1988 in Brussels¹⁴. National practices on labelling and origin legislation were varied and ‘approval and mutual recognition’ was posing some problems. In addition, following the *White Paper on completion of the internal market in foodstuffs* the Community was preparing an EC Trademark Directive. The necessity to carry out harmonisation of definitions and to ensure harmonised protection for designations of origin was signalled by some Member States.

The objectives of Member States arguing for a designation of origin instrument were in line with the new direction of agricultural policy and the desire to address the problems of rural society (see *Green Paper on future of Community agriculture*¹⁵). The original aim was to encourage the production of high quality products, taking into consideration that those products were often produced in mountain areas and less-favoured areas (see text box below).

¹² Registers for Wine PDOs and PGIs, and for Spirit Drink PGIs are in the process of being set up.

¹³ Where a registration application concerns a geographical area situated in a third country, it must be sent to the Commission, either directly or via the authorities of the third country concerned.

¹⁴ Conclusions of EBCH Council held in Brussels on 16.5.1988.

¹⁵ COM(85) 333 final - Perspectives for the Common Agricultural Policy, V-Bulletin EC 7/8-1985.

This aim complemented measures designed to find alternatives to standard agricultural production (such as cereals) that was increasingly uncompetitive in these zones.

Box 1: Suggestions for the future

Extract from 'The future of rural areas' Commission Communication transmitted to the Council and the European Parliament on 28 July 1988 (COM (88) 501 final)¹⁶.

Policy on product quality: rural society holds a strong card

Because of stagnating demand and the need to bring surpluses under control the future of rural production can no longer be seen in quantitative terms, but this does not rule out increases for certain products in deficit. The continued production and the promotion of high-quality products could become of substantial importance in particular to less-favoured and remote areas. Most distributors report that consumer demand for non-factory and regional products is increasing steadily.

The determination to protect agricultural and food products of identifiable geographical origin, their mode of production and their special qualities has led to the appearance of controlled origin designations or labels in the Member States. This movement has been piecemeal but has in general pleased both producers, who obtain higher prices in return for a concentration on quality, and consumers, who can buy high-quality products of guaranteed production method and origin.

Commission intends to promote a Community policy on product quality. It clearly indicated this option in 1985 in its Green Paper on a future for Community agriculture (COM(85) 333 final) and in its communication on completion of the internal market in foodstuffs (COM(85) 603 final). National practices on labelling and origin designations vary at present and a Community approach is required. Approval and mutual recognition procedures should be set that would prevent misuse and the pointless proliferation of labels of no precise signification.

Such a policy must not, however, lead to practices that could jeopardise the elimination of barriers to trade or to national legislation incompatible with completion of the internal market by 1992. Labels and origin designations must serve to highlight the special characteristics of certain products and protect them against unfair practices and imitations. But under no circumstances may they be used as an obstacle to the free movement of any product not bearing incorrect or misleading markings. Nor may their use hinder competition or innovation where the consumer is fully informed of these.

On this basis the Commission will shortly be suggesting a general framework for the use of labels permitting recognition of products:

- (i) subject to a special production quality requirement (cheese, butter, prepared cut meats, durum wheat pasta, etc.);
- (ii) originating in areas known for their traditional production (poultry, drinks, meat of particular breeds); a label such as 'European upland product' could be used to promote the extensive production methods still predominant in these areas;
- (iii) produced by special methods: free range, organic, etc.

In 1979 the Council adopted a Directive on labeling (OJ L 158 26.6.1979) introducing provisions designed to prevent purchasers of food products from being misled. Its text, general in nature, will shortly be amplified to prohibit any use of national names and descriptions incompatible with completion of the internal market by 1992, in order to guarantee free movement of products not marked with incorrect or misleading information. Statements describing modes of production and manufacture, origin or source will also be defined, e.g. free range, non-industrial, traditional, from animals fed in the traditional way, upland product, etc.

The same approach ought to be followed for the granting of controlled origin designations. While labels are, legally speaking, trademarks that may be used in more than one sector, origin designations involve more detailed legislative provision, the product description being available only to producers in a specific zone. The approval procedures for recognition at Community level ought to permit establishment of a clear link between product quality and geographical origin (soil, herbage cover, vine variety, know-how, etc.).

¹⁶ Bulletin of the European Communities Supplement 4/88, p. 45.

It is only for wine that specific rules protecting geographical indications have so far been enacted. A proposal on the names of spirits and aromatised wines is also on the table. General quality-linked protection of geographical indications, also covering origin designations, is needed for other food products.

A quality policy involving geographical indications ought to be integrated into a more general Community framework and to take account of policy followed on industrial and commercial ownership (trademark law).

A comprehensive approach not restricted to products originating in the countryside would also have the advantage of more easily permitting both the introduction of a Community policy to replace the bilateral agreements used so far between Member States and international defence of a uniform policy.

In sum, the problem of rural areas was identified as primarily in those agricultural zones where commodity farming was no longer viable and alternatives had to be found, including diversifying out of agriculture. The White Paper noted that these areas however held strengths in terms of regional, 'natural' and speciality product especially that associated with origin and environmental landscape. The problem of the viability of agriculture in rural areas was only to be partly addressed by quality schemes, including geographical indications system, among others to help producers in these areas become more viable by being able to advertise and market product with characteristics and/or farming attributes that they could produce having a competitive advantage (designated origin or landscape type not applicable in more productive zones) and for which there was a consumer demand.

The main policy to emerge from the White Paper was that of rural development, subsequently forming the "second pillar" of the Common Agricultural Policy (CAP).

The trend, fostered by the EC legislation, has been one of increasing the quality of products within the framework of the common agricultural policy, thereby promoting their reputation. The means used for this purpose include designations of origin. That tendency was borne out by the second to sixth recitals in the preamble to Regulation (EEC) No 2081/92. The legal basis for that regulation, is logically, Art. 37 EC, which is in the agriculture chapter of the Treaty. The legislature is thereby concerned not only with protecting the quality of agricultural products but, as is shown by the second recital in the preamble to the regulation, also with matters of structural policy. The promotion of rural areas is sought by improving farmers' income and retaining the rural population in those areas.

Rural development policy introduced in 2005 specific measures to support national and European quality schemes, including PDO and PGI. The aim of the measures is to support participation in quality schemes as well as to support information and promotion activities¹⁷.

Guidelines for rural development policy in the period 2007 to 2013 aim to address a strategic approach to competitiveness, job creation and innovation in rural areas and improved governance in the delivery of programmes. Under one of the axis of the rural development programmes, "improving the competitiveness of the agricultural and forestry sector", a range of measures will target human and physical capital in the agriculture, food and forestry sectors (promoting knowledge transfer and innovation) and quality production.

The **Evaluation of PDO/PGI regulation**¹⁸ has addressed the issue of development of rural areas through the study of 2 indicators¹⁹:

¹⁷ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).

- a) the increased diversity of products through the number of products preserved, the number of products introduced and the innovation in the industry;
- b) the rural area population retained.

The analysis of the evidence shows a mixed picture. On the one hand, it seems quite clear that the protection afforded by the scheme has served to protect vulnerable and aspiring product names, serving to generally successfully preserve the diversity in PDO/PGI products that are currently produced²⁰. One minor trade-off of this protection has been the fact that, as a specification is required in order to have a protection system, on registration of the product name, this requires some 'squeezing-in' of previously diverse product varieties produced in the region into one single PDO/PGI product. Obviously, producers who join the scheme feel that the benefit of the protection afforded to the name outweighs the cost of reduced product varieties.

The case studies show that the scheme has been effective in helping to preserve a number of products which would otherwise have been in danger. These products originate from several different parts of Europe including the North, South and new Member States.

According to the interviewed producers in the case studies, the scheme has had little overall impact on diversification for producers. Diversification for producers was promoted in only a limited number of cases when they were able to introduce new products as a result of a higher reputation achieved by the scheme. On the other hand, in some cases PDO/PGI producers have reduced their product range to comply with the PDO/PGI specifications.

Similarly, the effect of the scheme on innovation is rather limited. This is not surprising, considering that at the heart of the scheme is a specification of the traditional methods, ingredients and output qualities that must be employed in order for the produce to qualify for protection and the use of the protected name. Thus, the protecting mechanism becomes somewhat of a restraint on innovation in the production process.

However, one useful innovation permitted by the scheme has been the increased access of producers of protected product names to new marketing and distribution channels, as supported by the analysis of the responses of our surveys. This is an important diversification that will allow the existing, preserved protected product names more opportunities to sell their quality assured, geographically-linked and certified authentic produce to new customers, meaning the prospect of increased demand and sales.

¹⁸ Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

¹⁹ For each of these indicators, information on the impact of the scheme was provided by 108 producers PDO/PGI (farmers and processors) and 17 producers' groups' who were interviewed as part of the case studies. It should be noted that the evidence is qualitative and limited to a number of cases and may not necessarily be representative of the entire population.

²⁰ The case studies have shown a few examples where, according to participants, the scheme has helped prevent some products from disappearing. It is interesting to note that, in most of these cases, the PDO/PGI products are produced at a small scale, using traditional production methods, in remote areas or supply niche markets.

The other indicator on the effectiveness of the scheme in terms of achieving its objectives is the extent to which it has succeeded in increasing or retaining economic activities in rural areas. There are a number of ways in which the PDO/PGI scheme can contribute to higher economic value and promote economic development at local and regional level²¹. In annex I a summarised review of literature on the issue, conducted under the Evaluation of the CAP policy on PDO/PGI is presented.

The case studies²² undertaken as part of the PDO/PGI Evaluation provide qualitative evidence of improvement in conditions for development, benefit to the regional economy and employment growth based on the perception of respondents or experts. As a matter of fact, only one producers' group (Spreewälder Gurken) was able to provide statistics on production and employment. The analysis presented some methodological limits: firstly, data is limited for this task, as the analysis of the impact is specific to the area of production, whose geographical limits are defined with reference to the regional characteristics and production techniques of the product, rather than the standardised nomenclatures of regions (e.g. NUTS) used to produce regional statistics, such as population and structural business statistics.

Secondly, the expected impacts of improved development of rural economies and less favoured areas are both intermediate and global impacts, so the impact of the scheme in terms of achieving these impacts may not yet be fully felt in areas where PDO/PGI registration is more recent. Thirdly, where data is available, it is not possible in most cases to distinguish the impact in the data, or in the experience of the respondents, of the PDO/PGI registration from that of other factors.

This being said, in general, the evaluation of the impact of the PDO/PGI scheme on business conditions is judged to be positive by study participants, with many respondents noting a strong improvement. The reasons cited for the improved business conditions are wide and varied (higher prices, reduced name abuse, enhanced reputation and marketability, improved international trade conditions, increased consumer awareness, stable relationships, market access and new opportunities) but all of which are strongly linked to the PDO/PGI scheme and so may be deemed relevant than other factors.

At the same time, however, some other respondents reported that did not experience any significant impact on their activities. But, no PDO/PGI producer reported a negative impact.

The scheme also had a stronger positive impact on producers than retailers, which is likely to be explained by the fact that retailers sell a wide range of products besides PDO/PGI products.

²¹ Positive impacts include: larger sales volumes, higher prices and higher profits achieved by producers of PDO and PGI products as well as direct spending effects from the higher level economic activity of PDO/PGI producers. This includes the additional employment, or the employment which was safeguarded, by the PDO/PGI producers and the direct additional spending in the local communities and the region by the PDO/PGI producers and their employees. Other possible types of spill-overs such as technological and marketing spill-overs whereby other producers of non-PDO/PGI producers may learn from the experience and success of the PDO/PGI producers and adopt some of the practices of the PDO/PGI producers; Another type of spill-over concerns the general adoption of specific quality standards by non PDO/PGI producers in imitation of the PDO/PGI producers.

²² The information from the case studies is based on the results from interviews to 108 stakeholders in the PDO/PGI supply chain and 17 producers' groups using the questionnaires to producers and producers' groups.

On retention of rural populations, due to data limitations, it is not possible to make a judgement on the basis of the evidence available. Where data has been available, there has been an increase in population but, as population change is determined by many factors, it is not possible to judge how much (if any) of this change is attributable to the scheme.

Evidence of the PDO/PGI scheme benefiting the regional economy is weak and limited to anecdotal evidence, with many respondents expressing difficulty in providing any quantitative impact. The evidence suggests a positive impact in the case of Toscano and Jersey Royal potatoes. In some other cases, the scheme has had no impact on the regional economy.

When the PDO/PGI scheme has had an effect, it is mostly an indirect one based on spillovers from the increased production in the area.

Finally, regarding employment in the region, the effect of the PDO/PGI scheme has been low, with a measurable impact on employment only in two cases among the 18 PDO/PGI products covered by the case studies. In Tuscany, the PDO/PGI scheme is judged to have preserved jobs among olive producers, whereas in the case of Spreewälder Gurken employment increased by 22% since registration of the name.

This can bring us to the conclusion that even if the PDO-PGI instruments are not in and of themselves vehicles for funding, if they work effectively, they should:

- contribute to the achievement of aims of rural development funding with which they are associated, and
- assist farmers to develop economic viability of their businesses in so far as the production activities depend on the marketing of products identified as PDO and PGI.

Nevertheless, methodological complexity does not permit to a full picture of the overall results on diversification and rural economy. In this context, further research through a Meta study may be considered, to fully address the issue for the overall PDO/PGI schemes.

2.1.2.2. Visibility of the EU scheme:

With regard to information theory, an asymmetry of information between producers and consumers gives raise to market failure. While the producer knows the products properties, consumers do not have always easy access to this information. Asymmetrical information places the consumer in a position of weakness so that he cannot always optimise his choices (OECD, 2000). In addition, equilibrium in the market is achieved at lower levels of quality (Rangnekar 2003). The solution is to enable the consumer to obtain more information.

The EC created a Community symbol in order to facilitate information and increase knowledge of the PDO/PGI system. Nevertheless, a recent market survey indicates that only 8% of European consumers are able to distinguish and recognise the Community symbols (PDO/PGI Evaluation²³).

²³ Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and

A research conducted in UK in 2007, to around 1000 shoppers showed that recognition of PDO/PGI symbols is low. Only 7% of shoppers were aware about the PDO/PGI and TSG symbols. In addition changes in awareness from 2002 to 2007 have been insignificant²⁴.

One of the reasons to explain the low awareness of the European symbols which results in low visibility of the scheme could be the diverse understanding of the scheme's purposes, mainly among national authorities and operators, including producers. Although the EU scheme on GIs is aimed at protecting names designating products with specific quality features or reputation due to the geographical environment, there is a tendency to use it to protect high quality products or products merely coming from the area.

Geographical indications are also affected by the "excess of labels" phenomenon (see impacts assessment D). There might be confusion for consumers between the GI scheme and other schemes like traditional speciality guaranteed (also managed at EU level), national or regional origin labels or other quality labels conveying the concept of specific quality. There is also confusion with reserved terms (like "classico" and "curado").

European Economic and Social Committee (EESC) noted in an opinion issued in 2008²⁵ that the recognition of "European certification schemes and their logos and labels is still inadequate and very patchy".

During the evaluation, some producers have expressed concerns about the small interest that retailers show in the scheme, which has certainly a direct impact on the visibility of the scheme in the market. This could be partially explained because the information on control of compliance with the specifications does not reach retailers.

A research²⁶ was carried out in UK in 2003, among grocery retailers, to understand awareness and perception of the EU schemes on PDO, PGI and STG. Findings show that retailers are aware about the schemes. They found interesting the fact that the scheme had a logo that could be used to make products easily identifiable. But they also had concerns in respect to:

- Lack of knowledge of the scheme amongst consumers, suppliers and producers.
- Lack of knowledge and confusion between PDO, PGI and traditional speciality guaranteed (TSG).
- Low general profile of the schemes
- Low prominence of logo on packaging
- Limited choice.

Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

²⁴ Food from Britain market research report on Consumers' Awareness of and Attitudes to Protected Food Names, April 2007.

²⁵ Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

²⁶ DEFRA market Research report on Protected Food Names Scheme, made by ADAS, July 2003, available at: <http://www.defra.gov.uk/foodrin/foodname/research/pdf/adasresearchpdo.pdf>

DOLPHINS project made the following recommendations for the communication of PDO/PGI schemes. Though the effectiveness of the 1995 promotional campaigns have not been evaluated, the low consumer awareness of the designations recorded in many subsequent studies suggests that the campaigns were not very successful. According to the study, the EU faces two main problems: first, the lack of consumer confidence and trust in the EU as a message source, and second, the problems of generic campaigns lacking specificity and meaning. To address these problems, it is suggested linking future campaigns to on-going national or regional events (for example, exhibitions, markets, shows), and to use specific products in communications literature to illustrate and exemplify what the designations mean and how they are beneficial. In doing this, better relationships and coordination should be developed with the national and regional agencies responsible for supporting and certifying protected GIs, so that different assurance schemes can work in harmony rather than competition. Greater account should be taken of the acceptance and relevance of the designations to EU consumers, as to date, the designations have been producer-driven. It would be beneficial for communications to be tailored to specific consumer segments, rather than ‘all consumers’. Where possible, the independence and rigor of the certification system should be emphasised²⁷.

Stakeholders have expressed in the Green Paper consultation strong needs to increase and reinforce communication policy on the PDO/PGI scheme. Communication should target both third countries and internal market to inform the consumer on the scheme and to make the European symbols better known.

In third country markets, it could be an interesting tool to increase awareness on the protected names and would facilitate consumers to avoid misuses.

Extent of the problem: The knowledge of the consumers and producers on the registration system, on the purposes of the scheme as well as visibility and valorisation of the system in the market (through the Community symbols) appears to have been low.

2.1.2.3. Economic problems

If data and studies on the economic aspects of EU geographical indications are numerous, there is a lack of empirical, systematic and methodological comparable researches. Different economic disciplines have been demonstrated to be useful in analysing the supply chain. However, understanding the complex system of agri-food chains requires more investments in retrieving empirical data for testing propositions and developing appropriate models. The results of case studies should always be taken with precautions. Some of them (like the studies conducted under the **JRC projects on quality certification schemes**) have analysed supply chains of 4 PDO and provide interesting evidence of price formation and added value distribution in the chain. Among economic problems related to geographical indications, the long-term survival of farms and their market are fundamental to reach the objective of the policy.

²⁷ Concerted Action DOLPHINS “Development of Origin Labelled Products: Humanity, Innovation and Sustainability”. WP 4 “Link between Origin Labelled Products and consumers and citizens” - Final Report July 2002.

Evidence from study (Baena, JRC study 2006²⁸) shows that for an olive oil the price perceived by farmers for olives is the same for a PDO marketed product as for a non PDO marketed extra virgin olive oil. At the processing stage, price difference for the PDO is 10% to 30% and at retail up to 22%. Concerning margins, the same study shows that a margin of 44% is generated at processing and only 0.5% margin at retail. According to retailers, the PDO product works like a hook function since it increases the attractiveness of the marketplace. Pressure towards low margins affects also other supply chain stages.

A study on the chain supply of Comté²⁹ (JRC study) shows that in the region of Jura the price of milk perceived by the milk producer of Comté cheese is higher (0.37 €/l) than the price received for milk for a non PDO cheese (0.33 €/l), thus 12% increase.

This study also shows that in spite of a higher milk price, PDO farms obtain economic results similar to non-PDO farms. This suggests that profitability of PDO milk is not higher than of non-PDO milk. Nevertheless, the study qualifies this assumption: non-PDO farms of this sample draw a greater proportion of their income from crop products. The similar profitability of the two types of holding in fact probably reflects non-PDO farms having a lower profitability in dairy production, but stronger in crop production, particularly cereals. The choice to allocate less area to crops in PDO farms is probably explained by differences in soil quality, with PDO farms being located in zones that are less favourable for cereal crops. As a matter of fact, the Comté PDO area is located mainly in mountainous areas, but has a small part in plain with easier production conditions.

Evidence from a study³⁰ shows that Parmigiano-Reggiano (45 €/100kg cheese, 2001) and Grana Padano (40 €/100kg cheese, 2001) milk producers get higher prices for the milk than non PDO producers. Nevertheless, concerning profit on sales, milk producers get the lower profit rate (even negative) if compared with processors, traders and wholesalers and retailers. The latter get the most important profits from 23% for Parmigiano-Reggiano to 27 % for Grana Padano (see annex IV).

The 4th case study on "Dehesa de Extremadure" (Ham) shows a different tendency as producers get 29% higher prices for the raw material for PDO than for non PDO. To a lesser extent, industries and distributors also perceive a difference on prices, as prices for PDO hams are 21% higher than for non PDO hams. Surprisingly, those receiving less price difference are retailers who only gain a 6% price premium, the reason being probably that consumers are in general more concerned with other "Iberian ham" than with "PDO" ham. 'Iberian ham' is a name that adds value to the product in consumers' eyes whereas PDO is not yet widely known by consumers as adding such quality features.

That study shows that prices difference between PDO and non-PDO product at farm gate is being assumed by industries that are relying on PDO development. However, this situation does not seem to be sustainable if messages on price are not transmitted in the medium term to consumers – who must also be persuaded to pay the price difference. It is therefore necessary that consumers become aware of different features (linked to stricter requirements) offered by the PDO which are not currently sufficiently promoted.

²⁸ http://ec.europa.eu/agriculture/quality/certification/docs/case1_en.pdf

²⁹ Case study conducted by DG JRC/IPTS in 2006 on Comté:

http://ec.europa.eu/agriculture/quality/certification/docs/case3_en.pdf

³⁰ http://ec.europa.eu/agriculture/quality/certification/docs/case8_en.pdf

With the exception of the last study mentioned, evidence from a number of studies shows that even if the farmer gets higher prices for a PDO product, he does not get a return of added value equivalent to the rest of the stakeholders of the supply chain.

Distribution of added value among operators is linked to the collective organisation management³¹. The geographical origin calls for new local coordination and is conditioned by social forces that can have varying impacts on the way activities are pursued, for example on the composition of the producer association or consortium and on the vertical alliances which could involve contracts that formalise supplier-client relations and influence the rules of distribution of benefits among operators.

Trade, Intellectual property rights and sustainable development (IPDEV) project, financed within the Sixth EU Framework Programme for Research and Technological development³² concludes that there is evidence from many cases that GI protection can help producers to reach their economic objectives, and that it contributes positively to regional economic development. Then again, the potential economic impacts of GIs must be nuanced according to the degree of consolidation achieved by the GI in relation to the total production of the local good and vis-à-vis competing economic activities. The commitment of economic actors involved in the supply chain towards the achievement of common goal (i.e. to produce and sell a strictly defined product) is essential for GI success, as mere institutionalisation of GIs is not sufficient. In this sense, attention should be brought to the fact it has been seen that actors, in different stages of the supply chain, depend on incentives which may increase proportionally to their capacity of “capturing” the benefits generated by the GIs.

Two elements have been found to favour the increase in the capture of rents: the first element is higher levels of integration. Strategies which have envisaged integration forward have provided producers (particularly in short supply-chains, for ex. artisan or *fermier* cheese producers) with access to the benefits of the entire value-added (the last sale) of the product.

A second element is related to the coordination of the supply chain. Higher degrees of coordination among actors are accompanied by beneficial outcomes such as lower transaction costs and higher synergetic interaction. Coordination is normally ensured by the presence of intermediate institutions, such as producer associations or GI management institutions where producers, as well as other stakeholders participate (*Consejos Reguladores*). The presence – and strength – of such institutions, from the evidence found, seems to favour stability of arrangements among actors (for example, the payment of fixed price premiums to farmers by associated processors/distributors, as in the Schwäbisch-Hällisches Qualitätsschweinefleisch case) and ensure better rent distribution among actors.

Evidence from the "**Evaluation of the CAP policy on PDO and PGI**" shows that the distribution of profits and revenues over the members of the supply chain differs according to the product in question, and as such a firm conclusion on the effect of the scheme in terms of ensuring that farmers of PDO/PGI products benefit more than in the case of comparable non-PDO/PGI products is difficult to formulate.

³¹ Barjolle, Révion and Sylvander, “Creation and distribution of value in PDO cheese supply chain”, *Economies et Sociétés*, n°29, 9/2007.

³² <http://www.ecologic.de/modules.php?name=News&file=article&sid=1357>

The assessment done during the evaluation is based on a small number of case studies for which there was limited available data, supported by qualitative evidence provided by the participants in some case studies (limited to two case studies per country). So, the findings are not necessarily representative of the whole registered GIs in the European Union.

The impact of the PDO/PGI scheme on the distribution of the returns along the supply chain shows a mixed picture across the different products for which information has been obtained. In some cases farmers benefit from the scheme as a result of higher prices paid for PDO/PGI products (in relation to their comparator product identified in the study). Furthermore, in some of these cases the farmers also often get a higher share of the final PDO/PGI price. This means that in such cases farmers are able to secure a share of the returns of increases in sales for these products.

PDO/PGI products typically have higher production costs (see annex VI) than other products, so the fact that farmers receive higher prices does not necessarily correspond to higher profits in itself. However, the qualitative evidence provided during the evaluation shows for some cases (Mela Val di Non, Toscano, and Jamón de Teruel) that farmers are able to earn higher prices and profits as a result of using the PDO/PGI scheme. This can be explained by the following factors:

- Farmers get a higher share of the profit in cases where they are represented by an association or cooperative. In such cases, producers benefit from the actions of the association and services of belonging to the cooperative, yielding benefits such as increased organisation and negotiation powers.
- The high quality of the product sold at the farm gate seems indispensable to secure high profits for farmers. It is the uniqueness of the product that puts farmers in a better bargaining position vis-à-vis purchasers, as farmers certified under the scheme have an exclusive (collective) right to produce the product, giving them some degree of market power.
- Conversely, when farmers sell a product which can indistinguishably be used in the production of a PDO/PGI or non PDO/PGI product (such as, for example, the milk produced by Greek milk farmers and the rice grown by Camargue rice growers), they are not as successful in retaining a high share of the value added of the PDOs/PGIs. In fact the benefit to farmers in such a case is none or very small.

Green Paper stakeholders say:

Define rights of producers in relation to defining the volume of production FR-CNAOC.

Tasks of producer groups should be defined e.g. to manage volume production and use of ingredients. This demand was also expressed in the Advisory Group on Quality held on 25.2.2009.

These diverse economic results match with the perception of the producer groups of PDO/PGI (collected through a survey made directly to PDO/PGI producer groups in 2007): added value for PDO producers is weak (mentioned by producers from Italy) or is "taken" by the producer group (Italy). Some producer groups also complain on the increase of

production cost, especially for control operations (Greece), while others that the added value is not well distributed along the chain (from a producer group in Italy).

Main economic results of the Survey 2007³³

Producer groups said:

- Following registration in 60% of responses producer groups have underlined an increase in production. Nevertheless, productions' increase has not been entirely translated by an increase of number of producers as only 43% of respondents underline such increase.

Some respondents (1/3) record increases on employment following the registration.

As to sales, impact of registration seems clear, which shows improved identification of the product:

- it allows access to new markets: supermarkets, food specialised retailers and restaurants.
- it permits to extend market access to domestic and international markets. A third of respondents declared clients operate in national and no more in regional markets. Registration results sometimes in new costs, mainly linked to conditions imposed in specifications. Excessive cost of controls is also mentioned by several producer groups from Austria and Italy in the framework of the Survey 2007.

As to sales price,

- 40% of respondents notices an increase in sales prices, higher than inflation, put down by registration. Registration is the recognition of a know-how and an added value, that distinguishes the products from their substitutes and justifies a higher price in the market.
- Increase of sales prices seem to be more important for retailers than for wholesale, probably to the detriment of producers

Global effects on the region of production are more shaded. Nevertheless some respondents underlined positive impacts on revenue, tourism, employment, infrastructure creation and support to rural development. There was no socio-demographic impact, nor impact on landscapes, except for olive oil producers.

Extent of the problem: evidence of studies shows that even if the farmer gets higher prices for a PDO/PGI product, he does not get a return of profit/added value equivalent to that obtained by other stakeholders of the supply chain.

³³ DG AGRI carried out a survey among 600 producer groups of registered GIs in 2007. 143 answers have been received, from 134 PDO/PGI. Majority of respondents (88%) were producer groups answered to the questions, which were mainly on economic aspects of the scheme. Respondents were originating from 13 Member States, although 5 countries did concentrate the highest rate of responses: Italy, Greece, Portugal, Spain and France. Answers concern to 5 categories of products: olive oils, meat products, cheese, fruits and vegetables and meat.

2.1.2.4. Environmental approach to PDO/PGI schemes

EU legislation on geographical indications (under Regulation (EC) No 510/2006) does not mention environment protection among the specific objectives of the legislation.

Nevertheless, EU policies, and notably the Common Agricultural Policy (CAP), are increasingly aimed at heading off the risks of environmental degradation, while encouraging farmers to continue to play a positive role in the maintenance of the countryside and the environment by targeted rural development measures and by contributing to securing farming profitability in the different EU regions.

The agri-environmental strategy of the CAP is largely aimed at enhancing the sustainability of agro-ecosystems. The measures set out to address the integration of environmental concerns into the CAP encompass environmental requirements (cross-compliance) and incentives (e.g., set aside) integrated into the market and income policy, as well as targeted environmental measures that form part of the Rural Development Programmes (e.g., agri-environment schemes).

Recent reform of wine market organisation, which includes a chapter on geographical indications, cites as objective to "create a wine regime that preserves the best traditions of Community wine production, reinforcing the social fabric of many rural areas, and ensuring that all production respects the environment".

As it was underlined in the Green Paper on agricultural product quality "For many products the quality and reputation does not rest exclusively on factors linked to origin and/or the *savoir faire* of local producers. Sustainability criteria can also make an important contribution to the quality of the product and in meeting consumer expectations, such as:

- contribution of the product to the economy of a local area,
- environmental sustainability of farming methods,
- economic viability of the product and potential for export,
- for processed food products, the requirement that all raw materials must also come from an area surrounding the zone of processing of the product³⁴.

In this context, the Green Paper addressed the following question to stakeholders:

Should specific sustainability and other criteria be included as part of the specification, whether or not they are intrinsically linked to origin? What would be the benefits and drawbacks?

³⁴ Green Paper on agricultural product quality: product standards, farming requirements and quality schemes COM(2008) 648 final.
http://ec.europa.eu/agriculture/quality/policy/index_en.htm

Stakeholders express the following concerns:

A large majority of respondents from different sectors, with the exception of national authorities and individual consumers/farmers, are opposed to specific sustainability and other criteria.

Some respondents declared themselves in favour, majority were national authorities and consumers, and a minority of respondents from "other sector" which included environmental organisations. Among environmental organisations, EFNCP underlined that far stronger emphasis should be placed on how products are produced at farm level.

An interesting trend is that within the majority of national authorities favourable to those criteria, more than half stated that those criteria should be **voluntary**. This was also suggested by some of those who objected.

Disadvantages would be:

- Risk of confusion with organic farming, as sustainability criteria are essential to that scheme.
- Difficulty to justify in WTO.
- Sustainability is not a priority criteria for quality (conflict between modern ideas of sustainability and traditional production methods), it would be difficult to link it to production area of PGIs (long supply lines).
- Difficulty to monitor compliance and carry out audit.
- Communications on sustainability criteria could be resolved with a quality sign on "low carbon emission"

Advantages would be:

- Better consumer information especially for the consumer who is concerned with the environmental aspects. The degree of variation in the environmental requirements of labels is a potential source of confusion (obviously such detailed information is not displayed on the label itself), especially for the consumer who is concerned with the environmental aspects of the farming system, and who might assume that a product from an apparently more "natural" geographical area is produced with particular respect for the nature of the area (EFNCP response).
- Incentive to adopt best practices; Producer groups could prepare specifications and educate farmers on sustainability criteria
- Reinforce local and regional participation;
- Possibility to manage production volumes;
- Possibility to compensate higher cost by claiming higher prices.

Certain practices under PDO-PGI specifications have positive impacts on the environment. It has been stated that some PDO labels are far more explicit in requiring certain animal feeding systems, addressing areas such as maximum stocking densities, the use of local hay in preference to silage (e.g. “Comté” cheese in France, Bowen 2007), and the free-range use of acorns in the case of “Dehesa de Extremadura” acorn-fed Iberian ham. Thus from the perspective of high nature value farming, some PDO labels have some link to environmentally relevant farming practices³⁵.

Even if environmental protection is not a primary motivation in GI protection schemes, some studies have shown interesting results. Research has been carried out in milk production system of Comté (French PDO) and showed that industry is much less intensive than the industrial milk production model employed throughout much of France. The diversity of aromatic properties and flavours in Comté cheese is highly valued by producers and consumers alike. Actors in the Comté supply chain believe that factors such as climate, altitude, and native species of grasses—which are incorporated into the pasture-based diet of the cows— influence the properties of the milk, and the taste and organoleptic properties of the cheese.

IPDEV project has assessed the applicability of geographical indications as a means to improve environmental quality in affected ecosystems and the competitiveness of agricultural products³⁶. Even though environmental quality has been a secondary motivation in GI related strategies, there is some evidence in this study to suggest that GI policy makes possible the protection of some products that could be produced in environmentally sustainable farming systems. The case studies run within the IPDEV project were selected when links between GIs and environmental quality could be plausibly made i.e. when products displayed visible or evident links to protected natural areas and areas of high value farmland.-According to the findings of this study, the products protected by these GI show positive results in reference to conservation and maintenance of biodiversity and distinctive cultural landscapes, and the regions of origin often include protected areas (see table in annex III). In this sense, GIs may appear in certain cases as an important complement, to integration strategies for biodiversity-rich farmland areas (such as semi-natural grasslands, areas important for migratory birds and dehesas) in particular to avoid land abandonment in marginal regions.

On the other hand, there are also examples of GIs where production methods are not at all different from standard agricultural practices, with associated environmental impacts. In particular, processes of intensification - with visible environmental impacts - are present and possible under GI specification rules.

Following EFNCP (European Forum on Nature Conservation and Pastoralism) response to the Green Paper, some PDO areas may coincide with a high incidence of high nature value farming, but others may equally well be under predominantly more intensive farming . In order to be competitive, farms will tend to intensify as far as PDO-PGI requirements allow. Sometimes the resulting farming system is still high nature value, and sometimes not. In some

³⁵ EFNCP response to Green Paper on agricultural product quality.

³⁶ Trade, Intellectual property and sustainable development (IPDEV) is financed within the Sixth EU Framework Programme for Research and Technological Development (FP6).
<http://www.ecologic.de/modules.php?name=News&file=article&sid=1357>

cases, farming systems and nature values may vary considerably within a PDO production area. An example is the Camembert de Normandie PDO: much of the cheese carrying the label is from quite intensive farming systems and landscapes which have lost their nature value. Yet the image of the label and of the product is associated with a more traditional, low-intensity and generally HNV farming system which has survived in one specific area of Normandy – the Pays d’Auge.³⁷ In this sense, findings suggest that, despite possible idealised assumptions about GIs, these show *per se* an uneven effect on environmental quality.

GIs may act as an incentive contributing to environmental goals whenever the typical product “definition” incorporates “local” attributes of environmental value. The existing literature on GIs supports the idea that GI success depends on an optimal functioning of a process which begins with the identification of product qualities according to product definition (specifications), continues with the certification of these qualities and ends with the communication of certified product qualities to consumers (promotion and marketing). Findings show that whenever elements connected to the preservation of local environmental quality or biodiversity are a component of the product’s definition, then GIs may play a more important role in capturing extra revenues which derive from these environmental attributes³⁸.

Common to some case studies on PDOs/PGIs are short production chains (production, processing, supply and marketing) and therefore shorter transport distances which reduce the use of natural resources and energy. While it is true that environmental requirements are rarely included explicitly in the specification of a protected GI, in all cases where environmental quality is the primary motivation leading to the establishment of the GI protection, the product is more likely to achieve an environmental benefit. The environmental benefits of the GI protected goods are often achieved through indirect secondary effects. In some cases the price premium associated with the GI protection enables farmers to maintain environmentally friendly production methods or to support environmentally beneficial flanking measures. Moreover, synergies with other sectors such as tourism contribute to the protection of traditional landscapes and habitats. Often local specialities are produced using production and/or processing practices which are to a large extent based on procedures which, in line with tradition, use hardly any or no technical processes which could be harmful to the environment, and/or farming systems which are non-intensive and therefore further biodiversity and protection of the countryside and the environment³⁹.

According to another author, what makes GIs favourable to ecological sustainability is the notion of *terroir* - the link between the biophysical properties of particular places, the traditional practices that have evolved in that in these places, and the specific tastes and flavors (Bowen and Valenzuela Zapata 2009). This link is stronger in PDO than in PGIs and might suggest that the former are more favourable for ecological sustainability than PGIs.

³⁷ EFNCP response to Green Paper on agricultural product quality.

³⁸ Trade, Intellectual property and sustainable development (IPDEV) is financed within the Sixth EU Framework Programme for Research and Technological Development (FP6).

³⁹ Leipprand, Gorlach, Keefe, Riccheri and Schlegel, "Assessing the Applicability of Geographical Indications as a Means to Improve Environmental Quality in Affected Ecosystems and the Competitiveness of Agricultural Products", Workpackage 3 of "Impacts of the Intellectual Property Rights (IPRs) Rules on Sustainable Development (IPDEV)" - Sixth Framework Programme. Available at <http://ideas.repec.org/p/ess/wpaper/id847.html>

Extent of the problem. There is no full picture on the effects of geographical indications on protection of environment. Some studies show positives effects, but they have to be taken carefully as: 1) They cover a limited number of sectors, and evidence from certain more industrial productions like beer, bakery, fish or spirit drinks is missing; 2) They concern mainly PDO schemes, for which specifications include farming practices.

Nevertheless, PDO/PGI schemes could present synergies when addressing environmental problems as they call for regular local governance and coordination. The requirement or possibility to draft specifications which include minimum production criteria would permit to impose environmental conditionalities.

While there may be coincidences between PDO-PGI production and environmental values, the PDO-PGI instrument is not an environmental tool and care should be taken before introducing an additional obligatory rule into an already exceptionally complex scheme. It is clear that producers should be able to maximise benefits to the environment and like any farmer must respect environmental rules, especially in fragile and protected environmental zones.

The possibility to encourage producers to include environmental conditions and benefits deserves further reflexion and discussion with stakeholders.

2.1.2.5. Competition in the single market

The aim of the single market is the free movement of persons, goods and services and capital. PDO/PGI scheme can be seen as an exception to the free movement of goods and services, as it reserves to certain geographical areas the name used to describe a specific product. This is mainly justified on grounds of the protection of industrial and commercial property within the meaning of Art. 30 to the Treaty⁴⁰, but is also necessary to avoid misleading consumers, in the same way that many (non-registered) geographical names could not be used to describe products from another place.

The exception may apply to production, processing and in some cases to packing, labelling or other operations like slicing of a ham and grating of a cheese, if the quality of the product, or control operations justify it.

There is an increasing diversity on how to apply the restrictions vis-à-vis the requirements of the single market on those operations, especially packing, slicing, etc. that requires a case by case analysis by the Commission services to asses if the restriction is justified as an exception to the freedom to provide services in the single market. In addition, following ECJ judgments in the cases concerning Prosciutto di Parma and Grana Padano, restrictions have to be made public by the Commission if they are to apply across the Member States.

For example, operators willing to packing, slicing, etc. a product near the sales place will need to check the public information or specifications in order to verify if there is a restriction reserved on that operation. If the operation is to be made in the geographical area, they would not be able to supply product labelled with the PDO-PGI name to their purchasers.

⁴⁰ Another justification could be found in ensuring accurate information to consumers, as the system will prevent products not coming from the area to use a well known name.

A further issue that interferes with the free movement of goods is the restriction some specifications apply to the origin of raw materials. For a protected designation of origin (PDO) all the operations from production to elaboration of the final product, have to take place in the area, and as a consequence raw materials have to originate from the delimited area. For a protected geographical indications (PGI), only one step of the process (production, processing) has to take place in the area⁴¹. So raw material may come from anywhere outside the area.

Nevertheless, some PGI specifications do restrict the origin of place of farming to specific areas, on the basis of the impact that the quality of the raw material has in the final product.

The adoption of restrictions requires significant resources to the Commission services to be analysed as well as to be enforced in Member States. Enforcement bodies in every Member State have to ensure the enforcement of the protection of the name and the restrictions related to that product.

Green Paper Stakeholders say:

- Use of raw material of the region could be possible without justification (DE)
- Criteria needed for admissibility of restriction of origin of raw materials for PGI products (2 answers from academic organisations).
- It should be possible, without any justification, to restrict origin of raw materials to the PGI area, and if there is not enough production to extend the restriction to neighbour areas (bassins de production). This is justified by the territorial development objective that GI policy should have (some French respondents from meat sector).

Besides these two issues of conditioning and presentation and origin of raw materials, some other risks to the internal market may be linked to PDO and PGI schemes. **Dries and Mancini (2006)**⁴² have identified the following types of risks for the internal market:

Box 3: "Interaction of Quality assurance schemes with the internal and external market
Quality assurance schemes operate within the internal market..."

For agro-food products with a specified geographical name, particularly designations of origin, (but also agro-food products under other collective quality marks, for instance, Label Rouge in France), some degree of coordination is required between the stakeholders involved. This may entail coordination, both horizontally and vertically, in one of a number of forms. Producers and processors, while they may be independent firms, are linked in that they make a particular PDO product whose chief characteristics are set out in specifications. Research has shown the importance of coordination for traditional quality products, bringing out the various motivating factors (Boccaletti, 1992; Canali, 1997; Barjolle/Chappuis, 1999). The most frequent reason is the need, at the end of the processing stage, to arrive at a product with specific characteristics; this entails monitoring all along the chain. So a collective strategy is needed. Research based on transaction cost theory points out that, for products requiring a collective strategy, savings on transaction costs are more important than

⁴¹ The actual requirements are as follows:

PDO: Product must be produced and processed and prepared in the defined geographical area of production.

PGI: Product must be produced and/or processed and/or prepared in the defined geographical area of production.

⁴² Food quality assurance and certification schemes – stakeholder Hearing 11/12 May 2006 – Background paper p. 31.

savings on production costs, which are often limited on account of the differentiation strategy and the firms' location (Barjolle and Chappuis, 2000). This is especially the case when different links in the food supply chain are dependent on the specific quality of a product from an upstream stakeholder. Barjolle and Chappuis (2000) illustrated this with the case of cheese ripening, producing and dairy operations in Switzerland. Quality assurance schemes (QAS) can in this case reduce the transaction costs between the stakeholders by the establishment of framework contracts which incorporate a mechanism to provide the sufficient product quality for the downstream food chain.

In any analysis from the viewpoint of competition policy, it is important to remember that designations of origin are not linked to the size of the market for the product. A number of countries have applied designations of origin to products of all kinds, with widely varying production structures. That means that reference markets are very different, and so are production volumes.

From the analysis of a number of cases where competition authorities have intervened in member countries, a number of risks of anti-competitive practices can be identified:

(1) The risk of monopolistic cartels

In several cases adjudicated in EU Member States, the authorities found that groups had taken measures to control total supply. In most cases the total annual supply programme was accompanied by a detailed breakdown of output, through quotas allocated to producers. To ensure that producers kept to their quotas, penalty arrangements were in place. Direct price control measures were occasionally found, either in setting price ceilings for purchasing raw materials (above those ceilings, the consortium reduced the quantity purchased) and or in imposing minimum resale prices on distributors. Such behaviour may be an attempt to exert monopsony or monopoly power. Even when direct price control practices were not found, the final production price was consistently supported due to the overall restrictions on output.

In most cases the groups or consortia put forward three main lines of defence. They claimed a legal foundation for their power to control production. They also argued that supply controls were essential for quality control. Finally, they pointed to the exceptions which some competition regulations allow to the general ban on understandings to restrict competition.

(2) The risk of obstacles to market entry

The risk of obstacles to new operators entering the market seems significant. The competition authorities observed practices restricting access for new producers. In the case of the output plan adopted by the San Daniele Consortium, it was found that a firm which wanted to start producing ham using that name could apply to the consortium for a production quota. In no event could the quota exceed 3% of the total output of consortium members. Similarly, in the French red label, discriminatory measures were detected for the admission of poultry-breeders (OECD, 2000).

With designations of origin as defined and regulated within the European Union, the right is a collective one belonging to all those living in a geographical area, and cannot be transferred. The use of these concept may, in practice, lead to a risk of obstacles to market entry. In the case of designations of origin, the conditions of entry to producer groups with a geographical name are often set out in the group's own statutes; this leaves it free to set conditions that may not be consistent with the free play of competition. It is quite difficult to make a general evaluation on the possible risk of obstacles to market entry linked to the use of a designation of origin or of a certification mark. A case-by-case approach seems to be the most appropriate one.

(3) The risk of over-administration or over-regulation

It should be noted that excessive bureaucracy surrounding designations of origin can only be harmful for producers and consumers alike. It could greatly slow the registration process. Similarly, any administrative arrangements for products with designations of origin might provide producers and processors with insufficient stimulus. They might eventually associate the success of their product with the right to use the designation. As the designation itself becomes a hallmark of quality, there is a danger that the producer might not respond to market signals. The whole process might discourage innovation.

While coordination in a food chain under designation of origin is recognised to be important, there is still a risk that coordinating channels, and the agreements that result, will impede proper market operation. There is a danger that producers will push market prices up by cutting the volume of total supply. Placing ceilings on supply, and allocating quotas to producers, seems rather to be a way of overcoming structural failures in control systems. Groups of producers (consortia) state that production standards can be maintained only via ceilings on supply, rather than by other methods of quality control. It is noteworthy that most of the output plans criticised by EU competition authorities are based on historical or territorial criteria. Starting from a given reference year, total supply is allocated among producers on the basis of that year's quotas. Unless production quotas are

allocated on grounds of relative efficiency, consumers are likely to pay more because supply is held down and at the same time forgo the benefits that enhanced productivity would bring. Producers, compelled to stay within their quotas, lack the incentive to operate more efficiently. There may as well be an impact on the quality of the end product (...).

Extent of the problem: Restrictions authorised in the specifications of protected geographical indications and protected designations of origin may interfere with the internal market. Their adoption needs case by case analysis, as well as their implementation.

2.1.2.6. Intellectual property problems

Four types of problems have been identified:

- Differences in perception of the right to use and advertise on the use of PDO/PGI products as ingredients in processed products.
- Confusion in level of protection against other uses, notably: long usage, varieties and breed names, trademarks, generic, and continued/changing uses in future.
- No crystal clear criteria to assess generic character of a name.
- Enforcement applied differently among Member States.

(1) Differences in perception of the right to use and advertise on the use of PDO/PGI as ingredients

Legal position

Current Regulations on geographical indications (wine, spirits and agricultural products and foodstuffs) do not provide any specific guidance on how to deal with the identification and the advertising of PDO/PGI products used as ingredients in processed products. For example how to advertise in a label that a pizza contains a (or several) PDO cheeses, i.e. identified by their registered name(s) in the sales designation or other display material on the packaging of the product.

The protection provided to PDOs and PGIs⁴³ provides that the registered name shall be protected against (a) use of the registered name on a different product in so far as the name exploits the reputation of the protected PDO name, and (b) any evocation of the original product. In the pizza example, it could be argued that the PDO cheese name is being used in respect of a pizza (which is not covered by the PDO cheese registration) and that the intention of the reference to the PDO cheese on the packaging is precisely to "evoke" the original PDO cheese and benefit from the reputation of the PDO cheese. At the same time the cheese on the pizza is not in a form laid down by the specification as it has been partially processed, so whether referring to the pizza as a whole or only to the cheese on it, the product does not correspond to the specification of the registered PDO.

⁴³ E.g. Article 13(1) and (2) of Regulation (EC) No 510/2006.

Thus, on the one hand, it may be possible to argue that the use of PDO names as ingredients in processed products is already prohibited by existing rules⁴⁴. On the other hand, it could equally be argued that the PDO name is referring to the original product that (we assume good faith in this example) was the originating product and its use in the advertising of the pizza is acceptable under an assumption of "fair use".

Policy

Use of PDO/PGI products as ingredients in processed products represents an opportunity to extend outlets of PDO/PGI products and in many cases the use of these ingredients continues a long-held culinary tradition of using fine ingredients in prepared foods. In that sense, a majority of Member States consider that the use of PDO/PGI as ingredients in a further processed product creates more opportunities than difficulties⁴⁵. The identification of PDO/PGI products used as ingredients on the packaging of the processed products could also offer an opportunity for promotion of the name to a wider audience at relatively minor cost. Indeed no one seriously opposes either the use of PDO-PGI products as ingredients in processed foods, nor the reasonable use of the names in advertising on the labels. The policy issues that arise are:

- How to apply rules on not misleading the consumer?
- Should the producer of the PDO/PGI product have any explicit intellectual property rights over the use of the name on processed products, and hence control over use of the product?

Not mislead consumer

The reference to PDO/PGI products used as ingredients on the packaging of processed products can potentially cause difficulties for producers or consumers. For instance:

- There may be consumer confusion if the ingredients of a processed product include a PDO/PGI product and a non-PDO/PGI product of the same class. In such a case, the packaging of the processed product may induce the consumer to believe that the processed product uses only or mainly the PDO/PGI product as an ingredient whereas in reality the share of the non-PDO/PGI product in the particular type of ingredient may be substantial.
- The lack of guidance may also create an unlevel playing field for producers of similar processed products using similar ingredients if one of the producers provides unclear information about the precise significance of the PDO/PGI as an ingredient while other producers provide detailed information about the relative shares of the PDO/PGI product and the similar non-PDO/PGI product in the make-up of the processed product.

From the point of view of consumer associations (Evaluation of CAP policy on PDO/PGI – 2008), there is no evidence that labelling of PDO/PGI ingredients in processed products has led to confusion for consumers in Denmark, Spain, France, Greece, Germany, Hungary, Italy

⁴⁴ In this sense, see Hartmann, Reference to a protected geographical indication on a composite food product, 'With Spreewa'lder Gherkins' ('mit Spreewa'lder Gurken'), District Court Berlin, 23 August 2005 *Journal of Intellectual Property Law & Practice*, 2006, Vol. 1, No 5.

⁴⁵ Progress report from Working Party on Agricultural Product to the Special Committee on Agriculture on the Green Paper on agricultural product quality – December 2008. Commission prop. No 14358/08.

and Sweden. In the UK, no information is available on consumer perceptions of White/Blue Stilton cheese as an ingredient, which suggests this has not been a major issue.

In the framework of the Evaluation of PDO/PGI, no other problems have been reported by producers or consumer associations in the country case studies.

Legal arrangements between producers of PDO and processors

In the framework of the "Evaluation of the CAP policy on PDO/PGI" no ECJ and CFI cases were found which relate to PDO/PGI products used as ingredients in processed products. However, the case studies under that evaluation show that different approaches can be found in the Member States in relation to the identification of PDO/PGI ingredients in processed products:

- Only one Member State, Italy, has developed national legislation regarding the identification of PDO/PGI ingredients in the name and packaging of the processed products using PDO/PGI products as ingredients.
- In two Member States (Spain and the UK) a few agreements have been made between the producers' groups of certain PDO/PGI products and food processors using the PDO/PGI product as ingredients.
- In Germany, following a legal dispute, a temporary agreement regarding the reference to a PGI used as an ingredient on the packaging of a processed product was reached between producers of the PGI Spreewälder Gurken and a processor using the product as an ingredient.
- In some cases, producers have worked with manufacturers to agree the approach to labelling the products.
- In Italy, the two main Consortia (Parmigiano Reggiano and Grana Padano) have not encountered any problems relating to the labelling of ingredients on Italian-processed products, following the adoption of the law.
- In Spain, no instances have been reported of specific problems between producers of the Turrón de Jijona and producers using it as an ingredient
- In the UK, in the case of the voluntary approach for White/Blue Stilton cheese, there have been no disputes between producers of the cheese and manufacturers using White/Blue Stilton cheese as an ingredient.

Green Paper Stakeholders say:

Majority of respondents call for a framework to regulate the use of PDO/PGI as ingredients. On the other hand, other respondents, mainly processors, claims that use of PDO/PGI as ingredients should be free: licence agreement should not be the rule. The rules of Directive 2000/13/EC should be the only legal text applicable.

- Some organisations, for example the Association of European Regions for Origin Products (AREPO) propose legislation regulating both the use of the ingredient and the advertising of the ingredient on the label, designed to:

- give producer groups the right to authorise (and the right to prevent) the advertising of the registered name of the ingredient in a processed product.
- allow free use of the ingredient if there is no advertising (but under producer group surveillance). This would extend the property right from the name to the product.
- exercise producer group rights in cases where the ingredient is used in a foodstuff so that its characteristics are modified (e.g. by cooking). Controls could be carried out by the producer group and/or national authorities.

The EESC believes it is necessary for all stakeholders which are part of the applicant associations (protection consortia etc.) to agree on the criteria and parameters established regarding the GI-ingredient content required for the PDO and PGI labels to be used on the finished product⁴⁶.

Extent of problem: in theory, the lack of guidance on how to deal with the identification of PDO/PGI products used as ingredients in processed products may lead to consumer harm and detriment, and create an unlevel playing field between producers of processed products. However, the information and evidence reviewed during the Evaluation of the CAP policy on PDO/PGI and the declarations of the majority of Member States suggest that, so far, this does not appear to actually have been the case nor is it perceived as being the case. Moreover, it appears possible for PDO/PGI producers to come to a private agreement or arrangement on the identification of PDO/PGI used as ingredients with processors using their PDO/PGI products. Nevertheless, during the Green Paper consultations, several stakeholders asked for a framework to use and advertise on PDO and PGI when used as ingredients. Therefore, there may be need to provide specific guidance on how to deal with the identification of PDO/PGI products used as ingredients in processed products.

- (2) Confusion in level of protection against other uses, notably: long usage, varieties and breed names, trademarks, generic, and continued/changing uses in future and all these in translation

Current position based on Regulation (EC) No 510/2006:

When a name is proposed for registration as a PDO/PGI, existing users of the name are given an opportunity to object to the registration on the grounds that they use the name on products not covered by the registration proposed. These grounds are listed in Article 7(3), points (b), (c) and (d). Depending on the circumstances, the objection might prevent registration of the proposed PDO/PGI (which will then be rejected), the intellectual property right of a prior use and the PDO/PGI might coexist under certain conditions, the prior name may coexist for a temporary period of time, following which its use must cease, or the cessation of use might apply immediately from registration of the PDO/PGI.

The situation could be improved regarding the following aspects:

- the grounds for coexistence may appear unclear, particularly regarding some forms of intellectual property right;

⁴⁶ Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

- there appear to be some cases of prior usage where an objection cannot be filed even though the registration would prevent that usage. This does not allow such prior users the opportunity to defend their interests;
- the scope of protection of a PDO/PGI may cover names and usages that were not apparent — neither to the prior user nor to the PDO/PGI user — at the time of the application and publication for objection.

See Annex V for a summary of the types of uses, grounds for objection and possible outcomes in case of a conflict.

The regulations provide with different phase-out periods:

-- "adjustment period" may be granted to producers from the Member State where a PDO/PGI originates, if they can show a legal use of the name for at least the past five years before the registration (and have made that point in the national objection. It may not exceed 5 years and ceases when a decision on the registration of a name is taken.

-- a "transition period" of 5 years may be granted to enterprises established in the EU or a third country provided they have legally marketed producer that market and an admissible statement of objection has been submitted. Those enterprises may market within the EU the product under the protected name during that period, if they can show they have marketed legally the product in the market for at least 5 years before the date of publication for objection).

-- "super-transition period" of 15 years may be granted to identical names to the registered name, when it can be shown a legal use consistently and equitable since 24 July 1968 and the purpose of the use of the name has not been to profit from the reputation of the registered name and the consumer could not be misled as to the true origin of the product.

Is there a need to clarify or adjust any aspects of the rules laying down the rights of geographical indication users and other users (or potential users) of a name?

Green Paper stakeholders say:

About half of the contributions made clear that the current framework laying down the rights of geographical indication users and other users is sufficient. Different issues have been raised by the other half of respondents. Among the aspects for which clarifications have been asked most often, were:

- **the need to clarify the rights, duties and tasks of applicant groups.** This was done by several regional authorities, farming organisations, a trade organisation, many processing organisations, some individuals of the general public, academic organisations and quality organisations (within the category other). In this regard more specific items were asked to be clarified such as: the ownership of the intellectual property right of the geographical indication, the right to determine the volume of production, the right to determine the use of a geographical indication as an ingredient, the defence and protection of the geographical indication, the right to make certain operations obligatory in the area, the promotion of the geographical indication, the right to adapt the size of the logo to the specificity of the product. While the majority simply asked to clarify the issue, some farming organisations, regional authorities, individual consumers and quality organisations asked to give more powers to producer groups in relation to these issues. Several trade and processing organisations expressed against this.

- **Implementation of Articles 13 and 14 of Regulation (EC) 510/2006.** Some respondents (one national authority and two organisations from the category "other") have asked to better define the concepts on the scope of the protection. These two organisations (INTA and INBEV) stated that of the scope of protection extends to translations, evocations and indirect commercial use, that ability to search potential names by third party users of a designation is made much more difficult and thus decreases legal certainty. It was therefore proposed to bring the scope of protection for geographical indications in line with the scope of protection of trademarks.

ORIGIN considered there is a need to explain to national trademark offices and the Office for the Harmonisation of the Internal market (OHIM) not only the application of Articles 13 and 14 of Regulation (EC) 510/06 but also the Articles 44 and 45 of Regulation (EC) 479/2008 and articles 16 and 23 of the Regulation (EC) 110/2008. This organisation expressed that by virtue of these legal provisions, trademarks' applications identical or confusingly similar to a geographical indication must be refused.

A retail organisation (Carrefour) expressed concern about the refusal of trademarks with a connotation of label thereby referring to own brand quality label, because they potentially could be competitors to PDO/PGI quality labels.

INTA and INBEV and a national authority (NL) expressed some concern concerning the coexistence provisions of Article 14 (2) of Regulation (EC) 510/2006. These provisions could be read in a manner as to suggest that the use of a trademark filed long before the geographical indication application, but later than 1 January 1996 might be prohibited if the geographical indication had been protected in the country of origin at an earlier date. Respondents considered this would be a clear violation of the TRIPS Agreement, fundamental property rights guarantees and the basic principles of priority and territoriality. In this regard it was requested that the language of the coexistence provisions of Article 14(2) of Regulation (EC) 510/2006 and Article 23(2) of Regulation (EC) 110/2008 be amended so as to clearly reflect the priority principle enshrined in Article 16 TRIPS and the Paris Convention, and to bring it in line with Article 44(2) of Regulation (EC) 479/2008 and the previous provision of Article 14(2) under Regulation (EC) 2081/92 before the adoption of Regulation (EC) 510/2006. In addition it was suggested to make clear in the text of Regulations (EC) 510/2006 and 110/2008 that the beneficiaries of geographical indication protection are not entitled to object to the use of a trademark filed in good faith (or obtained by use, if available) before the date on which the application for protection of the geographical indication was submitted to the European Commission.

One farming and one processing organisation from Germany explained that Article 14 (2) of Regulation (EC) 510/2006 and article 44 (2) of Regulation (EC) 479/2008 should be more consistent.

Scotch whisky association expressed that for some earlier registered spirit names which have been listed in Annex III of Regulation (EC) 110/2008, the rights of other users might not have been properly weighted as they will not have gone through an objection or opposition procedure at EU level

Use of geographical indications as ingredients (this issue is treated more extensively under point below).

Stakeholders have also mentioned in the Green Paper consultation the need to **clarify rules for use of indication of origin, vis-à-vis geographical indications**, to avoid competitions between the 2 approaches. Some farming organisations (as COPA-COGECA) asked to define a clear borderline between trademark protection and geographical indication protection and suggested to limit the registration of trademarks containing geographical indication terms. A similar idea was expressed by a national authority (Slovakia) who wanted to have tighter rules for use of geographical names, especially by trademark holders. Some individuals from the farming sector asked to reinforce protection against trademarks that try to link themselves to geographical indications.

A consumer organisation highlighted that confusion arises when a trademark uses very similar or, identical terms as a geographical indication for a products of the same category (FR). Euromontana mentioned that it would be less confusing for consumer if only a geographical indication was allowed to use a geographical name.

Extent of the problem:

1. Difficulties may arise of not knowing scope of protection: matters as translation distant from original and evocation not understood until years later (the Court considered Parmesan was at least evocation).

2. Some potential problems:

- Language of some grounds for an objection do not coincide with the scope of protection: thus in certain cases it could be interpreted that a prior user has no ground under which to lodge an objection, although s/he may lose the possibility to use the name once the PDO/PGI is registered.
- Some grounds for an objection do not qualify as sufficient to prevent registration: the only result is cessation of use, while the objection may permit a limited transition period.

3. Some unclarities as to describe "similar" uses:

- "conflict" under criteria of Art. 7(3)(b): registration would be contrary to Art. 3(2): "a name may not be registered where it **conflicts** with the name of a plant variety ... and as a result is likely to cause consumer confusion
- "confusion" criterion: Art. 7(3): "actual risk of confusion"
- "similar", "evocation..." Art. 13 on protection

4. Complexity as to phase-out periods: complexities of "adjustment period" as well as "transition period" (which is often considered too short) and "super-transition period".

(3) No crystal clear criteria to assess the generic character of a name

In general usage, 'generic' is a term used to refer to a broad category of similar products, but that may be used to describe all of the products and brands within that category. Very often, a generic product name originates as the name of the most successful brand name in that category and enters common parlance to refer to all products with the same broad functionality and/or characteristics. In the case of geographically-linked products, a generic name is one which, although it relates to a place or region where a product was originally produced, has entered common usage to designate a category of products that do not necessarily originate in the region with the same name.

Under current Regulations, generic names cannot be protected as PDO or PGI⁴⁷.

Regulation (EC) No 510/2006 provides broad rules for establishing whether a name has become generic. According to Article 3(1) of the Regulation:

“To establish whether or not a name has become generic, account shall be taken of all factors, in particular:

- (a) the existing situation in the Member States and in areas of consumption;
- (b) the relevant national or Community laws.”

Furthermore, names which have been registered cannot become generic (Article 13(2) of Regulation (EC) No 510/2006). If a registered name contains within it a generic name for an agricultural product, the use of that generic name is permitted on an appropriate non-registered product.

Under repealed Regulation (EEC) No 2081/92 (Article 3(3)), the Council was required, upon a proposal by the Commission, to draw up and publish a non-exhaustive, indicative list of generics before the entry into force of the Regulation on 25 July 1993. Products' names on the list would have been deemed to be generic and not been able to be registered. The Commission made a proposal for a list of generics in 1996⁴⁸, but the required majority in the Council was not attained. The Commission withdrew the proposal in 2005⁴⁹, and no list has been agreed to date. The current Regulation (EC) No 510/2006, which replaced Regulation (EEC) No 2081/92, does not provide for a list of generics.

What exactly constitutes a generic name is a matter for considerable debate and has been a key cause of friction between Member States in the EU. Feta has been the most contentious name: Danish producers *inter alia* argued that Feta was produced in Denmark from the 1930's and at later dates in other European countries, and were of the view that it is a generic name. Feta was finally registered as a PDO in October 2002⁵⁰.

Similarly, the European Court of Justice recently ruled that it has not been established that Parmesan is a generic name and that only cheeses bearing the protected designation of origin (PDO) 'Parmigiano-Reggiano' can be sold under the denomination 'Parmesan'⁵¹.

Analysis of ECJ and CFI cases

⁴⁷ Article 3(1) of Regulation (EC) No 510/2006 defines a generic name as:
“the name of an agricultural product or a foodstuff that, although it relates to the place or region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or foodstuff”.

⁴⁸ Proposal for a Council decision drawing up a non- exhaustive, indicative list of the names of agricultural products and foodstuffs regarded as being generic, as provided for in Article 3(3) of Council Regulation (EEC) No 2081/92, COM(1996) 38 final.

⁴⁹ COM(2004) 542 final/3.

⁵⁰ Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ L 277, 15.10.2002, p. 10).

⁵¹ Case C-132/05: Judgment of the Court (Grand Chamber) of 26 February 2008 — *Commission of the European Communities v Germany* (OJ C 92, 12.4.2008, p. 3).

For the purposes of the "**Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)**" the following cases related to the generic status of products have been identified: Feta, Grana Biraghi and Parmigiano Reggiano. Considering that the PDO/PGI scheme has been in place for 15 years, the number of Court cases concerning the generic status of names is quite small.

Box 5: Case studies (Feta, Grana Biraghi and Parmigiano Reggiano)⁵²

Feta: In the dispute about Feta cheese, the ECJ had to decide on the criteria for determining a generic product. The Greek government had applied for registration of "Feta" as a PDO in 1994. Due to disagreement about the generic status of feta, the Commission conducted a comprehensive consumer survey and sought the opinion of the competent Scientific Committee. On this basis, it decided not to include feta cheese in its proposed list of generics, and registered Feta as a PDO.

Other Member States challenged the registration in the *Feta I* case before the ECJ.⁵³ In 1999 the ECJ annulled the registration because the Commission, in deciding whether 'feta' was a generic name, had not taken due account of all the factors listed in Regulation (EC) No 2081/92. In particular, it had not taken any account of the fact that the name had been used on existing products which were legally on the market and had been legally marketed for a considerable time in certain Member States, other than Greece.

The ECJ ruled that the contested registration of "Feta" PDO had to be annulled. Accordingly, the Commission started a new inquiry about the status of feta on the basis of a questionnaire sent to Member States. The information received was presented to the scientific committee, which in 2001 concluded unanimously that the name 'feta' was not generic in nature. In October 2002, the Commission again registered the name 'feta' as a PDO. This registration was once again challenged by certain Member States before the ECJ in the *Feta II* case.⁵⁴ This time, the ECJ held that the registration was valid. The Commission had taken all relevant factors into account, and several relevant and important factors indicated that the term had not become generic.⁵⁵

Grana Biraghi: In the recent *Grana Biraghi* case,⁵⁶ an Italian association of producers of Grana Padano cheese challenged the trademark Grana Biraghi, which had been registered as a community trademark. The association maintained that the trade mark was contrary to the PDO for Grana Padano cheese. The defendant claimed that the PDO protection only covered the expression "Grana Padano" as a whole, whereas the word "grana" was generic and its use therefore not contrary to the PDO protection. The CFI held that the word "Grana" was not generic in nature and therefore the trademark Grana Biraghi was invalid.

Parmigiano Reggiano: In this case, the Commission, after complaints from several economic operators, brought proceedings against Germany for failing to ensure on its territory the protection of the PDO 'Parmigiano Reggiano' against products designated as 'Parmesan' which did not comply with the specification for the PDO. The case concerned Regulation No 2081/92.⁵⁷

Germany argued that a PDO was only protected in the exact form in which it is registered, and that therefore the label "Parmesan" did not infringe the PDO 'Parmigiano Reggiano'. Further, Germany argued that 'Parmesan' had become a generic name for hard cheeses of diverse origins, grated or intended to be grated, distinct from the PDO 'Parmigiano Reggiano'. The ECJ rejected both arguments.

⁵² "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)" carried out by London economics 2008.

⁵³ Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark and Others v Commission*.

⁵⁴ Case C-465/02 – *Germany and others v Commission*.

⁵⁵ Case C-465/02 – *Germany and others v Commission*, para 70 et. seq.

⁵⁶ Case T-291/03 - *Consorzio per la tutela del formaggio Grana Padano v OHMI - Biraghi (GRANA BIRAGHI)*, judgment of the Court of First Instance of 12 September 2007.

⁵⁷ Case C-132/05 *Commission v Germany*.

While majority of Member States against, a minority of Member States and some stakeholders⁵⁸ still ask for a list of generics to be proposed by the Commission. Nevertheless if a list would have had the benefit of providing some clarity and reducing uncertainty over marketing and production⁵⁹, it would not provide certainty, on the names that could not be registered as PDO or PGI. As a matter of fact, any Member State or any natural or legal person directly and individually concerned could have sought the annulment of the list within 60 days of adoption under Article 230 of the Treaty or may have questioned or question in the future the validity of the list under Article 234 of the Treaty.

The issue of genericity of names is especially relevant to the names of cheeses. The proposal Commission submitted to the Council in 1996 was only containing cheese names. ECJ cases on genericity are mainly related to dairy sector, as Parmesan or Feta case. Answers of dairy sector to the question on genericity⁶⁰ in the Green Paper confirm that interest.

On the basis of a case by base analysis, stakeholders have proposed some following criteria:

- The name is considered generic according to a judgment of the European Court of Justice (EDA, ORIGIN, Belgium, and several regional and local authorities as well as farming and processing organisations);
- Length of use (regional authorities, farming organisations)
- Reputation no longer linked to the area
- The name has been considered generic in a bilateral agreement (EDA, Eucolait)
- Situation in the country of origin (Spain, Czech Republic, AREPO, Origin).

Argentina also asked in the consultation to take into account the translation of terms that might be generic outside the EU.

The following criteria refer mainly to cheese names:

- The name is registered according to Art. 13.1-2 of Regulation (EC) No 509/2006 on traditional specialities guaranteed (e.g. Mozzarella) (EDA, Eucolait);
- The name of the foodstuff is subject to a Codex standard⁶¹ (EDA, EUCOLAIT, Lithuania and others)

⁵⁸ Germany, Greece, Eucolait (Green Paper consultation 2008).

⁵⁹ Evaluation of the CAP policy on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) carried out by London economics, 2008.

⁶⁰ The question reads as follows: What criteria should be used to determine that a name is generic? p. 13 of Green Paper consultation on quality policy.

⁶¹ The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purposes of this Programme are protecting health of the consumers and ensuring fair trade practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organisations.

- The name of the cheese is mentioned in the footnotes of Regulation (EC) No 1107/96 (“the protection of the name X is not applied”); (EDA, several processing organisation industries)

Nevertheless a judgement of the European Court of Justice ruled that as regards a "compound" designation of origin the fact that there is no footnote in the annex to Commission regulation (EC) No 1107/96 (...) specifying that registration is not sought for one of the parts of that designation does not necessarily mean that each of its constituents is protected⁶².

- The name has been mentioned in annex B of Stresa Convention⁶³ (EDA, Eucolait).

In addition some stakeholders (EDA, Eucolait) have proposed a new criterion for registration, according to which applicant should prove the non-generic character of the name of the agricultural product or foodstuff for which protection is sought. International Trademark Association (INTA) opinion stresses also the importance to assess the absence of genericness during the GI registration procedure.

Finally, the EESC⁶⁴ recommends that "*Inter alia* in the light of disputes that have arisen to date, (...) creating more finely-tuned instruments for establishing more easily the longstanding existence and/or reputation of a name, such as an authority (or adjudication board) which could act as a buffer and/or provide oversight regarding potential PDOs within the EU Member States, or other such forums for out-of-court settlement".

Extent of the problem

Given the important role that certainty and a stable operating environment has in relation to financial planning and investment decisions, uncertainty as to whether any particular product name may be designated as ‘generic’ may lead to a loss of investment (e.g. required to meet the specification of a PDO/PGI, or in terms of investment in marketing of a sales name). Whereas, if there was absolute certainty about a list of generics, then producers of a sales name that was not on such a list would know that the name is not generic, and so they could proceed with confidence.

Therefore, the existence of a list would be unlikely to reduce uncertainty by much as legal challenges would still be feasible. The Feta case highlights the high public and private cost of such a challenge, whether challenging or defending generic listing.

That being said, disputes over the generic character of a designation are rare.

Additional criteria to assess the generic character of a name would be difficult to adopt, as they would be either general criteria (as the current ones) or specific for a precise group of

⁶² Judgement of the Court of 9 June 1998 in Joined Cases C-129/97 and C-130/97, OJ C 258, 15/08/1998 p. 3.

⁶³ International Convention on the Use of Appellations of Origin and Denominations of Cheeses, (*Journal Officiel de la République Française*, N° 5821), available at: http://www.admin.ch/ch/f/rs/0_817_142_1/index.html

⁶⁴ Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

products. In that case we could predict, following discussions in the Council on the list of generic, a difficult adoption of the criteria in the Council.

(4) Enforcement applied differently among Member States

Enforcement of the intellectual property rights of a geographical indication falls within the competence of Member States. The "Evaluation of the CAP policy on PDO/PGI" has shown a significant diversity (...) in the market surveillance. Only two Member States were identified as employing resources specifically dedicated to the protection of PDO/PGI names in the market place: in the first one, one official makes routine inspections of every supermarket on a monthly basis to detect fraudulent practices related to PDO/PGI products.

In the second, some enforcement activities are undertaken by regional authorities and inter-professional bodies representative of producers involved in each PDO/PGI. Inter-professional bodies have their own resources to survey the enforcement of the Regulation. In addition, other public authorities collaborate to enforce the regulation at issue.

In other countries the enforcement of the PDO/PGI scheme in the market place is typically undertaken as part of the general enforcement of Food law.

On the other hand, some producers complain about the lack of enforcement of the protection in other Member States and even in the Member State of origin. A Greek producer group mentions for instance that retailer's lack of enforcement where related to misuses (Survey to producers, 2007). Producers also mention the necessity to reinforce policy against counterfeiting and piracy.

Are any changes needed in the geographical indications scheme in respect of the enforcement of the protection?

A majority of respondents among farming organisations, regional authorities, individuals from the farming sector, processing organisations, consumer organisations, academic organisations and one retail organisation, expressed that there is a need for a better enforcement of protection (administrative enforcement) within and between Member States.

In particular, investigation procedures and sanctions of control bodies should be harmonised at EU level.

Different options in this regard have been proposed:

- Definition of EU guidelines;
- Inclusion of an explicit reference in Article 13 of Regulation (EC) No 510/2006.
- The creation of an EU structure, such as an European Agency for geographical indication to facilitate the management and the protection of GIs (both within the EU and in third countries). The example of European Patent Agency (located in Munich) was mentioned as well as some possible locations in existing agencies: OHIM (Alicante) or EFSA (Parma).

Some contributors stated the need for a clear identification of competent authorities in charge of protection. In addition, some respondents indicated cooperation between competent authorities and control bodies in different Member States should be reinforced.

Extent of the problem:

Non harmonised enforcement of intellectual property rights linked to geographical indications. The issue deserves more in depth analysis in order to assess impediments to the smooth operation of the internal market in the products marketed under the PDO/PGI scheme.

2.1.2.7. Other problems:

Possibility raw material is not farmed in the geographical area.

Regulation (EC) No 510/2006 and provisions of Regulation (EC) No 479/2008 and Regulation (EC) No 110/2008 do not provide any guidance on how to deal with information on the origin of raw materials used in PGI products.

A recent evaluation of Regulation (EC) No 510/2006⁶⁵, shows that premium value of PDO/PGI products lies in the association consumers make with specific raw materials and ingredients, artisan processes and aspects of product quality. The designation of origin of the product may lead consumers to infer that the raw materials and processing take place within the area⁶⁶. That being said, some exceptions to the PDO requirements are allowed⁶⁷.

In general, consumers do not raise concerns about the origin of raw materials. However, this might be related to their low knowledge of the PDO/PGI schemes and, in particular, of the issues related to the sourcing of the raw materials. Or they might not conceive that the raw material could come from outside the area of production of the GI.

Analysis of cases before the ECJ (European Court of Justice) and CFI (Court of First Instance)

The only court case at the European level concerning the origin of raw material in a PGI is the *Spreewaldgurken* case⁶⁸. The case considers whether the PGI is invalid⁶⁹, partly on the grounds that the designation leads consumers to believe that the ingredients (the gherkins) come from an area much smaller than that specified. However, the ECJ did not rule on the

⁶⁵ Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

⁶⁶ The actual requirements are as follows:

PDO: Product must be produced and processed and prepared in the defined geographical area of production.

PGI: Product must be produced and/or processed and/or prepared in the defined geographical area of production.

⁶⁷ For example, the PDO “Prosciutto di Parma”, must be produced in the defined area in the Province of Parma which includes land in the Province of Parma (in the Region of Emilia-Romagna, Italy) lying within 5 kilometres south of Via Emilia at an altitude of no more than 900 metres, defined to the east by the Enza river and to the west by the Stirone river. However, the raw material originates in a geographically wider area than the production area, including all municipalities in the following Regions: Emilia-Romagna, Veneto, Lombardy, Piedmont, Molise, Umbria, Tuscany, Marche, Abruzzi and Lazio (Italy).

⁶⁸ C-269/99 - *Carl Kühne GmbH & Co. KG* and others v. *Jütro Konservenfabrik GmbH & Co. KG*.

⁶⁹ The applicants were producers of pickled gherkins competing with the defendant, who used the PGI on its products. The applicants sought an order in a German court prohibiting the defendants from using the PGI. The defendant argued that the PGI registration was invalid.

origin of the raw materials used in the PGI, and left the decision on this point to the courts of the Member States.

Situation in Member States

In some Member States consumer groups⁷⁰ have expressed concerns that consumers are being misled with regard to the origin of raw materials. This is detailed in the box below.

Box 7. Case studies

Italy

The retailers and Consorzi interviewed for the Italian case study believe that most consumers do not know the characteristics of the product specifications for PDO/PGI products. As a consequence, few consumers know the characteristics that PDO/PGI products “should” have. This is especially relevant for PGI products where the origin of the raw materials (in particular beef) may be distant.

In Italy, the case of Bresaola della Valtellina PGI (a processed meat product) has recently come to public attention. The product is being produced by some firms using meat from Bovine-Zebu in Brazil. According to these firms, the Brazilian meat has specific characteristics which are suitable as an ingredient for the final product.

The Slow Food Association and a farmers’ union (Coldiretti) claim that this is an important example of consumers being misled because they have no knowledge of the true origin of the meat. Despite this, only one newspaper (La Repubblica) has dedicated a full page to the topic while other newspapers have given it much less coverage.

However, the Consorzio della Bresaola della Valtellina has not concealed the origin of the meat. On the website of the Consorzio it states: “Beef meat used in the production process, mostly from South America, is carefully selected by Bresaola’s producers and obtained only from wild living animals, the most suitable for the production of Bresaola della Valtellina”.

The issue of information on the origin of ingredients in PGI products also arises for other processed PGI products from Italy. In the cases of Speck dell’Alto Adige, Mortadella di Bologna, Zampone di Modena and Cotechino di Modena the origin of the raw material is not defined in the product specifications.

Germany

The Federation of German Consumer Association (VZBZ) and the producers’ group of Spreewälder Gurken stated that there is no evidence that consumers were confused as a result of the specification of origin of the Spreewälder Gurken (and the fact that 70% of the raw materials must be produced within the area).

However, VZBZ has criticised the PGI more generally for misleading consumers. In its view, the PGI suggests a regional origin of a product whose raw material ingredients might in reality come from many other parts of the world. In a position paper, the VZBZ describe some products where this is the case:

- “Nürnberger Lebkuchen” is a bakery product which is processed in Nuremberg but contains ingredients sourced from many parts of the world.
- For “Schwarzwaldforelle” it is not required that the trout be raised and fished in the Black Forest region;
- Meat products such as “Schwarzwälder Schinken” or “Ammerländer Schinken” use meat from different regions and only the processing has to take place in the defined area in order to be eligible for PGI protection.
- In the case of Lübecker Marzipan, the VZBV expressed the view, after consulting all consumer organisations at the State level, that there is no evidence of consumer confusion, reflecting the fact that consumers know that almonds do not grow in Germany.

⁷⁰ Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

Belgium

The consumers' association interviewed in Belgium (Test Aankoop) believes that consumers are misled when it is not indicated whether at least the most important raw material ingredients in PGI products originate from the designated region of production.

Hungary

The issue is that a number of paprika producers were selling a mixture of Hungarian and South American paprika under names or labels incorporating the paprika producing regions' names. While consumers appear to have been unaware of this fact, it became a major issue in Hungary when aflatoxin contaminated paprika from South America was used by the producers. At issue was the combination of the use of an unsuitable product (the South American paprika) and the use of an origin label which misled consumers to believe that the paprika they bought was from the region mentioned on the package. This example is not directly concerned with the lack of information on the origin of raw materials in PGI products, as Szegedi Fűszerpaprika Öremény is applying for a PDO, not a PGI. However, it highlights the potential consumer protection that a PDO provides, because if the PDO is granted all paprika used in the product will have to come from the region, which would not necessarily be the case if a PGI were given instead.

In Spain and Greece, consumer associations were asked about this subject but they did not raise any concerns. Concerns are limited in Denmark, Sweden and the United Kingdom because consumers have a very limited knowledge of the PDO/PGI schemes. Consumer associations were also contacted in France, but no information was provided on the subject.

The issue of non-information on raw material origin used in PGI products is complex. The impact of such lack of information depends entirely on whether the consumer subjectively believes that all the ingredients in a PGI are from the area named in the product's name because either some of the ingredients can or are actually sourced in the region or is actually aware of the fact the ingredients from outside the region can be used.

In the case of the Lübecker Marzipan, consumers do not expect that the key ingredient, namely almonds, is sourced in or around Lübeck.

The Nürnberger Lebkuchen is another interesting case in that the product name does not refer to an agricultural (or close to agricultural) product but a product which is clearly a "manufactured" product as is the Lübecker Marzipan. In these two cases, consumers may not necessarily assume that the ingredients are from the region.

In most of the other cases cited above (Spreewälder Gurken, Bresaola della Valtellina, Speck dell'Alto Adige, Mortadella Bologna, Zampone di Modena, Cotechino di Modena, Schwarzwaldforelle, Schwarzwälder Schinken and Ammerländer Schinken), the PGI could be interpreted by consumers as suggesting that the raw materials all come from the region as the product is much closer to the agricultural stage of production than the more "manufactured" products cited above.

Interestingly, however, the Federation of German Consumer Association (VZBZ) seems to be of a different opinion as they do not view the PGI Spreewälder Gurken as problematic while the Nürnberger Lebkuchen PGI is judged to be misleading for consumers.

What are the advantages and disadvantages of identifying the origin of raw materials in cases where they come from somewhere else than the location of the geographical indication?

Green Paper Stakeholders say:

As a general trend, all sectors, except processing organisations, are in a large majority **in favour** to the identification of origin of raw materials. Consumers' organisations had a favourable response for identification of raw materials for PGI processed products.

Advantages mentioned are:

- Better consumer information and awareness.
- Transparency criteria and traceability.
- Useful only for main ingredients linked with opinions on identification depending on the % of raw materials used (ceiling) suggested by farming org., consumers, think tank.
- Additionally individual respondent pointed out the importance to identify the terms 'bassin de production' and 'ancrage territorial' mentioning practices of raw material sourcing wider than defined GI area.

Some respondents suggested to make labelling voluntary. Some farming organisations and consumers underlined that **only EU/nonEU** identification should be used, backed individually by regional authority and think tanks

The processing organisations are in a large majority **against** identifying the origin of raw material. Among the other sectors a minority (sometimes large) expressed disagreement.

Main **disadvantages** were:

- Confusion of consumers: a few suggest as disadvantage that consumers could have a negative reaction to products with geographical origin and raw material identification coming from another area (farming organisations, consumers, think tanks).
- Excess of information on the label, and limited space (authorities, retail sector and academic/think tanks).
- No benefit for the "quality concept".
- Difficulty to source raw material from GI area (authorities, farming organisations, trade)
- Increase of costs is mentioned by a number of contributions (authorities, consumers, think tanks) with retail thinking that higher costs will be a result of changes in packaging as the source of raw material change or because of restrictions on source as a result of identification.

Extent of the problem

The bottom line is that the non-information on raw material origin used in PGI may, in some cases, be a source of confusion for consumers.

However, unless comprehensive market research studies are undertaken before the registration of a PGI (in which consumers' views on their perceptions of the characteristics of the PGI, including raw material origin, are sought), it will be next to impossible to determine whether non-information on the origin of the raw material used in the PGI may mislead consumers.

A case-by-case approach to carrying out this work, before the registration of every PGI, may take into account that such consumer surveys could be very costly and time-consuming to undertake.

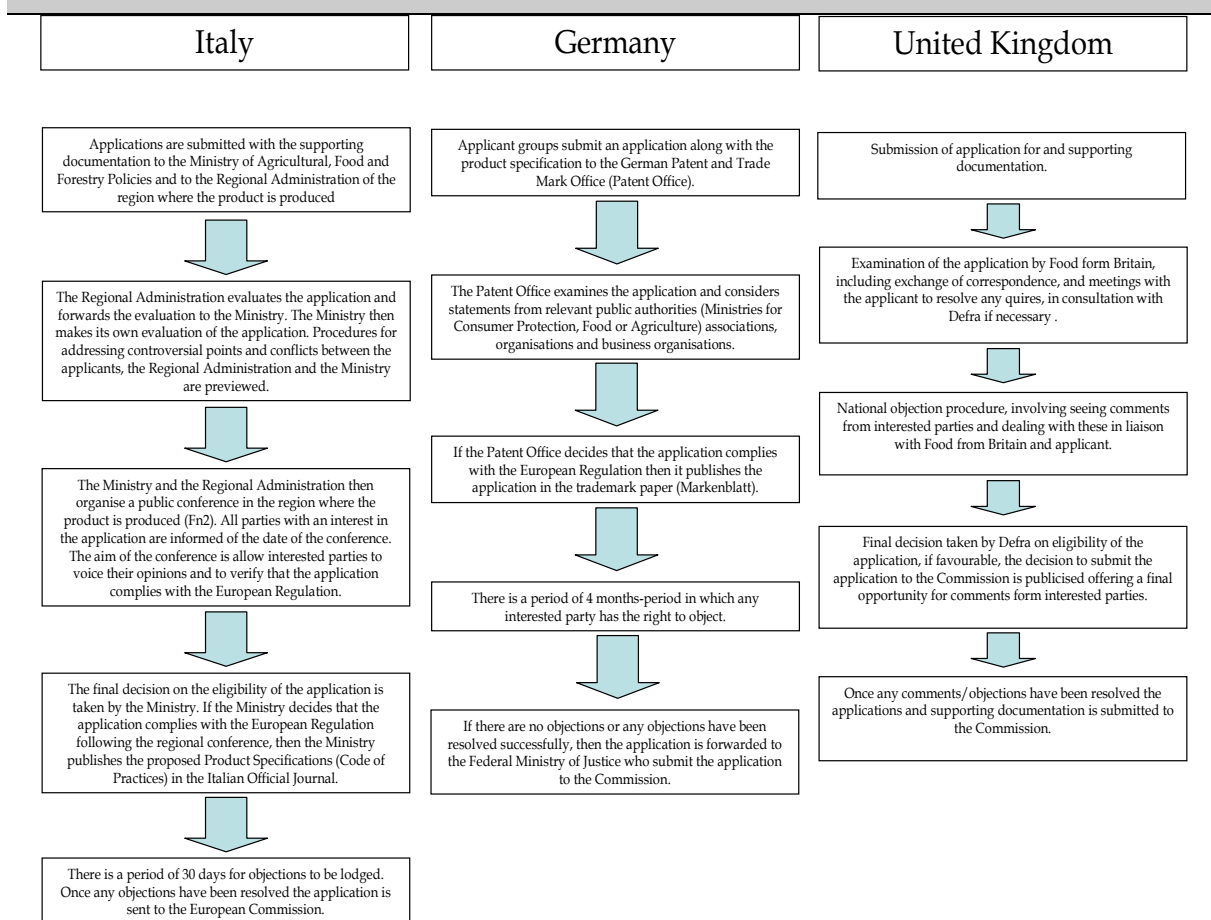
Moreover, as traceability and sourcing of food ingredients becomes an increasingly important subject for consumers, the issue of non-information on raw material origin used in PGI products may become more important in the future.

Long procedures at national level as well as EU level.

Domestic procedures for registering a name as PDO or PGI involve a number of steps for which length can vary between Member States (see box below with the examples of Italy, Germany and the United Kingdom):

- Submit application to relevant national institution;
- One or more examinations at national level;
- Objection period following publication of application;
- Submission of the application by relevant national authorities to the European Commission.

Box 8 National PDO/PGI registration processes in Italy, Germany and the United Kingdom⁷¹



As an example we can mention the timescale of objection, Regulation (EC) No 510/2006 only specifies that a reasonable period should be provided to allow for any potential opposition, but there is no clear guidance on what constitutes a reasonable period. As a result there is great disparity in the time period provided by MS for initial objections following publication of the application. It ranges from one month (Belgium, Bulgaria, Cyprus, Finland, Italy, Lithuania, Portugal and Slovenia) to five months in the Czech Republic.

So, the whole process of preparing the application, examining it, publishing for objection and solving the objections if any, and transmission to the Commission vary between the Member States and can take in some cases several years. This diversity may be higher if we take into account national procedures for adoption of protected names in wine and spirits.

Concerning the EU, **implementation of the three regulations on protection of geographical indications** (Council Regulation (EC) No 510/2006 on the protection of

⁷¹ Following research conducted on the "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)". The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

geographical indications and designations of origin for agricultural products and foodstuffs, Council Regulation (EC) No 479/2008 on the common organisation of the market in wine and Regulation (EC) No 110/2008 of the European Parliament and the Council on the definition description, presentation, labelling and the protection of geographical indications of spirits drinks), present strong convergence on basis principles (see table 5 below) but also remarkable differences.

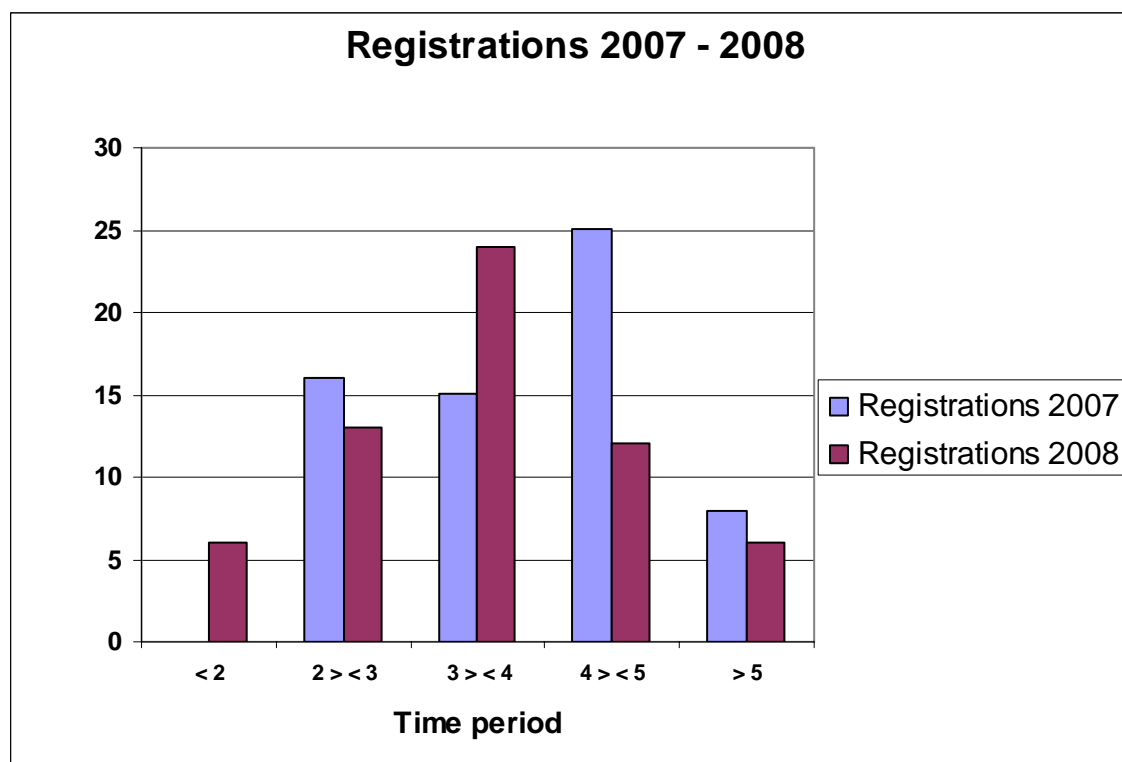
Table 5: Similarities and differences between Regulations (EC) No 510/2008, (EC) No 479/2008 and (EC) No 110/2008

	Agricultural products and foodstuffs	Wine	Spirits
<u>Similarities</u>			
Definition of geographical indication	Yes	Yes	Yes
Definition of designation of origin	Yes	Yes	No
Scope of protection	Yes	Yes	Yes
Administrative enforcement of protection	Yes	Yes	Yes
Relationship with trademarks (although an inconsistency in effective dates of protection persists in Regulations (EC) No 510/2006 and (EC) No 110/2008).	Yes	Yes	Yes
Rules on coexistence with homonymous names	Yes	Yes	Yes
Creation of a register	Register maintained at Commission premises in Brussels.	Electronic.	Annex III of regulation for spirit drinks
Availability of specification (website).	Yes	Yes	Yes
Existence of a two steps registration procedure, an objection procedure, and a (s) cancellation procedure	Yes	Yes	Yes
Maximum delay for examination	12 months	No delay	12 months
<u>Differences</u>			
Objection	6 months	2 months	6 months
Appropriate consultations after objection	Yes, 6 months	No	No
Coexistence of national and EU protection system	No	Yes	Yes
Harmonisation of national procedure prior to submission	Yes	Yes	No
Comitology	Yes, regulatory	Yes, regulatory	Yes, regulatory under EP scrutiny

Due to the recent adoption of regulations on wine and spirits, no data on the length of procedures at EU level for applications is available. As regards agricultural products, already 825 names have been registered and around 300 are under scrutiny. The length of the procedure for a non problematic application (this without any objection) currently varies

between 2 years and 4 years, depending inter alia on the quality of the initial application. For 85% of applications registered in 2008 length was less than 4 years, while in 2007 it applied only to 50%.

Graph 1: Length of the EU procedure for applications to Regulation (EC) No 510/2006



Producers groups complain regularly about the length of procedures both at national level and at EU level. In a 2007 Survey made by the Commission to all the producer groups, the issue of long procedures was raised by producers groups from Portugal, France, Germany and Italy. Excessive bureaucracy is also mentioned by several Greek and Portuguese producer groups.

The effects of the length of procedure at EU level are limited by the possibility to grant national protection during the procedure, as well as priority vis-à-vis any trademark application.

Opinion⁷² of the European Economic and Social Committee on geographical indications and designations (own initiative), issued in March 2008, issued some recommendations on the efficiency of PDO/PGI schemes, that include the need to have clearer and simpler application procedures.

During the Evaluation of the PDO/PGI regulation (only applying to Regulation (EC) No 510/2006 on agricultural products and foodstuffs), the review of the implementation of the PDO/PGI scheme has not provided evidence to suggest that the PDO/PGI regulatory

⁷² Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

framework and objection procedure is unclear *per se*, but the implementation of the regulation at Member State level varies across the EU.

In fact, there is significant diversity in terms of the institution responsible for promotion and administration, the level of support and guidance available for the application process, the time period allowed for objections at national level and the control of compliance and enforcement.

The evidence from the review of the implementation of the scheme, done under the Evaluation of PDO/PGI schemes, suggests the following issues would merit further consideration:

- *Availability of data at the Member State level*: the lack of comprehensive data on the number of PDO and PGI producers, the size of the agricultural land devoted to PDO/PGI production, the value and volume of production and the value of sales is a serious constraint to the monitoring and evaluation of the scheme at national and EU level.
- *Active promotion of the scheme and support for the applicant*: where national or regional institutions with a remit to promote the agri-food sector are involved, the level of support tends to be higher than when other bodies e.g. those responsible for intellectual property rights, are used. A secondary issue which can affect support is the resource available to the national body and the cultural attitude to regional quality food.
- *Control of compliance not harmonised*: there are important differences among the bodies responsible for certification and the degree of involvement by public and regional authorities.

Extent of the problem

There is significant diversity in terms of time period allowed for objections and other steps of the procedure at national level. Diversity increases if we consider the three systems of registration of geographical indications applying to agricultural products and foodstuffs, wine and spirits.

The extent to which this is a problem may be limited but, to guarantee a level playing field among producers of PDO and PGI products across the EU, there may be a need for a minimum harmonisation of the national and European application procedure.

Weak and unclear protection of intellectual property rights outside the EU

The TRIPS agreement provides for minimum standards of GI protection and the EC strives to enhance the protection of EU GIs in third countries via bilateral agreements. TRIPS provides a strong protection (under Article 23) to wines and spirits independent from any condition that the use of the name would mislead the consumer as to the true origin of the good. The use of the GI name is prohibited even in translation, or where the true origin of the good is indicated or even if it is accompanied by expressions such as "kind", "type", "style" or "imitation". TRIPS provides also protection (under Article 22(3)) to agricultural products and other goods, but only prevents the use of the indication to the extent that such use would mislead the public as to the geographical origin of the good.

Multilateral negotiations to ensure higher protection also to agricultural products and other goods are going on in Doha Development Agenda. Negotiation concerns also the establishment of a register designed to facilitate the protection of geographical indications for wines and spirits. Protection of EU agricultural GIs (for non wines and spirits) through bilateral agreements is a recent phenomenon.

Negotiations on an Anti-Counterfeiting Trade Agreement (ACTA) were launched in 2007 with several countries⁷³. Those negotiations are still going on and there is no agreed text at this stage. Areas for possible provisions include: legal framework (border measures, civil enforcement, criminal enforcement, internet, distribution and information technology), international cooperation and enforcement practices. In that context, the scope of intellectual property rights to be covered by the agreement is still debated. While some countries call for this scope to be limited to copyright and trademarks, the EC is in favour of a broad scope, covering all intellectual property rights, including GIs.

Some EU geographical indications face usurpations and misuses in some Third countries. This may result in problems concerning:

- Access to those markets, when intellectual property rights are already granted to that name by a trademark for example.
- Cost for fighting against the appropriation or illegitimate use of the name by third parties (courts cases).
- Loss of potential market shares in those countries when the name is considered generic.

Stakeholders have identified problems they face when exporting products bearing geographical names protected as PDO and PGI in the European Union. There is a general concern of the lack of extended protection of GI in third countries, mainly expressed by farming organisations and some Member States. Dairy Australia mentions that international trademark and fair trading regimes provide enough protection for brands.

Problems are:

1. The first set of problems concerns the **protection provided by TRIPS**. It is mentioned that provisions aiming to protect GI names seem to be insufficient or are ill-implemented in some third countries. When existing, provisions can take the form of trademark law, *sui generis* law or case law and operators need to use one of these systems to ensure protection (CNIV). It was nevertheless recalled that the trademark instrument could be useful to grant protection during the negotiation of the binding register (Qualifica PT, Asociación española de denominaciones de origen).

Stakeholders underline difficulties to enforce the protection to be provided by TRIPS, mainly because it is complex to prove the GI "status", either before local courts or enforcement body. Main difficulties appear in countries with little case law on the issue of intellectual property rights linked to GI's

⁷³ The goal of the ACTA negotiations is to provide an international framework that improves the enforcement of intellectual property right (IPR) laws. It does not purport to create new intellectual property rights, but to create improved international standards as to how to act against large-scale infringements of IPR. See The Anti-Counterfeiting Trade Agreement (ACTA), *Fact sheet revised January 2009*: http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142039.pdf

In addition infringements of GI rights are also difficult to prove. Obstacles are:

- Difficulty to identify the infringer, to provide evidence of infringement and to get local police or administration to act. As to the case law, difficulties are raised as to under trained judges, little case-law, unclear procedural law and low level of sanctions.
- Strong economic burden to sue third parties in third country courts.

The proofs to be provided by the owners of GI rights. Nevertheless, there are less difficulties if the GI at stake is already registered or protected in that country.

Major problem is also the low level of protection provided by TRIPS (especially for products other than wine and spirits), and that the protection is reduced by the scope of exceptions enshrined in Article 24. Infringements often refer to those exceptions to the protection of a GI under TRIPS agreement. For example it has been mentioned use of comparative indications such as Stilton style.

2. The second set of problems is the relation to **trademarks**. Some operators may for example face difficulties due to the registration of a trademark (often by competitors) in the third country market, which may prevent the GI from being protected or even used in that market. This is due to the fact that some third countries apply "first in time first in right" principle.

3. The third set of problems refers to the **generic** use of the protected name or its translation (mentioned by several respondents, such as ORIGIN and Wine and spirits trade association from UK). It was also mentioned that lack of protection in third countries increases the risk that names become generic.

4. Problems related to **counterfeiting** have been often mentioned. This problem has to be considered also under health protection perspective, as it was mentioned by spirit sector. It seems to be relevant to SMEs that dispose of weak resources to ensure protection.

5. Finally it was mentioned that the European Union does not sufficiently **enforce bilateral agreements**, (HU, Istituto di diritto agrario).

Argentina mentioned that many EU Geographical indications are presently generic terms in third countries, as results of European immigration. It was also mentioned that the main problem for EU GI's is that they are not competitive;

Some respondents, mainly from Italy (as well as CIAA and ATLA-FR), have also mentioned misuse or deceptive presentation of place of origin of the product, as to European Member states.

Beside the intellectual property problems, stakeholders have also pointed out the lack of understanding of the "GI concept"

Some stakeholders, mainly from France, were also surprised by the fact that EU regulations on GI's is open to third countries and no reciprocity is guaranteed in majority of third countries.

It is useful to consider the relationship between domestic action and the international protection of GIs. By adopting one of the different legal means, a country is signalling where

it would locate itself in the wider debate concerning international protection of GIs. Thus, the wider international ramifications of policy choice of domestic regime should be considered.

Extent of the problem: In order to fully develop the potential of the GI-system in third country markets, the objectives of current Regulations are insufficiently realised.

Overall conclusion on the problem definition

The core problem can be identified in a partial legislation that does not cover all the aspects the policy intends to address.

Moreover, other problems of essentially a technical nature have also been identified, including:

- uncertain impacts on rural economy and environmental sustainability;
- inadequate returns for the farmer and producer participating in a scheme;

These problems raise the question on the objectives, that are presently not fully defined and not hierarchised;

- inclusion of unjustified restrictions on the single market in product specifications;
- divergent application of controls

Resulting from the legislation being implemented in a diverse way, both with regard to application procedures and enforcement of the intellectual protection.

- confusion in the extent of intellectual property protection provided under the legislation, including conditions under which a name can be used as an advertised ingredient in another product and criteria to assess the generic status of a name;

Finally, protected geographical indications and protected designations of origin have encountered problems on the visibility of the scheme. The European symbol and the mentions, created to be used on the packaging of products bearing the registered names have not been used significantly. In addition only (% of European consumers is able to recognise or distinguish the European symbols.

A schema on drivers and effects is presented in Annex II.

2.2. What are the underlying drivers of the problem?

1. As **globalisation** spreads, European agricultural production faces a risk of homogenisation to respond to the growing competition in the market place. One visible effect is a threat to the diversity of local products. But in response, globalisation may raise opportunities as it gives increasing priority to traceability systems (Wilkinson, 2005)⁷⁴.

⁷⁴ Wilkinson, John (2005), Challenges and opportunities for GI markets (SINER-GI Parma, 21-22 June 2005): http://www.origin-food.org/2005/upload/meetings/SIN_WILKINSON_lecture_Parma.pdf

2. **Competition** is the main driving force behind any competitive market place, as it forces operators in the supply chain to react to changes in behaviour of the rest of the chain (Dries and Mancini, 2006).

Competition puts also strong pressure on the market for the maintenance of market share and for controlling the added value of the products. In that perspective it has to be mentioned that one of the most important development in the food supply chain in the past decades has been the shift of power away from producers and processors to retailers. To face competition, retailers implement practices to lower cost and increase efficiency:

Imposing standardisation that raises concerns about loss of products diversity and exclusion of smaller supply chains;

Concentrating bargaining power in the retail sector may also force upstream suppliers to produce and sell differentiated products. (Dries and Mancini, 2006).

These demands rising from the market, with the trends pushed forward by competition and globalisation, are resulting in a multiplication on the use and the creation of symbols to communicate features of products. Retail also adopts personalised "source of origin" marketing. This favors products where quality is clearly defined at the source and in terms of its specific process (Wilkinson, 2005). The geographical indications scheme is used in that context as a marketing strategy.

3. In parallel, the **demands of the market** are diverse and multiplying. Consumers in many parts of the world are demanding taste, tradition, origin and authenticity in their food, as shown in several studies undertaken by Siner-GI⁷⁵. This increases potential for export for European PDO/PGI producers.

Following this trend, opportunities may also rise for value-added products, like geographical indications mainly in the market of 27 Member States, but also through exports to new markets.

New and evolving demands have also been rising lately from society. This applies in particular to concerns on the preservation of diverse local and traditional products and with the requirement that agricultural production preserves environmental resources (like water), landscapes and biodiversity. In general, it is assumed that besides the classic contribution to economic and social dynamic of rural areas agriculture has to play additional societal roles in preserving European territories.

4. Consumers' demands are also facing changes as an increasing number of consumers call for additional reliable **information on food relating to the origin**, other demand for differentiated products, i.e. origin products or products obtained following traditional methods, other ask for guarantees on the method of production or the provenance of the products. From the perspective of third countries, primacy of food safety encourages reconnection of product to conditions of production (traceability) but also imposes new minimum standards (HACCP, ISO) (Wilkinson, 2005). There is also an increasing interest from public authorities, consumers and retailers to provide more information on the products, beside the information on composition, like on health and nutritional value.

⁷⁵ <http://www.origin-food.org/2005/base.php?cat=30>

2.3. Who is affected, in what ways and to what extent?

- (a) Producers of agricultural products with a link with geographical origin is the main population concerned by the problem. They are concerned as they:
 - Invest in order to comply with the rules of the specifications (rules on production, labelling, conditioning and establishment in the defined area),
 - Sustain costs of control/certification before placing the product in the market (see Annex VI).
 - Are affected by the delay in the procedure to register the name (both at national and EU level).
 - As beneficiaries and right holders of the intellectual property rights linked to the geographical indication, they are concerned by any lack of enforcement of their rights.
- (b) Other operators for which the right of use of a name has been limited or denied are affected by long procedures of registration and legal uncertainty during the process.
- (c) Other operators of the chain like food industry (users of products bearing a geographical indication as ingredients), operators doing conditioning activities and retailers.
- (d) Consumers are concerned as they are the final users of the product bearing a PDO/PGI. Consumers are also concerned as to the information failure due to asymmetric information.
- (e) Rural population is also affected through the weak revenue of producers.
- (f) Member States since they:
 - sustain the burden of preparing and adopting the applications
 - ensure administrative enforcement of the protection for all the products present in their markets corresponding to the names protected.
 - ensure in some cases the control of compliance of specifications.
- (g) European Commission which sustains the administrative burden of examining applications and registering the names.

2.4. How would the problem evolve without a change in policy?

The situation, without any new or additional EU intervention would evolve as follows:

Economic aspects

a. Producers. As added value and profit will not be equally distributed along the chain (see previous part 2.1.2.3), revenue of producers could weaken. Higher production costs for

PDO/PGI products may then not always be compensated by the premium price in the market. It is likely that producers will go out of the schemes.

The long delays in the application procedure (both on national and EU level) will continue to discourage certain producer groups from making applications, and weaken property rights associated to the names.

Due to the weak protection of intellectual property rights in some third country markets for EU geographical indications, some producers under registered names will continue to experience a loss of market opportunities in third countries.

b. Burden for Member States and for EU administration. There would be an increase in the number of applications submitted by Member States and third countries as well as in the number of registered names, for agricultural products/foodstuffs, wines, aromatised wines and spirits. Member States which recently became members have an arrear to make up and (producer groups of) third countries have shown an interest in the system (China, India, Thailand) which will lead to individual applications from producer groups. It is expected to have 400 more names registered as PDO/PGI by 2012.

In addition, under the recently adopted Regulations (EC) No 479/2008, protected wine geographical indications and designations of origin shall submit a technical application in order to confirm the protection. New wine names will also be subject to the submission of a technical file.

Under recently adopted Regulation (EC) No 110/2008 on spirit drinks, majority of 325 protected names mentioned in annex III of the regulation will likely submit a technical application in order to confirm the protection.

The number of names to be protected under bilateral agreements (negotiations currently going on with Georgia, Ukraine, Korea, Switzerland, etc.) may also increase the list of GIs to protect in the EU;

c. Simplification

Alongside the increasing number of applications, the existence of three legal frameworks and three registers will lead to confusion for users, producers, consumer and third country partners. In addition, the management of four different systems (with aromatised wines) may multiply administrative burden for EU and national administrations, and lead to development of specific rules; It will also increase risk of inconsistency between the existing legislations.

d. Intellectual property rights

The different level of enforcement and control on the specifications in Member States and third countries could undermine the credibility of the GI-systems. This would lead in turn to a loss of confidence among producers, consumers and operators.

Intellectual property rights may also be a threat if no clarifications are added to some aspects of the relations with other uses of names, generic character, etc.

Increase of activities reserved to the operators located in the limited area will increase the risks of creating barriers to the free movement of goods and freedom to provide services in the single market.

Social aspects

Growing international competition will lead to further disappearance of products typical for certain regions, which will result in less diversification on the market.

As to consumers, in case of some products referring to a PGI, consumers may continue to be confused when origin of the raw materials is not from the area.

From the 1st of May 2009 it will become obligatory for agricultural products and foodstuffs originating in the Community marketed under a registered name, to use on the labelling the indications 'protected designation of origin' and 'protected geographical indication' or the Community symbols associated with them. As mentioned above, the evaluation study showed that only 8% of shoppers in 2008 recognise the PDO or PGI symbol. Only about half of them was able to identify that the symbols mean the product is produced in one specific area. In case of a no policy change, consumers may remain confused because of a lack of information on the schemes and the symbols.

Environmental aspects;

As there is no specific requirement as to protection of environment in PDO/PGI schemes, it is difficult to assess the impact on environmental resources if no change in policy is addressed. With current policy overall environmental impacts would depend on the impact of each PDO/PGI scheme which is difficult to assess.

2.5. Does the EU have the right to act?

Production and trade of agricultural products and foodstuffs on the internal market and ensuring the integrity of the internal market are matters of Community competence. Both are European Union shared competences with Member States⁷⁶. Article 37 of the Treaty is the legal basis of the GI Regulations.

B.3. OBJECTIVES

3.1. General objective

The Community's general objectives in relation to Geographical Indications scheme can be linked to the basic objectives of the CAP set out in the Treaty, as shaped by successive reforms. In the Communication for 2003 CAP Reform, the CAP was identified as aiming to achieve, among other goals:

⁷⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community inserts a new Article 118 in the FEU Treaty: "In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure establish measures for the creation of European intellectual property rights to provide uniform protection of IPR through the Union and of setting up of centralised Union-wide authorisation, coordination and supervision arrangements".

- a competitive agricultural sector,
- a fair standard of living and income stability for the agricultural community.

Council Decision 2006/144/EC on Community strategic guidelines for rural development (programming period 2007 to 2013) adds on reference to the consumer aspect of competitiveness. It identifies as first rural development Community priority the following: “improving the competitiveness of the agricultural and forestry sector”. The concerned strategic guideline states: “Europe’s agricultural, forestry and food-processing sectors have great potential to further develop quality and value-added products that meet the diverse and growing demand of Europe’s consumers and world markets”.

As stated in the Decision, the Community strategic guidelines identify the areas important for the realisation of Community priorities, in particular in relation to the Göteborg sustainability goals and to the renewed Lisbon strategy for growth and jobs.

Changes introduced by the Health Check of the CAP Reform also reflect a clear concern for market-responsiveness. In order to live up to increasing competition on our own markets as well as global markets, EU agriculture has to play its strengths: emphasising quality of different kinds, including that linked to geographical origin.

In 2005 the European Commission presented a Communication on Simplification and Better Regulation for the Common Agricultural Policy. Reducing red tape in the farm sector by making rules easier to understand and less burdensome reduces costs for businesses and ensure that European citizens receive value for money.

The above general objectives are of direct relevance to the EU quality scheme (GIs) identifying products with specific qualities linked to geographical origin, as indicated in the recitals of Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin of agricultural products and foodstuffs.

3.2. Specific objectives

- (a) Provide clearer information regarding the products specific characteristics linked to geographical origin, enabling consumers making more informed purchase choices.

Indicator: degree of consumers' satisfaction and degree of knowledge of Community symbols.

- (b) Provide a single approach at EU level for a system of protection of names for products with specific qualities linked to geographical origin.
- (c) Ensure uniform enforcement - throughout the EU - of the intellectual property rights stemming from the registration of product names both of the EU. .

Indicator: degree of producers' satisfaction with IPR enforcement

- (d) Improve incomes of farmers and ensure that the system contributes to rural economy.

Indicator: added value distributed in the chain and employment linked to the use of PDO/PGI.

- (e) Simplification of the Community schemes on geographical indications.

Indicator: Number of GI systems. Degree of operators' satisfaction with reduction of administrative burden related to registration and enforcement procedures.

(f) Facilitate high level protection in third countries of EU geographical indications.

Indicator: Number of bilateral agreements ensuring protection of GI's; Outcome of DDA negotiations on the "extension" and "multilateral register" issues. Administrative cooperation to contribute to a better protection for GIs under third country systems.

3.3. Operational objective

Not needed.

B.4. POLICY OPTIONS

4.1. Option O: no change in present EU action – Status quo

This option is treated as the baseline option, in part 5, willing to assess the impacts of the different option as well as in part 6, willing to compare the options. See description on baseline scenario section 2.4.

4.2. Option A: Protection through trademark system.

4.2.1. Basic approaches

Traditionally, intellectual property can be divided into two main categories: industrial property and copyright. Both geographical indications and trademarks are industrial property rights. They have in common that they enable holders to prevent unauthorised use of an intangible asset of potential commercial value, i.e. the indication to the consumer of origin.

This option is very similar to Option H "no EU action at Community level". Nevertheless, the difference is that no national system for the protection of geographical indications could be created. Level of protection would be the one ensured by TRIPS, but the legal means to apply it (protect names) would only apply through the Community trademark system (Council Regulation (EC) No 40/94 on the Community trademark⁷⁷).

Trademark protection could be provided through the Community collective mark⁷⁸. Nevertheless, a Community collective mark does not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

⁷⁷ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (O L 11, 14.1.1994, p 1).

⁷⁸ Under Art. 64(1) a Community collective mark is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings. Associations of manufacturers, producers, suppliers of services, or traders which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations of all kinds, to make contracts or accomplish other legal acts and to sue and be sued, as well as legal persons governed by public law, may apply for Community collective marks.

Another option could be to develop a Community certification mark. Generally speaking the main difference between collective and certification marks is that the former may be used only by particular enterprises, for example, members of the association which owns the collective mark, while the latter may be used by anybody who complies with the defined standards. Thus, the users of a collective mark form a "club" while, in respect of certification mark, an "open shop" principle applies.

As a consequence of that option, the definition of designation of origin will disappear in the EU legislation, as same definition of geographical indications will apply to every Member State (TRIPS definition of geographical indication).

This option has been cited as preferred by a minority of Member States. The EESC (European Economic and Social Committee) feels that the use of trademarks to protect GIs outside the EU is certainly a feasible idea; however, it would not solve the problem of international protection for designations as it would be complex (given the number of countries potentially concerned) and costly (i.e. feasible only for large commercial organisations with sufficient financial resources) while failing to provide full protection.

Stakeholders said (Green Paper):

Should the use of alternative instruments, such as trademark protection, be more actively encouraged?

A majority of respondents stated that geographical indications and trademarks are not alternatives but two systems distinct in nature that should co-exist.

Some stated both systems can be complementary. Several farming organisations indicated that collective trademarks can be interesting to use in the case of international trade in certain third countries. Collective trademarks can be an alternative to geographical indications for certain typical local productions linked to an area having a limited economical impact.

Few processing organisations within the dairy sector, asked to encourage the use of collective trademarks not linked to PDO/PGI.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, consumers and producers expressed against that option that would undermine current GI system.

Table 6: Comparison of the GI and Trademark/Collective/Certification marks systems⁷⁹

	GEOGRAPHICAL INDICATIONS (GIs)	COLLECTIVE TRADEMARKS	
		COLLECTIVE TRADEMARK <i>STRICTO SENSU</i>	CERTIFICATION TRADEMARK*
Legal basis	R (EC) No 510/2006 R (EC) No 479/2008 R (EC) No 110/2008	Regulation. (EC) No 40/94 on Community trademark lays down rules on the Community collective mark	- MS National laws. - Directive 2008/95/EC (harmonisation national laws) mentions MS certification marks, without providing a definition.
Nature	Collective right	Collective right	Collective right
Objective	Designed to identify the geographical origin and its links with the quality, characteristics or reputation of a product.	Designed to distinguish the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.	Designed to certify quality, characteristics, origin, materials, etc.
Link between the product and the geographical origin	Essential. Link cannot be broken - PDO: quality essentially due to geographical origin - PGI: quality, reputation or other characteristic - prevent relocation/delocalisation of production	Merely possible. Link with the geographical origin is not a <i>sine qua non</i> condition (it can be)	Merely possible (=>"GI without the soul") Link with the geographical origin is not a <i>sine qua non</i> condition (it can be)

⁷⁹

Compiled on the basis of multiple sources, including *inter alia*: Addor and Grazioli, "Geographical Indications beyond Wines and spirits. A roadmap for a better protection to Geographical Indications in the WTO TRIPS Agreement", *The Journal of World Intellectual Property*, (2002), Vol. 5 No 6, available at: <http://www.ige.ch/e/jurinfo/documents/PDF-doku3.pdf>; Lucatelli et al., "Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and legal Implications, Committee for Agriculture", OECD, 2000; Rangnekar, "The international protection of geographical indications: The Asian experience, UNCTAD/ICTSD Dialogue, Intellectual Property Rights, Innovation and Sustainable development, Hong Kong.

Owner/right holder	<ul style="list-style-type: none"> - not explicitly identified in EC regulations - complex and controversial in legal literature. Some commentators: difference between holder of the right “over” the appellation and “to” the appellation. - conferred to all producers of the area complying with specification, not necessary to be part of a collective group 	<p>Collective ownership , public or private</p> <p>Owned by the collective body which exclusively grants its members the right to use it</p>	<p>Collective ownership, public or private</p> <p>Owned by a certification authority</p>
Usa	Any person respecting the specification requirements. No need to belong to association	Any person who has authority to use under the regulation governing its use.	"Anti use by owner rule". Owner cannot use it. Any person respecting standards laid down in the regulation can use it.
Licensing	Cannot be licensed	Possible	Possible
Transferability	Ownership cannot be transferred or assigned	Possible	Depending on national law
Duration of protection	- Indefinite protection	subject to periodical renewal 10 years	subject to periodical renewal 10 years
Registration costs	- depending on national law	€1050 paper filling (under proposal of the Commission to be adopted in March2009). Reduction of €150 if electronic filling.	Depending on national laws
Certification/Control	National competent authorities/control bodies	Voluntary	Owner
Scope of Protection	Very broad "Absolute" protection	<ul style="list-style-type: none"> - Does not prevent other producers from registering similar signs, providing that they do not result in a likelihood of confusion - “First in time, first in right” applies: who uses the CTM first gets the protection to the exclusion of all others. 	<ul style="list-style-type: none"> - Does not prevent other producers from registering similar signs, providing that they do not result in likelihood of confusion “First in time, first in right” applies: who uses the CTM first gets the protection to the exclusion of all others

Enforcement/Means of protection	Mix of public (<i>ex officio</i>) and private action	Only private action	Only private action
Genericity/genericness defence	Can never become generic once registered	Registration does not prevent "genericide"	Registration does not prevent "genericide"

* As regards certification marks, conditions for protection and its duration and costs involved in registration and protection are provided in national legislation and so vary from country to country. Moreover, different mechanisms do not necessarily apply on exclusive basis. Cumulative application is common.

4.2.2. Screening for technical and other constraints

Repealing of EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006, the pertinent provisions in wine Regulation (EC) No 479/2008 and their implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (decisions will probably intervene under co-decision procedure).

Possible modification of Council Regulation (EC) No 40/94 on the Community trademark to lay down specific rules on a Community certification mark.

Diversity between national systems would decrease as definition, protection and instruments will be similar in every MS.

As for geographical indications, trade mark registration in the Community has been harmonised in Member States for more than 15 years and Community trade mark rights co-existing for over 10 years.

Level of protection in trademark law is lower than present level of protection (see below).

Besides this, different level of protection would apply to wines and spirits comparing to that granted to agricultural product and foodstuffs. The trademark system will be registering around 4000 names.

In addition there is a probability for some local products that are not produced in significant quantities or are not exported will not endorse that option.

4.2.3. Assessment of effectiveness, efficiency and consistency

Low efficiency as to the harmonised approach, as different level of protection for wines and spirits comparing to that granted to agricultural product and foodstuffs. Efficiency would be higher to "mature GIs" and low for "small GIs".

Same effectiveness as to the *sui generis* GI approach in the EU: definition, protection and instrument would be similar to every MS. High effectiveness as to administrative burden as the Office for the Harmonisation in the Internal Market will examine the applications received directly from applicants.

Low effectiveness in the protection of names as:

- The level of protection would be lower than the present EU protection. The principal distinction in terms of the scope of legal rights is that certification or collective marks are subject to the same rules as other marks, usually with the exception of

rules relating to non-use. Whereas GIs are not subject to such exceptions as genericness or use in good faith, certification and collective marks are.

- The trademark regime usually does not prevent other producers from registering similar signs, providing that they do not result in a likelihood of confusion. In general, the protection provided by the *sui generis* GI system is broader in scope, protecting registered names against imitation or evocation, even if the true origin of the product is clear.
- While in a GIs system the producer group seeking the registration is required to demonstrate the existence of a special link between the characteristics of the product and its geographical origin, these conditions usually do not apply for registration of a certification mark which is based on the intention of the group and which is free to define the rules for users in line with characteristics it chooses. This does not exclude the possibility that the owner includes, should he so wish, the existence of a special link between the characteristics of the product and its geographical origin in the certification standards of the product.
- Enforcement would apply only through private action: GI producers, and/or MS would need to engage in private legal actions in every MS to ensure protection.

Inconsistency with other EU action on quality policy (under rural development and promotion).

Consistent with international obligations (TRIPS), but highly inconsistent with EC position in DDA. Inconsistent with EU position in bilateral negotiations taking place and inconsistency with signed bilateral agreements.

As far as the production method is concerned, a GI protection implies by its very nature that it is publicly available, since anyone who respects the specification is entitled to use the name. The production method of a trade marketed product may be secret or itself protected under a patent.

Transition between the current *sui generis* system (more than 800 GIs registered and around 2500 being registered) and a new system providing – or anyway generally perceived as providing - a weaker protection would be extremely complex. It could give rise to disputes with current GIs beneficiaries.

4.3. Option B: Simplification of current EU systems, including streamlining of procedures.

4.3.1. Basic approach

This option would consist in a reduction of present delays in the procedure at community level:

- Examination period: reduce the current examination period of 12 months (agriculture products and spirits) to 3 months.
- As is presently foreseen in EU provisions, the result of the examination will be a straight decision from the Commission (either to reject or to register).

- Reduce the current objection periods of 6 months to 2 months.
- Reduce delays for appropriate consultations following objections from 6 months to 2 months.

It would also contribute reducing inconsistencies between the three systems of protection: wines, spirits and agricultural products as foodstuffs.

4.3.2. *Technical constrains*

Modification of EU legislation through a Council decision will be needed for Regulation (EC) No 510/2006 and its implementing rules, and the pertinent provisions in wine Regulation (EC) No 479/2008 and implementing rules. It will also need a modification of spirits Regulation (EC) No 110/2008. These modifications will probably intervene under co-decision procedure.

4.3.3. *Assessment of effectiveness, efficiency and consistency*

This option would be:

- Very effective as to shorten delays. Producer groups would rapidly know if the name is registered or rejected.
- Very efficient as would reduce administrative burden. The administrative practice of sending several letters to applicants through the Member States (for EU applications) would be reduced to one single letter if the application was not complying with the Regulations.
- Consistent with simplification strategy and with recent exercise to submit applications on line through online application system DOOR (Database of Origin and Registration).

Option B1: merging of the 2 definitions for geographical indications and designations or origin

Basic approaches

This option would consist in merging the 2 definitions currently provided for in EU GI legislation: “protected designation of origin” and “protected geographical indication”. The European Community is member of World Trade Organisation, and bound to respect the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) The definition of geographical indication laid down in that agreement obliges to maintain that definition. So, in practical terms, this option would consist in deleting from EU regulations the definition of protected designation of origin. It is also worth noting that since the definition of "geographical indication" given in Article 22 of the TRIPS Agreement appeared in some respects broader than the definition laid down in Article 2(2)(b) of Regulation (EEC) No 2081/92 (now repealed), Regulation (EC) No 510/2006 also aimed at bringing those definitions closer together.

Some Member States are strongly against any change in the PDO and PGI definitions⁸⁰. The EESC⁸¹ believes that merging the symbols for PDOs and PGIs may risk creating an inequality between two concepts of equal worth, established and rooted in various geographical areas. In view of the need to make products more recognisable to consumers, greater graphical distinction between PDOs and PGIs (e.g. different colours) was also suggested.

Screening for technical and other constraints

Modification of EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006 and its implementing rules, and the pertinent provisions in wine Regulation (EC) No 479/2008 and implementing rules.

Assessment of effectiveness, efficiency and consistency

Although some stakeholders would prefer that option as it will simplify the legislation and the concept of GIs, other think it would be less effective as to information to provide to consumer (see EESC Opinion). Designation of origin responds to the practice developed in those Member States since the 60's to protect some very well known names. Already Regulation (EEC) No 2081/92, after acknowledging the successful results achieved by Member States whose legal systems already protected designations of origin (recital 6), mentioned the diversity existing in the field: there was diversity in the national practices for implementing registered designations of origin and geographical indications (recital 7).

Designation of origin corresponds to the reality of the Member States and the abolition in EU legislation of that definition will not stop those MS to use corresponding national mentions. According to the recital to Regulation (EC) No 510/2006, existing practices make it appropriate to define two different types of geographical description, namely protected geographical indications and protected designations of origin.

Protection does not extend to all names but only to ones which encompass a dual connection, both spatial and qualitative, between the product, on the one hand, and its appellation, on the other. The qualitative connection also serves to differentiate designations of origin from geographical indications, in that the link with a particular area is not as strong in the latter case. Some writers⁸² are of the opinion that the distinction is one of degree only, rather than of substance. Furthermore, it has been observed that the PGI is not a light form of qualified indication of origin: registration procedures and protection granted are exactly the same⁸³. Other commentators assert that the distinction is not clear⁸⁴.

Although no specific studies have been made on the knowledge for the two definitions, in some MS the concept of designation of origin is widely spread and known for the consumer (due mainly to the use of that definition in wine sector) whilst the definition of geographical indication is relatively new.

⁸⁰ Procès-verbal de la 72ème réunion du Comité permanent des indications géographiques et des appellations d'origine protégées des produits agricoles et des denrées alimentaires du 26 juin 2007.

⁸¹ Opinion of the European Economic and Social Committee on Geographical Indications and Designations of origin (2008/C 204/14), (OJ C 204/57, 9.8.2008).

⁸² See, for example, Sordelli, 'Indicazioni geografiche e denominazioni di origine nella disciplina comunitaria', *Diritto Industriale*, 1994, p. 837 et seq.

⁸³ Olszak, *Droit des appellations d'origine et indications de provenance*, 2001.

⁸⁴ O'Rourke, *European Food Law*, 2nd edition, Palladian law publishing, 2001.

This would cause confusion in the consumer as he/she will see on the market the Community definition of geographical indications, and several national mentions; each of them with a national symbol, of designation of origin. Effectiveness would thus be very low as regards the problems of communication and competition in the single market.

The option is **inconsistent with recent modifications** of legislation:

- A graphic differentiation between the Community symbols for PDO and PGI was introduced in 2008. Following this change, a red and yellow symbol identifies the Designation of Origin, clearly distinguishable from the blue and yellow symbol for Protected Geographical Indications. A recital to the concerned regulation reads as follows: "Whereas present the motivation to distinguish both PDO from PGI, in the light of experience gained since they were adopted and with the aim of promoting their use, it should be made easier for consumers to distinguish between protected designations of origin and protected geographical indications. Different colours should therefore be used for the symbols relating to the two different indications."
- Recent reform of market organisation of wine introduced the two definitions (Article 34 of Council Regulation (EC) No 479/2008).

The **option is consistent** with international engagement. It would also present advantages when negotiating bilateral agreements, as would present a simpler EU system.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, consumers and producers expressed against that option that would undermine current GI system. Consumer association defended present system, but asked for further differentiation between PDO and PGI, as well as improved information to consumer.

Option B.2: merging of the 3 existing registers: wine, spirits and agricultural products and foodstuffs.

Basic approaches

The fusion of three registers (for wine, for spirits and for agricultural products and foodstuffs) and the inclusion of the system of aromatised wines should be considered under that option.

The fusion of the three registers could be accompanied by the drafting of a single Regulation, that would include present common grounds existing in the three regulations, as well as separate chapters containing specific provisions related to wine and other products.

The majority of Member States supports an harmonisation, while they agree that specificities for wine should be respected.

Green paper Stakeholders said:

An overwhelming majority of respondents is in favour of a gradual harmonisation and simplification of the 3 systems: agricultural products, wine and spirits but keeping their specificity. It was mentioned that common definitions (allow PDO for spirit), procedures (allow consultation in case of objections for wine and spirit), level of protection, use of quality symbols, monitoring, the differences among Member States should be harmonised and/or simplified.

This would also have positive effects on the level of protection as wine provisions could apply to other categories. Credibility in multilateral and bilateral negotiations was mentioned. Harmonisation will also rationalise and even reduce administrative costs, increase understanding of rules, better recognition and simplification of the information to provide to the consumer. Synergies as to promotion and communication programmes covering the three systems were mentioned.

Nevertheless stakeholders from wine and spirits sector, advocating for a more harmonised approach (for example on the registration procedure), prefer a separate development of the systems (farming organisations CCAE and from UK, CNAOC, CECRV, CEEV, Pernod Ricard, Scotch whisky, CNIV, Association cider and fruit wine, AREPO, ORIGIN) and even further simplification. Their main concerns are:

- Systems are already harmonised and the sectors should keep the specificities;
- Wine and spirit systems are new, time to adapt should be allowed.
- Difficult to implement and bigger administrative burden to create only one system.
- Avoid ending up with the lowest common denomination.

Screening for technical and other constraints

It would need repealing provisions concerning GIs in Regulation (EC) No 479/2008 on wine market organisation and implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (decisions will probably intervene under co-decision procedure). It would also need to repeal Regulation (EC) No 510/2006 and its implementing rules.

Adoption of a new Regulation would intervene under co-decision procedure.

Assessment of effectiveness, efficiency and consistency

High effectiveness, as consumer and stakeholders will better understand one single register including all the protected names.

Better effectiveness as synergies in examination and procedures would fully be in place.

This option would ensure consistency and coherence between the existing regulations on protection of geographical indications at EU level.

It would also make the EU legislation more transparent, as the same rules would apply to all the products. Nevertheless, a level of specificity for some sectors (wine, cheese, and other animal products) will be needed.

Full consistency with other EU agricultural policies and declared objectives on quality policy.

Fully in line with better regulation and simplification priorities of the Commission. This also includes the Action Programme on Reducing Administrative Burden, which has as an objective, endorsed by the Council, to reduce administrative burdens with 25% by 2012.

The option is consistent with international engagement. It would also present advantages when negotiating bilateral agreements, as would present a simpler EU system.

Option B.3: Create national systems to protect geographical names and subsequent reduction of number of registered names

This is the preferred option by a minority of MS.

4.3.4. Basic approaches

In addition to previous option B the system would consider:

- Introduction of trade (volume and value) criteria as precondition for registration of names at EU level;
- Reduction of present list of registered names at EU level, to comply with the abovementioned economic/trade criteria.
- The possibility to create national systems to protect names in parallel to EU systems. Protection of those names would then only apply as to the national market.

4.3.5. Screening for technical and other constraints

Modification of the EU regulations to permit the creation of national systems to protect geographical names in parallel to EU systems.

Definition of trade criteria (volume and value) would be complex. It is worth remembering that GIs are not linked to the size of the market for the product.

Reduction of present number of names protected as PDO/PGI would be particularly difficult.

The laying down of national systems, however defined, should be compatible with TRIPS provisions as interpreted by the abovementioned Panel ruling.

4.3.6. Assessment of effectiveness, efficiency and consistency

National protection would fragment the territory of the Community and may thus adversely affect intra-Community trade.

Low effectiveness on providing clear information to consumer as national labels/logos would multiply.

Low effectiveness in providing a clear legal framework, and ensuring adequate intellectual property protection. Protection of GIs at national level is characterised by the existence of a variety of different legal concepts. These were developed in accordance with different legal traditions and within framework of specific historical and economic conditions. These differences have a direct bearing on important questions such as condition of protection, entitlement to use and scope of protection. Moreover, mechanisms do not necessarily apply on an exclusive basis. On the contrary, cumulative application of different means of protection is common.

In addition, low effectiveness in providing clear information to consumers as national labels/logos will multiply and in providing clear legal framework may be created.

Some MS are organised on a decentralised pattern (like Spain or Germany) and the geographical indications are logically included into federalism redistribution of competencies. Costs of procedures, duration of decision-making, and complexity of administration offices involved are various. National system of protection could prove to be better placed to assess the specificities of applications concerning small and local PDO/PGI productions⁸⁵.

High coherence with the external policy of protection of PDO/PGI. Bilateral agreements would concentrate on protection of names with significant importance in trade.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, this option was defended by Italian representatives only. AREPO defends that option for international protection purposes. Nevertheless it recognised the need to be cautious with that option as:

- Some small GI presently do not have any export potential, but may develop in the future.
- Some products are exported but could be imported to the local areas, e.g. protected as trademarks and undermine the rights of the local GI right holders.
- Some local areas have tourist potential. EU symbols on PDO/PGI could serve to distinguish those local products.

Majority of respondents expressed innuendos, even if they considered that restricting criteria to the number of GIs would be useful.

4.4. Option C: Clarifying PDO/PGI rules

4.4.1. Basic approaches

This is the preferred option by the majority of Member States. It is in line with the Commission declaration on 30.3.2006 on the review of the GI policy. The system in place could be clarified and improved by taking into account the results of several consultations (conference, economic study, Evaluation, Green Paper, etc.).

The points already mentioned in the Commission declaration in 2006 should be subject of these improvements but other points could also be added.

This could be done through modification of the current Regulations and of implementing rules or by drafting guidelines.

Clarifications or improvements would be added in particular to:

- The use of PDO/PGI as ingredients in processed products.

⁸⁵ In *Carl Kühne and Others*, the Court addressed the question of the division of powers between the Member States and the Commission during the registration procedure. The ECJ declared that the system of division of powers is attributable particularly to the fact that registration presupposes verification ‘that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check’.

Several Member states called for guidelines to ensure the availability of clear information for consumers. The guidelines would also prevent the products under PGI and PDO from risk of undue exploitation for commercial purposes.

- Labelling of place of farming of raw materials used in a PDO and a PGI, when they refer to an agricultural products.
- The obligations for ensuring enforcement in
 - The market place.
 - Production stages
 - Transit and trade prior to retail sale.
- Clarification as far as possible of the rights of use of protected names, including in relation to other (potential) uses on non-originating product (trademarks, plant varieties and animal breeds, prior uses, etc.)"
- Coexistence with trademarks: the text of Article 14(2) of Regulation (EC) No 510/2006 should be widened to clarify coexistence also for trademarks applied for prior to the application for registration of the GI in the EU.
- Transitional periods.
- Legal clarification on the possibility to register GIs via bilateral agreements.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, this option was mentioned as the most interesting. Some issues to be addressed were mentioned as criteria for generics and rules on the link of quality of the products with environmental quality, through the method of production.

4.4.2. *Screening for technical and other constraints*

A legislative process is needed, proposition from the Commission, discussion and vote in the Council (co-decision would presumably apply by 2010)⁸⁶.

Amendments to Regulation (EC) No 510/2006 and Regulation (EC) No 110/2008 should be compatible with relevant TRIPS provisions as interpreted by the aforementioned Panel ruling. In particular, attention should be paid to rules on the relation between GIs and trademarks.

⁸⁶ On the first day of the month which follows the last ratification, the Treaty of Lisbon enters into force a new Article 118 concerning the adoption of measures for the creation of European intellectual property rights, will be introduced into the FEU Treaty. This raises the question whether legislation concerning GIs (and thus an amendment to PDO/PGI regulation) will in the future have to be based on that Article rather than on Article 43(2) FEU Treaty. Whilst acts under the new Article 118 would also have to be adopted in co-decision, the use of one or the other legal basis could, of course, have internal institutional consequences and also with regard to the width of powers which, at first sight, would seem to be wider under Article 43(2) than under Article 118.

4.4.3. *Assessment of effectiveness, efficiency and consistency*

High effectiveness as to the implementation of rules, as further clarifications would be considered.

Nevertheless, there would be a risk that legislative framework becomes too detailed and difficult to understand.

Improved efficiency during the examination process for the Commission services as clarifications would have a direct impact on the quality of the application.

Full consistency with other EU agricultural policies and declared objectives on quality policy.

4.5. Option D: Management by an Agency

4.5.1. *Basic approach*

Set up of an executive agency to manage the applications, to register the names and to enforce the protection. The agency would be established in one of the Commission sites (Brussels or Luxembourg).

The possibility to give the management of a program on an existing agency shall be considered. In this context the management to the Office for the Harmonisation in the Internal Market (OHIM) or the "Community Plant Variety Office" (CPVO) should also be considered under that option.

The preferred option by the stakeholder organisation Origin (Organisation for an International Geographical Indications Network) is to create an Agency to enforce the protection. AREPO asks to study this option aiming to study the "subjects" related to GIs. COPA/COGECA introduced also the idea that the Agency would have also tasks concerning the surveillance and enforcement of intellectual property rights linked of protected geographical indications and protected designations of origin in third country.

4.5.2. *Screening for technical and other constraints*

Executive agencies are governed by Regulation (EC) No 58/2003⁸⁷. While the Regulation opens certain possibilities, it does require the executive agency to operate under a Community program (involving commitment of expenditure in a limited delay of time) and it is not clear that the examination, registration and enforcement of protection of GI schemes would fit in that definition. Amendment of the Regulation to cover examination of applications is very unlikely (European Parliament agreement needed). The amendment would be responsibility of DG BUDG.

Reduction of Commission posts should follow.

As regards the enforcement of the protection, this task is presently performed by Member States.

⁸⁷ Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16/1/2003, p. 1).

4.5.3. *Assessment of effectiveness, efficiency and consistency*

Low efficiency as previous studies show that in order to achieve efficiency, at least 50 people staff should be considered for an annual basis. The current flow of applications is around 100 per year and thus does not require that amount of work. Nonetheless, a number of factors have to be taken into account in making estimations on future applications (e.g. likely number of third country direct applications depending on bilateral negotiations' outcome, etc.).

The problem definition shows the legal aspect of the core problem. The examination of applications and the registration process implies a margin of appreciation. The number of cases before the European Court of Justice/OHIM Board of appeals could increase.

High effectiveness as to the harmonisation of registration at EU level.

4.6. Option E: Action through a Framework Directive

4.6.1. *Basic approaches*

Existing EU regulations would be replaced by a framework Directive, setting:

- the definition of geographical indication and/or designation of origin.
- a level of protection (similar to the level existing presently in current legislation).
- a registration system in every MS to recognise GIs originating in that MS.
- a notification system to the EU.

Every Member State would be responsible for the implementation of the framework directive. This would imply registering the names at national level. Member States would also have to ensure the protection to the names from other MS, which had been duly notified to the Commission under the Directive;

A body to solve the conflicts among the Member States might be needed (see European patent proposal on creation of "instance chamber").

4.6.2. *Screening for technical and other constraints*

Adoption of a Directive under co-decision procedure. Repealing of the EU legislation, through a Council decision will be needed for Regulation (EC) No 510/2006 and their implementing rules, and the pertinent provision in wine Regulation (EC) No 479/2008 and implementing rules as well as provision included in spirit Regulation (EC) No 110/2008 (decisions would probably intervene under co-decision procedure).

The definitions laid down in the framework directive should be compatible with TRIPS definition of geographical indications.

Present registered names would be transferred to the "notification system".

4.6.3. *Assessment of effectiveness, efficiency and consistency*

Low effectiveness as to a uniform approach of recognition of geographical indications, as every Member State would recognise its own GIs.

Low effectiveness as to a uniform approach of implementation of protection. A framework directive would lead to differences in the implementation of enforcement the protection between the Member States. Some MS would be enforcing by administrative means, other would require private legal actions to enforce protection.

Depending on the content of the Directive, this would lead to effectiveness in ensuring revenue to producers.

As to efficiency, this option would lead to a serious risk of highly increasing the number of notifications and thus of names to be protected in MS. Conflicts between GIs and trademarks in other Member States could increase, as well as disputes concerning the generic character of some names. As no EU objection procedure would exist, high risk of increase number of infringement procedures and/or ECJ cases on the conflictive cases would remain. With an increased number of geographical indications and designations of origin, credibility of the system might be put in question.

This would increase the burden on MS with regard to enforcement of protection of the increasing number of names that would be notified at EU level.

This would compel a third country to do a screening of the existing national legislations to decide a host country for the application. Most third countries would address their applications to same language speaking countries.

Low consistency with other agricultural policies (rural development, promotion).

4.7. Option F: Co - Regulation

4.7.1. *Basic approaches*

A legal act would define objectives and level of protection and a non- governmental organisation representing geographical indications would share responsibilities for the implementation:

- Recognition of GIs;
- Establish code of practices in respect of protection rights.

4.7.2. *Screening for technical and other constraints*

This option would need the adoption of a legal act (e.g. Directive) to define a geographical indication, to define a level of protection and rely on a code of practices in respect of the process of recognising a GI and the protection of the property rights.

Presently more than 3000 GI do exist in 27 MS, which shows that producers of geographical indications products are numerous. Although in some MS national organisations regrouping interest of GI producers have been created, it remains an exception. Although one plurinational organisation (ORIGIN) exists, it does not adhere the overall existing GIs in

Europe, including also third country geographical indications. AREPO and AREV (Assembly of European Winegrowing Regions) are "assemblies" of regional administrations, representing in some cases also producers.

Neither MS nor the rest of operators of the chain(s) of the products (consumers, retailers, food industry in some cases, control authorities, certification bodies, and other potential users of the names) are equally represented in those organisations.

Moreover, resources in their present structures are scarce, and administrative experience for such a task is lacking.

Legal and economics dimension are important in the problem definition. For example disputes for the use of a name in translation or the manipulation of the products (conditioning) for certain fragile products.

So, co-regulation would present the technical limit of the election of the non- governmental organisation representing geographical indications players at EU level. Moreover, resources in their present structures are scarce, and administrative experience for such a task is lacking. Besides this, they would not have the means for the enforcement and the implementation.

4.7.3. Assessment of effectiveness, efficiency and consistency

This option would be efficient and effective in the recognition process.

Risk of low effectiveness as to the difficulty to choose the partner(s) as GI sector is fragmented.

Although this option presents efficiency and effectiveness as to the recognition process of a GI, the enforcement would present low effectiveness with regard to trademarks rules. Low effectiveness and efficiency in enforcement of protection since potential users of the name would not be involved.

High efficiency in surveillance of the market would depend on resources of representative organisations.

Low efficiency and effectiveness to apply commitments on bilateral agreements. High risk of discriminatory practices vis-à-vis third country GIs.

Low consistency with other EU agricultural and rural policies and no consistency with international trade policy (EC negotiation position in DDA).

4.8. Option G: Self - Regulation

4.8.1. Basic approaches

Guidelines would set the minimum representative criteria groups of producers and/or operators (retailers, industry, promotion bodies control bodies) would have to comply. Each representative body would be able to set its own rules to create the GI scheme and govern it.

Protection to names would be ensured by code of practice including surveillance provided for by the above representative groups. A system of sanction could be created.

In the case of group of producers, the group prepares the specifications for one or more products, promote them EU wide, aiming at a differentiated product, a better market position and a price surplus, and is responsible for the scheme in general.

Level of protection would be equivalent to the one provided for in TRIPS.

Each GI body would make market surveillance.

4.8.2. *Screening for technical and other constraints*

Self-regulation would result in a non harmonised system, leading to a diverse implementation of the scheme, according to the economic interest and the chain power of players. Presumably, only some groups of producers would have the resources to establish such a system and only for products with economic significance in the market. Small groups dealing with local products would face difficulties to embrace the system.

Legal and economics dimension are important in the problem definition. Similarly to co-regulation (see option B.2 above) self regulation approach would present the technical limit of the fragmented sector, so non-governmental organisations representing geographical indications players at EU level would be difficult to emerge.

4.8.3. *Assessment of effectiveness, efficiency and consistency*

Burden for small farmers, producers and companies would be important and difficult to bear, especially with regard to the enforcement of protection.

Low efficiency as to a harmonised EU system, as self-regulation would result in a diverse implementation of the scheme.

Effective as to the low involvement of Commission and of Member States. Efficiency as to the national administrative cost would be lower and some players may proceed to a more effective communication of the scheme. Nevertheless, there is a risk of misleading the consumers, because of the non effective control system.

Low consistency with other EU agricultural and rural policies.

Low consistency with international trade policy. (EC negotiation of international and position in DDA and negotiation of bilateral agreements).

4.9. Option H: No action at Community level

4.9.1. *Basic approaches*

This option would consist in repealing the EU legislation referring to GIs, without creating any additional EU legal instrument. Existing EU schemes would thus be discontinued and each MS would develop a system to ensure protection of the registered names, which could present diversity with 2 extremes:

- Some MS would act by establishing national GI *sui generis* protection system.

- Some MS would not act, therefore producers individually would decide to engage in protection through trademark law (collective, guarantee or certificate marks, at national level or Community trademark) or passing off law or unfair competition law or consumer law.

National regimes should of course be compatible with the ECJ case law developed with regard to geographical names prior to the lay down of the *sui generis* system for GIs.

We shall consider under this option the perspective of development of *sui generis* GI legislation in some MS. We might think that some Member States would develop a system for registration and protection of national geographical indications, and some would not.

We could also consider that Directive 98/34/EC⁸⁸ on national technical measures could be applied in that context: Member States send as a draft the names they intend to protect to the Commission for translation and circulation in all Member States. There is a period to comment/objection for every Member State.

4.9.1.1. Screening for technical and other constraints

Repealing EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006 and their implementing rules, and the pertinent provision in wine Regulation (EC) No 479/2008 and implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (later decision would intervene under co-decision procedure).

The protection may be lower than the level of protection of present EU legislation for both wine and spirits and for agricultural products. Nevertheless as wine and spirits benefit for a higher level of protection we could predict that the ways to ensure it could also be diverse as for example no administrative control by the MS can be ensured.

Diversity inside the EU would increase the probability of market failure as to the non harmonised level of protection and mechanisms to ensure it. Without a mechanism of mutual recognition between MS, operators willing to be registered/protected in the EU would be facing 27 (or as much as systems would exist) registration procedures if MS decide to develop *sui generis* registration system.

Products circulating in the EU may risk misuse, usurpation, etc. outside the country which grants them protection.

In addition the diversity of action by the Member States would lead to a multiplication of regional labels and therefore creating more confusion among consumers.

4.9.2. Assessment of effectiveness, efficiency and consistency

This option would present low efficiency in seeking registration and protection (as should be sought in every MS).

⁸⁸ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).

Low effectiveness for harmonisation in the EU. The protection at EU level would be replaced by bilateral agreements among Member States, time and resource consuming.

Possible different level of protection would discriminate producers of wine and spirits from the rest of producers.

Low effectiveness in providing consumer information as to the guarantee of origin and the clear information, provided by the EU symbol

Not consistent with other EU policies encouraging developing of quality and high added value products, like rural development policy, promotion and common market organisations initiatives (in olive oil, cotton, etc.).

4.10. Option I: Protection through international rules: Lisbon agreement.

4.10.1. Basic approaches

Protection would be granted through the **Lisbon Agreement** for the Protection of Appellations of Origin and their International Registration⁸⁹ (hereinafter referred to as Lisbon Agreement), administered by WIPO (World Intellectual Property Organisation).

That system would replace present EU legislation. Protection would be ensured by the terms of the agreement.

No EU register would be needed as MS would directly register GIs under the agreement. Presently only 7 MS apply Lisbon, 2 more have signed it.

4.10.2. Screening for technical and other constraints

Repealing of the EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006, the pertinent provision in wine Regulation (EC) No 479/2008 and their implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (later decision would intervene under co-decision procedure),

Strong EU involvement would be needed:

- Negotiation for an amendment or a revision of the Lisbon Agreement as membership is currently open to states only. It would be necessary to allow regional organisations to adhere.
- Negotiations on definitions might also be needed, as the definition of appellation of origin of the Lisbon agreement is stricter than the EU definition of geographical indication. EC to become party to the Lisbon Agreement.

The Lisbon agreement failed to attract support from more than a few states (26). The main problem is that accession is confined to those nations which protect appellations of origin as “such” (thus states which protect geographical names under unfair competition or consumer protection laws are locked out).

⁸⁹ http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.htm

It could be noted that of the 810 appellations registered under the Lisbon Agreement, the vast majority (over 66%) belong to France. Many Lisbon Agreement Members have no appellations.

Table 7: registrations under Lisbon Agreement

France	508	Czech Rep.	76
Bulgaria	51	Slovakia	37
Hungary	28	Italy	28
Georgia	20	Cuba	19
Mexico	11	Algeria	7
Portugal	7	Tunisia	7
DPR of Korea	4	Moldova	1
Peru	3	Montenegro	2
Israel	1	TOTAL	884 of which 810 in force

Source: WIPO website: <http://www.wipo.int/lisbon/en/>

Lisbon is a “government-to government” notification and registration system. Private parties may neither notify GIs nor object to their protection. Private right holders have no opportunity to challenge notifications or to petition for cancellation.

The recent two enlargements of the EU have also posed certain challenges to the Lisbon system in terms of its capacity to deal with developments in international law relating to the protection of indications of geographical origin. The new EU Member States that were also contracting countries of the Lisbon Agreement had specific concerns about the impact of the transitional arrangements in question. Since the enlargement of the EU in 2004, none of these problems have been resolved in an entirely satisfactory manner⁹⁰. The option at issue would solve the problem.

4.10.3. Assessment of effectiveness, efficiency and consistency

Inefficient with regard to the protection as not all the geographical indications would be covered by the Agreement. Lisbon Agreement applies to designations of origin (for which an essential or exclusive link to the area is needed). However it should be noted that out of 818 names registered up to 31.12.2008, only 452 are designations of origin. Few spirit drinks are designations of origin, and around half of wine GIs are designations of origin.

Long process and strong involvement of resources of the Commission would be needed in the negotiation phase. Nevertheless, once achieved, efficiency would be high as to the registration and protection process for designations of origin.

This option may negatively affect multilateral DDA negotiations policy (as it would diminish interest in TRIPS multilateral register and “extension” negotiation).

It would be inconsistent also with ongoing bilateral negotiations with third countries (e.g. Switzerland, Ukraine and Georgia).

⁹⁰ Ficsor, *Challenges to the Lisbon system*, paper prepared for WIPO Forum on Geographical Indications and Appellations of Origin, Lisbon, October 30 and 31 2008. Available at: http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lis_08/wipo_geo_lis_08_theme1_ficsor.pdf

Protection in countries signatory of the Agreement would be facilitated for designations of origin. Protection granted by the Lisbon Agreement is similar to the present protection granted by the EC legislation.

Low effectiveness with regard to implementation of protection as the EU system would not be harmonised, as every Member State would result in a diverse implementation of the scheme. Presently only 6 Member States are parties to the Lisbon Agreement and 2 more have signed it.

4.11. Fine-tuned shortlist for further analysis

Action through a **Framework Directive** (Option E) presents a low consistency with one of the objectives of the policy, i.e. to have a harmonised framework. It will not be retained for the analysis of impacts.

Co-regulation (option F) and **self-regulation** (option G) options need the involvement of non-governmental organisations, social and economic partners. The highly fragmented representation of that interest and the economic and legal dimension of the problem are structural limits that make those options low effective and efficient in comparison to the other options; they will not be considered for further analysis.

No action at Community level (option H) would lead to a greater risk of market failure as to the non harmonised level of protection and mechanisms to ensure it. In absence of a mechanism of mutual recognition between MS, operators willing to have their products' names registered/protected in the EU would be facing 26 (or as much as systems would exist) registration procedures if MS decide to develop *sui generis* registration system. Products circulating in the EU may risk misuse, usurpation, etc. outside the country which grants them protection. In addition the diversity of action by the Member States would lead to a multiplication of regional/local labels and therefore creating more confusion among consumers.

International rules option through Lisbon Agreement (option I) would be impossible to apply in a short term, as an international negotiation to adhere to WIPO would be needed as well as some amendments on definitions.

The options retained for further analysis are:

- Option A. Abolish current *sui generis* PDO/PGI system at EU level + develop EC certification/collective trademark
- Option B. Status quo including simplification of PDO/PGI schemes and streamlining existing procedures:
 - Sub-option B.1: merging PDO and PGI definitions.
 - Sub-option B.2: merging of Wines-Spirits-Agricultural product systems.
 - Sub-option B.3: create national systems of protection of names and reducing the number of PDO/PGI.

- Option C: Clarifying PDO/PGI rules.

Option C is combinable with B options. Option A is not combinable with B or C.

Finally, the Agency option (D) is essentially a management option. It would be combinable with B and C. It will not be considered at this stage of the impact assessment which is intended to identify political orientations. It will be considered in further steps of the process.

B.5. IMPACT OF OPTIONS

5.1. Option A: Abolish PDO/PGI at EU level and development of Community trademark system (existing Community collective trademark and possible new Community certification mark)

Economic impacts

a. Functioning of the internal market and competition

As regards competition in the internal market, the negative influence stemming from the possible introduction at EC level of a new IPR (i.e. Community certification mark) - by nature restrictive of competition - would be compensated by the repealing of the GI instrument.

b. Operating costs and conduct of business/Small and Medium Enterprises

Negative impact in terms of costs: the experience of EU GI producers shows that it is in general, more costly to obtain legal protection of GIs in trademarks systems than in *sui generis* systems.

Although a trademark registration provides for an exclusive right on the registered name, in most countries where geographical names are protected via a trademark system producers need to continue to assert their rights. This entails a significant cost of market surveillance: a regular monitoring of the markets where the trademark is protected is essential. Producers need to be ready to launch all necessary legal actions to protect their intellectual property right by private action. With this regard it is worth mentioning that The European Parliament has recently adopted a non legislative resolution on “Enhancing the role of European SMEs in international trade”⁹¹. It supports the establishment of an international multilateral register of geographical indications enabling SMEs to protect their own geographical indications in a simple and economical manner.

All GIs systems based on trademark law require the payment of registration fees, this being only possible in *sui generis* regimes. Protection via trademarks implies periodical renewal of registration. However, it has to be noticed that recent trend is in the sense of lowering fees: fees 1050 € paper filling (under proposal of the Commission to be adopted in March 2009). Reduction of 150 € if electronic filling.

⁹¹ On 5.2.2009 the European Parliament adopted by 437 votes to 77, with 69 abstentions, a non legislative resolution (INI/2008/2205) on “Enhancing the role of European SMEs in international trade”.

It could be noticed that reducing the costs of enforcement was a major reason for certain third countries producer groups to seek protection through the EU GIs *sui generis* system.

The transition between the current *sui generis* system and a TM system could entail additional costs for current GIs beneficiaries (investments in promotion campaigns, etc).

As delays in trade mark procedures are normally significantly shorter than in *sui generis* systems, the TM option could have a positive impact on the efficiency of businesses' planning and marketing strategies, resulting in a better ratio costs/benefits. Positive impact with regard to the time required to successfully complete a registration procedure.

Positive impacts as regards costs for control and certification, that would not be sustained.

c. Administrative burdens on businesses

This option would reduce, albeit in a limited way, administrative burdens on businesses with regard to the registration procedure. It is commonly accepted that an application for registration of a name as GI requires more information than the process leading to registration as collective or certificate mark.

Positive impact also on control and certification burdens.

d. Property rights

Option A would result in a clear identification of the ownership of the intellectual property right, while ownership is a complex concept for GIs⁹². Certifications marks are generally owned by groups/bodies which do not trade in the relevant products (usually a certification authority). As regards the Community collective mark, it is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

Negative impact on the level of protection: no "absolute protection" (i.e. the use of the name is prohibited even though the consumer is not misled about the true origin of the product) of the name is possible via a TM system. As shown by existing TM systems, the coexistence of similar marks would not be ruled out.

Normally, in systems where GIs are protected by certification or collective marks rather than under a *sui generis* GI regime, the principle of "first in time, first in right" applies to conflicts between the same or similar marks. A valid prior registration of a geographical trademark by an individual producer can thus obstruct the subsequent registration or use of a GIs as a collective or certification mark in that jurisdiction⁹³.

⁹² Audier, "Quelle stratégie juridique pour la commercialisation du produit agricole? Marques et indications géographiques de la filière viti-vinicole", *Revue de droit rural*, 311(2003).

⁹³ Gangjee, Protecting geographical Indications as collective Trademarks. The prospects and Pitfalls, Institute of Intellectual Property, Tokyo, (2006), available at:

Option A would be compatible with EU Charter of Fundamental rights (Art. 17: "Intellectual property shall be protected"). Specific provisions on certification marks are already provided for in a number of MS legislations and are referred to in Directive 2008/95/EC.

Current holders of intellectual property rights stemming from PDO/PGI protection would be negatively affected: the level of protection provided for by a TM regime would be lower than the existing one. Current applicants seeking registration of names as PDO/PGI would be affected with regard to the protection transitionally granted at national level.

e. Consumers

While there is no available data to infer that a complete shift to the Community TM system as a means to protect GIs would affect the prices that consumers pay and/or the quality of products available, such a change could have effects on consumer information. Depending on the way the difference between different legal instruments (EC collective marks *stricto sensu* and possible certification marks) is presented to and perceived by consumers, market transparency may be enhanced or curtailed.

The abolition of established EU GI symbols would have a negative impact on consumer information.

f. Specific regions or sectors

In case rules on a specific Community certification mark are laid down, the system take-up may be unevenly distributed on a geographical basis due to different familiarity with this type of IPR (certification marks) in a number of MS.

Draft Opinion on the "Green Paper on agricultural product quality", of the Committee of Regions⁹⁴, of 12-13 february 2009 welcomes the acknowledgement in the Green Paper that agricultural quality is intrinsically linked to regional traditions, development and sustainability, but these need to be enhanced and protected through schemes such as Geographical Indication schemes (GIs) and their intellectual property respected internationally. The draft Opinion considers that Local and Regional Authorities have extensive experience and established competence to influence and support agricultural quality production by their actions in managing EU rural development plans, spatial planning and regional development. There are many cases where authorities have fostered quality through their support for schemes such as GIs. Moreover, it points out that Local and Regional Authorities control large budgets to support agricultural quality through the EU Rural Development Programmes. Local and Regional Authorities

http://www.lse.ac.uk/collections/law/staff%20publications%20full%20text/gangjee/Gangjee_IIP%20Report%202006.pdf

⁹⁴ Committee of Regions, Draft Opinion on the "Green Paper on agricultural product quality", 78th plenary session, 12-13 february 2009.

are key to establishing priorities and implementing the programmes which have achieved success in developing and delivering real advantages to EU farmers.

g. Third countries and international relations

The EU is the principal advocate of greater protection for GIs around the world, by way of bilateral negotiations, in the context of WTO/TRIPS or in the context of the WTO Agriculture Agreement negotiations⁹⁵. Option A would represent a radical departure from the current EC negotiation position on geographical indications in DDA and in a number of ongoing bilateral negotiations with third countries on GIs protection.

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement⁹⁶.

The option at issue would also put into question some agreements on GIs protection signed or under negotiation with third countries.

It would also affect some non-sectoral agreements. For instance, the Agreement CARIFORUM – EC EPA (European Partnership Agreement) sets out some important provisions on GIs. There is a *rendez-vous* clause according to which the CARIFORUM States will establish a system of protection of GIs by 2014. In the meantime provisions aim at fostering cooperation to identify and promote GIs in CARIFORUM via the active involvement of the EPA Trade and Development Committee⁹⁷. According to the parties, GIs as development tools can play a valuable role in developing countries to create a genuine niche for development of agri-food industries. GI products constitute a genuine interest for producers as they unlock value by capitalising on consumers desire for diversity and typical quality products. In particular the combination of GIs (guaranteeing origin and quality of a product) with fair trade schemes (guaranteeing sustainable production conditions) can be a powerful development tool.

In the long term, the abandonment of a *sui generis* system could affect, albeit indirectly, developing countries' effort to protect traditional knowledge via a *sui generis* regime.⁹⁸ Traditional Knowledge (hereinafter TK) and GIs) share a common element insofar as they both protect accumulated knowledge typical to a specific locality. While TK expresses the local traditions of knowledge, GIs stand for specific geographical origin of a typical product or production method. GIs and TK relate a product (GIs), respectively a piece of information (TK), to a

⁹⁵ Van Caenegem, "Registered GIs: Intellectual Property, Agricultural Policy and International Trade", *European Intellectual Property Review*, p. 170, 2004.

⁹⁶ Art. 63(2) of TRIPS reads as follows: "Members shall notify the laws and regulations referred to in paragraph 1 (*i.e. Laws and regulations and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights)*) to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement.

⁹⁷ "Cariforum-EC EPA: Innovation And Intellectual Property" – European Commission. http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_140978.pdf

geographically confined people or a particular region or locality⁹⁹. The African Group proposed that TK is a “category of IPR” for which a *sui generis*-type protection should be accorded. The African proposal prefers top-down protection of TK, whereby a multilaterally agreed standard would serve to unify the different national laws. GIs may ensure protection for TK, which for some reason does not fulfill the criteria for patent protection, usually because no TK holder can be identified.

Some commentators consider that GIs protection for developing countries a dilemma with both potential for positive and negative outcomes¹⁰⁰. However, as a matter of fact the proposal that GI absolute protection should go beyond wines and spirits was endorsed by the African Group: GIs protection should be extended to other products recognisable by their geographical origins (handicrafts, agro-food products).

Nonetheless, it is important to note that GI protection is not a North-South issue. Interests in the developing world vary, according to the economic structures and objectives.

A study prepared for the UNCTAD Biotrade Initiative¹⁰¹ recognises that "More than other major types of intellectual property, geographical indications have features that respond to norms for use and management of bioresources and traditional knowledge that are characteristic of the culture of many indigenous and local economies". For instance, one very important area where GIs could be applied is the protection of plants or plant-based products¹⁰².

h. Public authorities

The option in question would likely have positive, albeit limited, impact on national administrations. In case of a certification mark, the certification authority could be a local government entity or a private association.

⁹⁹ Panizzon and Cottier, “Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions”. In Petersmann (ed.). “Developing Countries in the Doha Round. WTO Decision-making Procedures and Negotiations on Trade in Agriculture and Services, 2005, pp. 227-268.

¹⁰⁰ See for instance, Mosoti and Gobena, for the Development Law Service, FAO Legal Office, “Geographical Indications and trade in agricultural products”, in “International trade rules and the agriculture sector Selected implementation issues”, FAO Legislative Study No 98, 2007.

¹⁰¹ See Down and Alird, "Innovative Mechanisms for sharing benefits for biodiversity and Related Knowledge: case Studies on Geographical indications and Trademarks", paper prepared for the UNCTAD Biotrade Initiative, 1999.

¹⁰² “Several designations of plants such as fruit, vegetables and cereals are protected in the EU as GI. Examples include the "Riso Nano Vialone Veronese" for rice from Italy and the "Arroz de Valencia" and the "Arroz del Delta del Ebro" from Spain. The successful application of these designations to plants shows that GIs could serve as a useful tool for indigenous and local communities and farmers to protect their plants or to enhance the marketing value of their plant-based products which are produced in a specific region and have specific characteristics due to their geographical origin”. In Addor and Grazioli, "Geographical Indications beyond Wines and Spirits. A roadmap for a better protection for Geographical Indications in the WTO TRIPS Agreement", *The Journal of World Intellectual Property*, Vol. 5 No 6, November 2002

At Community level, option A would likely result in enlarging the competences of the regulatory agency competent on Community trademarks (OHIM), while DG AGRI would presumably have to reorganise its organigram.

In the light of the opposition expressed by a majority of MS as well as of the historical attachment of a number of Central and Southern MS to the GI instrument, a problematic take-up of the TM system is likely.

Social impacts

The economic literature on welfare implications¹⁰³ of various mechanisms designed to encourage producers to geographically differentiate and collectively market their products (GIs included), has shown that the stronger the level of property right protection, the greater the incentives for producers to develop geographically differentiated agricultural products. Moreover, it has been shown that stronger property right protection for producer organisations may be welfare enhancing even after a geographically differentiated agricultural product has been developed. Compared with TM protection, the *sui generis* GI rules are likely to dominate in terms of ex ante societal surplus (i.e.: surplus that accounts for incentives to develop geographically differentiated products). Therefore, while any extension of such rules providing producer organisations with stronger control over supply should lead to an increase in the formation of geographically differentiated products organisations and ultimately in social welfare, a purely TM option is likely to be less social welfare enhancing.

Environmental impacts

It could be argued that this option may have a negative environmental impact since it would be necessary to include farming practices usually provided for in PDOs specifications.

It is worth mentioning that the European Parliament resolution of 2008 on the CAP 'Health Check'¹⁰⁴ mentions the issue of the recognition and protection of GIs among European "non-trade concerns" in world trade talks the Commission should urgently push through so as to prevent unfair competition against European producers.

5.2. Option B: Simplification of present legislation and streamlining of procedures.

Economic impacts

a. Operating costs and conduct of business/SMEs

¹⁰³ See for example, Lence, Marette, Hayes and Foster, "Collective Marketing arrangements for Geographically Differentiated Agricultural products: Welfare Impacts and Policy Implications. "American Journal of Agricultural Economics", Vol 89, No 4, pp. 947-963, 2007.

¹⁰⁴ European Parliament resolution of 12 March 2008 on the CAP 'Health Check' (2007/2195(INI)).

The shortening of the registration procedure by simplification and streamlining of procedures could have a positive impact on the efficiency of business planning and marketing strategies, resulting in a better ratio costs/benefits.

The harmonisation of delays for the three systems could facilitate access to the system to operators willing to oppose to the applications for protection. It could nevertheless argue that reduction of objection delays from 6 to 3 months would limit the potential objections.

b. Public authorities

It could be argued that the reduction of examination periods could lead indirectly to a better quality of applications submitted to national authorities and thus to the Commission. The stricter time constraints and the consequent less room for applications' improvement via Member States-Commission exchanges would result in better drafting of applications to avoid negative straight decisions from the Commission services.

Harmonisation of delays would increase efficiency and coherence between the three systems for national administrations dealing with applications and objections.

c. Property rights

Shortening of delays would contribute to legal certainty for GI applicants.

The shortening of procedural delays would also benefit trademark applicants (as to a trademark registration after a GI application submission).

Social impacts

a. Consumers

Visibility of the PDO/PGI scheme would be increased as the three systems would share the same principles and could be marketed using the same European symbol. This would reduce the diversity existing on the market causing "fatigue of logos" to consumer.

Environmental impacts

No environmental impact has been detected.

Simplification aspects are further considered below under options B1, B2 and B3.

5.3. Option B1: Merging of the 2 definitions for geographical indications and designations or origin

Economic impacts

a. Operating costs and conduct of business/Small and Medium Enterprises

This option may result in additional costs for enterprises that have invested in marketing and communication to promote the recent graphic differentiation between PDO and PGI symbols.

b. Consumers

Given the long time establishment of the designation of origin definition, it is likely that at least in some MS the distinction between PDO and PGI would not disappear completely in the marketplace. The commercial use of such designation would increase consumer confusion.

c. Third countries and International relations

The merger of PDO and PGI definitions would also present advantages in bilateral agreements' negotiations, as would contribute presenting a simpler EU system.

Environmental impacts

Assuming that the merging would result in retaining the definition of geographical indication, that could affect the potential of geographical indications for contributing to preserving biodiversity. PDOs can better favor local development because of their strong link to origin and thus contributing to environment and biodiversity¹⁰⁵.

5.4. Option B2. Creation of a single register for wines-spirits-agricultural geographical indications and possibly adoption of a single legislative act.

Economic impacts

a. Functioning of the internal market and competition

Set up of a single register as well as the adoption of a single legislative act concerning the protection of geographical names for wines, spirits and agri-products, would clarify the current framework, making enforcement easier, thereby contributing to fighting anti-competitive behaviors.

b. Administrative burdens on businesses

While some administrative burdens related to sectoral specificities would remain, nevertheless, the harmonisation of registration and amendment procedures further to the merging would contribute reducing administrative complexity.

c. Property rights

The option would not affect existing rights of GIs holders.

Option B1 would facilitate information vis-à-vis enforcement authorities on the level of protection as well as on the names protected.

d. Consumers and households

¹⁰⁵ Valenzuela Zapata, Marchenay, Berard and Foroughbakhch, "Conservación de la diversidad de cultivos en las regiones con indicaciones geográficas. Comparación del tequila y calvados", *Sociedades rurales, Producción y Medio Ambiente*, Vol 5 Número 8 (7-22), 2004.

The merging and related streamlining of the three systems (wines, spirits and agricultural products) could reduce the risk of consumers' confusion with regard to Community schemes, symbols and indications.

e. Specific regions or sectors

Withdrawal of wine and spirits GI provisions from their respective legislation would create initially confusion among those sectors. They could have the impression that existing rules would undergo significant changes. However, the option's objective is to maintain present rules by grouping them under a single legislative act.

As wine production is concentrated in 9 Member States, the measure would affect essentially those countries.

f. Trade policy

The merging of the three systems (wines - spirits - agricultural products) could support the EC negotiation position on the need for an extension of TRIPS protection granted to wines and spirits to agricultural products as.

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

g. Third countries and international relations

The merger of the three registers could have a positive impact vis-à-vis third countries as the Register would include all third countries GIs, protected either through EU domestic legislation or through bilateral agreements.

h. Public authorities

Enforcement through administrative protection would be easier as only one list would group the protected GIs in the EU

Positive impact on enforcement since public authorities would apply the same level of protection to all GIs.

Environmental impacts

This option may have an indirect positive impact on environmental sustainability. It could be noticed that environmental concerns are not explicitly spelt out in the recitals to Regulation (EC) No 510/2006, while Regulation (EC) No 479/2008 on wine, albeit with regard to some specific aspect, makes reference to environment. The merging of the three systems may provide the opportunity to valorise environmental-friendly aspects of GI protection for all concerned classes of products.

The recent wine reform simplified the wine labelling provisions by setting up a single legal framework applying to all the different categories of wine and removing the distinction between the rules on labelling wines with and without

geographical indications¹⁰⁶. The system is fundamentally based upon the common notions of designation of origin and geographical indications laid down in Regulation (EC) No 510/2006. The merger of the three systems would represent a further step towards a simpler and more transparent EU legislation on GIs.

5.5. Option B3 Simplification including streamlining existing procedures and introduction of national systems

Economic impacts

a. Functioning of the internal market and competition

Traditionally GIs are not linked to the size of the market of the product and are applied to products of different kinds, with widely varying production structures. That means that the reference markets are very different, and so production volumes.

The creation of national systems - beside the EU PDOs/PGIs - should be carefully thought through in its conception and implementation so as to avoid the risk of fragmenting the single market because of national exclusive protection.

In the current EU GI system the distribution of competences between the MS and the Commission is attributable particularly to the fact that registration presupposes verification 'that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check'. It could be argued that the set up of national systems would represent a step forward in this direction.

However, the need to ensure that a uniform approach is followed across the MS has to be taken into account. While it is true that competition national authorities in MS have intervened to address a number of anticompetitive practices at national level, nonetheless, the lack of a supranational level of scrutiny could raise a significant issue in terms of uniformity in the rules' implementation, especially in cases where the product's specification provides for certain restrictions to free movement of goods and services. It should be borne in mind that unjustified restrictions - even if referred to products with quantitatively limited production - could potentially pose obstacles to the free circulation of goods and services in the single market. The Treaty prohibits all measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question.

¹⁰⁶ Gonzalez Vaque and Romero Melchor, "Wine labelling: Future perspectives", *European Food and Feed Law*, 2008.

b. Operating costs and conduct of business/Small and Medium Enterprises

SMEs, that represent the greater part of European food firms producing PDOs and PGIs¹⁰⁷, meet difficulties in adapting their strategies to market changes, and in competing with big enterprises. It can be assumed that the set up of national systems well suited in terms of costs/benefits to the specific needs of small PDO/PGI productions could contribute improving their marketing performance. Even if such “micro GIs”¹⁰⁸ are unlikely to benefit from sales beyond their own region, they are potentially useful in the development of tourism, where the cultural identity bestowed by the concept of *terroir* and the GI system can be valuable.

c. Administrative burdens on businesses

Depending on the way the national procedures are conceived and implemented, there could be a positive impact in terms of reduction of administrative burdens for producers of products with only local economic significance.

d. Property rights

Negative impact on the intellectual property rights of producers of products bearing a registered name at national level as would be enforceable in the same country only.

Subject to the concrete definition and implementation of the national systems, the possible introduction of a new form of intellectual property right at national level could complicate the legal framework.

e. Consumers and households

Effects on consumers would depend on the modalities the national systems are shaped and communicated to the public. For instance, an inadequate communication could easily induce consumers to mistakenly believe that the different level of protection (national vs. EC) implies some sort of hierarchy in terms of specific quality.

Negative impact on consumer information since national geographical schemes would coexist with EU schemes.

The creation of national systems to protect certain products' names may have an indirect effect on the take-up of existing national collective/certification marks instruments (so called regional/local "quality label") established in the MS. However it appears difficult to define such an impact.

f. Specific regions or sectors

¹⁰⁷ Belletti, Burgassi, Manco, Marescotti, Pacciani and Scaramuzzi, “The roles of geographical indications on the internationalisation process of agri-food products”, 105th Seminar of European Association of Agricultural Economists (EAAE), March 8-10, 2007, Bologna, Italy.

¹⁰⁸ Josling, “The war on terroir”, *Journal of Agricultural Economics*, Volume 57 Issue 3, 2006, pages 337 – 363.

On the basis of current uneven geographical take-up of the EU GI system in MS, it can be assumed that due to diverse historical and legal traditions some MS would not put in place national protection systems for geographical indications. Producers in these countries would therefore face a disadvantage.

g. Third countries and international relations

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

The establishment of national systems should comply with WTO obligations. Therefore, this would raise the issue of third countries producers' right to protect geographical names in their own territory via national systems.

h. Public authorities

Providing the possibility for national systems of names' protection for products which meet certain economic/trade criteria would decrease the MS workload on applications to be submitted to the Commission.

Positive impact on enforcement authorities, as they would only need to enforce the limited of names of the EU register. Nevertheless, in some MS public authorities would face an increasing number of names protected at national level.

Social impacts

a. Employment

The set up of national systems tailored for products which are not of European economic significance could be an incentive for small food businesses to seek names' protection to better compete in the market. This would end up in supporting local employment. The specific qualities of these products are at least in a number of cases associated with an extensive system of production and processing, which implies a higher rate of employment than in intensive system dedicated to commodities or innovative food products.

b. Social impacts in third countries

No impact on third countries given the scale of production of products bearing the national protection. Nonetheless, any national system should be in compliance with TRIPS obligations.

Environmental impacts

Within the framework laid down at EU level, it is likely that a number of MS would take the opportunity of national systems to fully exploit the environmental potentialities of the GI instrument.

5.6. Option C: Clarifying PDO/PGI rules

Economic impacts

a. Functioning of the internal market and competition

A number of legislative clarifications, for instance with regard to the origin of raw materials and the rules on the use and advertising of PDO/PGI as ingredients may affect market transparency and information to the buyers. The economic literature¹⁰⁹ has highlighted how asymmetrical information can reduce the quality level in the market. Asymmetrical information applies when the producer is in a better position than the buyer to know the exact quality of its product, which is precisely what occurs when rules on raw materials and ingredients are not sufficiently clear.

b. Administrative burdens on businesses

According to the concrete solution adopted to address the above problems, there may be different consequences on businesses. For instance, the establishment of an obligation to inform the producer group/national authority regarding the use of a PDO/PGI as ingredient in a processed product would increase the administrative burden on businesses.

c. Property rights

Depending on the concrete solutions implemented to regulate the relation between users of names as holders of different IPR (TM and GIs), the concerned intangible assets will be affected differently.

d. Consumers and households

The clarification of constraints with regard to the use of GIs products as ingredients and the source of raw materials in GIs would positively affect consumer information.

e. Specific regions or sectors

The pattern of distribution of registered GIs shows a strong bias towards Less Favoured Areas (LFAs)¹¹⁰. In most MS the great majority of PDO/PGI products come from such regions. Regionally designated products, whilst not exclusive to LFAs, tend to be associated with agricultural peripheral regions precisely because such regions have, for a variety of reasons, failed to fully engage with the “productivist” conventions that have predominated the agro-food system in the second half of the 20th century. The clarification of a number of problematic issues may contribute to increase the magnitude of positive effects on these areas.

¹⁰⁹ See Poinelli, “An economic assessment of the International Protection of Geographical Indications”, paper presented at 9th Joint Conference on Food, Agriculture and the Environment, Bologna, 28 August–1 September 2004. Available at: <http://www.tesaf.unipd.it/minnesota/It/mauro-poinelli.pdf>

¹¹⁰ Parrot, Wilson and Murdoch, “Spatialising quality: regional protection and the alternative geography of food”, *European Urban and regional studies*, Vol. 9, No 3, 241-261 (2002).

f. Third countries and international relations

The insertion of provisions on names' registration via bilateral agreements into GI legislation would help third countries in assessing the pros and cons of different ways to seek protection for their products in the EU.

Clarification of the relation with trademarks would decrease legal uncertainty.

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

g. Public authorities

Better rules on the relation of GIs with other users of names (trademark, plant varieties and animal breeds, prior users, etc.) would make it easier for public authorities to assess appropriately the effective status of a name at national level, thus reducing the risk of prejudice against third parties' rights.

Social impacts

a. Employment

A clarification of certain provisions in the legislation in force would make it possible the full realisation of GI potentialities, reinforcing some of its intrinsic advantages. GIs tend to have a positive effect on the regional employment situation, although the overall quantitative impacts differ strongly between the cases. Traditional processing methods may require a higher input of manual labour than industrial substitute products, which benefits employment. Even when a GI production in a given area does not lead directly to employment, it may at least limit a general trend towards decline of employment in the agricultural sector. Indirect positive effects on employment are also reported through the promotion of tourism or via benefits to the local gastronomy and other companies in the region that either process or sell the product.

Environmental impacts

a. Soil quality or resources

EU legislation on protection of GIs includes some instruments that could be useful for addressing environmental problems. On one hand, a PDO/PGI is a governance tool that could be used in addressing sustainability problems. For example, work has been undertaken in the frame of the EU's LIFE programme to promote sustainability of PDO-PGI production for certain products. One of the "Pilot projects Minimum Impact" aims to reduce the environmental impact and promoting the sustainable development in the context of the designation of origin "Jamón de Huelva" and at the same time offer greater quality products (LIFE98 ENV/E/000375). Another project concerns the PDO Arroz del Delta del Ebro, to

permit it remains sustainable within the environment on which its special character depends¹¹¹.

On the other, under present legislation, each GI has to comply with a set of minimum rules that have to be included in the specifications, notably management of yields in wine or detailed rules on feed for animal production. Concerning PDO, EU rules impose that feed comes in majority from the defined area.

b. Biodiversity, flora, fauna and landscapes.

The clarification of the relation with other users of plant varieties and animal breeds' names could indirectly contribute to the role played by GIs in conserving varied local ecosystems at various levels: animals, plants (breeds and local varieties), plant association, and microbial systems.

It has been observed that “quality is a term that can conceptually link increasing consumer demand for differentiated product taste with increasing regulatory pressure from environmental protection. Synergistic benefits from such a linkage have the potential to strength rural development initiatives. California winegrape growers, wineries have responded to public criticism about the expansion of vineyards and agricultural pollution by creating sophisticated networks to define, extend and publicise sustainable farming practices. Geographic branding and quality marketing carry with them the potential to enhance income to producers, but they also expose the specific circumstances of production to criticism on environmental grounds.¹¹²

Another dimension of biodiversity relates to the diversity within an area and can be addressed through requirements on extensive practices. In some economically successful cases, in order to prevent the trend towards a monoculture system encouraged through economic incentives, convergence with organic productions methods is a way to maintain environmental benefits¹¹³.

B.6. COMPARING THE OPTIONS

Likely advantages and drawbacks of options retained for impact analysis are listed below.

	Advantages	Drawbacks
Option A: Abolish PDO/PGI and develop Community TM	Clear identification of ownership	Limited level of protection (i.e.: no “absolute” protection)

¹¹¹ Pilot project Minimum Impact. Reducing the environmental impact and promoting the sustainable development in the context of the denomination of origin “Jamón de Huelva” (LIFE98 ENV/E/000375) http://www.mma.es/secciones/ayudas_subvenciones/life/que_es/pdf/librolife2003_1p2.pdf

Also see LIFE 02/ENV/E/255 (Pollutant-free rice packing in the Ebro Delta); LIFE 96/NAT/SP/3133.

¹¹² Douglass Warner, “The Quality of sustainability: Agroecological partnerships and the geographic branding of California winegrapes”, *Science Direct*, 2006.

¹¹³ “Promotion of traditional regional agricultural and food products: a further step towards sustainable rural development”, Twenty-sixth FAO Regional Conference for Europe, Innsbruck, Austria, 26-27 June 2008.

<p>system (possible Community certification mark)</p>	<p>Lower administrative burden for public authorities concerning enforcement</p> <p>Shorter delays for registration procedure</p>	<p>Compulsory registration fee/compulsory periodical renewal fee</p> <p>Higher cost of market surveillance</p> <p>Enforcement only through private action</p> <p>Problematic transition to a purely TM system</p> <p>If specific rules on a Community certification mark are to establish, need for amendment to CTM Regulation (DG MARKT)</p> <p>Not supported by majority of MS</p> <p>Affects bilateral treaties with 3C</p> <p>Risk of regional uneven take-up</p>
<p>Option B: streamlining EU procedures</p>	<p>Shortening and harmonisation of procedures will:</p> <ul style="list-style-type: none"> - Reduce cost for operators - Increase efficiency and coherence between the three systems. 	<p>Reduced time delays for amicable procedures in conflicting cases.</p>
<p>Option B1: streamlining EU procedures and merging of PDO and PGI definitions</p>	<p>It would bring EU GI definition closer to TRIPS definition</p> <p>Would make easier negotiations with 3C on protection</p> <p>It would help providing consumers a clearer message on products' characteristics linked to geographical origin</p>	<p>Some MS strongly against. EESC against.</p> <p>Two different types of geographical origin (PDO-PGI) originally introduced to reflect existing national experiences=>likely difficult implementation</p> <p>Inconsistent with recent graphic differentiation of PDO and PGI symbols</p> <p>Inconsistent with recent wine reform</p> <p>It would drive down the intensity of the link between product and geographical origin</p>
<p>Option B2: Streamlining EU procedures and create single register (wine, spirits and agricultural products)</p>	<p>Ensure coherence among EU rules on protection of geographical names</p> <p>In line with better regulation and simplification</p> <p>A single register would be consumers –friendly and easy for operators and administration use</p>	<p>Need for preserving some specificities of the 3 systems</p>

	<p>A single legal act and a single register would contribute to a better enforcement</p> <p>Majority of MS supports some sort of harmonisation, provided that specificities are respected</p> <p>Merging would support EC negotiation position in DDA on extension of protection beyond wines and spirits</p> <p>Opportunity to extend environmental concerns currently spelt out in wine regulation to agricultural products as well.</p> <p>Likely reduction of administrative burden regarding enforcement</p> <p>Synergies in registration procedure and information campaigns</p>	
<p>Option B3: streamlining EU procedures and introduction of national systems of protection</p>	<p>Reduce Commission burden of approving names at EU level</p> <p>Possible reduction of administrative burden for small businesses producing “micro GIs”</p> <p>Possible positive effect on local employment</p> <p>Possibility - within the EU framework - to address at national level specific concerns (e.g. environmental)</p>	<p>Could fragment the single market</p> <p>Current system was created to avoid recurrent problems related to non-harmonised national systems</p> <p>Definition of trade criteria would be difficult</p> <p>Risk of consumer confusion (proliferation of national logo)</p> <p>Solutions may increase control burdens</p>
<p>Option C: clarifying PDO/PGI rules</p>	<p>Resolve current ambiguities</p> <p>Clarify demand for greater (indirect) control by producer groups</p> <p>In line with Commission declaration of 30.3.2006</p> <p>Supported by majority of MS</p> <p>Better market transparency and consumer information</p> <p>Improvement quality of applications</p>	<p>Controversial issues: solutions not evident</p> <p>Certain solutions may increase administrative and control burdens.</p>

Comparison of retained options by specific objectives

<i>Options</i> <i>Objectives</i>	Option 0 status quo	Option A Replace geographical indications with trademark system	Option B status quo plus (streamlining)			Option C Clarification PDO/PGI rules
			Option B.1 merger PDO/PGI definitions	Option B.2 merger wine, spirits and agricultural products	Option B.3. creation of national systems	
Ensure clearer information regarding the products specific characteristics linked to geographical origin. (see general objective and)	0	- As the TM system is not a specific instrument to transmit product characteristics linked to geographical origin	- As designation of origin is better known than geographical indication in some countries of the EU.	+ Consumer and producer would rely on a single set of rules	- Consumer would be further confused with the appearance of new national systems that would coexist with EU system	+ As place of farming of raw materials would ensure clearer information
Ensure a single approach at EU level for GIs and simplify the Community schemes.	0	- On one hand the GI system would be simplified as it would disappear; on the other, in its present form, trademark legislation would not ensure commitments on level of protection for GI's. Finally, the TM solution would not ensure a single approach as to the 3C GI's protected through bilateral agreement.	-	+ As the three existing systems would be simplified into one	-- As every MS would be able to create is own system, and the present single approach would disappear. Complexity with EU system, national or regional systems would increase,	0

Ensure uniform IP rights enforcement - throughout the EU.	0	- As wine and spirits scope of protection would be different than agricultural products, enforcement might get more complex	0	+	--	++ As clarifications would be introduced on the enforcement of protection, as well as on relation between potential conflicting rights.
Improve incomes of farmers and ensure that the system contributes to rural economy.	0	- Delocalisation of a trademark is possible. Specifications needed in a GI system (but not a TM) may introduce rules on quality or process that contribute to maintain rural economy.	- As some evidence shows that returns to farmer in PDO are higher than in PGI's	0	+	0 As multiplicity of ad-hoc systems may be created to valorise local productions
Facilitate high level protection in third countries of EU geographical indications	0	+	+	0	0	0
		In the case of individual applications, the system would better adapt to implementation of TRIPS provisions through trademarks systems	As it would single GI definition, applying to all TRIPS members			

The comparison of options retained is made against the specific objectives. General objectives are not adequate to be used in that context as the policy on EU schemes of geographical indications is already in place, and the purpose of the present impact assessment is to analyse further recast and simplification. This is why the comparison of options has been made vis-à-vis the specific objectives defined under section 3.2.

Among the options retained, option B2 (Streamlining EU procedures and create single register (wine, spirits and agricultural products) and options C (clarifying PDO/PGI rules) show the highest objectives achievement.

The objective related to the protection of intellectual property rights of GI holders in third countries (objective e) is not achieved by any of the considered options.

Summary of comparisons

Comparison with effectiveness, efficiency and consistency (see Annex B, § B.6)

<i>Options</i> <i>Objectives</i>	Option 0 status quo	Option A Replace geographical indications with trademark system	Option B status quo plus (streamlining)			Option C Clarification PDO/PGI rules
			Option B.1 merger PDO/PGI definitions	Option B.2 merger wine, spirits and agricultural products	Option B.3 creation of national systems	
Effectiveness (how well will it solve the problem?)	0	0	— Incoherent with recent creation of PDO/PGI in wine system	+ A higher coherence between the 3 systems; further simplification	— Complexity will be increased	+ Better information to consumer; reduce complexity
Efficiency (is this the most we can get for the money?)	0	0	0	+ As cost advantages would be created of merging the 3 systems	0	0
Consistency (is it in line with other Commission objectives and strategies?)	0	0	0	+ In line with simplification strategy	— Against EU harmonised framework.	+ Consistency with current legal frameworks

Option B2 (streamlining and merger wine, spirits and agri-products) and option C (clarification PDO/PGI rules) score the highest on effectiveness, efficiency and consistency.

B.7. MONITORING AND EVALUATION

This impact assessment is in the context of setting out strategic orientations in a Communication, so in the immediate future, the test of progress will be whether or not these orientations are developed and adopted.

For the progress of policy itself the following core progress indicators are proposed provisionally and will be developed during preparation of each initiative:

Orientation	Core progress indicators	Monitoring and evaluation arrangements
Abolish <i>sui generis</i> system and replace by existing trademark system.	Asses the efficiency and effectiveness of the collective trademark system vis-à-vis certification trademark system.	Monitoring of legislation
	Preparation of trademark legislation modification	Work plan to be proposed by the Commission
Streamlining procedures combined with:	Prepare modifications of legislation	Work plan to be proposed by the Commission
	Speed up of internal procedures	Annual data recorded by the commission.
1. Merging of PDO/PGI definitions	Prepare modification of 2 legislations (wine and agricultural products)	Work plan to be proposed by the Commission
2. Creation of single register for wine, spirits and agricultural products	Preparation of new single framework regulation	To commence after Lisbon Treaty ratified. Work plan to be proposed by the Commission
		Commission single database
3. Creation of national systems	Prepare modification of legislations	Monitoring to be addressed by MS.
Clarifying PDO/PGI rules	Preparation of legislation modification	Work plan to be proposed by the Commission
	Development and approval of guidelines with regulatory committees (3) and advisory groups (3)	
	Assess economic importance of GIs in marketplace	External study on value and volume of PDO/PGI

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ANNEX I

INCREASING OR RETAINING ECONOMIC ACTIVITIES IN RURAL AREAS

Extract from the evaluation of PDO/PGI.

Findings from the literature

The magnitude of the effects will depend on the size of the production of the PDO/PGI product and its relative importance in the region, and the alternatives to the production of the PDO/PGI.

It is most likely that the regional economic development benefit of the scheme will be the greatest in regions with few, if any, alternatives to the production of the PDO/PGI. Typically, such regions are more remote from the main centres of economic activity and suffer from a lack of economic development opportunities.

In contrast, the PDO/PGI scheme is unlikely to have a major economic development impact if the production of the PDO/PGI is relative small scale and there are many alternative agricultural and/or non-agricultural economic opportunities in the region.

For example, Hauwuy et al. (2006), in a study of dairy production for cheese-making in the northern Alps, note how the existence of a geographical indication helps maintain a specialist agricultural sector through generation of price premiums for local milk and maintenance of skilled labour.

However, some authors question the direction of causality between PDOs/PGIs and economic benefits, arguing that PDOs/PGIs tend to appear in already prosperous regions rather than being a stimulus for development of less favoured regions. For example, in Italy, most PDOs are based in the northern developed regions (Tuscany, Emilia Romagna, etc).

If the PDO/PGI scheme is to retain and/or boost economic activities in rural areas, it must maintain or increase the revenues for the rural communities, including farmers. O'Connor & Co. (2006) highlight the success of the registration of 'Lentilles vertes du Puy' in France as a PDO in 1992 as having complemented local farmers' income, leading to growing production levels through to 2005. The density of lentil cultivation means that it yields twice as much crop as the same area of corn, bringing higher profitability. Based on data from the Centre of Rural Economy of the Haute-Loire, the authors state that, on average, the 'Lentilles vertes du Puy' provides its 850 growers with an additional €305 per month, representing an increase of 10-15% relative to average farming income in France.

Research by DG Joint Research Centre¹¹⁴ identified impacts of the PDO/PGI scheme on rural development as including product differentiation and the contribution to competitiveness, extensive production, rural processing, protection of traditional production systems and ways of life and agro-tourism. However, the research also points to the protection of traditional

¹¹⁴ Summarised by: Hubertus Gay, S. and Gijbers, G. (2007) "Summary of case studies undertaken by the JRC", EC DG Joint Research Centre-IPTS and Innovation Policy Group TNO, Conference: "Food Quality Certification – Adding Value to Farm Produce", 5-6 February 2007.

methods as being a restraint on innovation. Several studies¹¹⁵ support this analysis, highlighting the important role of GIs in the regeneration of the countryside, conservation of local plant varieties, rewarding local producers, supporting rural diversity and social cohesion, whilst promoting new job opportunities in production, processing and other related services.

In their review of the PDO/PGI regulation, Barjolle and Sylvander (2000) note the difficulty in evaluating the regulation's contribution towards the long-term objectives. But they also state that, for certain products of less-favoured regions, market success allows proper remuneration of labour-intensive small-scale or farm production, and farms in such regions would be less viable without this revenue.

Other research has pointed to the limitations of quality labels as a rural development tool, owing to the narrow distribution of the benefits resulting from the protection of geographic names. Callois (2004) finds that quality labels are “a very selfish way of development”,¹¹⁶ as the rise in farmers’ income does not benefit the rural region as a whole.

Pacciani et al. (2001) argue that the economic contribution of PDO-type schemes depends on the type of strategy that local actors adopt and in particular on whether a ‘supply chain’ strategy or an ‘extended territorial strategy’ is used. In the former case, only producers and processors are involved in the certification and they tend to be the only ones that gain from the scheme. In the latter, a diversity of actors tends to be involved and the economic benefits of the scheme are shared within the local community.

Whatever the case, the statistics show that in certain cases, the economic contribution of PDO/PGI products is significant. For example, a study by INDICOD – Nomisma (2005) found that registered products (excluding wine) contributed over €3,1 billion at production and €8,6 billion at consumption to the Italian agri-food economy, or approx 7,2% of the agricultural added-value.

Many other researchers, including Belletti and Marescotti (2006), Ray (2002) and Rangnekar (2004), also highlight the important role of GIs in supporting rural development and preservation of socio-cultural aspects. In particular, they point to the contribution of GIs to the creation of social and cultural capital, and to the re-spatialisation and re-socialisation of food in the regions. The rural development potential of geographic products is linked, they argue, to the characteristics of these products produced in traditional, small-scale farms, in

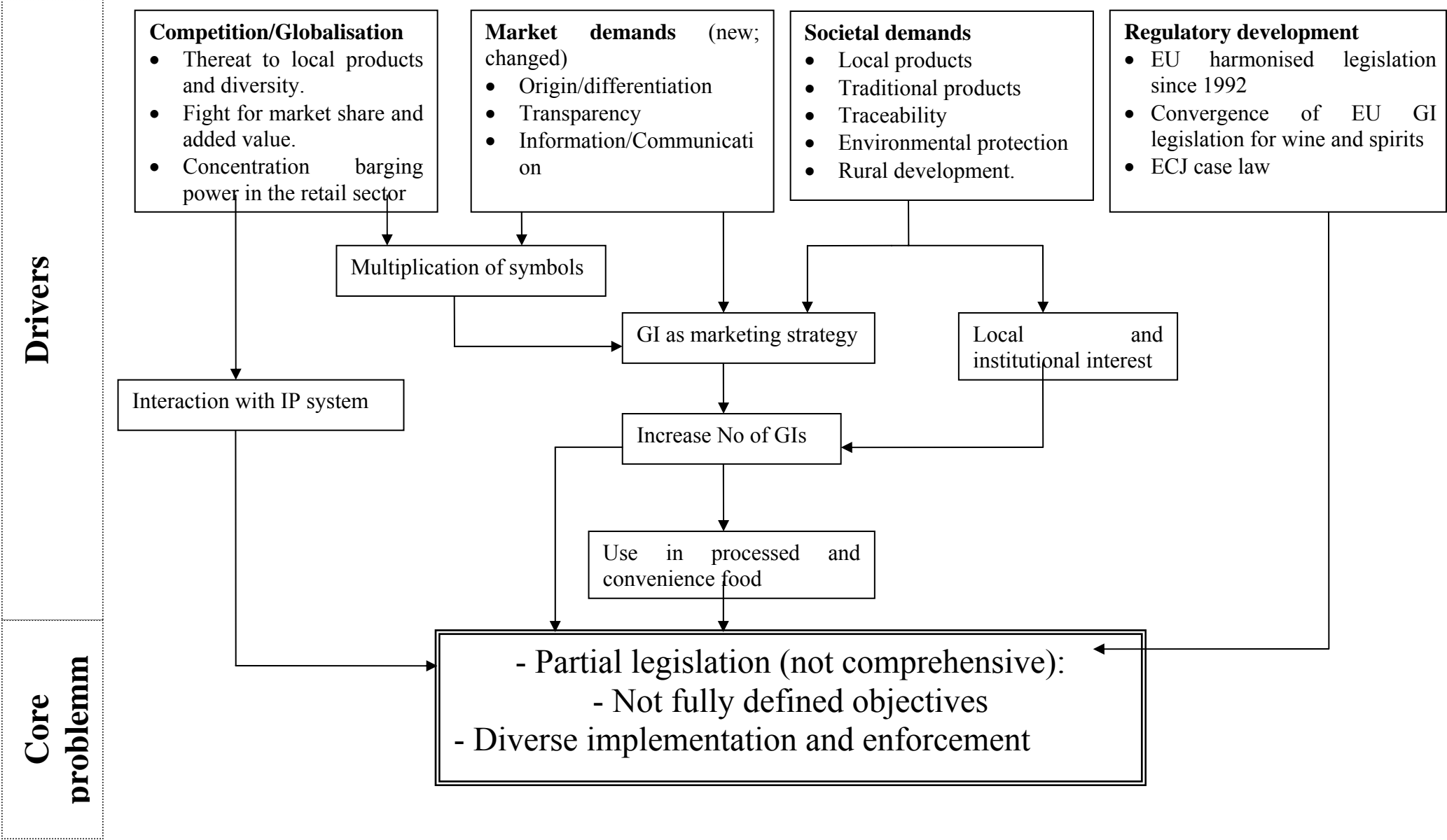
¹¹⁵ EC DG Agriculture cite the following studies: Impact de l’utilisation d’une indication géographique sur l’agriculture et le développement rural (Fromage de Comté, France) – MAAPAR, 2003/2004; Geographic Indications in France – A dynamic sector of the Food Industry – Dupont ; High Quality Products and regional specialities: A promising trajectory for endogenous and sustainable development – Jan Douwe van der Ploeg; Geographical Indications and Rural Development in the EU – Carina Folkesson, Lund University. http://ec.europa.eu/agriculture/publi/fact/quality/2007_en.pdf

¹¹⁶ Callois (2004), pp. 15.

traditional ways, in fragile and/or marginal rural areas; keeping alive these ‘traditional ways of living’ and traditional landscapes in marginal rural areas.

Other authors highlight the spillovers into adjacent economic activities in the region. The marketing of the region through one GI product can bring publicity to the region and reinforce the regional identity, fostering agri/cultural tourism, and so creating more job opportunities and increasing incomes through an indirect link with the original GI¹¹⁷.

¹¹⁷ Ray, 2002, pp. 12; Rangnekar, 2004, pp. 16-17.



Competition/Globalisation

- Threat to local products and diversity.
- Fight for market share and added value.
- Concentration bargaining power in the retail sector

Market demands (new; changed)

- Origin/differentiation
- Transparency
- Information/Communication

Societal demands

- Local products
- Traditional products
- Traceability
- Environmental protection
- Rural development.

Regulatory development

- EU harmonised legislation since 1992
- Convergence of EU GI legislation for wine and spirits
- ECJ case law

Multiplication of symbols

GI as marketing strategy

Local and institutional interest

Interaction with IP system

Increase No of GIs

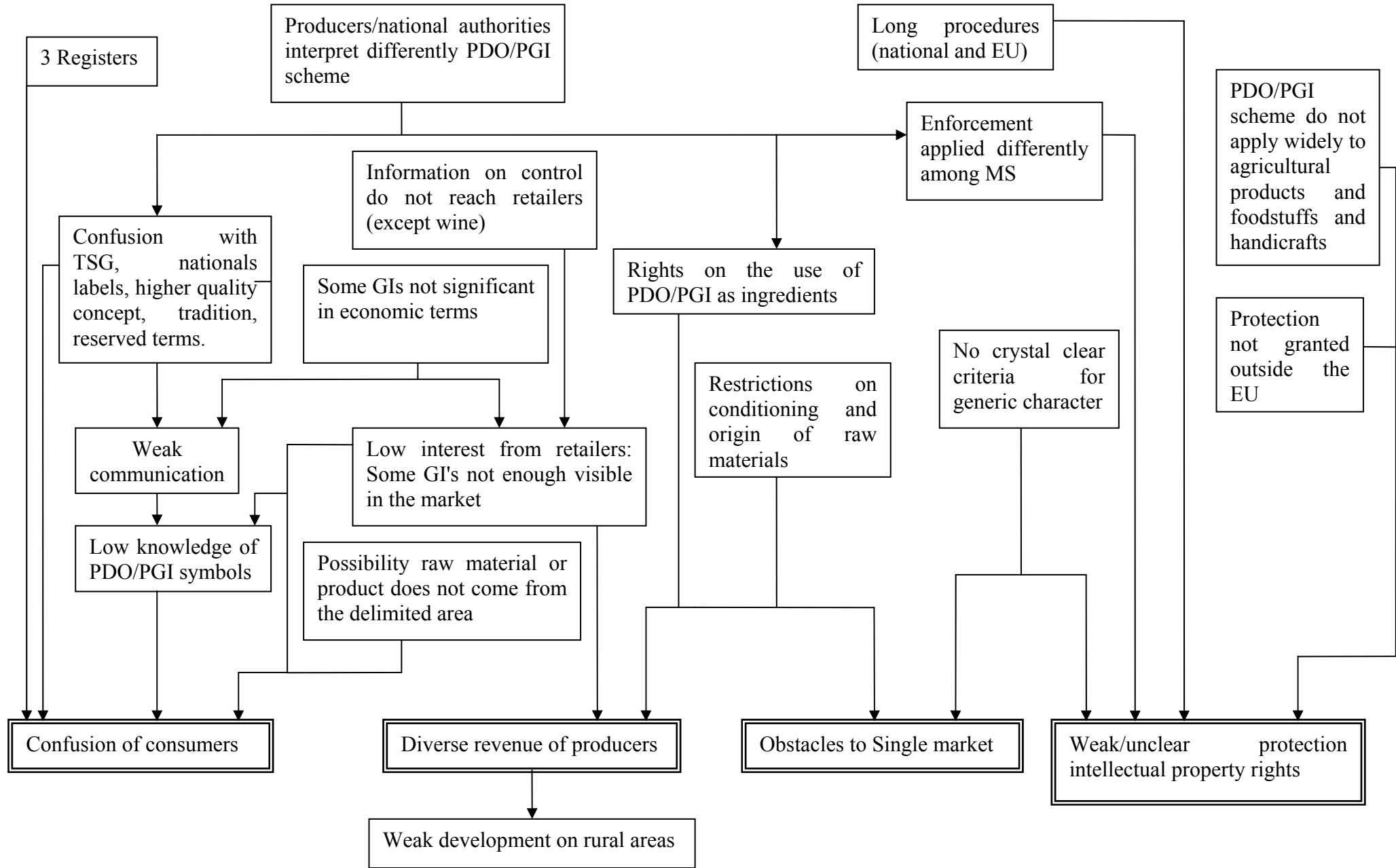
Use in processed and convenience food

- Partial legislation (not comprehensive):
 - Not fully defined objectives
 - Diverse implementation and enforcement

Drivers

Core problem

Effects of the problem



ANNEX III

SUMMARY OF ENVIRONMENTAL IMPACTS ON THE CASE STUDIES CONDUCTED IN IPDEV PROJECT

	Overall assessment	Most important effects (positive/negative).
Jersey Royal Potatoes (PDO)	<p>Environmental effects: production has, overall, a positive effect in light of worse alternatives (land abandonment and rural decline), considering that there are no substitute crops of comparable economic viability (although diversification is being promoted). Problems came from intensification in the 1980s – with consequences for water pollution and soil erosion. All production now has to meet minimum Jersey environmental standards to receive a subsidy and the standards required by British retailers for export (99% of production). The quality of Jersey produce and the island countryside is now being promoted.</p>	<p>(-+) water: as Jersey is a small island, freshwater is a finite resource but rainfall is usually plentiful. There are occasional drought years when desalination for drinking water is necessary and the crop on the sandier west coast may be irrigated. But this is rare and relatively small-scale because most rain falls during the growing season.</p> <p>(-) medium/high fertiliser and pesticide input, although new practices have been introduced to reduce this: cover cropping that is ploughed back in, soil and disease analysis and monitoring, integrated crop management (compliance with Assured Food Standards, LEAF for export and Jersey Codes of Practice for subsidy). Risk of higher input use by small producers who do not export.</p> <p>(-+) Some soil erosion due to loss of some boundaries and cultivation on slopes. Use of cover crop and seaweed to add texture and programmes to replace boundaries.</p> <p>(+) Contribution to landscape maintenance. Jersey Royal Potato growing has defined the Jersey landscape for 200 years.</p> <p>(+) Biodiversity: field boundaries, where maintained, provide habitat and wildlife corridor. Jersey Royal is indigenous. Cover crops for 8 months of the year provide important habitat for birds, invertebrates. Key that Jersey Royal has very short winter/spring growing season.</p> <p>(+) Some organic production and likely to increase with UK consumer demand as new premium market.</p> <p>(+) No GMO varieties</p>
West Country Farmhouse Cheddar (PDO)	<p>Dairy farming to produce West Country Farmhouse cheddar has, overall, a positive effect in light of worse alternatives (loss of permanent grassland through land abandonment, conversion to arable farming where unsuited to the land, development). Helps conserve traditional landscape, knowledge and methods. Highly integrated production system. Farmers strive to maximise milk output but</p>	<p>(+ -) although water use is quite high in dairy farming and overall demand is increasing in the area, water is plentiful and the traditional, highly integrated production methods are likely to reduce need.</p> <p>(+ -) water quality: medium-high fertiliser input, but risk of diffuse pollution lesser than for alternative land uses where these are unsuited to the soil type. Producers follow certified schemes, which reduce pollution risk. Some production is conservation grade or organic and this is likely to increase.</p> <p>(+) soil: regional poor soil structure and heavy rain creates risk of water pollution where land use is</p>

	<p>PDO cheese production linked to producer interest in conservation, animal welfare, organic production, other traditional products.</p>	<p>inappropriate. PDO maintains dairy farming and is likely to permit correct stocking rates and grazing intensity, helping conserve local grassland, hedgerows and trees.</p> <p>(+) Contribution to traditional landscape and land-type maintenance.</p> <p>(+ -) Biodiversity: maintenance of indigenous grass species, and wildlife in hedgerows and woodland.</p> <p>(+ -) Energy/Waste – because of highly integrated, traditional production, this is reduced compared with industrial cheddar making (e.g. reduced transport, plastic packaging, energy for pasteurisation in some cases).</p>
<p>Spreewald gherkin (PGI)</p>	<p>Environmental effects ambiguous – positive and negative impacts can be identified, weighting not possible. Intensive farming practices for cucumber production, but negligible share of total agricultural area is concerned.</p>	<p>no organic production, but integrated production is mandatory</p> <p>(-) high water demand (but modern and efficient irrigation techniques)</p> <p>(-) high fertiliser input, use of fungicides and insecticides</p> <p>(+) mostly short transport distances – regionalised production cycle</p> <p>(+) contribution to landscape maintenance</p>
<p>Schwäbisch-Hällisches Qualitätsschweinefleisch (PGI)</p>	<p>Pig keeping according to production guidelines is clearly beneficial compared to conventional/industrial pork production. Organic branch exists.</p> <p>Environmentally compatible production is declared aim of the producers' group; group is involved in environmental projects.</p>	<p>(+ compared to standard pork) reduced pressure on water and soil due to limited livestock density and regionalised production process</p> <p>(+) re-establishment of endangered breed benefits agro-biodiversity</p> <p>(+ compared to standard pork) reduced energy demand due to short transport distances and special pig housing facilities</p>
<p>Diepholzer Moorschnucke (PDO)</p>	<p>Clearly beneficial – conservation of landscape is major aim of the activity. No negative impacts on environment, preferable to alternative agricultural and livestock management practices. Unique, close relationship between sheep and habitat.</p>	<p>(+) regeneration and conservation of moorlands (under supervision of environmental NGO)</p> <p>(+) no or very little fertiliser and plant protection products</p> <p>(+) sheep grazing contributes to favourable nutrient balance and maintaining nutrient-poor soil conditions</p> <p>(+) maintenance of habitat for many rare and endangered species</p> <p>(+) re-establishment of endangered breed benefits agro-biodiversity</p>

		(+) low energy input, short transport distances
Idiazábal (PDO)	Extensive system of production lessens the impact on the environment. Traditional activity has shaped landscapes (highland pastures). PDO qualified sheep -Latxa and Carranzana-: autochthonous sheep.	<p>There are two organic cheese producers within the PDO (one experimental farm). Extensive model of production which competes with more intensive models (caw milk).</p> <p>(+) Environmental impacts are low.</p> <p>(+) Contribution to landscape maintenance. Landscapes are often described as “semi natural” due to repetitive, seasonal grazing of transhumant flocks.</p> <p>(+) Biodiversity: preservation of autochthonous (not highly productive in terms of quantities produced) sheep. Latxa and Carranzana (Carranzana in danger).</p> <p>(+) Biodiversity: creation of diverse habitats in mountains –mosaics-.</p>
Arroz de Valencia (PDO)	The area is a wetland, protected under national, international and EC regulations. Conserving rice activity is said important to preserve wetland habitats (recognised by Rural Development EC rules). Producers committing to the preservation of “traditional” rice production receive economic aids. (+++)	<p>There are no organic producers. The production being a Natural Park, there are constrictions as to agrochemicals, construction of new facilities, and conversion of rice fields to other productions.</p> <p>(+) Water availability: Rice-paddies are the only agricultural activity which do not imply drying lands out –agricultural alternative land uses are prohibited. High levels of water management, but preserving wetland characteristics.</p> <p>(+) Soil erosion is low. Floods guarantee permanent input of sediments (loam).</p> <p>(+) Rice paddies are part of the landscape, and has been for centuries.</p> <p>(+) Biodiversity: The area is of enormous importance for migrating/ water birds. Rice fields provide, shelter, food and water.</p> <p>(+) PDO contribution: technical cooperation for rational use of inputs and agricultural practices. Valorisation of an environmentally important production.</p> <p>(+/-) use of herbicides and insecticides exist, but are rationalised. Integrated systems are promoted by administration with the aid of RCAV (see, for example, pheromone treatment for borer plague..</p> <p>(-)Water and soil contamination: eutrophication resulting from waste waters of populated neighbouring areas. High organic presence in water reduces fertiliser input inputs in rice. Loams in certain area register presence of contaminating agents.</p> <p>(-) Siltation (natural and man provoked).</p>

			(-) Air: rice hay which cannot be recycled is burnt.
Sierra (PDO)	Mágina	<p>Environmental effects: olive oil production has, overall, a positive effect</p> <p>facing worst alternatives (land abandonment and desertification), considering that reforestation is difficult. Worst problems are intensification –with consequences on water use, pollution and soil erosion-) RCPDO contributes</p> <p>in conserving traditional methods, limiting –somewhat-pressures for intensiveness and giving technical cooperation for ex: orienting production towards more integrated systems.</p>	<p>There are few organic oil producers within the PDO, but successful (Trujal de Sierra Mágina). Integrated production is not mandatory, but methods which are recommended by the RCSM bring production close to integrated production standards.</p> <p>(-) increasing water demand (since irrigation augments productivity).</p> <p>(-) medium/high fertiliser input, use of herbicides and insecticides.</p> <p>(+) Soil erosion is generally high, due to labour in slopes. Application of natural covers (information and cooperation granted, among others by RCSM), reduces this problem.</p> <p>(+) Water wastes: Expansion of the use of two phase decanters, replacing three phase decanters, reduce water wastes –vegetative waters-.</p> <p>(+) contribution to landscape maintenance. Olive groves have occupied the scenes of Jaén and Córdoba slopes. Olive trees are a part of traditional landscapes.</p> <p>(+) Biodiversity: Olive groves provide habitats and food for several species of insects and larger animals.</p> <p>(-) Biodiversity: despite the richness and varieties of olive trees, PDO favour the protection of the varieties with good properties for oil production (Piqual, in the case of Sierra Mágina).</p> <p>(-) Some studies mention that only organic olive oil production is sustainable (only two oil mill/cooperatives). Intensified traditional such as Sierra Mágina groves, although less harmful than completely intensive groves, are not sustainable.</p>

Source: IPDEV – summary of case studies.

ANNEX IV

THE ECONOMIC ANALYSIS OF THE VALUE CHAIN

Extract from the "Case studies 8. *Parmigiano Reggiano* - 30/11/06" DG JRC/IPTS¹¹⁸

Some of the key data concerning the Parmigiano Reggiano (PR) supply chain, are reported in table 1 below, together with the corresponding data concerning Grana Padano (GP). The objective of the table is to resume the data on average per unit revenues and costs of the main actors of the supply chain (farmers, processors, agers/traders/wholesalers, retailers), in order to clarify how rents are allocated along the chain. The only actors experiencing negative profits in the last four years are the PR farmers delivering to private dairies. The size of this negative per-unit profits crucially depends on the level of the raw milk price, which tends to fluctuate quite strongly. In 2002, when the raw milk price was at its highest point, profits were very closed to 0, while in 2005 the drop in milk price generated a strong negative profit. These negative profits do not necessarily imply dangers for the farms involved, since family farms still provide most of the labour needed for milk production, and negative profits simply imply that this labour is paid at a lower rate as compared to the standard salaries. However, this remains a problem for the PR supply chain, since farmers producing milk for GP can experience positive profits, at least in some years, thanks to their lower average milk production costs.

The situation of PR farmers delivering to coops is slightly different. If we use private dairies' profits as proxy of coops' net revenues, these revenues make farmers' profits positive in all years, ranging from 2 to 16% of milk sales. However, this calculation does not take into account the fact that coops pay milk to farmers up to 24 months after delivery, in case they carry out also the ripening phase. This of course means that farmers have to bear the additional cost of financial exposition.

All the other actors of the chain (private processors, agers/traders/wholesalers, retailers) experience positive profits in all the years considered in this analysis, although the size of this profits tend to fluctuate quite strongly, given the cyclical behaviour of both the milk and the cheese prices. In general, however, the incidence of profits on sales tends to be substantially larger for retailers (ranging from 15 to 30%) and also for PR processors (from 13 to 32%, except in 2002), which have recently benefited from the strong negative raw milk price trend. GP processors, as well as agents/traders (which normally act in both PR and GP supply chains), experience profit margins ranging from 2 to 7% of their sales depending on the year.

¹¹⁸ http://ec.europa.eu/agriculture/quality/certification/docs/case8_en.pdf.

Table 1: Value added and profits at different stages of the Parmigiano Reggiano and Grana Padano supply chain

	Parmigiano-Reggiano (PR)				Grana Padano (GP)			
	2001	2002	2003	2004	2001	2002	2003	2004
<i>Farm level (€/100 kg of milk)</i>								
Milk price*	45.97	51.05	44.86	37.40	40.57	37.50	39.77	38.66
Total farm revenue (milk+meat+others)	48.04	53.98	46.63	40.40	43.67	41.79	43.70	43.46
Milk production costs	55.34	54.27	54.50	52.58	44.59	43.32	41.70	41.18
Profits	-7.30	-0.29	-7.88	-	-0.92	-1.53	2.00	2.28
				12.18				
<i>Processing level (€/kg of cheese)</i>								
Cheese wholesale price (PR 12 months aged; GP 9 months aged)	8.13	8.05	8.97	8.51	6.10	5.65	6.09	5.88
Processing costs	0.15	0.15	0.15	0.16	0.12	0.12	0.12	0.12
Cost of raw material (15 kg of milk for PR – 14 kg of milk for GP)	6.89	7.66	6.73	5.61	5.68	5.25	5.57	5.41
Value added	1.23	0.39	2.24	2.90	0.42	0.40	0.52	0.47
Profit	1.08	0.23	2.08	2.74	0.31	0.28	0.40	0.35
<i>Agers/traders/wholesalers level (€/kg of cheese)</i>								
Cheese wholesale price (PR 24 months aged; GP 18 months aged)**	9.08	9.08	10.12	9.83	6.49	6.09	6.55	6.31
Ageing costs	0.27	0.44	0.64	0.67	0.14	0.21	0.29	0.31
Cost of raw material (PR 12 months aged; GP 9 months aged)	8.13	8.05	8.97	8.51	6.10	5.65	6.09	5.88
Value added	0.95	1.03	1.15	1.32	0.39	0.44	0.46	0.42
Profit	0.68	0.59	0.51	0.66	0.26	0.23	0.17	0.12
<i>Retailers level (€/kg of cheese)</i>								
Cheese retail price	13.20	13.23	13.63	14.11	9.80	9.63	9.74	9.75
Retailing costs (estimated)	1.05	1.05	1.10	1.10	1.05	1.05	1.10	1.10
Cheese wholesale price (PR 24 months aged; GP 18 months aged)***	9.05	9.00	10.16	9.78	6.39	5.93	6.33	6.00
Value added	4.15	4.22	3.47	4.33	3.41	3.70	3.41	3.75
Profit	3.10	3.17	2.37	3.23	2.36	2.65	2.31	2.65
<i>Distribution of valued added among agents</i>								
Processors (%)	19.5	6.9	32.6	33.9	10.0	8.8	11.8	10.1
Agers/traders/wholesalers (%)	15.0	18.3	16.7	15.5	9.3	9.7	10.4	9.2
Retailers (%)	65.5	74.9	50.6	50.6	80.7	81.6	77.7	80.7
<i>Incidence of profits on sales</i>								
Farmers (%)	-15.2	-0.5	-16.9	-30.2	-2.1	-3.7	4.6	5.2
Processors (%)	13.3	2.9	23.2	32.2	5.0	5.0	6.6	6.0
Agers/traders/wholesalers (%)	7.5	6.5	5.1	6.7%	4.0%	3.8%	2.5%	1.9%
Retailers (%)	23.5	24.0	17.4	22.9	24.1	27.5	23.7	27.2

Source: author's calculation on data from various sources.

* Price paid by private processors (cooperatives excluded)

** Weighted average of wholesale domestic price and export price

*** Wholesale domestic price only (foodservice and food industry uses are excluded)

Another important element to judge how rents are allocated along the chain is the distribution of the value added. There is no doubt that retailers are producing the highest share of the total value added of the cheese supply chain: from 50 to 75% of the total for PR and around 80% for GP. This is mainly due to the high margin that retailers can enjoy in terms of differences between retail and wholesale cheese prices. Processors and agers/traders produce the remaining share, which may reach 30% for PR processors (9-10% for GP) and 15-18% for PR traders (9-10% for GP).

These data, together with those on profits, confirm the perception of all the operators of the chain, that the increasing bargaining power of modern retailers is shifting toward them the benefits of the PR and GP Quality Assurance Schemes. These considerations are of course based on the fact that a highly concentrated retail sector can exert its oligopsony¹¹⁹ power on a highly fragmented supply chain, with 5000 PR farmers, more than 500 PR processors and 70-90 traders/wholesalers that act in both the PR and GP chains. Moreover, in a situation in which very few firms are able to implement their own brand policies in the final market, retailers become also the main players in the grana cheese marketing strategies, both in terms of product differentiation (through different types of products like vacuum packed pieces, snacks and grated cheese, but also through their own Private Label brand policies) and in terms of pricing and promotions (big discounts, below-cost sales,...).

¹¹⁹ An oligopsony is a market form in which the number of buyers is small while the number of sellers in theory could be large. It is a form of imperfect competition. The buyers have a major advantage over the sellers. They can play off one supplier against another, thus lowering their costs. They can also dictate exact specifications to suppliers, for delivery schedules, quality, and varieties. They also pass off much of the risks of overproduction, natural losses, and variations in cyclical demand to the suppliers.

ANNEX V

PRIOR USES, OBJECTIONS AND OUTCOMES

The first table below summarises the position for the most simple case, that is a prior use in the same name as that proposed for registration as a PDO/PGI (e.g. Feta / Feta PDO), or the PDO/PGI contains an exact part of the prior use (e.g. British Sherry / Sherry PDO). In either case, if *exclusive* protection is given to the registered PDO/PGI, the prior use cannot continue.

The second table examines the circumstance, which is more common, where the prior use is in a different name that would (normally) be covered by the protection of a registered PDO/PGI, for example a translation or evocation of the PDO/PGI name (e.g. Bavaria / Bayerischer PGI), or the PDO/PGI includes a part of the prior use (e.g. Cheddar / West Country Farmhouse Cheddar PDO).

Table 1: Prior use in the same name as that proposed for registration as a PDO/PGI, or the proposed PDO/PGI contains an exact part of the prior use

Prior use	Ground for objection under Article 7	Potential outcome	Comment
Plant variety (registered in Angers CPVO; registered at MS level; traditionally used) and Animal breed (no EU herdbooks exist; in MS herdbook or traditionally used)	Art. 7(3)(b): registration would be contrary to Art 3(2): "a name may not be registered where it conflicts with the name of a plant variety ... and as a result is likely to cause consumer confusion"	(1) rejection of the PDO/PGI (2) conflict or consumer confusion not judged to be significant, and PDO/PGI is registered	(1) Plant variety name continues (2) unclear whether or not the plant varietal/breed name can continue to be used to market product of the variety which does not correspond with the PDO/PGI.
Name is wholly or partly homonymous with a name already registered as a PDO/PGI	Art. 7(3)(b): registration would be contrary to Art 3(3) which lays down rules on homonymity	(1) (normally) new PDO/PGI is registered. (2) exceptionally, if the proposed PDO/PGI would mislead consumers as to origin of that product, registration is rejected.	(1) Art. 3(3) lays down conditions for use of the two names (ensure distinction between names) (2) only original PDO/PGI name may continue..
Prior trademark	Art. 7(3)(b): registration would be contrary to Art 3(4) which provides that registration of a PDO/PGI shall be refused if a prior trademark has a certain reputation.	(1) if registration of the PDO/PGI would confuse consumers as to its origin by reason of a prior trademark's renown, reputation and long use, PDO/PGI is rejected. (2) if trademark does not have the above consumer recognition,	(1) In that case the result would be that only the trademark may continue to be used (2) Under Art. 14(2) the trademark may 'coexist' (see box on 'trademark coexistence') <i>Note: under neither of</i>

	<p><i>or</i></p> <p>Art. 7(3)(c): registration would jeopardise the existence of an entirely or partly identical... trademark</p>	<p>the PDO/PGI is registered</p>	<p><i>these outcomes is the existence of the prior trademark 'jeopardised', which renders the provision of Art. 7(3)(c) to have no apparent effect.</i></p>
Prior name	<p>Art. 7(3)(c): registration would jeopardise the existence of an entirely or partly identical... name.</p> <p><i>'name' presumably does not refer to a 'trademark' as that is listed separately. But it could refer to other types of IPR (such as plant variety) or any other usage, such as generic usage.</i></p>	<p>(1) if the name is not covered by any other provision (plant variety, generic,...), the PDO/PGI is registered.</p> <p>(2) if the name is covered by any other provision (plant variety, generic,...), see consequence under that heading...</p>	<p>(1) the prior use of the name must cease.</p> <p>(2) this overlapping presents a lack of clarity.</p>
Prior products	<p>Art. 7(3)(c): registration would jeopardise the existence of products which have been on the market for at least 5 years.</p>	<p>(1) the PDO/PGI would be registered, but the product (possibly under a different name) could continue to be produced and placed on the market.</p>	<p>It is difficult to see how the protection of a PDO/PGI could jeopardise the existence of a <i>product</i> as distinct from a name, since the product could continue to be made (neither the ingredients nor production method nor recipe are protected) and placed on the market, albeit under a different name.¹²⁰</p>
generic	<p>Art. 7(3)(d): under Art 3(1) names that have become generic may not be registered.</p>	<p>(1) the name is found to be generic in the EU or in a single Member State: no registration of the PDO/PGI.</p> <p>(2) the name is found to not be generic: the name can be registered as PDO/PGI.</p>	<p>(1) generic usage continues</p> <p>(2) Prior uses (which have been found to not be generic) will have to cease.</p>

¹²⁰

A producer may argue (with reason) that without the name, the product loses its commercial value and hence the product itself is threatened. However, even in this case, the reference to "product" does not seem to add any ground that is not covered by the reference to "name".

Table 2: prior use is in a different name, for example a translation or evocation of the PDO/PGI name, or the PDO/PGI includes a part of the prior use.

Type of prior use	Ground for objection under Article 7	Potential outcome	Comment
Plant variety (registered in Angers CPVO; registered at MS level; traditionally used) and Animal breed (no EU herdbooks exist; in MS herdbook or traditionally used)	Art. 7(3)(b): registration would be contrary to Art 3(2): "a name may not be registered where it conflicts with the name of a plant variety ... and as a result is likely to cause consumer confusion"	(1) the proposed PDO/PGI by reason of its difference from the prior name is most likely to not cause consumer confusion: the PDO/PGI will normally be registered.	(1) unclear whether or not the plant varietal/breed name can continue to be used to market product of the variety which does not correspond with the PDO/PGI.
Name is partly homonymous with a name already registered as a PDO/PGI	Art. 7(3)(b): registration would be contrary to Art 3(3) which lays down rules on homonymity	(1) in all practical cases, a partly homonymous PDO/PGI is registered.	(1) Art. 3(3) lays down conditions for use of the two names (ensure distinction between names)
Prior trademark	As above	As above	As above
Prior name	As above	As above	As above
Prior products	As above	As above	As above
Generic	Art. 7(3)(d): under Art. 3(1) names that have become generic may not be registered.	(1) As Art. 3(1) only refers to the same name this ground does not apply and no objection can succeed for a different name.	(1) notwithstanding that the objection could not be considered, the protection of the registered PDO/PGI will probably prevent the generic use, unless a common right to use a generic can be derived. Position not clear.

ANNEX VI

COST OF PDO/PGI SCHEME

There is no comprehensive data available on the costs of preparing and running a PDO/PGI scheme. The reason is that it is very difficult to aggregate data referring to diversity of products or diversity of Member states. Member States implement the scheme, including monitoring and enforcement in a very diverse way. The scheme applies to very diverse kind of products, from industrial one like beers to raw materials like cereals. Concerns of commercial confidentiality from operators are among the reasons. However, information included in certain studies could provide interesting indications.

1. Cost of preparing application

In general it can be observed that these costs vary according to a number of factors, *inter alia*: earlier availability of relevant documentation, reliance on in-house drafting/research competences, possible gathering of scientific evidences about products' chemical/microbiological characteristics, support from local /regional authorities in the first phases of the process. Some producer groups mentioned €3 000 and 5 000.

Although a membership to a producer group is deemed to be voluntary, cost of joining it should also be mentioned. Membership fees can be established according to different criteria: fixed annual fee and/or variable part depending on volume of production. Membership fees can include the cost of certifications (like in some Italian PDO/PGIs).

2. Costs of administration at national level

In the majority of MS the costs stemming from the registration procedure are borne by public authorities. Cost may vary according, *inter alia*, the number of activities carried out by public authorities: assistance, promotion, etc. The level and concrete administrative structure of Member States may also affect costs: the number of procedural steps at national level/regional level can affect the timeframe and thus costs.

In one Member State the regional structure (Wallonia) did evaluate cost of application process, including objection process up to 10.000 € per application. UK also provided similar figures taking into account the shared competences between DEFRA and Food for Britain, on the basis of a average application request of 10 per year. A Member State is planning to conduct a survey on cost of application process.

In general Member States do not charge any fee for application procedure. Nevertheless, some Member States charge a fee to cover their costs, including those incurred in scrutinising application for registrations, statements of objections, applications for amendments and request for cancellation. According to the PDO/PGI Evaluation Germany charges 900 € for a 4 page application and in Hungary the fee for a PDO/PGI application amounts to 430 €.

3. Cost of registration at EU level

The Community phase of the registration procedure does not provide for a Community fee payment. Costs are due to full time equivalent (FTE) staff assigned to scrutinise applications and interact with MS and translations in all EC official languages in view of publication in the Official Journal. In case of objection the cost would be increased.

4. Certification costs for producers

The cost of certification depends on the type of body that is carrying the control (private, public) the type of product (for example seasonal), on the degree of requirement established in the specification, on the average of inspection visits, etc.

Cost of certification can be charged an annual fee or depend on volume. Findings in literature show that in some cases the "consorzio" negotiates with the certification body fees for all the operators (independently to the fact they are members of the consorzio). In other cases the cost of certification is covered totally by local authorities.

Finally in some cases, public authorities do carry out the control, and do not charge the operator.

As examples, 0.3 €/Kg is mentioned for cheese, €0.24 per chicken and 0.75€/ton mentioned for rice. Estimation based on data given by producers places certification costs at between 3.7% and 4.3% of the final cost including financial and transport cost.

5. Administrative burden for producers

Concerning the administrative burden there is very different views. In general, producers do not consider administrative cost to be a burden and they are not generally mentioned. Some of them consider a PDO/PGI scheme does not add any additional administrative burden to their routine responsibility. Preparation of documents and preparation of controls are not considered a major cost.

Nevertheless, some Greek producers expressed strong concerns on the issue during the PDO/PGI Survey carried out in 2007 (see annex E). It was mentioned also for France that the 3 controls made annually were imposing a heavy burden. In France too, a producer group evaluated the administrative cost to 4% of the working time of farmers.

6. Administrative burden on monitoring and enforcement

It is difficult to evaluate enforcement of the protection provided by PDO/PGI, as the role is often distributed between central and regional administrations (Germany, Spain), or shared competences between several administrations (INAO/DGCCRF in France). It can also be integrated with food law controls or be responsibility of agencies/bodies such as Trading standards (UK).

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ANNEX C: TRADITIONAL SPECIALITIES GUARANTEED

PART C: TRADITIONAL SPECIALITIES GUARANTEED

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ANNEXES

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PART C: TRADITIONAL SPECIALITIES GUARANTEED

C.1. INTRODUCTION

'Traditional specialities guaranteed' (TSGs) was introduced in 1992 to register names of agricultural products or foodstuffs that are produced using traditional raw materials or traditional methods of production, or that have traditional composition.

TSG scheme offers two types of registration of a name: with or without 'reservation'. If the name is registered without reservation, it can still continue to be used for products that do not correspond to the specification but without the indication "traditional speciality guaranteed", the abbreviation "TSG" or the Community symbol. On the contrary, when a name is registered with reservation, it can only be used to describe the product made in accordance with the specification.

It has to be noted that TSGs differs from the system for geographical indications (GIs) since it does not refer to origin. In fact, the system is drawn so that any producer complying with the product specification may use the registered name together with the TSG indication, abbreviation or logo on the labelling of an agricultural product or foodstuff.

C.2. PROBLEM DEFINITION

2.1. Problem identification

Since 1992 only 20 TSG names have been registered. Most of them without reservation of the name what serve only to identify the traditional product, and not to protect the name. Only few of the registered names are significant in economic terms. Also it appears that no operators outside the country from which the initial application was made have taken advantage of this provision in the TSG regulation.

The problem can therefore be summarised as that TSG scheme as conceived is difficult to be implemented.

2.2. What are the underlying drivers of the problem?

There are only few studies available concerning the implementation of the scheme. However, several causes that lead to low implementation of the scheme¹ can be identified:

¹ Background Paper to the Green Paper on agricultural product Quality summaries a Commission Report to the Council on the implementation of Regulation (EEC) No 2082/92 (COM(1999) 374, 19.7.1999), a study concerning the protection of traditional Rhônalpins products as TSGs, and a chapter on TSG in a booklet

- *Low understanding of the scheme.* At the time of its introduction the TSGs scheme was completely new and unfamiliar concept to the producers. It included the notions of ‘specific’ and of ‘traditional character’ that were not defined and consequently their elements were often used interchangeable.

Also the indication "Traditional Speciality Guaranteed" is complex. If scheme was to be easily understood by consumers it should have conveyed a simple message of the type ‘produced in a traditional way’. The complexity of the indication may explain the limited use of it and/or logo on products in the market. This in turn leads to low consumer awareness and thus low demand for registration of recognised traditional specialities.

In order to be registered, a name should be either ‘specific in itself’ or ‘express the specific character’ of the product. The later criterion has turned out to be problematic.

In contrast to the GI scheme, which was introduced at the same time and which was already in place at national level in certain Member States, there is no link between the product and its origin.

Several times it has been pointed out that it is difficult for producers to grasp the point of the protection afforded by the Regulation.

- *Two types of registration and protection.* Registration provided for in paragraph 1 of Article 13 of the Regulation (EC) No 509/2006 would serve only to identify the agricultural product or foodstuff that corresponds to the product specification. However, registered names may continue to be used on the labelling of products not corresponding to the registered specification, but without the indication "traditional speciality guaranteed", the abbreviation "TSG" or the Community symbol. This option has been strongly criticised on several occasions as not offering real protection for the consumer and creating greater confusion rather than removing ambiguities. Furthermore, producers failed to understand how, when a name is registered, it would still be possible to find a product on the market, sold under the same name as the registered product but produced in a different way.

Protection provided for in Article 13(2) involved protection of the name. Under this option the name can only be used to describe the product made in accordance with the specification, whether or not it bears the indication ‘traditional speciality guaranteed’, the acronym ‘TSG’ or the EU logo. Reservation of the name can be obtained if it is not shown that the name is used in a lawful, renowned and economically significant manner for similar agricultural products and foodstuffs. This type of protection would be obviously clearer to the producer (and consumer), but it was more difficult to obtain hence only few applicants opted for it. Following objections, some applicants, in order to reach a settlement, have agreed to convert their original

applications for registration with reservation of the name to applications under paragraph 1.

Any producer who follows the conditions of production laid down could use the registered name as well as the Community logo and indication. In most cases producers would prefer the option of reserving a name and recipe just for themselves. In other words - this non-exclusivity may have discouraged some producers from opting for this scheme.

- *Registration procedure.* Experience has shown that the registration procedure takes a long time especially when additional information relating to the specification is required or objections are raised to the application. Another aspect raised by producers as being off-putting is the objection process itself: being raised frequently and very often based on competition considerations rather than fundamental (e.g. technical) reasons.
- *Inspection.* The cost of inspection that has to be borne by the users could represent a fairly substantial item of expenditure, at least for small and medium-sized producers. Therefore not appropriate/suited/tailored control requirements can be considered as one of the disincentives for producers to submit registration applications.
- *TSGs unknown.* Low awareness of the scheme can be observed by both producers and consumers. As already pointed out above TSGs introduced completely new concept. The fact it was established and promoted together/at the same time as GIs explains the confusion between those two concepts. In fact, many of the registered names denominate local traditional specialities that more closely correspond to PGIs, being produced and marketed in the limited areas.

In this regard very similar EU symbols for TSGs and GIs, though non-obligatory, certainly did not contribute to raise awareness of or to promote TSGs. This implies that only a limited added-value can be expected from the use of TSG symbol and therefore the scheme could hardly be used as a tool to differentiate the products.

The causes and effects of the problem are mapped in Problem tree in Annex I.

2.3. Who is affected, in what ways and to what extent?

- *Producers* who wish to produce traditional agricultural products or foodstuffs and market them as such i.e. with a clear, understandable, simple, comprehensive indication (for the consumers) on the label. It could be assumed that mainly (artisan) small-scale producers/processors (SMEs) that use traditional method of production and/or ingredients in production of local/regional specialities. For the reasons explained above, producers do not opt for TSG registration.
- *Consumers* that are affected if they are interested in purchasing traditional foods. However, it is unlikely they are able to find with any frequency the 20 TSGs on the market, even less with TSG indication or a logo on the label.

They may rely on private or national labels claiming traditional production. On the other hand, consumers could question if product labelled as 'traditional' is genuine and/or that same criteria apply for different products in different regions.

Box 1: Consumer demand for traditional agricultural and food products in Europe

In Europe, consumer demand for traditional agricultural and food products has played an important part in the renewed interest of local farmers and distributors in these products. In general, the demand for these products increases with economic improvements in societies, urbanization and the degree of integration in the global market. Indeed, traditional regional agricultural and food products are often seen as a response to environmental concerns generated by globalization (transport of products over long distances) and to retailers' driving the supply of food. In the case of transition economies, it can be a response to the rapid and sometimes uncontrolled modernization process, which commonly includes an increase in importation of processed foods marketed by multinational firms.

In this context, traditional products are seen as a counter force to modern anxiety (globalization and rapid changes), attracting an increasing number of consumers who are looking for roots, familiarity, continuance in places, identity and tradition. Some consumers may prefer local or national products if they perceive them to be of better quality; they want to support the local or national economy; or they are proud of their cultural identity. Finally, the organoleptic characteristics of these products make them attractive, especially for connoisseurs.

(Promotion of traditional regional agricultural and food products: a further step towards sustainable rural development, Twenty-sixth FAO Regional conference for Europe, Innsbruck, Austria, 26-27 June 2008

http://www.fao.org/world/Regional/REU/ERC2008/ERC_EN/ERC26_08_6_E.pdf

- Traditional products when sold through short channels such as direct marketing (sales on farm, farm tourism) and other local outlets like food shops, local markets, guest houses/restaurants, farmers' markets/festivals etc. would benefit several *local actors* involved.

As a consequence of marketing through retail chains and tourism *non-local actors* would benefit - a notable trend.

- *Authorities* by promoting their culinary heritage what would include managing the register of traditional products/check compliance with criteria/award the use of the traditional name and/or indication-logo...(see examples in Boxes 3 and 4)
- *International dimension*. TBT notification; scheme open to 3. countries applicants – comply with criteria if term used.

2.4. How would the problem evolve without a change in policy?

Taking into account several aspects the problem of the implementation of the scheme, it could be expected that only few names would continue to be registered. At present there are 22 applications for registration. As a consequence, it could be concluded that without a change in policy the objectives of the scheme would not be achieved.

2.5. Does the EU have the right to act?

The present IA is about revision of existing EU legislative act (Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed which repealed Regulation (EEC) No 2082/92) where the objectives of EU action have been defined. Article 37 of the Treaty provides the legal basis.

C.3. OBJECTIVES

Regulation (EC) No 509/2006 in force sets out the objectives of the scheme in the recitals (Box 2).

Box 2: Recitals to the Regulation (EC) No 509/2006 concerning the objectives of the TSG scheme

"(2) The diversification of agricultural production should be encouraged. The promotion of traditional products with specific characteristics could be of considerable benefit to the rural economy particularly in less-favoured or remote areas both by improving the income of farmers and by retaining the rural population in these areas.

(3) For the sound running of the internal market in foodstuffs economic operators should be provided with instruments allowing them to enhance the market value of their products while protecting consumers against improper practices and guaranteeing fair trade."

It is difficult to argue that these objectives are met taking into account the situation as summarised in the previous section. However, the purpose of this analysis is to determine the way how they can be achieved.

Proposed options will be therefore assessed with respect to:

3.1. General objectives

- Support rural areas to improving the income of farmers thus retaining the rural population in these areas
- Smooth functioning of the internal market in foodstuffs

3.2. Specific objectives

- promotion of production and marketing of traditional products thus diversification of the agriculture

- protecting consumers against improper practices and guaranteeing fair trade

3.3. Operational objective

- to establish a ("user-friendly" - easy to use/understandable for producers and consumers) framework in order to enable identification, and poss. registration of traditional products (incl. poss. introduction of a symbol)

Indicator: No of products marketed bearing the indication/logo or names registered – depending on the option that will be selected

C.4. POLICY OPTIONS

4.1. Option A: No EU action

4.1.1. Basic approaches

Existing EU scheme would be discontinued and EU would in principle not get involved by setting specific rules/legislation in regard to traditional products. Regulating traditional specialities (including defining the term) and its implementation (i.e. identification/registration of traditional products) would be left to Member States and/or regions.

However, EU could through other instruments (not considered here) such as rural development policy, support the activities of private operators and Member States.

4.1.2. Screening for technical and other constraints

Member States/regions that find necessary/useful they could put in place any kind of a system to identify and or register traditional specialities as some already have.

Box 3: 'Prodotti agroalimentari tradizionali' in Italy

Based on **Legislative decree 173/98** and implementing rules in **Ministerial decree 350/99**:

- Traditional agrifood products refer to products for which the method of preparation, conservation or maturation has become well established over time.
- Regions and autonomous provinces verify that methods used in their territories in uniform manner and in accordance to traditional rules and had been used for a period not less than 25 yrs.
- Regions/provinces keep directories of traditional agri-food products containing name, product characteristics and production/conservation/maturation method, raw material and equipment, and premises of production/conservation/maturation.
- National directory composed of products in regional and provincial directories is held by Ministry.
- Possibility for derogations from hygienic rules for production of these products (Decree of Health minister in agreement with Minister for Agriculture and Minister for Industry and Crafts)

Circular n°10 of the 21 December 1999 defines criteria for products to be included to the directories of regions and provinces of traditional agri-food products

- being same as those listed in Annexes to Regulation (EC) No 510/2006 and liqueurs.
- if name is subsequently registered under Regulation (EC) No 510/2006 then product is deleted from national directory (Repeated in Decree of Director General 'seventh revision of national directory of agri-food products, No 8627, from 2007).
- regions and provinces transmit to the Ministry (Director general) their directory of traditional products. For each product a form has to be compiled containing the following elements:
 1. category;
 2. name of the product, comprised synonymous and dialectal terms;
 3. concerned territory to the production;
 4. summarised description of the product;
 5. description of method of production, conservation and maturation;
 6. raw materials, specific equipment used for the preparation and the conditioning;
 7. description of working premises, conservation and maturation;
 8. elements that they prove that the method has been practiced in homogenous way and according to traditional rules for not less than 25 years.

Products can be searched on IT Ministry web site:

<http://www.politicheagricole.gov.it/ProdottiQualita/ProdottiTradizionali/default.htm>

There are also web sites on regional/traditional/typical products:

<http://www.prodottiregionali.net/> and <http://www.prodottitipici.com/>

Box 4: Identification of traditional Flemish products in Belgium

In order to be recognised as traditional, products have to satisfy the following criteria:

- products are prepared with raw materials from the region;
- they are perceived by the local population or by a broader public as traditional regional products;
- they are manufactured in old-fashioned way according to the region's tradition;
- they are prepared in their region of origin;
- they must exist for a minimum 25 years. Term 'traditional' means a long-term or historical reputation as a region's speciality.

<http://www.streekproduct.be/overstreekproducten/index.phtml>

4.1.3. Assessment of effectiveness, efficiency and consistency

Effectiveness of this option would in the first place depend on Member States decision whether on not to opt for an establishment of a system. Furthermore, various mechanisms can be chosen (e.g. only register of names or introduction of

a logo) and supported. This approach is in line with the decentralised operation of Rural development programming.

Box 5: European Parliament – DRAFT REPORT on ensuring food product quality: harmonisation or mutual recognition of standards (2008/2220(INI), 18.11.2008

25. Favours preserving and simplifying the system of guaranteed traditional specialities (GTSs); expresses disappointment at the performance of this instrument, under which so far only a small number of GTSs have been registered (20, with 30 applications pending); stresses that producers prefer the national instruments for certifying traditional products, in many cases in order to obtain exemptions from certain obligations (e.g. plant health rules);

27. Welcomes the creation at Member State level of offices for traditional and organic products; believes that every Member State should have bodies, whether public or private, that are universally recognised by producers and consumers for purposes of promoting and validating local organic and quality production;

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-414.335+01+DOC+PDF+V0//EN&language=EN>

This option would on the other hand lead to different implementation in the Member States/regions, especially in regard to the definition of traditional products. It would be possible that consumers from other Member States/region, having different perception and expectations of traditional products, could be misled, therefore effectiveness of this option is questionable as far as functioning of the Single Market is concerned.

Provided burdensome registration procedures are avoided, Member State/regional registration could be considered as being efficient. On the other hand, there will be adjustment costs for registered/applied names.

Option would be coherent with the Better Regulation objective by reducing 'red tape' of TSG scheme, while it might help the objectives of CAP as laid down in Article 33(1) of the Treaty (Box 6), in particular regarding income (point (b)).

Box 6: Objectives of CAP laid down in the Treaty

Article 33

1. The objectives of the common agricultural policy shall be:

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.

4.1.4. *Fine-tuned shortlist for further analysis*

This option is to be retained for further analysis.

4.2. **Option B: Labelling**

4.2.1. *Basic approaches*

Bearing in mind that most of the names were registered without reservation of the name and serve only to identify the traditional product-speciality and not to protect the name, an introduction of a defined reserved term for "traditional product" would be another option.

In this regard development of framework legislation that sets out basic principles/conditions and procedures for definition and use of reserved terms would have to be considered.

4.2.2. *Screening for technical and other constraints*

Taking into account the results of public consultations on labelling of non-obligatory information (Box 7), notably no consensus among stakeholders while pointing out danger of consumers to be misled, solution of defining an optional reserved term could be appropriate. In fact, in the Green Paper consultations, the stakeholders most frequently proposed a defined reserved term as an alternative to TSG scheme (Annex II).

Defining the term 'traditional' would mean that when used by operators the product bearing it on the label would comply with the definition.

Box 7: Results for public consultation concerning the labelling of non-obligatory indications

"Voluntary information"

There was no consensus emerging from the contributions on the best way forward to deal with voluntary mentions, in particular promotional messages.

On the whole, the industry wants no additional legislation on voluntary information and would favour the status quo, with a freedom to offer voluntary information providing that it is not misleading and can be substantiated. However, some industry representatives think there is scope for Codes of Practice that could be agreed by the industry on an EU-wide level.

Although it is quite accepted that the EU legislation could not be so prescriptive as to regulate the use of such terms as "pure", "original", "farmhouse", "country style", "traditional", "authentic" (...), some Member States would like those voluntary mentions to be addressed by way of a Commission guidance document with a view to ensuring that the consumer is not misled. On the contrary, other Member States are of the opinion that those terms, when used, are so much linked to national culture and

practices that they should be assessed locally through national case law or guidance set at national level."

(Summary of results for the consultation document on "Labelling: competitiveness, consumer information and better regulation for the EU", December 2006,

http://ec.europa.eu/food/food/labellingnutrition/betterregulation/lab_cons_summary.pdf)

However, defining the term might turn out as not being an easy task. At present several definitions exist (Regulation (EC) No 509/2006; Boxes 3, 4 and 8) what indicate the possible elements/aspects the definition of reserved term should or could include. Proper definition of the term seems crucial - if not adequate it could result in more harm by eroding/jeopardising real traditional products being produced and marketed.

Box 8: TRUEFOOD's definition of traditional food products

At the 1st workshop of Work Package 5 (WP 5), organised in Gent (Belgium) in July 2006, the participants developed a new definition of traditional food products.

For the purpose of this project WP 5 agreed on a definition of traditional food with the following aspects:

- 1) PRODUCTION: the key steps of the production must be local (national/regional/local). Once firms start to produce in other countries, the food is no longer considered as traditional.
- 2) AUTHENTIC: the product has to fulfil at least one of the following steps: authentic recipe (mix of ingredients) and/or authentic origin of raw material and/or authentic production process,
- 3) COMMERCIALY AVAILABLE: for the public for at least 50 years (= 1950 and before) in stores or restaurants; it may happen that during that period the food product disappeared from the market, but it was on market at least 50 years ago, and
- 4) GASTRONOMIC HERITAGE: the product must have a story which is - or can be - written down in 2-3 pages.

(TRUEFOOD – Traditional United Europe Food is an Integrated Project (IP) financed by the European Commission under the 6th Framework Programme for RTD. The project started 1 May 2006 and will last 4 years. The overall aim of TRUEFOOD is to introduce suitable innovations into traditional food industry to maintain and increase the competitiveness of the industry in an increasingly global European market place.

http://www.truefood.eu/latest_news_det.asp?ID=4

This option would not entail registration, although this is also possible if Member States/regions would decide so. Regarding proper implementation of the term, the same control provisions as for food labelling would apply. Claims that products

are 'traditional' could be more easily checked against its definition. If the term is not defined, it is up to the operator to demonstrate the claim whatever understanding he might have.

It has to be noted though that other terms that are considered as voluntary mentions in food labelling (Boxes 7 and 9) seem likely to remain not regulated horizontally at the EU level, including the terms with most similar meaning like 'authentic'.

Box 9: Other terms used ...

The demand for traditional products has created branding incentives. In this regard, big retailers are largely using references to terroir, tradition, regional features, and even creating their own specific umbrella trademark in order to market products. A diversity of associated claims, such as "natural", "old", "farmhouse", "original", "rustic", "classic", etc. are used and this can be confusing for consumers.

Definitions and accurate explanations of terms for sustainable food production and consumption are needed, particularly for consumer education and food labelling. Terms such as natural, eco, fresh, bio and pure while sometimes being defined at the national level according to the cultural context, also need to be re-examined at the international level.

Green Food Claims, An international survey of self-declared green claims on selected food products, Consumers International, 2004, available at: http://www.consumersinternational.org/Shared_ASP_Files/UploadedFiles/C2A0C218-1399-4FC7-9EA9-34E73EA45C77_Doc1156.pdf

Food Standards Agency (FSA) in the UK issued in 2002, revision in 2008, "Criteria for the Use of the Terms Fresh, Pure, Natural, etc. in Food Labelling" that aims to assist manufacturers, producers, retailers and caterers to decide when these marketing terms may be used and when they should not as well as to help enforcement authorities to provide consistent advice about labelling and to challenge inappropriate uses of marketing terms. (NB It is acknowledged that there is no legal obligation to follow the recommended criteria. Whether this advice is followed or not, misleading labelling would still be an offence under legislation.)

Criteria for the Use of the Terms Fresh, Pure, Natural, etc. in Food Labelling, Food Standards Agency (FSA), Revised July 2008, available at: <http://www.food.gov.uk/multimedia/pdfs/markcritguidance.pdf>

In UK, a survey published in February 2004 indicated that up to 40% of the labels informally investigated were considered not to comply with the guidance (44% in case of term 'traditional'). This gives a clear indication that in the UK such claims continue to be used in a way that is potentially misleading to consumers.

Survey Report: An Investigation Of The Use Of Terms Such As Natural, Fresh Etc In Food Labelling, Food Standards Agency (FSA), 2004, available at: <http://www.food.gov.uk/multimedia/pdfs/labeltermsreport0204.pdf>

Another possibility is the traditional terms model in the Common Market Organisation in wine (See Box 10) that are traditionally used in the Member

States. Although both TSGs and traditional expressions in wine are labelling devices, designed to convey to consumers that certain traditional production methods have been used, there are not many similarities between them. In the case of wines, traditional expressions are reserved exclusively to particular wines and only in the Member States and language(s) that ask for their recognition. Protection of traditional terms against the misuse, imitation or evocation applies only in the language(s) they are registered. It has to be noted that terms must have been defined in the Member State's legislation. It therefore seems that precisely this model (in effect attaching the traditional term to a registered PDO-PGI) would not be manageable across all agricultural product sectors.

Box 10: Traditional expressions under Common Market Organisation in wine

As explained in the Recital 18) to Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (Official Journal L 118, 04/05/2002 P. 0001 – 0054), the use and regulation of certain terms, other than designations of origin, to describe quality wine sector products is a long-established practice in the Community. Such traditional expressions can evoke in the minds of consumers a production or ageing method or a quality, colour or type of wine or a particular event linked to the history of the wine. So as to ensure fair competition and avoid misleading consumers, a common framework for registering and protecting such traditional expressions had to be provided.

Article 24 of that Regulation lays down definition of the term traditional, procedure for term's recognition, derogation for use on the labels of wines with GI originating in third countries and protection.

Traditional term has to be

- (a) specific in itself and precisely defined in the Member State's legislation;
- (b) sufficiently distinctive and/or enjoy an established reputation on the Community market;
- (c) traditionally used for at least 10 years in the Member State in question;
- (d) used for one or more Community wines or categories of Community wine.

Member States notify to the Commission the terms that are included in their legislation that meet the requirements and the wines for which they are reserved, together with justification for recognition of each term.

By way of derogation, the use of certain traditional terms listed would be permitted on the labelling of wines with a geographical indication originating in third countries under certain conditions.

Protection of traditional terms against any misuse, imitation or evocation applies only in the language(s) in which terms appear in Annex III to the Regulation.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002R0753:EN:HTML>

4.2.3. *Assessment of effectiveness, efficiency and consistency*

By applying same definition for the term 'traditional', the possibility of unfair competition and trade practices would be avoided therefore the proper functioning of the Single Market in traditional agri-food products would be achieved. It is not possible to estimate to what extent the operators would make use of the possibility to use the term on the label of their products when marketed. Also, the appeal to consumers that would be decisive when making purchasing decisions is not known. Besides, Member States/regions could put in place different systems to identify and/register traditional specialities as well as decide to support their promotion. Nevertheless under this option policy objectives seem likely to be achieved.

If burdensome registration procedures are avoided that it would be possible that measures adopted at the Member States/regional level could be considered as being efficient. On the other hand, there will be adjustment costs for registered and applied names for registration as a TSG.

Option would be coherent with the Better Regulation objective by reducing 'red tape' of TSG scheme and seems in line with the objectives of CAP as laid down in Article 33(1) of the Treaty (Box 6), in particular regarding income (point (b)).

4.2.4. *Fine-tuned shortlist for further analysis*

This option is to be retained for further analysis.

4.3. **Option C: Certification**

4.3.1. *Basic approaches*

If the TSG scheme continues then it should be simplified. The current scheme provides that a name can be registered with or without its reservation. It would be therefore possible to streamline the provisions of the scheme by allowing henceforth only one type of registration, namely:

- Sub-option C1: TSG registration without reservation of the name. This sub-option would entail the abolition of the registration of the name under Article 13(2) therefore the registration of a name would serve only to identify the traditional form of the product.
- Sub-option C2: TSG registration with reservation of the name. In this case the name would only be used to describe the product made in accordance with the specification therefore current control provisions would seem adequate.

It has to be noted that in the Green Paper consultations, the option of allowing only registration with reservation of the name was preferred to several stakeholders if the provisions of the current scheme are to be simplified and streamlined (Annex II).

4.3.2. *Screening for technical and other constraints*

Abolition of one type of registration would remove the confusion between the two possible registrations that producers and consumers experience at present.

As a consequence some other provisions would need to be adjusted e.g. the UE register would contain only one list of names recognised throughout the Community. Beside other and further steps in simplifying and streamlining of the existing legal framework would be opportune, in particular in case of Sub-option C1:

- Inspection system should be made suitable to the requirements of the scheme. In case of Sub-option C1 where the registration of TSG serves only to identify the traditional product and not to protect the name the control system can be less demanding. On the other hand in case of Sub-option C2 the name would be used to describe the product made in accordance with the specification therefore current control provisions would seem adequate;
- Registration procedure under Sub-option C1 could be made shorter and less demanding, especially regarding the objection procedure. On the other hand, under Sub-option B2 it would remain burdensome, both at a national and Community level, since several oppositions are likely;
- streamlining of the provisions, including the definitions for the specific and traditional character as well as a review of the provisions regarding names could also be included;
- in order to make the scheme relevant a comprehensive indication to both producers and consumers (e.g. "Traditional product") and appropriate new logo, that would not resemble the PDO/PGI logo, could be envisaged/considered.

4.3.3. *Assessment of effectiveness, efficiency and consistency*

Both options give rise to doubts in terms of their effectiveness. Not only the estimation of the number of registered TSGs in the future, their economic importance would need to be taken into account. Among the registered names at present (Box 11) names of a generic nature on one hand as well as names relating to a small scale local product can be found under each type of registration.

It has to be noted that not all names make use of a logo although from 1 May 2009 its use or the indication "traditional speciality guaranteed" will be compulsory.

Box 11: List of TSGs according to the type of registration

Registered TSGs without reservation of the name (Article 13(1) of Regulation (EC) No 509/2006):

1. Vieille Kriek, Vieille Kriek-Lambic, Vieille Framboise-Lambic, Vieux fruit Lambic/Oude Kriek, Oude Kriekenlambiek, Oude Frambozenlambiek, Oude Fruitlambiek
2. Vieille Gueuze, Vieille Gueuze-Lambic, Vieux Lambic/Oude Geuze, Oude Geuze Lambiek, Oude Lambiek

3. Faro
4. Kriek, Kriek-Lambic, Framboise-Lambic, Fruit-Lambic / Kriek, Kriekenlambiek, Frambozenlambiek, Vruchtenlambiek
5. Lambic, Gueuze-Lambic, Gueuze/Lambiek, Geuze-Lambiek, Geuze
6. Mozzarella
7. Leche certificada de Granja
8. Traditional Farmfresh Turkey
9. Panellets
10. Hushållsost
11. Trójniak
12. Póltorak
13. Czwórniak
14. Dwójniak

Registered TSGs with reservation of the name (Article 13(2) of Regulation (EC) No 509/2006):

15. Jamón Serrano
16. Falukorv
17. Sahti
18. Kalakukko
19. Karjalanpiirakka
20. Boerenkaas

(Source:

<http://ec.europa.eu/agriculture/quality/door/browse.html;jsessionid=JpgJJBSWpJg3wJh8qLVGKThy7z320nJ9JyTSP19pNcWCrPB7kNky!-1030956484?display>

It would be difficult to demonstrate efficiency of both Sub-options: Efficiency of Sub-option C1 could be achieved due to significantly lighter administrative burdens (registration procedure, control) - what can not be expected for Sub-option C2 – but on the other hand no gains to either producers nor consumers can be seen due to ambiguity/confusion due to products not corresponding to the specification being produced/marketed under registered name would not be eliminated.

Sub-Option C1 would be more coherent with the Better Regulation objective by reducing 'red tape' of TSG scheme than Sub-Option C2. Both the Sub-options are not counter to the objectives of CAP as laid down in Article 33(1) of the Treaty (Box 6), in particular regarding income (point (b)), but none of them are actually helping them to be achieved.

4.3.4. *Fine-tuned shortlist for further analysis*

This option will be retained for further analysis.

4.4. **Option D: Status Quo**

4.4.1. *Basic approaches*

This option envisages the continuation of the current scheme.

Under this option the issues that are included in the declaration of the Commission to the Council at the time the Regulation (EC) No 509/2006 was adopted would need to be addressed namely product coverage, the use of geographical names, and a possibility of creating "representative bodies" for products with TSGs.

4.4.2. *Screening for technical and other constraints*

Although importance of and support for the current scheme was expressed by several Member States and other stakeholders (Box 12, Annex II), that is not substantiated in the number of applications. According to Member States the main reason that the scheme experiences such a low take-up is that the scheme is relatively unknown due to its recent introduction (in 1992) and to lack of its promotion.

Box 12: Member States position on TSG scheme

On 5 and 14 November 2008, Council Working Party on Agricultural Product Quality discussed Green Paper on Agricultural Product Quality: product standards, farming requirements and quality schemes.

It has to be noted that Several Member States signalled that their internal consultations with the stakeholders were still on-going and therefore delegations were only able to give their preliminary views.

Concerning TSG, Member States acknowledged that the TSG scheme has not been as popular as GIs but all delegations wanted to maintain the TSG scheme. Several delegations called for its promotion, whereas some others felt that this concept should be developed and simplified further. The Working Party noted that it has particular interest for new Member States.

(Source: Council WP Progress Report, 15652/08 LIMITE AGRI 387)

4.4.3. *Assessment of effectiveness, efficiency and consistency*

Taking into account that several aspects of the problem the scheme contains (as described in point 2.2) it could be expected that only few names would continue to be registered. This assumption is supported by a fact that at present there are 22 applications for registration as TSG. As a consequence, it can be concluded that without a change in policy the objectives of the scheme would not be achieved. In other words: the current scheme can not be regarded as effective.

Moreover, efficiency of the scheme is questionable when heavy administrative burdens (registration procedure, control) are taking into account, especially in case of registration of a name without its reservation.

As described above, Option D would be considered as - despite the provisions of the Regulation were streamlined in 2006 - coherent with the Better Regulation objective by reducing 'red tape' nor it would have impact on the objectives of CAP as laid down in Article 33(1) of the Treaty (Box 6), in particular regarding income (point (b)).

4.4.4. *Fine-tuned shortlist for further analysis*

As baseline scenario this option is retained for further analysis.

C.5. IMPACT OF OPTIONS

5.1. **Option A: No EU action**

5.1.1. *Identification of impacts*

Economic impacts

Competitiveness, trade, competition in internal market

An impact would by large depend on Member States/regions and consequently operators decisions to establish and use a system for identifying the traditional product. Even a significant impact could be expected under this option if experiences of Member States are taken into account: In Italy alone there are more than 4000 'traditional' agri-food products registered².

But it has to be noted that differences between Member States/regions that can be expected under this option would not contribute to the proper functioning of the Single Market, even more, unfair trade practices are possible.

Consumers

Possibility that Member States/regions adopt different system to identify traditional products that are based on different criteria is likely so consumers could be misled.

Specific regions /sectors

Effects on rural economy and areas by creating/preserving jobs, esp. SMEs, would be difficult to asses especially because Member States/regions already have the possibility to regulate traditional products as previewed under this Option, beside/in parallel to TSG scheme.

Operating costs and conduct of business

Use of an indication or a symbol for traditional product on the label would not have a major impact on costs of business.

Administrative burdens

No registration procedure at EU level but possibly at Member States/regional level.

² Source: <http://www.politicheagricole.gov.it/ProdottiQualita/ProdottiTradizionali/default.htm>

Abolishing the scheme under Option A would affect rights acquired for the existing registered names as well as for the pending applications. In this regard an appropriate transitional period would need to be envisaged for the alternatives to TSG registration. It will be up to producers to decide which one (GI, TM, labelling with 'traditional'... or none) to go for. An important possibility lies in registration of a name as a PGI, especially for registered names that denominate local traditional specialities. It has to be noted that back in 1992 it was not possible for a non-geographical name to be registered as a PGI. However, this option was opened in the 2006 regulation to better align the PGI definition with that in TRIPS.

International trade

Abolishing the scheme would not produce any impact.

Social impacts

Employment

Difficult to predict, even more to quantify, the possible increase in production of traditional specialities that would in turn have positive effect on (local) employment in the rural areas, including other sectors (services like trade, catering and tourism).

Environmental impacts

Use natural resources

Not possible to assess. Likely no effect, unless production of traditional products improve farmers' incomes thus help to keep rural areas populated. By retaining those areas populated it would not only result in production of food, other agriculture's functions/goals would be achieved like countryside management and nature conservation. The fact is that farming, together with forestry, has crucial role for land use and the management of natural resources in the EU's rural areas.

5.1.2. Qualitative assessment of impacts that are most significant

Too many variables so it is not possible to assess how Member States/regions and especially producers would behave under No EU option.

5.1.3. Advanced qualitative or quantitative analysis of impacts

None of the impacts can be quantified.

5.2. Option B: Labelling

5.2.1. Identification of impacts

Economic impacts

Competitiveness, trade, competition in internal market

Introduction of a common EU definition would certainly establish a level playing field for the producers. It would prevent non fair trade practices as well as misleading the consumers thus contributing to smooth functioning of Single Market in foodstuffs.

Consumers

Consumer would only benefit from a clear and understandable indication on the label when making purchasing decision. NB claims could be easily verified and false ones sanctioned.

Reserved term would avoid 'logo fatigue'.

Specific regions /sectors

Similar as for the other options, effects on rural economy and areas by creating/preserving jobs, esp. SMEs, would be difficult to assess.

Operating costs and conduct of business

Change of label due to addition of an indication for traditional product would not have a major impact on costs of business.

It is however not possible to assess the extent the term 'traditional' would be used by operators.

Administrative burdens

No registration at EU level, possible at Member States/regional level.

As explained under Option A, an appropriate solution for the problem of rights acquired for the existing registered names as for the pending applications would need to be envisaged.

International trade

If term used on labels of products originating in third countries then it would have to comply with defined criteria.

Notification to the WTO under the TBT Agreement (Technical Barriers to Trade) might be required.

Social impacts

Employment

Difficult to predict, even more to quantify, the possible increase in production of traditional specialities that would in turn have positive effect on (local) employment in the rural areas, including other sectors (services like trade, catering and tourism).

Environmental impacts

Use natural resources

Not possible to assess. Likely no effect, unless production of traditional products improve farmers' incomes thus help to keep rural areas populated. By retaining those areas populated it would not only result in production of food, other agriculture's functions/goals would be achieved like countryside management and nature conservation. The fact is that farming, together with forestry, has crucial role for land use and the management of natural resources in the EU's rural areas.

5.2.2. Qualitative assessment of impacts that are most significant

Too many variables so it is not possible to assess how Member States/regions and especially producers would behave if this option is selected.

5.2.3. Advanced qualitative or quantitative analysis of impacts

None of the impacts can be quantified.

5.3. Option C: Certification

5.3.1. Identification of impacts

Economic impacts

Competitiveness, trade, competition in internal market

None of the Sub-options are likely to have notable positive economic impacts since it can be predicted that none of the Sub-option if selected would result in many TSG registration. Particularly to Sub-option C1 – registration with no reservation of the name that enables TSG Regulation to be adopted in 1992 – producing and marketing products not complying with the specification under the registered name. Such situation raises questions about the benefits of TSG registration to the producers while consumers would be confused having able to choose among different products (that are or not made according to the specification) with same name. Sub-option C2 – adopted as derogation from registration without reservation of the name back in 1992 – would require demanding registration and controls.

Consumers

None of the Sub-options is likely to increase much the consumers' choice of food products with authentic traditional specialities since not many registrations can be expected. In fact, Sub-option C1 would enable production and marketing of products that do not comply with the specification of the registered name. Consumers would be confused being able to choose among products with same name that are or not made according to the specification.

Specific regions /sectors

No significant effect on rural economy and areas nor to any specific sector can be expected.

Operating costs and conduct of business

Use of a symbol or indication TSG on the label does not have a major impact on costs of business.

Administrative burdens

Solution for registered names and for applications under the abolished type of registration would need to be envisaged.

Abolishment of one type of registration would enable simplification of provisions in particular on registration and control in case of Sub-option C1. If Sub-option C2 were selected procedures and requirements would remain more or less the same as at present.

International trade

EU Regulations were notified to the WTO under the TBT Agreement (Technical Barriers to Trade) as it would be necessary for any change of the scheme in the future.

Social impacts

Employment

No significant effects can be assumed: even if better prices were to be achieved for TSGs, their limited number would not allow concluding otherwise.

Environmental impacts

Use natural resources

Not possible to assess. Likely no effect, unless registered TSGs would increase farmers' income thus help to keep rural areas populated. By retaining those areas populated it would not only result in production of food, other agriculture's functions/goals would be achieved like countryside management and nature conservation. The fact is that farming, together with forestry, has crucial role for land use and the management of natural resources in the EU's rural areas.

5.3.2. Qualitative assessment of impacts that are most significant

Too many variables so it is not possible to assess how Member States/regions and especially producers would behave if this option is selected.

In this regard it has to be noted that Member States/regions already have the possibility to regulate traditional products at their level, beside/in parallel to TSG scheme.

5.3.3. *Advanced qualitative or quantitative analysis of impacts*

Due to the above, none of the impacts can be quantified

5.4. **Option D: Status Quo**

5.4.1. *Identification of impacts*

Economic impacts

Competitiveness, trade, competition in internal market

Continuation of the current scheme with expected few registered names that could relate to limited production in economic terms would therefore not have a significant impact to any of the mentioned criteria.

Consumers

Option would not increase much the consumers' choice of food products with authentic traditional specialities.

Specific regions /sectors

Option would have a significant effect on rural economy and areas by creating/preserving jobs, esp. SMEs.... Nor to any specific sector.

Operating costs and conduct of business

According to Regulation (EC) No 509/2006, a registered traditional speciality guaranteed produced within the Community will have to include on the label either the Community symbol or the indication "traditional speciality guaranteed" from 1 May 2009. Use of a symbol or indication TSG on the label does not have a major impact on costs of business.

Administrative burdens

As described in point 2.2, TSGs entail very demanding registration procedure and control requirements.

International trade

Current system is open to registrations from third countries. EU Regulations were notified to the WTO under the TBT Agreement (Technical Barriers to Trade) as would any change of the scheme proposed/ in the future.

Social impacts

Employment

No significant positive effect on (local) employment in agri-food sector can be assumed: even if better prices were to be achieved for TSGs, their limited number would not allow concluding otherwise.

Environmental impacts

Use natural resources

Not possible to assess. Likely no effect, unless registered TSGs would increase farmers' income thus help to keep rural areas populated. By retaining those areas populated it would not only result in production of food, other agriculture's functions/goals would be achieved like countryside management and nature conservation. The fact is that farming, together with forestry, has crucial role for land use and the management of natural resources in the EU's rural areas.

5.4.2. Qualitative assessment of impacts that are most significant

Too many variables so it is not possible to assess how Member States/regions and especially producers would behave if this option is selected.

In this regard it has to be noted that Member States/regions already have the possibility to regulate traditional products at their level, beside/in parallel to TSG scheme.

5.4.3. Advanced qualitative or quantitative analysis of impacts

Due to the above, none of the impacts can be quantified.

C.6. COMPARING THE OPTIONS

Likely advantages and disadvantages of each option are presented in the following table.

Table 1: Summary of the advantages and drawbacks of the options

		Advantages	Drawbacks
Option A: No EU action		- scheme not successful, need for EU action not shown so traditional specialities would be managed only at Member States/regional/local level	- fragmentation of Single Market, consumer confusion possible - problematic for registered names and those applied for registration
Option B: Labelling		- establishment of clear framework by defining optional term 'traditional' - authenticity of traditional product more would be guaranteed to producers and consumers thus achievement of both objectives more likely - low administrative burdens (i.e. no certification)	- names not registered (and recognised - logo) at EU level - problematic for registered names and those applied for registration - far from certain if definition of a term would be such to identify 'real' traditional products (plus question of proper implementation/control). In other words, not adequate term could result in more harm (eg not really traditional product bearing the denomination would certainly erode/jeopardise real traditional products being produced and marketed) than 'doing nothing' - not coherent approach if other voluntary terms like 'authentic' would not be regulated horizontally at the EU level
Option C: Certification	Sub-option C1: <i>TSG registration without reservation of the name</i>	- TSG scheme simplified, especially in regard to control arrangements and registration procedure	- products not corresponding to the specification could still be produced/marketed under registered name therefore ambiguity/confusion would not be eliminated - few names continue to be registered thus achievement of policy objectives questionable - problematic for registered names and those applied for registration with reservation of the name
	Sub-option C2: <i>TSG registration</i>	- scope for simplification of TSG	- few names continue to be registered thus achievement of

	<i>with reservation of the name</i>	scheme seems rather limited - only products that correspond to the specification could be produced/marketed under registered name so no more ambiguity/confusion for producers and consumers	policy objectives questionable - problematic for registered names and those applied for registration without reservation of the name
Option D: Status Quo		- option supported by stakeholders, esp. Member States - no change for registered names and those applied for registration	- problems persist - few names continue to be registered - as a consequence the objectives would not be achieved

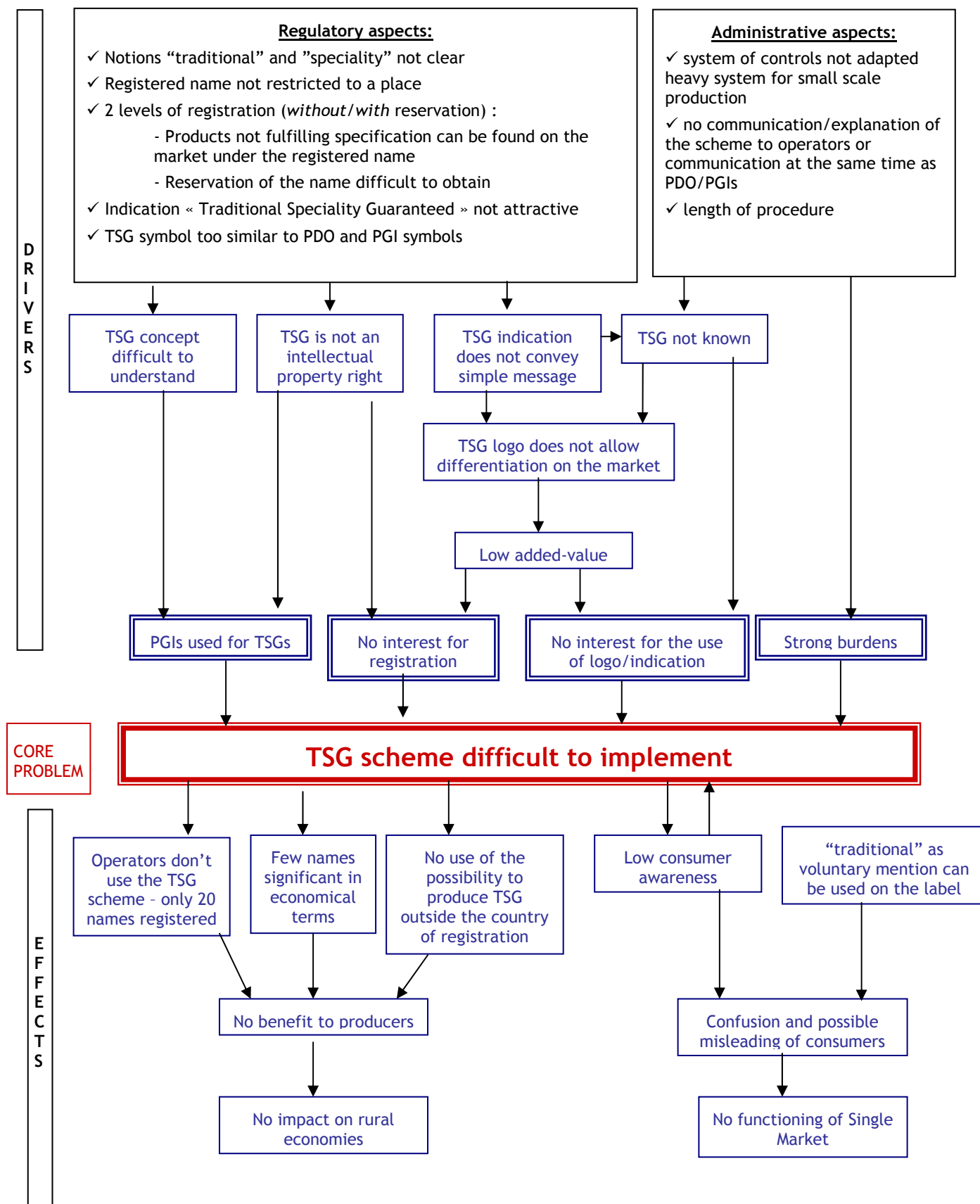
Effectiveness, efficiency and coherence of the options are presented in the following table.

Table 2: Comparison of effectiveness, efficiency and coherence of the options

		Effectiveness	Efficiency	Coherence
Option A: No EU action		o	+	o
Option B: Labelling		+	+	o
Option C: Certification	Sub-option C1: <i>TSG registration without reservation of the name</i>	-	-	o
	Sub-option C2: <i>TSG registration with reservation of the name</i>	-	-	-
Option D: Status Quo		-	-	-

Legend:
+ high
o medium
- low

ANNEX I: PROBLEM TREE



ANNEX II: GREEN PAPER - CONSULTATION OF STAKEHOLDERS ON TSG

Several stakeholders see way forward in simplifying and streamlining the provisions of the scheme: most pronounced ideas seemed to be that only registration with reservation of the name would be possible. In this regard there was a suggestion for registration of names with reservation at EU level while names without reservation would be registered at national level and notified to of the Commission. Another interesting proposal was that decision on TSG registration would be taken at national level although names would than enter EU register. Other improvements that were suggested are simplification of the procedure and control provisions, new logo, and wider scope.

Some stakeholders call for a communication and/or scheme promotion while others were in favour of *status quo*.

As an alternative to TSG the stakeholders most frequently proposed that a reserved term is defined. Other suggestions include its replacement by the introduction of guidelines or "code des usages" at EU level, conversion of existing TSG to GIs system, replacement with a national system, and to have recourse to trade marks. Sometimes simply a deletion of the scheme was proposed.

It has to be noted that in the consultation considerable support was expressed to TSGs scheme while pointing out its importance. In this regard it was often pointed out that TSG allows delocalisation of production (mode of production, recipe). On the other hand, there were claims that traditional products are linked to local know-how and therefore an instrument of protection at regional level for local artisanal products made according to traditional methods is thus needed.

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THIS REPORT COMMITS ONLY THE COMMISSION'S SERVICES INVOLVED IN ITS PREPARATION AND DOES NOT PREJUDGE THE FINAL FORM OF ANY DECISION TO BE TAKEN BY THE COMMISSION

ANNEX D

**CERTIFICATION SCHEMES FOR AGRICULTURAL PRODUCTS AND
FOODSTUFFS¹**

¹ This paper is concerned with the private and national/regional certification of agricultural products and foodstuffs according to standards laid down in a specification. It does not concern the certification of seeds or the phytosanitary certificates or passports of plants.

ANNEX D – CERTIFICATION SCHEMES FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS

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D.1. INTRODUCTION

Recent years have seen a substantial growth in private and national certification schemes for agricultural products and foodstuffs (e.g., Bredahl et al. 2001; Dries and Mancini 2007).

A preliminary inventory done for the Commission in 2006 arrived at close to 400 different schemes², even though this figure has been disputed and is currently under revision.

Certification schemes for agricultural products and foodstuffs provide assurance (through a certification mechanism³) that certain aspects of the product or its production method, as laid down in a specification, have been observed. They cover a wide range of different initiatives, both public and private, that function at different stages of the food supply chain (pre- or post-farm gate, covering the whole chain or just a segment). They can operate at the business-to-business (B2B) level or at the business-to-consumer (B2C) level. They can make use of logos but, especially at the B2B-level, many do not.

Some schemes operate on the basis of a label or logo (often registered as a trademark, e.g. in the case of the Hungarian "Traditions – Tastes – Regions" scheme) without involving any certification mechanism. Adherence to these schemes is done by self-declaration or through selection by the scheme owner (often a public authority). While strictly speaking these are no certification schemes, they will nonetheless be included in the scope of this paper.

Certification schemes for agricultural products and foodstuffs in the EU range from compliance with compulsory production standards to additional requirements relating to environmental protection, animal welfare, organoleptic qualities, worker welfare, producer contractual arrangements (e.g., "Fair Trade"), climate change concerns, ethical, religious or cultural considerations, farming methods, and origin.

Scheme owners are equally varied, covering the whole range from farmers and producers, through NGOs, interest groups and retailers, to public authorities.

All of these schemes are voluntary. However, as will be explained below, some schemes may be required by powerful market actors and therefore function as an entry requirements for certain markets.

Because certification schemes are so varied, the legal framework governing their use is complex and spread across various policy areas. Certification schemes are subject to some EU legal provisions, namely:

- the rules of the internal market. Certification services should be freely available across borders. Schemes should also not result in de facto barriers to trade in goods in the internal market;

² see http://foodqualityschemes.jrc.ec.europa.eu/en/documents/inventory_FOAS_Nov_2006.xls

³ Defined as “the procedure by which a third party gives written assurance that a product, process, service or management system conforms to specified requirements” (ISO Guide 2, cited at http://www.eurogentest.org/web/info/public/unit1/qmanagement/definitions_v1.xhtml)
Accreditation is the “Procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks.” (ISO guide 2, cited at http://www.eurogentest.org/web/info/public/unit1/qmanagement/definitions_v1.xhtml)

- rules on competition. Certification schemes should not lead to restrictive horizontal or vertical agreements that abuse market power (e.g. buying power) or foreclose other competitors.
- consumer information and labelling requirements. Are consumers aware of what lies behind a label claim? Are they misled by the certification claim?
- specific legislation on the subject covered by the certification scheme (e.g. regulatory requirements for food safety and hygiene; animal welfare; environmental protection)

In addition, the internationally recognised rules for operating product certification schemes are set out in the International Standards Organisation (ISO) Guide 65, which is analogous to European Standard EN 45011. While product certification schemes are voluntary initiatives, compliance with EN 45011/ISO 65 is a statutory requirement for some schemes.

However, there is currently no legislation that specifically addresses rules or requirements for certification schemes.

1.1. Classification of certification schemes

Certification schemes for agricultural products and foodstuffs can be grouped into three broad clusters according to the general purpose/objective of the scheme and its place in the food supply chain:

1.1.1. Food safety and liability schemes (post-farm gate)

"**Food safety and liability schemes**" at the post-farm gate level were developed by the food industry and retailers to ensure the safety of their own branded products in order to protect their reputation and gain legal security. Under the UK 1990 Food Safety Act, the basis of food law changed from one of strict liability to a recognition that problematic incidents can and do happen no matter how diligent a manufacturer is. Since then, if a manufacturer can show that all reasonable precautions have been taken and all due diligence applied so as to prevent a food law offence occurring, then the courts will accept that as a sufficient defense (Turner, 1999). In principle, these schemes allow for efficiency gains for suppliers that should lead to improved supply conditions.

Many different retailer control schemes were designed to meet this new legal obligation. Some liability schemes in Europe include the British Retail Consortium (BRC) standard and the International Food Standard (IFS), but SQF, Dutch HACCP and ISO 22000 also operate in the EU market (see annex 1 for a short summary of each of these schemes).

These schemes, most of which are owned and developed by groups of retailers and wholesalers (except Dutch HACCP and ISO 22000), operate almost exclusively at the business-to-business level for post-farm gate food processing. Their first and foremost concerns are food safety issues. They are normally not communicated to the final consumer by means of a logo or label and therefore certification does not result in a price premium. However, most retailers demand certification from their suppliers, thereby making it a de-facto requirement for market access (e.g., Bredahl et al., 2001; DG JRC/IPTS 2006 (a)). While the overall number of such schemes operating in the EU market is moderate, the number of certificates issued under these schemes is significant, especially considering that certificates are issued to food processing enterprises rather than primary producers (see Table 1):

Table 1: Certificates issued by the main food safety and liability schemes

	BRC	IFS	SQF 2000	Dutch HACCP	ISO-22000
Certificates	8607	8414	6000	2064	4000
Countries	80	80	50	40	80
Certification bodies	76	63	60	12	40

Source: modified from Groeneveld, 2008

Certification costs are based on company size, scope and complexity of operation. The cost structure is also based on the minimum audit time on site. It is therefore difficult to state exact fees. Costs differ from certifier to certifier but are estimated to lie somewhere between 1000 € and 2500 € for an annual audit of 1-2 days.

The Global Food Safety Initiative (GFSI) has introduced a benchmarking process for food safety management schemes. While some retailers, like Carrefour, Tesco, Ahold, WalMart, Metro, Migros and Delhaize, announced their recognition of all the GFSI standards (BRC, IFS, SQF, Dutch HACCP), this is not the case for the majority of other retailers. As a consequence, suppliers to more than one retailer are faced with a situation in which they have to comply with largely overlapping schemes (see table 2), each requiring its own certification and audit mechanism with the corresponding costs. However, the question to what extent this situation affects farmers and primary producers remains to be analysed.

Table 2: Overlap between the schemes

	BRC	IFS	ISO 22000	HACCP
BRC	X	90%	60%	100%
IFS	90%	X	60%	100%
ISO 22000	60%	60%	X	100%
HACCP	100%	100%	100%	X

Source: INTEGRA (<http://trust.taftw.org.tw/doc/prod/prod8.pdf>)

Thus, while a certain degree of consolidation has already been achieved at the level of these schemes, there is still a significant degree of overlap and therefore room for more harmonisation.

Some certification bodies have recognised this problem and are now offering audit packs in which several standards are combined and covered by a single audit. Certificates are issued for each desired standard separately.⁴

⁴ e.g.: http://www.foodsafety.sgs.com/foodsafety_v2/single_food_audit_pack_foodsafety.htm

The main competition concerns that could arise would be related to possible foreclosure of competing buyers (i.e. since such schemes would be capable of preventing access of competing/alternative retailers to agricultural supplies). A particular certification scheme applied by one or more undertakings with significant market power may have the effect of limiting access of competing retailers to certain categories of products and/or limiting the possibility for those retailers to differentiate their product range and procurement policies, thus losing a competitive edge over their stronger rivals.

In summary, food safety and liability schemes at the post-farm gate level mainly affect food processing and manufacturing enterprises supplying different retail chains. Their effects may be important for farmers if they lead to increased or decreased opportunities for sale.

1.1.2. Food assurance schemes (pre-farm gate and whole chain)

"**Food assurance schemes**" at the farm level, and sometimes covering the whole food supply chain, developed to give retailers and consumers assurance about product safety and certain aspects of production methods. The most prominent example in this category is GLOBALGAP (formerly EurepGAP), but a range of other schemes also exists in different EU countries (see annex 2). For example, the red meat sector in the UK began developing a number of logos in the 1990s to identify their products. By the end of the 1990s there was an increasing desire for a mark to identify 'assured' products from all commodity sectors (Kirk-Wilson, 2008). Such schemes have potential beneficial effects for competition since they can lead to improved production and supply whilst possibly providing EU farmers with important efficiency gains (for example reduced duplication of resources employed in terms of product characteristics, collective quality benchmarking, etc.)

These schemes often do not add any particular quality characteristic to the product or its production method but assure that all legal requirements have been complied with. Many of them use a logo to communicate this fact to the consumer, raising the question of whether this misleads consumers into believing that certified products are "better" than non-certified ones.

In a review of UK food assurance schemes conducted in 2002, a number of problems were highlighted that led to the development of guidelines by the UK Food Standards Agency. Uptake of these guidelines by UK food assurance schemes is discussed in a 2008 report (Kirk-Wilson, 2008) which concludes that while there has been significant improvement in almost all areas that were previously considered problematic, improvements can be made particularly in the area of transparency and inclusion of consumers in the standard setting procedure.

The main competition concerns are related to possible foreclosing of competing suppliers of agricultural products (i.e. since such schemes would be capable of preventing access of competing suppliers to the distribution channels). However, this is probably a low risk.

In summary, the main concerns related to these types of schemes are related to:

- ⇒ The lack of inclusiveness in standard setting / the dominance of industry in their governance structure

- ⇒ The de-facto mandatory status in some markets, combined with a significant degree of overlap with legal requirements, leading to duplication of official controls
- ⇒ The potential misleading of consumers as regards the “higher” quality of products covered

1.1.3. Differentiation schemes

By far the largest (and growing) group in terms of number of existing schemes (e.g., DG JRC/IPTS 2006 (a)), differentiation schemes aim to distinguish certified products from others by highlighting certain product or process attributes (e.g., observance of strict animal welfare or environmental requirements; organic farming; social standards; high organoleptic product quality; origin; etc.) and communicating this fact to the consumer by means of a logo or label. Farmers and producers can use such schemes to improve their marketing position and obtain higher prices for their products. Similar schemes may be put forward by national or regional authorities to support producers in their constituency, or by NGOs/interest groups advocating certain political or social goals. Examples of such schemes are the following:

- ⇒ LeafMarque (UK; focus on environmental protection)
- ⇒ Neuland (DE; focus on animal welfare)
- ⇒ Label Rouge (FR; focus on high organoleptic quality)
- ⇒ Fair Trade (international; focus on payment of guaranteed premium prices to participating producers in developing countries)
- ⇒ Air freighted (UK; focus on carbon emissions during transport)
- ⇒ Demeter (international; focus on biodynamic agriculture)
- ⇒ Prodotti della Campagna Romana (IT; focus on origin)

Differentiation schemes offer consumers the possibility to make better choices as regards the product and process characteristics of their purchases. In addition they help farmers and producers to differentiate their products from other competing goods and provide them a competitive edge which can enhance their chances to enter and/or expand on the market. It must be borne in mind that differentiation schemes are in particular very useful for EU farmers in terms of better marketing and negotiating their product both with large retailers and alternative distribution channels, whilst increasing consumer choice. Thus a multiplicity of such schemes could be beneficial to EU farmers from a competition point of view.

However, the sheer number of labels and claims is threatening to undermine the benefits of increase choice. Consumers are no longer able to keep track of the various schemes without making a considerable effort, and even then it is not always possible to find clear and transparent information. Confusion and potential deception of consumers is a very real problem in this group of schemes.

Possible competition concerns are related to the need to ensure openness and transparency of the objective of the certification or product characteristics and farming attributes (i.e. ensuring that all market operators that comply with the respective pre-requisites can adhere to the scheme).

In addition, internal market issues arise for differentiation schemes that either highlight the origin of certified products or where certification services are limited to certain certification bodies (see annex 3 and box 1). Numerous existing schemes operate in a grey area in the sense that they carry the name of a country or region while at the same time allowing, at least in theory, the participation of outsiders if they fulfil the requirements of the scheme. This latter point will in most cases not be known to consumers, who are likely to expect products from the specified area when they read the label.

Box 1: Certification services for organic products – are they compartmentalising the internal market?

Organic products are governed by European legislation. Council Regulation (EC) 834/2007 defines and protects the use of the terms organic, ecological and biological in relation to agricultural products. It also obliges Member States to set up a control system for this sector. In most countries public authorities recognise and supervise private control bodies that certify the products as organic.

Despite this harmonised EU legal framework, the market for organic food in the EU remains largely divided along national lines. The preference of organic consumers for locally produced food could partly explain this. The private or national certification logos traditionally used in most markets also contribute to this phenomenon. In a number of countries consumers are very much used to this logo and supermarkets are eager to have this logo on all their products, whatever their origin is. This mechanism is even more amplified because of the legislation that requires a reference on the label to the control body in charge of the controlling the last step in food chain, often the packaging, which is often done in the country where the product is sold and for which a local control body is chosen.

The effect is that operators wishing to sell their products in another EU Member State than their own may currently need to require an additional logo that will be recognised by consumers, or that in some cases will even be required by the players in these markets. Obtaining such additional logos can be burdensome and create difficulties in trading organic products between Member States.

In addition some of the private logos refer to private organic standards that contain some additional elements when compared to the EU legislation. Such logos attract certain groups of consumers that value the additional requirements, for instance the biodynamic logo or logos owned by grass-root organisations.

The overall conclusion seems to be that private organic labels referring to additional standards have a role to play, but that the lack of mutual recognition between these schemes appears to split up the market.

D.2. PROBLEM DEFINITION

A problem tree charting problems, drivers and effects can be found in annex 4 of this paper.

Following the discussion of the different groups of schemes above, three core problems can be identified as concerning

- ⇒ the transparency of schemes' requirements, the credibility of the claims made, and whether these are understood by consumers (**asymmetric information**);
- ⇒ their possible effects on commercial relations, including undue burdens on farmers and producers, also in developing countries (**missing or weak competition at certain levels of the supply chain**); and
- ⇒ the functioning of the internal market (**implementation and enforcement failure**).

These three broad concerns affect each particular group of certification schemes differently:

- ⇒ **the transparency of schemes' requirements, the credibility of the claims made, and whether these are understood by consumers:** mostly an issue for differentiation schemes; also for food assurance schemes which are communicated to consumers. Not for liability schemes.
- ⇒ **their possible effects on commercial relations (including undue burdens on farmers and producers):** mostly for schemes where overlap and duplication exists, either among schemes or between schemes and official controls. Thus, this mainly concerns liability schemes (for processing and manufacturing enterprises) and food assurance schemes. Indirectly also an issue for some differentiation schemes if the situation arises that non-participation in a scheme can lead to exclusion from certain markets (a concern that has been raised in the context of "Fair Trade" schemes, e.g. by Renard (2005)).
- ⇒ **the functioning of the internal market:** mostly an issue for differentiation schemes (either the schemes themselves or certification providers requested by national customers); also for food assurance schemes which could be associated with a certain origin (Red Tractor; Geprüfte Qualität - Bayern; etc.). Not for liability schemes.

However, it should be noted that it is not always possible to draw clear lines between the different groups of schemes, which sometimes combine elements from two or even three groups (e.g., assurance schemes incorporating elements of product differentiation). The complexity of the standards setting for high-value foods is likely to increase in the future given the emerging tendency, especially within the private sector, to package together safety, quality, environmental, and social standards (Worldbank, 2005).

2.1. What are the underlying drivers of the problems?

Annex 5 outlines the rationale for food safety and quality standards at a very general level.

A number of more specific factors contributed to the emergence of the currently existing wide variety of certification schemes, and again we need to distinguish between the three broad groups of schemes outlined above when looking at each driver.

(a) Food scares:

A number of food scares (BSE, dioxin, salmonella, listeria, E-coli) starting in the later 1980s lowered consumer confidence for a period in official food safety systems and controls⁵ (see Table 3).

⁵ The Commission's White Paper on Food Safety of 2000 states that "The European Union needs to re-establish public confidence in its food supply, its food science, its food law and its food controls." and "The principal objective of a European Food Authority will be to contribute to a high level of consumer health protection in the area of food safety, through which consumer confidence can be restored and maintained."

Table 3: Examples of major food safety “events” in industrialized countries

Year	Event	Country
1987/88	Beef hormone scare	Italy/European Union
1988	Poultry salmonella outbreak/scandal	United Kingdom
1989	Growth regulator (<i>alar</i>) scare for apples	United States
1993	E.Coli outbreak in fast-food hamburgers	United States
1996	Brain-wasting disease linked to BSE	United Kingdom
1996/97	Microbiological contamination—berries	United States, Canada
1995-97	Avian flu spreads to humans	Hong Kong, Taiwan
1999	Dioxin in animal feed	Belgium
2000	Large-scale food poisoning—dairy	Japan
2001	Contaminated olive oil	Spain
2006	Rotten meat scandal	Germany
2008	Melamine in dairy products	China
2008	Dioxin in pork	Ireland

Source: Worldbank, 2005 and own additions

While several of these events involved serious illness and loss of life, it should be noted that the adverse effects of these and other events were amplified by the way they were handled in public, further lowering consumer confidence. This situation then gave the impetus to the private sector to develop their own standards. According to a report produced by the Worldbank,

"Both the mainstream and tabloid media seized on the events, often magnifying public concerns by emphasizing the potential threats to human health, the influence of vested interests unconcerned with consumer protection, and the alleged ineptitude of governments. Each new event further eroded the confidence of consumers in the safety and integrity of certain food products, in national and regional systems of regulation, and (at least in Europe) in the broader scientific community supporting the agri-food system. Many came to believe that the existing regulatory apparatus was more geared toward protecting the interests of farmers and food distributors rather than consumers. Public disagreements among scientists in different countries about food risks further sapped consumers' confidence.

"Governments and the private sector have responded to these developments in various ways. At the official level, regulations have been revised and significant institutional changes have been made in food safety oversight. Standards have been tightened on foods that have long raised concerns, while new standards have been developed for previously unknown or unregulated hazards. Governments are increasingly adopting a production-to-consumption (or farm-to-table) perspective, requiring traceability of animals, products, and raw materials, while national systems for border inspections of food and plants have been scaled up.

"Spurred by these regulatory changes and the business cost of food scares, supply-chain leaders such as food retailers and major food manufacturers have led the private sector in making adjustments to food safety and quality

management systems and demanding similar changes on the part of suppliers. In addition to laying down and enforcing their own safety and quality requirements, the leaders are increasingly consolidating their systems of procurement, entering into longer term relationships with a more limited number of “preferred suppliers.” Many different schemes are being promoted or imposed at the level of individual companies, specific supply chains, national industries, regional groupings of firms, and even, internationally.” (Worldbank, 2005)

The schemes having emerged in reaction to the above-mentioned food scares mainly belong to the group of pre-farm gate assurance schemes (the most prominent example here is the UK Red Tractor Scheme; see Kirk-Wilson, 2008), but to a certain extent also the food safety and liability schemes have their roots in private sector reactions to food scares. While differentiation schemes may have experienced a certain boost due to the loss of consumer confidence in “traditional” supply chains, it is unlikely that new differentiation schemes have emerged in reaction to food scares.

(b) Societal demands:

Even though the share of income spent on food has been shrinking in all industrialised countries over the last decades (e.g., EUROSTAT), absolute expenditure on food is larger than ever. This indicates a change in the pattern of consumption towards agricultural and food products with higher income elasticities of demand (fish, poultry, fresh produce), and it implies that consumers are willing and able to pay higher prices for products with certain desirable characteristics (Bredahl et al., 2001).

Differentiation schemes have emerged in response to the perceived demand for products with particular characteristics or resulting from particular farming methods. Some of the main drivers of innovation for this type of schemes include:

- a desire for consumers to reconnect with agriculture and give preference to local and seasonal products from farming systems that sustain both nature and society;
- the environmental concerns of combating climate change, managing natural resources such as water and soil more efficiently, and preserving biodiversity;
- promotion of nutritional qualities of foodstuffs;
- social concerns: the Fair Trade label is an example of a scheme based on the strategic intention to help producers and workers (chiefly in developing countries) move from a position of economic and social vulnerability to one of security and economic self-sufficiency (see box 2 below);
- animal welfare concerns: private schemes promoted by animal welfare groups and farmers working with retailers and the scientific community. These animal welfare schemes generally certify that higher than the minimum requirements are met, for marketing purposes.
- New technologies in agriculture and food production (e.g., GMOs) which may be officially allowed but not desired by many consumers. Differentiation schemes can guarantee the absence of food produced with those new technologies, thereby respecting consumers' right to choose.

Consumer demands are continuously evolving, as can be illustrated by the example of schemes trying to address climate change concerns (see annex 6). For producers, certification is a way of meeting these demands by communicating certain aspects of products or production methods to potential buyers. Whether or not such schemes will be successful in the long run depends on the development of effective market demand.

Box 2: "Fair Trade" labels

Fair and ethical trade is an approach that addresses the contractual conditions of production in developing countries. Fair Trade labelling is one distinct concept within this broader category and is generally understood to apply to the dozen or more commodity items eligible for certification by Fairtrade Labelling Organisations [FLO]⁶. FLO is in some ways the mainstream interface for a distribution system inspired by a reaction against traditional supply chains and an attempt to supplant them by alternative models. The rules for producer participation are laid down both generically and geographically and by product, but participation is also limited by the availability of consumer uptake. Many of the rules are comparable to those contained in mainstream CSR-driven supply-chain codes, but what distinguishes the Fair Trade contractual relationship is

- the existence of progress standards, where improvement is more important than absolute attainment;
- a guaranteed price with a pre-determined floor, and a premium above the usual market price,
- the assurance of long-term relationships.

Certain elements from Fair Trade, such as progress standards, long-term relationships, but generally not the price guarantee in exactly the same form, have been taken over by other schemes that do not pass for “Fair Trade”. Other schemes that are not Fair Trade at all sometimes use the words fair, fairly, and trade or traded by themselves or in combination with other terms, which can create uncertainty for consumers about the origin and production of a product. Despite that, public recognition and broad understanding of the Fair Trade concept is high and increasing (see <http://www.fairtrade.net/figures.html>).

The European Commission is addressing the issue of Fair Trade and other non-governmental trade-related sustainability assurance schemes in a Communication to be adopted in 2009. The Communication seeks to provide an up-date on developments and issues that have been raised since the last Commission Communication on the subject in 1999⁷. The Communication will also take account of a number of broad interests that have been articulated, most notably in the European Parliament Report on Fair Trade and other independently monitored trading initiatives contributing to raising social and environmental standards⁸.

⁶ Fair Trade Labelling Organisations International, created in 1987 (divided in 2004 into FLO-1 for standard-setting, and FLO-Cert Ltd for certification and auditing activities).

⁷ COM(1999) 619 of 29.11.1999.

⁸ European Parliament Report on Fair Trade and Development 2005/2245(INI).

(c) The changing legal framework:

Partly due to events such as the food scares mentioned above, the official rules and regulations governing food safety, announced in the European Commission's "White Paper on Food Safety" in 2000 have been prepared and set up, either by tightening existing rules or by introducing new ones.

Some fundamental changes in food safety regulation and management were introduced, including⁹:

- ⇒ greater institutional independence (creation of independent food safety agencies, both at European and Member State level)
- ⇒ full supply-chain perspective (introduction of farm-to-fork approaches in addressing food safety hazards; growing attention to the traceability of animals, raw materials, and products)
- ⇒ increased emphasis on the adoption of HACCP systems (Various EU member states have HACCP requirements, and all suppliers of dairy, meat, and fish products are required to have such systems, with oversight provided by national authorities and periodic inspections by EU technical experts).
- ⇒ increased use of scientific risk assessment (e.g., in the SPS Committee, in CODEX and other standard-setting organisations, in order to determine the need for new regulations or standards)
- ⇒ intensified border inspections
- ⇒ greater transparency of risk assessments and other measures
- ⇒ greater stringency and broader application of standards (e.g. in the field of pesticide use and residues)

These measures constitute the framework in which private standards and certification schemes operate. The impact that changes in legislation can have on certification schemes is clearly illustrated by the UK Food Safety Act of 1990 (see box 3) introducing "due diligence" requirements for retailers, which in turn has led to the development of "food safety and liability" certification schemes (BRC, IFS) (e.g., Kirk-Wilson 2008 UK food assurance review).

⁹ This section is based on Worldbank 2005, pp. 18-23 , which in turn is based on upon Roberts and Unnevehr (2003) and Caswell (2003).
http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthes_isreport.pdf

Box 3: The UK Food Safety Act (1990)

This Act, passed in the wake of food scares related to Salmonella and other issues in the mid-to-late 1980s, was a major watershed event in the United Kingdom, one that foreshadowed future legislation at the EU level. The Food Safety Act radically transformed quality management systems in Britain's food sector and established greater clarity in control, enforcement, and responsibilities for food safety. It made firms responsible for the safety and quality of their food inputs, the conduct of their suppliers, and the safety of consumers. Both reputation and financial resources were at stake if firms failed to prove due diligence in detecting and preventing problems in the food chain. Under the Act, any supplier of a branded product would be liable for the safety of that product unless they could show due diligence. All fresh produce sold in unpackaged form was considered to bear the brand of the retailer. These liability provisions went further than those that would subsequently appear in continental Europe. As a result, they provided a strong stimulus for private, self-governing actions that subsequently took the form of: (1) a set of good agricultural practices (for example, the Assured Produce Scheme); and (2) a protocol of good hygiene practice (the BRC Technical Food Standard). These, in turn, became part of the foundation for wider food safety initiatives by the private sector in Western Europe.

Source: Worldbank, 2005

(http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenge_synthesisreport.pdf), based on Loader and Hobbs (1999); Henson and Caswell (1999); Holleran and others (1999)

(d) Public support:

Finally, the eligibility of producers for receiving public support may be tied to participation in certification schemes fulfilling specific criteria. For example, EU rural development funds are available for farmers who participate in certain types of food quality schemes (Council Regulation No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), Article 20(c)). While this may not contribute to the emergence of new schemes, it certainly serves as an incentive to participate in existing ones. The existence of public support opportunities for participation in certain types of certification schemes is at least partly linked to recent reforms of the Common Agricultural Policy (and therefore with point (c) – changing legal environment, above) with a greater emphasis on market-oriented production.

2.2. Who is affected, in what ways and to what extent?

(a) **Consumers** are directly affected by schemes which are communicated to the general public by way of a label or logo. These represent the vast majority of differentiation schemes as well as some assurance schemes. The significant growth of the number of schemes in this group, combined with the corresponding growth in the number and diversity of logos and labels, can be seen both as a blessing and a curse.

On the one hand, labels and logos should enable consumers to make an informed choice concerning the product they buy or the way in which it has been produced. More labels and logos imply greater choice and greater attention by retailers to the wishes of consumers for certain product or process characteristics. Many of those characteristics can be considered as 'credence' attributes, the presence of which cannot be detected by the consumer, not even after the purchase and consumption of the product (such as,

“pesticide-free”, “grass-fed” or “produced and bottled in Saint Emilion”). This presents a situation of asymmetric information between retailer and buyer of the product, a typical case of market failure where additional efforts on the part of the producer (e.g. higher animal welfare through more extensive production methods) will not be rewarded by the consumer as long as he/she has no guarantee that these efforts have indeed been made. An independent and trusted certification mechanism and corresponding label is one way of addressing this market failure.

On the other hand, a plethora of schemes with labels on widely differing subjects has given rise to consumer confusion, to the extent that they are likely to ignore these labels. Such confusion can arise because of unclear scheme claims, where the name of the scheme may contain unclear terms (e.g., “integrated agriculture”, a term which can be defined in different ways) or where the name suggests something that the scheme itself does not provide (e.g., in the area of assurance schemes, terms such as “assured quality” can be understood to mean higher quality than legally required; “Geprüfte Qualität - Bayern” may suggest that the product actually comes from Bavaria where in fact the scheme is/has to be open to all producers complying with the specification). Information on the specific scheme requirements is not always readily available or requires significant research which only the most dedicated consumers may be willing to engage in. Furthermore, different schemes may promote contradicting objectives (for example, labels promoting reductions in CO₂-emissions may be damaging to development objectives; improving animal welfare could lead to increased energy consumption). And finally, it is often not clear to what extent the various schemes are controlled by independent bodies, thereby guaranteeing the independence and objectivity/neutrality of the scheme. This is particularly critical for the labels promoted by different retail chains (e.g., Tesco’s Nature’s Choice; Filière Qualité Carrefour)¹⁰.

Box 4: The situation of organic farming labels

The EU organic logo as well as private and national logos are used to supplement the labelling and increase the visibility of organic food and drink for consumers. So, consumers buying products bearing the EU logo can be confident that:

- at least 95% of the product's ingredients of agricultural origin have been organically produced;
- the product complies with the rules of the official control scheme;
- the product has come directly from the producer or is prepared in a sealed package;
- the product bears the name of the producer, the preparer or vendor and the name or code of the control body

The placement of the EU organic logo is currently voluntary, but a new EU organic logo will become mandatory on EU product on 1 July 2010 as regards pre-packaged food. It will continue to be voluntary for imported products after this date. Where the Community logo is used in the future, an indication of the place where the agricultural

¹⁰ Tesco’s Nature’s Choice is independently audited (see <http://www.tescofarming.com/tnc.asp>). For Carrefour, suppliers’ production sites are audited by Carrefour, its service providers or certification agencies, see <http://www.carrefour.com/cdc/responsible-commerce/product-safety-and-quality/>.

raw materials were farmed should accompany it. This indication can mention 'EU', 'non-EU' or the name of the specific country, in or outside the EU, where the product or its raw materials were farmed.

However, a wide variety of privately-owned organic logos has existed for many years in the EU. While all of them belong to schemes that comply with the requirements of the EU regulation, some have their own additional requirements which are often not clearly communicated to consumers. Making the use of the EU organic logo mandatory is a move that intends to offer pan-EU recognition, thereby facilitating trade in the single market and reducing the need for multiple logos.

In a study conducted in 2005 for DG SANCO¹¹, many consumers claimed that, while they welcome as much information as possible on the product, they experience the following problems (amongst others):

- Confusion between “real” and “objective” information and advertising and “marketing”- type information.
- Difficulty in locating the genuinely useful aspects one is looking for, “drowned out” as they are in the midst of all the information given.
- Suspicions of there being information missing: ingredients or additives not mentioned; possible presence of GMO concealed or difficult to find; information not given on cultivation or breeding methods, the ethical character of production conditions, the exact origin of the products, etc.
- Occasional suspicions of deliberate impenetrability of the information provided.

In 2003, the National Consumer Council (NCC) of the UK carried out a study of consumers' views on voluntary food labelling, including food assurance schemes. It concluded that the proliferation of labels and logos has caused **confusion and information-overload among consumers**. The NCC's research showed that consumers did not understand what the majority of labels and logos mean, and that food assurance schemes were most often used as a marketing tool rather than a way of informing consumers and offering real choice (House of Commons, 2005).

Gellynck et al. (2006) reported that despite the abundant rise of information through labelling, traceability systems and quality assurance schemes, the effect on consumer trust in meat as a safe and wholesome product is limited. The overload and complexity of information on food products results in misunderstanding and misinterpretation.

Are consumers also affected by the business-to-business schemes which are not communicated to them? Only to the extent that these schemes have an effect on final prices or, conceivably, on the quality of the product. On the one hand, liability and assurance schemes may lead to higher prices due to higher requirements for quality management within the supply chain, plus certification and control costs. On the other hand, broad adoption of these schemes can reduce transaction costs (costs of searching, testing prior to purchase etc), limit the risk of failed contracts because of sub-standard deliveries, and facilitate technology transfer (DG JRC/IPTS 2006 (b)). Empirical evidence on this issue is scarce.

¹¹ OPTEM 2005; http://ec.europa.eu/consumers/topics/labelling_report_en.pdf

Business-to-business schemes may also affect consumers when they become de-facto requirements for sales to the main retailers in a market. In such a situation, small-scale producers and their products may effectively be excluded from the market, leading to a loss of product diversity and thereby reduced consumer choice.

In summary, consumers would benefit from

- ⇒ Better information on scheme claims and requirements, including a clear indication of whether and how a scheme goes beyond minimum legal requirements
- ⇒ Independent control of schemes
- ⇒ Reduction in the number of schemes with similar requirements operating in the same market (although past experience shows that this can be a difficult process)
- ⇒ Greater involvement in scheme development

(b) **Farmers and producers** are affected by all schemes that require them to produce according to certain standards and procedures, regardless of whether these are communicated to consumers or not. However, a fundamental difference exists between those schemes that are required by actors further down the food supply chain (thus, most liability and assurance schemes) and those that are initiated by farmer and producer groups, NGOs or public authorities with the aim of differentiating certified products from others.

In the latter case, the whole aim of certification is to secure an economic advantage: additional sales and/or higher prices. Differentiation schemes use the fact that consumers are heterogeneous in their preferences and in their willingness to pay for different product characteristics and farming attributes. It is thus the degree of the consumers' willingness to pay, balanced against the additional costs caused by scheme participation (needed investments, higher production costs plus certification and control costs) that determines to a significant extent the success of such schemes. Since differentiation schemes are by nature voluntary, they present an opportunity for farmers and producers to realise higher incomes.

On the other hand, farmers and producers cannot expect consumers to pay premium prices for products by reason of participation in liability and assurance schemes, especially those not communicated to consumers. The main benefit of scheme participation lies in the ability to access certain (mostly very important) markets. As described above, farmers and producers are faced with a situation where in order to be able to sell their products they need to participate in one, and sometimes more, certification schemes.

This situation is compounded by the ongoing concentration process at certain segments of the food supply chain. In Europe, it is mainly the retail level which shows a high degree of concentration. According to a study undertaken by London Economics for the Consultative Commission on Industrial Change of the European Economic and Social Committee (London Economics, 2008), the combined market share of the top-5 firms (known as the "C5") in the food retail market varies significantly between countries. The main findings of the study are:

- ⇒ Germany and the UK are the most concentrated markets with over 70% of the market controlled by the largest five firms.

- ⇒ The French market is also comparatively concentrated, with a C5 of around 60%.
- ⇒ In Italy, Spain and the Czech Republic, the C5 is between 30% and 45%.
- ⇒ There have been significant increases in market concentration in the UK, the Czech Republic, Romania and Spain over the last three years.

A study conducted by the JRC-IPTS on behalf of DG AGRI in 2005 in a different set of countries comes to similar conclusions (JRC-IPTS 2005):

“[...] in the food distribution sector a particularly high degree of concentration has been reached in the Scandinavian countries and in France. In all these countries, and also in Spain, large-scale retail chains, with their typical outlets (hyper- and supermarkets; hard discounts), have come to dominate the sector, at the expense of traditional small-scale retailers. In the Czech Republic and in Poland, for which comparable concentration data were not available, the expansion of large-scale retail at the expense of traditional retail operators is also underway.” (JRC/IPTS 2005, p. 14)

In contrast, and despite an ongoing concentration process also at this level, agricultural production remains characterized by a large number of relatively small operators. In 2005 (the latest year for which figures are available; EUROSTAT 2008), a total of 7.8 million holdings of at least 1 European Size Unit (ESU)¹² existed in the EU-27.

In general terms, food supply chains are characterised by dispersed primary production and much higher levels of concentration at the retail end of the chain. "One business study of the European food market found that in Europe (then 15 member states), there were 3.2 million farmers, around 240,000 processors, 600 retailer chains, but just 110 combined 'buying desks' (consortia of retailers' contracts and specification officers) that interface with 250 million consumers through 170,000 shop outlets (Lang, 2005). This study concluded that the role of retailers and their buying desks was the new power in the consumer-producer interface." (Gabriel and Lang, 2006, p. 29)

This significant divergence in industry structure at the production and retail level has direct implications for the ability of actors to exercise market power¹³. While farmers and producers can improve their bargaining situation by creating associations, they still need to comply with retailer-imposed standards in order to sell their products. Furthermore, certification is normally done at the level of the individual farm, with each farmer having to bear the costs individually.

Reflections on the competitiveness of the European agro-food industry are currently ongoing in the context of the High Level Group on the Competitiveness of the Agro-Food Industry (see box 5), which will deliver its report in March 2009.

Box 5: High-level group on the competitiveness of the agro-food industry

¹² For each activity (“enterprise”) on a holding, or farm, (e.g. wheat, dairy cow or vineyard), a standard gross margin (SGM) is estimated, based on the area (or the number of heads) and a regional coefficient. The sum of all margins, for all activities of a given farm, is referred to as the economic size of that farm. The economic size is expressed in European Size Units (ESU), 1 ESU being equal to 1200 Euro of SGM (EUROSTAT 2008).

¹³ DG MARKT is currently undertaking a monitoring exercise of retail services in the context of the Single Market review, which looks at retail service provision in the Member States in order to identify possible market malfunctioning affecting any part of the retail value-added chain.

In recognition of the fact that the competitiveness of the European agro-food industry is today a matter of great concern a **High Level Group (HLG) on the Competitiveness of the Agro-Food Industry** has been set up by the Commission Decision of 28 April 2008 (2008/359/EC) and launched officially on the 12th of June 2008 by Vice-President Verheugen together with his fellow Commissioners: Mrs. Fischer Boel, Mrs. Kuneva and Mrs. Vassiliou.

The formal objective of the exercise was to **identify** the factors, future challenges and trends that can influence the competitive position of the European Agro-Food Industry as well as to **formulate recommendations for actions over the short to medium term in public policy and the regulatory framework which would enhance the sustainable development and competitive position of the sector**. In this respect, the following areas of interest were tackled during the HLG discussions, and consequently in the High Level Group Report scheduled to be adopted after March 2009¹⁴:

- **Agricultural and Environmental Policy**
- **Internal Market for Food**
- **The Operation of the Food Chain**
- **Research and Innovation**
- **Trade and Exports**

The HLG Members sought to establish an **integrated approach** to their task that would encompass all relevant existing policy areas having an impact on either the supply or demand side of the industry (from farm to fork and vice versa), taking into account the vision of the respective HLG members for the future of the sector. In the course of their work, the Group has examined ways to reduce costs, where possible, and enhance the growth and efficiency of the whole food supply chain, from the primary sector to the retail sector, whilst securing sustainable, safe and diversified products at affordable prices for the consumer.

The HLG is addressing the issue of private labels and encourages the European Commission to study their effects on the competitiveness of the Agro-Food SMEs and examine ways to reduce where appropriate the imbalances of power in the food supply chain should they be found to exist.

http://ec.europa.eu/enterprise/food/high_level_group_2008/hlg_introl1.htm

The certification and control requirements applying to private schemes have to be added to the official control requirements. The degree of overlap between some schemes (mainly those certifying good agricultural practices) and official requirements, for example in the area of cross-compliance, can be substantial, even if a study on synergies between cross compliance and certification schemes conducted in the context of an EU research project (Farmer et al., 2007) concludes that “Among the countries examined, there appear to be very few, if any, schemes that incorporate all of the cross compliance standards that apply in the Member State concerned”. However, it goes on to say that “...it may be the case that farmers who are certified for meeting specific standards are less likely not to meet cross compliance standards. Membership of certain certification schemes could be a factor in the risk sample that member states use to target farms for cross compliance inspections. Such an approach would require some confidence that certification schemes rigorously enforce standards that closely match those set for cross compliance”.

¹⁴ These are also the main chapters of the Report.

This has been recognised in a 2007 amendment of the cross-compliance regulation¹⁵ which now states that

The risk analysis may take into account one or both of following:

(a) a farmer's participation in the farm advisory system provided for in Articles 13 and 14 of Regulation (EC) No 1782/2003;

(b) a farmer's participation in a certification system if the scheme in question is relevant for the requirements and standards concerned.

However, it is not known to what extent this provision has already been used in the different member states.

In summary, farmers and producers would benefit from

- ⇒ Greater harmonisation and mutual recognition among liability and assurance schemes covering largely the same elements
- ⇒ Greater participation and influence in scheme development
- ⇒ Greater recognition of certification to (relevant) private schemes for the purposes of official controls

(c) Developing countries

The impact of private standards on **farmers and producers in developing countries** has been discussed in a number of publications and international fora. Two perspectives are described in the 2005 Worldbank report on Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports (Worldbank, 2005), identifying standards as "catalysts" or "barriers":

The "**standards as catalysts**" perspective emphasizes the *opportunities* provided by the emerging standards and the possibility that certain developing countries could use those opportunities to their competitive advantage. From this viewpoint, many of the emerging public and private standards represent a potential bridge between increasingly demanding consumer requirements and the participation of distant suppliers. Many of these standards provide a common language within the supply chain and raise the confidence of consumers in food product safety. Without that confidence, the market for certain products cannot be maintained, let alone increased, in turn jeopardizing international trade.

From this perspective, the challenge inherent in compliance with standards may provide a powerful incentive for the modernization of developing countries' export supply chains and give greater clarity to the SPS management functions of government. For example, increased attention to the adoption of 'good practices' in agriculture and food manufacture may induce changes in domestic food safety and agricultural health

¹⁵ Commission Regulation (EC) No 1550/2007 of 20 December 2007 amending Regulation (EC) No 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers.

controls. Such changes could also benefit the domestic population, producers, and the environment.

Rather than eroding the comparative advantage of developing countries, the enhancement of capacity to meet stricter standards could create new forms of competitive advantage and generate new employment. Hence, the process of standards compliance could conceivably provide the basis for more sustainable and profitable trade over the long-term—albeit with some highly visible winners and losers.

Asfaw et al. (2008) provide an empirical analysis of EU private food-safety standards impact on pesticide use and farm-level productivity among smallholder export vegetable producers in Kenya. Their estimation results show that export producers complying with private standards significantly use less toxic pesticides; however there is no significant difference on the total quantity of pesticides used. Model results also demonstrate a positive and significant impact of standards adoption on revenue of vegetable production. They conclude that while food safety and quality standards can be a barrier for resource poor smallholders to maintain their position in the lucrative export markets, they can also induce positive changes in production systems of small-scale farmers who adopt it. Their findings partly support the notion that adoption of emerging food-safety standards can serve as a catalyst in transforming the production systems of developing countries towards safer and more sustainable production

A more pessimistic “**standards as barriers**” perspective highlights concerns that the growing stringency of food safety and agricultural health standards could undermine progress made by developing countries in increasing their exports of high-value agricultural products, while posing insurmountable barriers to new market entrants within the developing world. The conventional wisdom, reflected in most analytical literature and public pronouncements, holds that the emerging product and process standards amount to a barrier to the trade of developing countries and, in particular, to small producers and agro-enterprises. Echoing criticism of the wider trade regime for agricultural products, many analysts, commentators, and developing country policymakers view food safety and agricultural health measures as disguised protectionist tools. Scientific justification is now used to prohibit or restrict imports. Discrimination occurs when higher standards or more rigorous enforcement applies to imports than to domestic supplies. Even if standards are not used intentionally to discriminate against imports, there is concern that their growing complexity and the lack of harmonization among countries will impede the agri-food trade expansion efforts of developing countries.

There is also concern that many developing countries lack the administrative, technical, and scientific capacities to comply with emerging requirements, presenting potentially insurmountable barriers in the short and medium term. A related concern is that the initial investment and recurrent costs required to comply with emerging standards weakens the competitive position of developing countries or compresses the profitability of their export-oriented activities. It is argued that the combined effects of institutional weaknesses and rising compliance costs will contribute to the further marginalization of weaker economic players, including small and poor countries, small and medium-sized businesses, and smallholder farmers.

http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthesisreport.pdf

The issue of private standards has been raised in the SPS Committee of the WTO; Annex 7 provides a discussion on whether and how private standards fit in the framework of the SPS Committee. The issue of private standards and developing country exports of fresh fruit and vegetables was raised in the SPS Committee in 2007 (WTO G/SPS/GEN/761, 26.02.2007).

Concerning animal welfare, the OIE expressed concern for assurance schemes demanding high compliance levels and said they must be based on sound science. (WTO G/SPS/GEN/822, 25.02.2008)

A number of measures have been proposed to facilitate use of private standards by producers in developing countries:

- ⇒ First, relevant stakeholders face a major challenge in simply being aware of the rules and requirements pertinent to particular markets and understanding how the game is actually played. This learning curve gives incumbent countries and suppliers a large advantage over new entrants.
- ⇒ Second, it is more urgent than ever before that developing country stakeholders participate in standard-setting processes, whether through international organizations, bilateral discussions, or membership in private bodies.
- ⇒ Third, there is an acute need for a strategic approach to capacity-building related to standards. That approach would gauge the direction of future standards, act in a pre-emptive fashion to address emerging risks, and, where possible, get ahead of the curve by asserting competitive advantage through effective application of standards.
- ⇒ Fourth, although the diversity of existing standards may sometimes increase transaction costs, it also may enable developing country suppliers to choose among markets for whose standards they can most readily meet. Given the diversity of standards applied within and between countries, there is scope for different speeds on the highway of standards compliance. This is certainly the case when one considers the emerging opportunities for South-South trade in high-value food products

http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthesisreport.pdf

see also conclusions to SPS Committee of the WTO (G/SPS/GEN/761, 26.02.2007)

In summary, farmers and producers in developing countries would benefit from

- ⇒ Greater harmonisation and mutual recognition among liability and assurance schemes covering largely the same elements
- ⇒ Greater participation and influence in scheme development
- ⇒ Capacity building for exporters to meet scheme requirements
- ⇒ Assuring policy coherence on assurance scheme development

(d) **Other actors in the food supply chain (processors, traders, retailers)** are affected to the extent that their operations need to be certified as well. Quite often, certification schemes cover the whole food supply chain and thereby have an impact on all actors in the food supply chain. However, the extent to which this represents a burden depends amongst others on the degree of concentration at the particular chain level (see point b

above; highly concentrated operations will find it less difficult to comply with certification scheme requirements; they may even be in a position to set their own requirements).

2.3. How would the problem evolve without a change in policy?

Without a change in policy, it can be expected that the currently observable trends in the development of certification schemes would continue. This means:

In the area of **differentiation schemes**, performance in the market will continue to be the main determinant of success or failure. Schemes will come and go according to how well retailers see they meet consumer demands, how much more consumers are willing to pay for certified goods and how expensive scheme participation is for farmers and producers (i.e., whether they can derive economic benefit from scheme participation). Whether the overall number of differentiation schemes is likely to rise is difficult to predict. However, without a change in policy, there won't be any significant changes in the way these schemes operate and hence no change in the risks to competition problems. Greater transparency and clarity of the claims made may or may not be in the interest of scheme owners, but the growing debate around these schemes and the greater attention given to these issues in the media may have a positive influence.

It should be noted that the potential threat to the internal market from schemes indicating the name of a Member State, place or region can at least partly be addressed through existing legislation (see Annex 3: *Case-law prevents certification schemes that conceal barriers to the Internal Market*). There remains a grey area for schemes bearing the name of a place or region which in theory are open to all producers complying with the scheme specification. Consumers are likely to expect that certified products come from the name-giving place or region, and actual practice shows that this is indeed the case (e.g., Verbraucherzentrale 2005). Ongoing revisions of labelling rules at European level may be able to provide greater clarity here, for example by addressing country of origin labelling.

The issue of consumer confusion arising from different schemes covering similar objectives is being taken up by initiatives such as the ISEAL Code of Good Practice (see annex 8), which claims to be the international reference for setting credible voluntary social and environmental standards.

Currently, such initiatives are only known for standards and schemes operating at the international level (e.g., the Marine Stewardship Council; rainforest Alliance; IFOAM; Fairtrade Labelling Organisations; Forest Stewardship Council).

In the area of **food assurance schemes**, the proponents of currently existing schemes claim to have already embarked on a significant degree of harmonisation. GLOBALGAP's predecessor EurepGAP replaced a range of different retailer standards for good agricultural practices. The UK Assured Food Standards and the Red Tractor mark were set up in 2000 to help harmonise the approach to standard setting and inspection throughout the supply chain at a time when the public was faced by a plethora of food standards and labels¹⁶. The Red Tractor mark has unified different UK company and sector standards under a single assured food standards umbrella (which may in fact serve to consolidate the single-Member State nature of this scheme). The German QS

¹⁶ <http://www.redtractor.org.uk/site/REDT/Templates/GeneralWho.aspx?pageid=21>

scheme owners have, however, entered into harmonisation agreements with several other schemes in other Member States – in Belgium, The Netherlands, Denmark and Austria. It can be expected that the success of the strongest schemes in this group will lead to further consolidation or mutual recognition in the future. In this light the risk of competition problems emerging (in terms of foreclosing competitors) could rise.

While overlap among schemes seems to be a diminishing issue in this group, overlap between schemes and official controls is also pertinent. Policy has already started to take this issue into account (see 2.4 b) above). To what extent this possibility will be used by the Member States and thereby lead to a reduction of the audit and control burden on farmers, remains to be seen. In the UK, progress seems to be made in this area (see box 6):

Box 6: Reducing duplicate audits by taking participation in certification schemes into account for official control purposes

“January 2007 saw a big step forward in co-operation with a government agency to reduce the burden of inspection on assured farmers. Food businesses along the supply chain have had to comply with General Food Hygiene Regulations for more than a century, but until now the regulations have never applied to food production before the farm gate. EU regulation 852/2004 has changed all that, and farmers and growers also fall within the regulations that require producers to take all reasonable steps to keep food free from contamination that could pose a threat to the health of anyone that eats it.

“A new regulation means a new enforcement regime and the Food Standards Agency (FSA) has appointed local authorities to do this work in mainland UK, and DARD in Northern Ireland. But the FSA has recognised that the industry’s farm assurance schemes were already covering food safety. And in keeping with the much discussed principles of ‘Better Regulation’ the FSA has introduced a system for planning of inspection programmes that avoids unnecessary duplication. Red Tractor assurance schemes have demonstrated to the FSA that we cover the legal requirements point by point. And they have satisfied themselves that there is a robust inspection process.

“The risk based system for inspection priorities includes a very heavy weighting for assured farmers and growers. The FSA recommends as a default that 25% of farmers and growers should be inspected every year. But for assured producers this is reduced to just 2% per year. This is a significant benefit for assured farmers and allows regulatory authorities to use public resources more effectively.”

<http://www.redtractor.org.uk/site/REDT/Templates/GeneralNews.aspx?pageid=96>

To what extent consumers will receive better information on the claims made by these schemes remains unclear. The UK House of Commons in its seventh report on the Environment, Food and Rural Affairs (House of Commons, 2005) concludes that

"It is not at all clear that food assurance schemes are currently providing useful and meaningful information to consumers, and the proliferation of such schemes adds to the confusion. Few consumers are in a position to inquire into the veracity or reliability of the schemes' claims. Furthermore, even where scheme are sound, they may certify nothing more than that required minimum standards have been met – something consumers should be able to take for granted without the need for assurance by an external, private body. We believe that most consumers are likely to assume that the fact that a food carries an

assurance scheme mark means that it has exceeded legal requirements in some respect".

It is likely that this situation will continue unchanged until further measures are taken.

In the area of **food safety and liability** (post-farm gate), scheme owners have also started to harmonise their specifications. While mutual recognition at the international level may still be blocked by different legal requirements, some progress has already been made at the national level. For example, the BRC Global Standard for food processing companies has harmonised many differing retailer control schemes designed to meet the legal obligation of "due diligence".

The main problem for this group of schemes is the unequal distribution of power along the food supply chain, which enables actors down the chain to impose requirements on other actors further up the chain. This situation is not likely to change in the near future, even though concentration processes are also ongoing at the level of primary production. However, the conference "Changing Dimensions of the Food Economy; Exploring the Policy Issues" organised in 2003 by the OECD, in collaboration with the Dutch Ministry for Agriculture, Nature Management and Food Quality, concluded that existing competition policy is sufficient to address market power issues:

"Governments may address possible market power through competition policy and possibly dependency laws. The presenters concluded that present competition law suffices to address possible market power issues, but that enforcement may be an issue. There is little action against food retailers, among other things because suppliers do not complain. In some European countries, dependency laws are introduced as an additional protection for suppliers. Their effects are limited so far, again because suppliers typically do not complain."¹⁷

However, if consolidation continues, the threat of competition problems rises.

2.4. Does the EU have the right to act?

The issues which may give rise to action touch on various policy areas of Community competence. These include trade policy; consumer policy; environmental policy; development policy; competition policy; internal market policy; food and feed safety policy (including labelling and animal welfare policy). First and foremost, however, agricultural policy is concerned. EU farming requirements and rules for the placing of agricultural products and foodstuffs on the internal market and ensuring the integrity of the internal market are matters of Community competence (Titles I and II of Part Three – Community Policies – of the Treaty establishing the European Community, and in particular Article 37 thereof).

No option described in this Impact Assessment conflicts with the EU Charter of Fundamental Rights.

The area of food quality certification is not entirely new for the EU. The existing schemes for Organic farming, Protected Designations of Origin (PDO) and Protected

¹⁷ <http://www.foodeconomy2007.org/UK/History+2003+Conference/>

Geographical Indications (PGI) as well as the scheme for Traditional Specialities Guaranteed (TSG) are examples where the EU has taken on the legislation of certification schemes, thereby replacing the various schemes that existed at the level of the Member States. The justifications for action in these areas include the need to ensure farmers get a fair return for agricultural product having certain characteristics, to protect consumers, and to support rural development objectives.

Whether or not specific action is justified to restrict or regulate certification activities by private actors, will depend on the circumstances and the extent to which the problems identified cannot be resolved by Member State or private sector action. Since food markets are frequently national in scope, national competition authorities are also well placed to address competition-related concerns raised at local level.

For any intervention at EU level, subsidiarity is a guiding principle. The following key questions must be answered in analysing whether Community action, legislative or non-legislative, is justified:

- Why can the objectives of the proposed action not be achieved sufficiently by Member States (Necessity Test)?
- As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

In the area of certification schemes for agricultural products and foodstuffs, the many different approaches in Member States and private sector initiatives are at the heart of the problem. While several ongoing attempts are aiming at harmonising the existing approaches (see section 2.5), the development of an agricultural quality policy which would include a policy line on certification schemes for agricultural products and foodstuffs is within the remit of the Community. As will be detailed and analysed in the following sections, this policy line can take a variety of forms, from no intervention to various types of action.

D.3. OBJECTIVES

3.1. General objective

Depending on the type of certification scheme at hand (see above), certification of agricultural products and foodstuffs aims to:

- reduce transaction costs and increase efficiency in vertically integrated supply chains;
- reduce risk and thus protect the reputation of food business operators, notably retailers, and serve as a legal defence in liability disputes;
- ensure compliance of production processes with legal requirements and expectations of consumers and citizens;
- highlight certain product or process characteristics corresponding to consumer demands in order to differentiate the product in the market and obtain a premium price;
- maintain the diversity of products and production methods in Europe and thereby contribute to rural development objectives.

3.2. Specific objectives

Existing arrangements for certification of agricultural products and foodstuffs should be reviewed in order to

- ensure that certification schemes do not undermine the proper functioning of the internal market;
- increase the transparency of certification schemes and avoid consumer confusion due to the high number of schemes and unclear or potentially misleading claims;
- reduce duplication and overlap of requirements among schemes, or between schemes and official requirements and the resulting costs for participants;
- avoid adverse effects on suppliers from developing countries.

3.3. Operational objective

Not needed.

D.4. POLICY OPTIONS

The preceding sections have outlined the main problems in the area of certification schemes for agricultural products and foodstuffs according to the type of scheme and the way in which these affect the different actors in the food supply chain, all of which is summarised in Table 4 (* *possible problematic areas indicated in italic*):

Table 4: Overview of certification schemes for agricultural products and foodstuffs, suspected problems and affected parties

	Safety and liability schemes (post-farm gate)	Pre-farm gate assurance schemes	Differentiation schemes
Scheme owners (who is making the rules?)	Retailers	Mostly independent organisations set up specifically to manage the schemes; boards can include retailers, producer associations, certifiers and others	Farmers/producers; public authorities; NGOs/interest groups
Position in the food supply chain (who has to follow the rules?)	Post-farm gate (processing, manufacturing)	Farmers, primary producers, sometimes covering the whole chain	Mostly farmers and primary producers
Use of logo	No	Some yes, some no	Yes
Main (overt) drivers	Legal requirements; protect reputation (following food scares)	protect reputation (following food scares); legal requirements	Societal/consumer demands
Main objectives of the schemes	In-chain quality and safety management	Guarantee compliance with legal requirements, including duty of care	Product differentiation
Main benefits	<ul style="list-style-type: none"> ▪ protection of liability and reputation of retailers ▪ potentially increase efficiency and reduced transaction costs 	<ul style="list-style-type: none"> ▪ protection of liability and reputation of retailers ▪ market access for certified producers ▪ increased consumer confidence in food safety and compliance with legal requirements 	<ul style="list-style-type: none"> ▪ increased consumer choice ▪ higher prices for producers
Main potential problems	<ul style="list-style-type: none"> ▪ Overlap between schemes and with official controls; ▪ unequal power between scheme owners and scheme takers (dominant position of retailers) 	<ul style="list-style-type: none"> ▪ Overlap with official controls; ▪ unequal power between scheme owners and scheme takers; ▪ potential deception of consumers by schemes certifying and advertising compliance with legal requirements ▪ potential threat to internal market 	<ul style="list-style-type: none"> ▪ Consumer confusion (number of schemes; unclear claims; lack of transparency) ▪ Potential threat to the internal market by schemes bearing regional names
<p style="text-align: center;">* No official requirements for accreditation and control * No official requirements for independence, inclusiveness and transparency</p>			

Table 4 ctd.

	Safety and liability schemes (post-farm gate)	Pre-farm gate assurance schemes	Differentiation schemes
Effects on farmers and producers	Hardly any (the schemes apply to processing and manufacturing, post-farm gate)	<i>* Significant burden and potential advantage; may lack involvement in scheme development; de-facto condition for market access</i>	Voluntary initiatives; opportunity rather than burden; for voluntary participants, additional costs and risk that decertification could negate advantages
Effects on (export) producers in developing countries	Hardly any (<i>*only at the stages of packaging and processing</i>)	<i>* Significant burden and potential advantage; de-facto condition for market access; lack of involvement in scheme development; lack of capacities to comply with scheme requirements; potential opportunity for modernisation and increased efficiency</i>	Voluntary initiatives; opportunity rather than burden
Effects on intermediate chain actors	<i>* Significant burden for food manufacturing and processing enterprises; de-facto condition for market access</i>	<i>* Can be significant where the scheme includes the whole supply chain</i>	Hardly any
Effects on retailers	Positive; protection of liability and reputation; schemes owned and imposed by retailers (or by groups with strong retailer involvement)	Positive; protection of liability and reputation; strong retailer involvement in scheme development	Hardly any; retailers can stock labelled products and thereby increase consumer choice; normal commercial risks
Effects on consumers	<i>* Possibly through price effects or through reduced choice of products; otherwise none</i>	Increased confidence in food safety and compliance with legal requirement; <i>* potential confusion if scheme message is not clear</i>	Increased choice, but also <i>* confusion through number of schemes and unclear claims</i>

** Possible problematic areas*

While a number of problems highlighted in the analysis of certification schemes presented above can at least partly be addressed by making better use of existing legal instruments (see 4.1 below) or by building on ongoing initiatives in the private sector, two broad clusters of issues can be identified where further action may be required, namely:

- (a) Issues related to **the way in which certification schemes operate (process)**, including
- independence of certification and control; accreditation;
 - stakeholder participation in scheme development (also from developing countries),
 - awareness-raising and capacity building for small-scale operators (also in developing countries)
 - transparency of standard setting processes and scheme requirements

- the need for clarity of the relation between scheme requirements and legal minimum requirements
- (b) Issues related to **the content covered by certification schemes**, including
 - reduction in the number of schemes with similar requirements operating in the same market; improved mutual recognition among similar schemes
 - overlap of private certification schemes with official requirements, e.g. in the context of cross-compliance
 - communication of scheme requirements and claims, including a clear indication of whether and how a scheme goes beyond minimum legal requirements
 - definition of terms and/or standards for specific policy areas (environment; animal welfare; ethical considerations; etc.);
 - clarification of the status of schemes indicating regional or place names.

The two areas are not mutually exclusive but can be addressed simultaneously. For each area, two general options exist: **voluntary guidelines or standards** on the one hand, and **regulation or mandatory standards** on the other. Naturally, the status quo presents a valid option, even more so since a number of information gaps remain. Therefore, the status quo described below includes activities which aim to increase our knowledge of certification schemes, their functioning in the market and their effect on the various actors in the food supply chain.

4.1. Option 1: no new EU action = status quo (plus further research)

This option is a continuation of the present situation in which the EU is not directly involved in the operation of private and national/regional certification schemes¹⁸. The EU provides a general policy framework on issues of relevance to certification schemes (internal market rules; competition rules; consumer information and labelling requirements) but no specific rules or legislation for the operation of certification schemes.

In fact, a number of problems highlighted above can be addressed through existing legislation:

Misleading claims made by certification schemes

Article 2 of Directive 2000/13/EC states that

"The labelling and methods used must not:

- (a) be such as could mislead the purchaser to a material degree, particularly:

¹⁸ The EU oversees certification schemes itself. These are the schemes for (a) protected designations of origin and protected geographical indications, (b) organic farming and (c) traditional specialities guaranteed. They are treated in parts II and III of this impact assessment, and further schemes are under consideration (Ecolabel for processed food and Animal Welfare).

- (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;
- (ii) by attributing to the foodstuff effects or properties which it does not possess;
- (iii) by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics; [...]

In addition, Directive 2005/29/EC on Unfair Commercial Practices fills the possible gaps by specifically prohibiting in all circumstances the following practices:

"Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation" (annex I, point 3) ;

"Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation" (annex I, point 4).

The Unfair Commercial Practices Directive also prohibits misleading practices which may affect the purchase decision of consumers, such as false or deceiving information on the main characteristics of a product, its method of manufacture, its specification or geographical or commercial origin.

- (a) National rules on accreditation, certification schemes or the provision of certification services hindering the free movement of goods and services and the freedom of establishment

The free movement of goods is enshrined in Articles 28-30 of the EC Treaty.

Accreditation services have recently and for the first time been harmonised and laid down at EU level in Regulation (EC) No 765/2008. This will guarantee the provision of accredited certification services throughout the single market and ensure the operational standards and supervision of each national accreditation authority.

Articles 43 and 49 of the EC Treaty and Directive 2006/123/EC on services in the internal market (the "Services Directive") apply to the establishment of certification service providers (so called Conformity Assessment Bodies, "CABs") and to the cross-border provision of certification services. As regards the freedom of establishment of CABs, the Services Directive in its Art. 10(3) sets out in substance the principle of non-duplication, which can also be inferred from the case-law on Article 43 EC.

Article 10(3) Services Directive reads as follows: "The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose to which the provider is already subject in another Member State or in the same Member State."

In this context, paragraph 4 of Article 10 of the Services Directive is also worth mentioning: "The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest."

As regards the freedom to provide services, pursuant to Regulation (EC) No 765/2008 and the Services Directive, CABs accredited in a Member State have the right to provide their services cross-border in other Member States on the basis of the accreditation they received in their home Member States.

- (b) Certification schemes being imposed on producers by powerful actors in the food supply chain

Competition authorities may intervene if certification schemes are used as a tool for abusing market power (e.g. buying power) or when they lead to reduction of consumer welfare by for example foreclosing other competitors¹⁹. Competition authorities may also intervene in case of cartel-like behaviour (horizontal coordination) on the part of the producers or the buyers:

- Agreement among competitors
- Restrict entry
- Decrease output

For cartels, establishment of market power is not necessary

If seller/buyer has market power (e.g., monopsony/oligopsony) and certification schemes are contributing to the abuse of such market power or otherwise foreclose other competitors, at the detriment of consumers, i.e.:

- negative effects on total input/output and
- subsequent impact on consumer prices/choices or quality
- there may be a violation of competition rules.

In a speech given to the Konrad-Adenauer Stiftung in January 2009, Commissioner Fischer Boel stated that

"... national and European competition authorities need to keep an eye on the consolidation which is taking place in the retail and food-processing sectors – to make sure that this consolidation does not tilt the playing field too far in one direction. As we know, in some Member States the retail sector has the strength of a giant."²⁰

¹⁹ Based on a presentation given by Paul Csiszar (Director, Directorate E – Industry, Consumer Goods and Manufacturing, DG Competition) during the conference on "Food Quality Certification – adding value to farm produce", Brussels, 5-6 February 2007 (http://ec.europa.eu/agriculture/events/qualityconference/csiszar_en.pdf)

²⁰ <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/09/25&format=HTML&aged=0&language=EN&guiLanguage=en>

(c) Certification schemes presenting barriers to international trade

Both the TBT and the SPS Agreement of the WTO make statements of relevance to certification schemes, where mandatory certification is required and the latter is carried out either by governmental or non-governmental bodies. The general underlying principle is that they should not be more trade-restrictive than absolutely necessary and that imported products should have access to certification procedures in no less favourable terms than those accorded to domestic products. The provisions of the TBT agreement would therefore only operate where a positive assurance of conformity with a technical regulation or standard is required, and this certification scheme is operated by a governmental body or delegated to a non-governmental body. Under the SPS-Agreement, scientific evidence for the necessity of a measure is required.

Choosing this option would include **further research** in the area of certification schemes in order to gain a better understanding of the nature and extent of the problem. Such research could, in particular, establish the number or percentage of farmers who are participating in more than one certification scheme and the magnitude of the associated cost and burden, figures which are currently lacking. An updated **inventory** and classification of certification schemes operating in the EU market is an indispensable tool for such research²¹. The inventory would classify schemes according to their objectives, targets, scope etc. and would thereby allow operators in the food supply chain to compare their schemes with others. Ultimately, the inventory could lead to the identification of best practices for different types of certification schemes.

A variation of this option is the establishment and publication of a register of certification schemes operating in the EU market, for the sake of transparency and information. Since this implies a certain degree of scrutiny of the schemes to be published, this option will be addressed below.

Stakeholders say:

- No intervention at EU level is not an option (CEJA, Stakeholder Hearing, 2006)
- + Market forces already act to eradicate problems such as duplication and overlap between schemes. Competition law and market legislation are available to deal with schemes which act anti-competitively or as barriers to trade (COPA/COGECA, Stakeholder Hearing, 2006)
- + Food processors do not consider involvement of public authorities in quality issues to be beneficial (Food processors panel, Stakeholder Hearing, 2006)
- + Retailers believe that further harmonisation and convergence will take place without intervention. This process has already started, as it is a commercial imperative. Business-to-consumer schemes will succeed where they meet consumer requirements (Retailer panel, Stakeholder Hearing, 2006).
- + Retailers state that research has not yet identified the best practice amongst certification schemes, but they have been judged on how they use differentiated quality criteria.

²¹ The establishment of such an inventory has been requested as an external study for 2009/2010.

Stakeholders may wish to consider what voluntary action they could take together to facilitate dissemination of best practice amongst certification schemes (Retailer panel, Stakeholder Hearing, 2006).

Option 1 will be retained as the reference point for all other options to be analysed.

4.2. Option 2 (focus on process): Oversight of the way in which private and national certification schemes operate – a meta-standard for certification schemes

4.2.1. Basic approaches

In order to address cross-cutting problems of independence, inclusiveness, transparency, accreditation and control which are inherent in the way that certification schemes operate and which affect all types of schemes to a certain extent, criteria could be established which form the minimum requirements for all certification schemes. This would be equivalent to a **meta-standard**, a certification of certification schemes.

Possible criteria for inclusion in such a meta-standard are²²:

- Where appropriate, standards of certification schemes should be built on scientific evidence and on existing international standards.
- Scheme standards (or scheme specifications) should be set by independent committees where there is a consensus from all relevant food chain stakeholders. Experts who are relevant to the scope, objective and technical specification of the standard must also participate in the independent committee.
- Standards to be applied to imports from developing countries should ensure the participation of developing country stakeholders in the setting of the standard.
- The technical scope and objective should be clearly identified and specifications should be relevant, clear and practically applicable. "One issue-labels" bear the risk of trade-offs (e.g. carbon labelling: environmental vs. development objectives). Therefore, schemes covering agricultural production should take an integrated approach and single-issue labels take account of such trade-offs.
- The specifications in the standards should balance benefits and costs having regard for market requirements.
- The specifications in the standard must comply with all regulations relevant to the scope, but it must also include further requirements above legislation. Alternatively, there should be clear indication whether and to what extent scheme requirements go beyond existing regulations.
- Opportunities for mutual recognition with other schemes should be explicitly set out in the specifications, together with conditions for accepting other certificates as equivalent

²² This is based to a large extent on the submission of COPA-COGECA to the Green Paper consultation.

- The standards must be transparent to all stakeholders in the food chain including consumers, regularly reviewed and preferably available on the Internet.
- Standards should avoid using names or images that would suggest a certain origin of certified products while in fact they are/should be open to all operators who are complying with the scheme specifications
- An assessment must be done by a third party certification body and the certification body should be different to the standard setting body.
- The certification body must be accredited in accordance with ISO 17021 for management standard or EN 45 011 for GAP or product certification standards. The accreditation of the certification body must be done by a body which is a member of the EA (European co-operation for Accreditation)
- Assessments of the standards must be done regularly in a way to ensure conformity. These guidelines do not specify an inspection interval since existing credible quality assurance systems all use different assessment systems, but it is important that if standards are to get mutual recognition or be used as a tool for official controls, the inspection frequency must be agreed and accepted by the different parties.
- There must be a requirement of internal audits in the standard. Internal audits are audits carried out by the individual farmer/business or group of farmers/businesses that are certified to the standard.
- When group certification is used, inspections carried out on individual farms/businesses by the 2nd party audit (internal audit) must follow the same procedures and specifications as those for individual third party inspections in order to be credible. The third party auditing body must also take a big enough inspection sample of the group in order to approve the group certification. The group must have a management system to carry out inspections on all the members of the group.

This list is not exhaustive and serves as a basis for discussion and further development.

This option can be implemented in two ways: either through **regulation** (equivalent to a mandatory standard) or through **guidelines** and possibly a voluntary standard. Both of these sub-options could be combined with a (mandatory or voluntary) register for certification schemes.

4.2.2. Option 2.a: Development of specific legislation for the operation of certification schemes for agricultural products and foodstuffs (mandatory standard)

Under this option, the EU would adopt legislation laying down rules for the operation of certification schemes for agricultural products and foodstuffs in the EU market along the lines of the criteria listed above. All schemes operating in the EU market would have to comply with these rules. Non-compliant schemes would face sanctions or would be prohibited.

4.2.2.1. Screening for technical and other constraints

Significant resistance of many stakeholders to this option presents a clear constraint. This resistance has been voiced for example during the 2007 Food Quality Certification conference (e.g., report of Workshop 2), and is based on the perception that certification schemes, inasmuch as they are private or Member State initiatives, should be left to the private sector or the administration in the Member States as much as possible.

Stakeholders in various consultations (e.g., Stakeholder Hearing 2006; consultative group; Council working group; 2007 conference) have expressed great hesitation at the idea that the EU could regulate the functioning of predominantly private certification schemes (see below).

In the consultation on the Green Paper on Agricultural Product Quality, stakeholders were asked whether EU guidelines would be sufficient and what criteria such guidelines could contain (question 16). Annex 10 summarizes the responses received to this question. The majority of stakeholders are of the opinion that no additional regulation is needed in this area and that guidelines are indeed sufficient.

However, there are also proponents of the regulatory approach. For example, the UK House of Commons in its seventh report on the Environment, Food and Rural Affairs (House of Commons, 2005) concludes that

"we recommend that the [UK] Government should ensure the central registration of food assurance schemes. All schemes should have to be registered and approved by an identified body. The FSA [Food Standards Agency] would be an obvious candidate for the task. The purpose of such schemes should be to certify that the product carrying the mark has either been:

- produced or manufactured in a way which exceeds minimum legal standards – for example, in respect of the environment or animal welfare – or
- has a "special characteristic", such as meeting organic or vegan/vegetarian production requirements."

4.2.2.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Regulation coupled with a control mechanism is the most legally secure method of ensuring that only schemes complying with defined criteria operate in the EU market. However, depending on the consequences of breaches of the law, legal regulation will necessitate high burden of proof and identification of legal and illegal behaviour. Advisory provisions would be difficult to incorporate. It is quite likely in developing such regulatory requirements that many issues essential for the coherent development of schemes cannot be described as legal obligations or can only be described in a blunt way. The omission of important elements or their superficial treatment, coupled with the higher burden of proof and time needed for enforcement, would reduce and possibly negate the legal security provided by regulation. Thus the effectiveness of regulation for such an issue could be low.

Efficiency: Regulating criteria for certification schemes for agricultural products and foodstuffs means that they will have to be controlled. Regulation could require a register or at least a means to identify schemes, either at EU or at Member State level²³, and designated control bodies for carrying out the inspections. All of this comes at a significant cost, for national administrations as well as for the stakeholders in the food supply chain. For farmers, even though they are not likely to be controlled themselves, the (sometimes already high) costs of certification are likely to rise.

Therefore, efficiency of this measure seems to be low.

Stakeholder say:

- No need for an EU regulatory framework for quality assurance schemes. The diversity of existing schemes shows that requirements can vary across regions, a dynamic that would be lost by regulatory intervention (CEJA; COPA/COGECA, Stakeholder Hearing, 2006)
- Legal requirements (notably food safety) are already regulated. Consequently there is no need for additional legislation laying down requirements (Food processors panel, Stakeholder Hearing, 2006)
- Certification bodies believe that the EU should work only as a facilitator of rationalisation of certification schemes in the form of reducing the number of schemes in each segment of the food chain and improving mutual recognition and benchmarking (Certification bodies panel, Stakeholder Hearing, 2006)
- Retailers question how official intervention to standardise existing certification schemes will differ from the requirements in international norms on accreditation and certification. They fear a loss of diversity at the business-to-consumer level. Will legal liability be transferred from operators to regulators? (Retailer panel, Stakeholder Hearing, 2006)
- Retailers think that mutual recognition is a minefield and that regulation will not improve it. Moreover, certification schemes have to build confidence in their systems and are accountable directly to their stakeholders, so they must be free to set their own reasonable criteria (Retailer panel, Stakeholder Hearing, 2006)

Consistency: This option is unnecessarily heavy in terms of public intervention and administrative burden and is therefore in contradiction with the Commission's "better regulation" policy, its simplification programme and its action programme to reduce administrative burden. While self- and co-regulation mechanisms could be considered in order to reduce the administrative burden on the Commission, they would still constitute a significant intervention in the economic activities of actors in the food supply chain.

Conclusion: Option 2.a will not be retained for further analysis.

²³ The case of certification schemes operating in more than one Member State needs to be born in mind.

4.2.3. *Option 2.b: Develop guidelines for the operation of certification schemes for agricultural products and foodstuffs (equivalent to a voluntary standard)*

Instead of regulating the operation of certification schemes for agricultural products and foodstuffs, this option foresees the development of guidelines or best-practice approaches along the lines of the criteria listed above. Schemes not in conformity with the guidelines (but in line with all other legislation) would not be prevented from operating in the EU market. Conformity with the guidelines could be highlighted by scheme owners vis-à-vis consumers or other actors in the food supply chain. The guidelines could thus serve as a benchmark²⁴ for certification schemes for agricultural products and foodstuffs.

In order to provide an incentive for scheme owners to comply with the guidelines, various supporting measures can be envisaged:

a) Eligibility for EU (and/or other public) support: Already, EU rural development funds are available for farmers who participate in food quality schemes fulfilling certain requirements²⁵. It would not be difficult to replace these requirements with the full guidelines, once they have been developed. However, schemes would have to be independently assessed against the guidelines in order for participants to become eligible for funding.

b) A logo indicating compliance with the guidelines. The development of a logo signalling compliance with the guidelines to the consumer deserves special attention. The core problem in the area of certification schemes has been identified as being the proliferation of logos without clear rules. While clear rules would be established through the guidelines, the addition of yet another logo (which would not even concern the product but only the scheme under which it is certified) needs to be very carefully considered. Furthermore, such a measure would require significant efforts by Commission (and/or other public) services in developing the logo and overseeing its use.

c) Publication of compliant/non-compliant schemes: a list of schemes complying with the guidelines could be made public on the Internet. Alternatively, a list of non-compliant schemes could be published ("name and shame- approach"). Both approaches would require an independent assessment of compliance and a register of schemes (see 4.2.4. below).

4.2.3.1. Screening for technical and other constraints

Establishing the guidelines themselves should not encounter any significant constraints other than the potentially different opinions of stakeholders in the food supply chain. There are ongoing initiatives in this area, for example by COPA-COGECA, and in the context of a

²⁴ Benchmarking is the process of comparing the cost, time or quality of what one organization does against what another organization does. The result is often a business case for making changes in order to make improvements. Also referred to as "best practice benchmarking" or "process benchmarking", it is a process used in management and particularly strategic management, in which organizations evaluate various aspects of their processes in relation to best practice, usually within their own sector. This then allows organizations to develop plans on how to make improvements or adopt best practice, usually with the aim of increasing some aspect of performance.

²⁵ (Council Regulation No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), Article 20(c)). Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) specifies a range of criteria that food quality schemes have to comply with in order to be eligible for support.

CEN workshop No. 40 on "Quality and Environment in agricultural activities." Existing standards or guidelines for certification schemes for agricultural products and foodstuffs can be found in the French standard NF V 01-007 (quality and environmental management systems for agricultural activities), or the ISEAL Code of Good Practice (see annex 8). Furthermore, EU standard EN 45011 (based on ISO Guide 65) and other international standards exist, which specify general requirements that a third-party operating a product (including processes and services) certification system shall meet if it is to be recognised as competent and reliable.

It is worth noting that the final report of CEN Working Group 177 in October 2007 concluded (recommendation 2):

"Since there was no consensus to reach an European management system standard on quality and environment in agricultural activities, CEN BT WG 177 concludes that there is no need for a specific quality and environmental management system standard for agricultural activities at European level."

Designing an incentive mechanism for schemes to comply with the voluntary guidelines will be more difficult and potentially much more costly, with implications for effectiveness and efficiency (see below).

4.2.3.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Voluntary guidelines are probably less legally effective than regulation in ensuring that only schemes complying with the defined criteria operate in the EU market. However, compared to the baseline scenario (status quo), a positive result is likely to be achieved. This is the option which is preferred by a broad group of stakeholders, as expressed for example during the conference "Food Quality Certification – adding value to farm produce" held in Brussels on 5-6 February 2007²⁶. Other supporters of this idea can be found in the UK (e.g., http://www.foodaware.org.uk/red_tractor.htm) and among respondents to the consultation of the Green Paper on agricultural product quality²⁷.

If guidelines provide a value-added for scheme owners and stakeholders, and if combined with the right incentive mechanism, effectiveness can be high.

Efficiency: Voluntary guidelines without a register and control mechanism are less costly than a mandatory standard (i.e. regulation). If they are combined with an incentive mechanism (which adds to the cost) or use a "name and shame" approach to highlight non-compliant schemes, they should be able to achieve a positive outcome. Thus, efficiency should be higher than for regulation.

Consistency: The development of voluntary guidelines is consistent with the Commission's objectives for better regulation, simplification and reduced administrative burdens.

²⁶ In her concluding remarks of that conference, Commissioner Fischer Boel expressed her intention to develop a clear, concise guide setting out what makes a good food certification scheme, including issues related to competition, internal market rules and labelling (see http://ec.europa.eu/agriculture/events/qualityconference/fischer_boel_cr_en.pdf). The report of Workshop 2 also recommends the establishment of EU guidelines for certification schemes (see http://ec.europa.eu/agriculture/events/qualityconference/ws2_rep_en.pdf).

²⁷ COM(2008) 641 final

Stakeholders say:

- + The solution might be to develop, with industry, an EU-wide framework providing non-mandatory guidelines on organisation of reputable certification schemes. This might cover requirements on organisational structure; independent operation; equal and effective participation by all stakeholders, irrespective of their location; transparency, clearly defined technical scope of the scheme; and technical competence. Another key benefit of such a framework might be to facilitate mutual recognition between schemes operating in the market place (COPA/COGECA, Stakeholder Hearing, 2006)
- + Traders believe that an EU-wide framework could help to solve the issues and challenges of certification schemes (Trader panel, Stakeholder Hearing, 2006)
- + The EU could provide financial assistance for development of systems to improve the integrity of certification schemes (Trader panel, Stakeholder Hearing, 2006)
- + Traders are in favour of EU intervention along the lines described above and, in particular, of standardisation of existing certification schemes and of general implementing rules. Not only should minimum requirements be established but also some types of requirements should be forbidden ((Trader panel, Stakeholder Hearing, 2006)
- + Certification schemes are numerous and there is scope for industry driven harmonisation of the process related to certification schemes. The procedure should be harmonised as follows and more widely used in the EU: the normative document should be made available to the public, in order to ensure clarity about what “quality” is being assured. This normative document remains the responsibility of the industry. Guidance on certification of implementation of the normative document. Stakeholders should agree on the certification scheme, based on a certification standard. Certification should be undertaken by an accredited body (Food processors panel, Stakeholder Hearing, 2006).
- + Across all categories, the majority of respondents to the consultation of the Green Paper on agricultural product quality²⁸ is of the view that EU guidelines would be sufficient to contribute to a more coherent development of certification schemes. This opinion is most pronounced among national authorities; regional and local authorities; the farming community; processing organisations; consumers and general public (even though a sizeable number here thinks that guidelines are not sufficient); and academic organisations. Somewhat more undecided are trade organisations and NGOs, but overall numbers of respondents in these categories are small.

Option 2.b will be retained for further analysis.

4.2.4. Potential additional measure: register and publicise schemes that meet the standard

While for sub-option 2.a the establishment of a register of schemes is a de-facto requirement (to enable controls), sub-option 2.b does not necessarily require such a register. However, a register of schemes complying with the guidelines would be needed for the various incentive measures (e.g. publication of compliant or non-compliant schemes). It would also

²⁸ COM(2008) 641 final

increase transparency of scheme requirements to consumers and other actors in the food supply chain.

Management of such a register could be done in various ways – through self-registration of scheme owners, at the level of the Member States or at Community level. It has to be noted, however, that a certain degree of scrutiny (repeated at certain intervals) would be needed in order to justify the inclusion of a scheme in the register. Thus, establishing a register requires a considerable administrative effort.

Stakeholders say:

- + No objection to developing a European registry of quality assurance logos which could provide an overview to all interested parties if published on the Internet (CEJA, Stakeholder Hearing, 2006)
- + Development of an EU database covering the existing certification schemes, which would include details on their criteria and certification, could promote transparency vis-à-vis consumers and other stakeholders in the supply chain (Food processors panel, Stakeholder Hearing, 2006)
- Farmers’ representatives think that this would be very difficult to manage and question what purpose this might serve (COPA/COGECA, Stakeholder Hearing, 2006)

The potential additional measure of establishing a register will be retained as an add-on to Option 2.b

4.3. Option 3 (focus on content): Addressing the policy areas covered by private and national certification (differentiation) schemes for agricultural products and foodstuffs

Neither liability nor assurance schemes are considered to be candidates for EU schemes, and these type of schemes are not considered.

4.3.1. Basic approaches

In order to reduce the overall number of certification schemes, to harmonise different concepts and definitions in the Member States and the private sector, and to establish common criteria at EU level for some of the policy areas covered by certification schemes for agricultural products and foodstuffs, the Community can directly intervene in the content or policy area covered by the schemes.

Two broad approaches can be distinguished: Voluntary labelling (e.g. through the development of new EU schemes) or the establishment of mandatory standards. The choice between the two will depend on a number of considerations, as outlined in box 7 below.

Box 7: Mandatory standards or voluntary labelling?

Typically, certification schemes address product and process attributes that cannot be observed by the consumer, neither before nor after the purchase and consumption of the product, not even through repeated purchases. Examples of these so-called "credence attributes" are the safety of the food; the way in which animals are kept for meat products; or the agricultural practices used in growing crops. There is thus an information asymmetry between producers and consumers with regard to these attributes, which certification schemes and the corresponding labels are trying to address.

The question of whether mandatory standards or voluntary labels are better suited to correct this market failure depends on the extent to which consumers are only concerned about their own consumption²⁹. If some consumers wish that their own consumption satisfies the standard and are willing to pay (some of) the cost of its doing so, voluntary labelling is the obvious solution since it enables producers to demonstrate to consumers that they have met the standard and claim a premium price for doing so.

As soon as one person's choice creates spill-over effects for other persons, and especially when these are negative and costly externalities for the persons affected, labelling would not be sufficient anymore to ensure that all individuals make consumer choices that have no externalities on others. Mandatory regulation may be required, but that raises the ethical issue of imposing preferences on others. If preferences are truly collective and all consumers share them, there would be no need for mandatory regulation since all consumers prefer and would buy the labelled goods that correspond to their preferences. Only if consumers experience tangible negative effects from others' consumption of non-compliant foods would there be a case of mandatory regulation. For instance, a ban has been called for against Canadian seal fur where EU consumers experience strong 'psychic' negative externalities. The extent, to which the 'disutility' from safety risks can be equated with the 'psychic disutility' from consumer aversion for particular production methods, even if only consumed by others, is more a matter for ethic than for economic debate. Since standards of morality and ethics differ across the globe, there is no consensus on this.

Furthermore, mandatory standards need to be screened for consistency with WTO rules so as not to be perceived as trade barriers under the guise of "credence attributes."

In the following, and based on the discussion provided in box 7, only voluntary EU labelling initiatives will be explored. It is assumed that the policy areas currently addressed by certification schemes do not present the negative and costly externalities of consumption mentioned above.

Voluntary labelling can again be done in two ways: through the development of new EU schemes, or by defining protected reserved terms. The main difference between these two options is that the former requires a certification mechanism while the latter doesn't. Both will be discussed below.

²⁹ This section is based on a study on qualified market access commissioned by DG TRADE (Holmes et al., 2008)

4.3.2. *Option 3.a: Developing new stand-alone EU schemes for specific policy areas.*

The Commission has already developed certification schemes (or is preparing to develop them) in several policy areas (see box 8), under three different models.

Box 8: EU-managed voluntary certification schemes for agricultural products and foodstuffs

(1) "exclusive scheme" model: The EU scheme replaces all existing private and national schemes in the particular policy area, e.g.

- Geographical indications (PDO/PGI) for agricultural products and foodstuffs (Regulation (EC) No 510/2006)
- Traditional Specialities Guaranteed (TSG) (Regulation (EC) No 509/2006)

(2) "reference standard" model³⁰: the EU scheme forms the baseline on which private and national operators can be certified or build their own schemes, e.g.

- Organic farming (Regulation (EC) No 834/2007)

(3) "Primus inter pares" model: The EU scheme stands as one among other private and/or national schemes in the same policy area, e.g.

- Traditional Specialities Guaranteed (TSG) (Regulation (EC) No 509/2006)

Two potential new EU schemes are currently under discussion: DG SANCO is exploring the feasibility of different options for indicating animal welfare related information on products of animal origin and is in this context looking at the possibility of developing an animal welfare label, and the Commission has proposed to extend the coverage of the EU *Ecolabel* to cover processed food.

Furthermore, the Commission is addressing the issue of Fair Trade in a Communication that fulfils a commitment made to the European Parliament in 2006 to continue to reflect on the issues which had been raised in the European Parliament report on Fair Trade and Development³¹ (see also Box 2 above).

Several other candidates for new schemes have been proposed by stakeholders, namely in the area of products from high-nature-value farming (see Box 9, below); climate change; integrated farming; mountain products; and water labelling (see Annex 9). In its Council Conclusions of 4.12.2008 concerning "*Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan*", Council invited the Commission:

"to study the introduction of the carbon footprint of products in the existing EU environmental labelling instruments such as the Eco-label and energy labelling; also

³⁰ "Reference standard" here refers to the criteria of a voluntary labelling scheme, which can be used by other schemes for further development. This is different from the basic legal requirements that all farmers have to follow, whether they participate in a scheme or not.

³¹ European Parliament Report on Fair Trade and Development 2005/2245(INI).

INVITES the Commission, taking into account Member States' experience, to start working as soon as possible on common voluntary methodologies facilitating the future establishment of carbon audits for organisations and the calculation of the carbon footprint of products."

Box 9: Highlighting products from high-nature value (HNV) farming – a case for a potential new EU scheme

Certain farming practices and methods are inextricably linked to environmental value, such that if the farming were to cease or change, the environmental value could suffer. This is particularly the case for 'high nature value farming' which is defined with reference both to the environmental value of a specific area and to the farming on which that value depends. Many of these areas are mountainous or semi-natural grasslands where farming activity is marginal and economically not remunerative. In many areas of Europe, semi-natural land cover or features survive only as smaller patches in a more intensively farmed landscape, but can still be of sufficient local value for biodiversity conservation to be considered as HNV farmland. Considerable financial efforts are put into preserving the farming activities in these areas, under CAP rural development programmes and under environmental programmes such as LIFE. A systematic product policy that could assist farmers to get a return from the market for their provision of environmental value in terms of biodiversity and habitats protection linked to the way they farm, does not exist.

The arguments advanced for considering a scheme for products of high nature value farming activities can be summarised as follows³²:

- these farmers provide a substantial environmental service because of the way they farm, on which rare and increasingly threatened biodiversity depends.
- despite CAP support, many farms are not viable and as a result, many of these extensive farming systems are under threat.
- a segment of consumers could be willing to pay for products having the attribute of being produced in these areas. However, they can be misled if product is not made in line with the particular farming techniques on which the environmental value depends. (e.g. product claiming the 'mountain' image when it has not been produced in a mountain zone).
- a new quality label for high nature value farming systems would open up marketing opportunities and so provide a market instrument to broaden the economic sustainability of producers in these areas.

Some of the issues that need to be addressed before considering a scheme linked to environmental value of the farming activity are:

- a sufficiently robust identification of farming techniques and areas having the specific characteristics which create in combination high nature value farmland, so that the scheme could be adequately controlled;
- degree of subsidiarity, i.e. the extent to which the task should fall to Member States and regions, and the justification for action at EU level: why can the problem not be addressed by private and/or national or regional initiatives?
- coherence with existing policies and in particular rural development policy and environmental policy;

³² For more detail, see <http://www.efnecp.org/download/EFNCP-HNV-farming-concept.pdf> 'HNV Indicators for Evaluation', Final report for DG Agriculture. Contract notice 2006-G4-04.

- adequacy of control mechanisms and weight of administrative burdens, both on public authorities and on farmers.

Stakeholders say:

Contribution by the European Forum on Nature Conservation and Pastoralism (EFNCP) to the Green Paper on agricultural product quality:

- + Existing schemes and arrangements are inadequate from the point of view of products from High Nature Value (HNV) farming. Under the current system, products of HNV farming cannot be differentiated from other products.
- + Maintaining HNV farming is an explicit policy aim of the EU, enshrined in the EU Biodiversity Strategy and as one of three environmental priorities for Pillar 2 of the CAP.
- + HNV farming needs to find alternative ways to increase the economic return on its activity, as intensification is either not possible due to the natural limitations of the location, or would degrade the nature value of the existing farming system.
- + Market demand for products from farming systems that conserve nature may represent an important economic opportunity for HNV farming. Although this opportunity can be pursued in local and national markets without an EU labelling scheme, it seems appropriate that the existing EU scheme should take account of new policy priorities such as HNV farming, and be adapted to their needs. In this way, opportunities may be opened up for differentiating HNV farming products on the wider EU market.

Contribution by Natural England to the Green Paper on agricultural product quality:

- An EU-wide scheme for products from "high nature value areas" would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products. It would also risk duplicating national and other EU schemes

Each new scheme will have to be assessed on its own merit. It is beyond the scope of this impact assessment to analyse possible policy options for new schemes at this stage. This section will therefore focus on a general discussion of the criteria to be applied in the decision on whether or not to establish a new EU scheme, as well as look at the pros and cons of such an option in the context of the problems and objectives identified earlier.

4.3.2.1. Screening for technical and other constraints

Naturally, only schemes with similar policy objectives could be harmonised under one EU scheme. Given that the objective of many scheme owners is to differentiate their products from other competing products, it seems somewhat counter-productive to take away the differentiating element. The biggest asset of existing schemes is the degree of consumer recognition of their own logo. There is likely to be fierce resistance by scheme owners to the idea of merging existing schemes under a European umbrella if this would mean that existing schemes and logos may no longer be used (the "exclusive" model, see box 8 above).

Any new EU scheme would have to be managed in a way that complies with WTO rules.

It is assumed that any new stand-alone EU scheme, whether it follows the "exclusive" or "reference standard" model outlined above, is implemented by way of a regulation or directive. As such, it would include definitions of terms which would then become binding for use in all Member States. For instance, an EU scheme for mountain products could define the term "mountain". A side effect of such a scheme could therefore be the limitation of the term "mountain" in line with the definition given in the regulation setting up the EU scheme. This may be desired, but it may also generate conflicts with other current users of the term. Alternatively, the new EU scheme could therefore simply define the use of a logo (possibly with an accompanying phrase such as "product of mountain farming") without reserving any particular terms (the option of using protected reserved terms is addressed in detail in annex A.II).

4.3.2.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Establishing an EU scheme in an area where private and national schemes already exist would be effective if it had an influence on the main identified objectives (improved functioning of the internal market; less confusion of consumers; reduced burden on farmers, including those from developing countries).

A new EU scheme would be effective in reducing the confusion of consumers if it defined terms and concepts in a way that would be binding for all other users of these terms, and if it would successfully communicate this fact and the corresponding definitions to the consumers. Compared to the status quo in many policy areas (different schemes with no harmonised definition of terms and concepts), it can be assumed that an EU scheme under the "exclusive model" would have a positive impact, since it would replace all national, regional and private schemes. An EU scheme that would allow other schemes to continue ("reference standard" model) would have to address the potential consumer confusion that could be caused by the creation of an additional logo that consumers would have to understand and distinguish from existing private logos in the same policy area.

In terms of burden on farmers and producers, it should be noted that the policy areas proposed for new EU schemes are clearly aimed at product differentiation. As mentioned earlier, there is not much overlap in the group of differentiation schemes – if farmers/producers belong to one of them, they very rarely choose to adhere to a second one in the same policy area (e.g., a Bioland farmer very rarely if ever is also certified according to Demeter standards). Thus, introducing a new EU scheme in the policy areas proposed it not likely to be effective in reducing the burden on farmers and producers.

Concerning the functioning of the internal market, harmonisation of terms and concepts is certainly likely to have a positive impact. Furthermore, an EU scheme would by definition be available for all producers in all EU Member States, under the same certification requirements. It is therefore likely to improve the free flow of goods and services in the internal market (even though there still seems to be a certain fragmentation in the market for organic products, despite the fact that a "reference standard" EU scheme exists).

Efficiency: Establishing a new EU scheme could be a costly undertaking. It may be possible to limit the costs by choosing a "reference standard" model where existing private schemes could apply for certification based on harmonised criteria. If the certification scheme is voluntary and rely on private certification bodies, which are paid by the firms certified, the extra costs for the public authorities could be negligible.

Consistency: Every new EU scheme would have to be assessed in the context of existing EU schemes and overall policy principles. Currently, no policy line exists that would frame the development of new EU schemes. Development of new EU schemes will become consistent if common criteria for their development are established. This is discussed under option 3.b below.

Stakeholders say:

- Retailers feel that the further development of EU schemes should be in response to specific consumer demand rather than to meet different policy objectives (Retailer panel, Stakeholder Hearing, 2006)

In the context of the consultation of the **Green Paper** on agricultural product quality³³, stakeholders were asked whether there any pressing issues for which existing schemes and arrangements are inadequate and for which there is a strong case for an EU level scheme (see Annex 10, question 14):

- The majority of respondents are against introducing new EU schemes (although some make specific reference to mandatory schemes and don't express their views of voluntary schemes). Some see possibilities for new schemes if certain conditions are fulfilled, and 24% of all respondents (= 50 replies) are of the opinion that new schemes are needed in certain policy areas

Arguments against new schemes include:

- Additional new schemes would confuse consumers;
- Quality issues should primarily be in the hands of private operators; schemes will develop as private initiatives, no Commission involvement is necessary. The market is more flexible and responsive to develop products according to consumer demands, without excessive bureaucracy;
- New schemes are not compatible with "better regulation" principles;
- (proliferation of) certification schemes are (is) costly for small-scale operators; scheme participants have no advantage in the market
- current schemes are already above international market standards
- legal minimum standards must apply to all products and should not be covered by a scheme; mandatory issues to be addressed through legislation and not through a scheme
- there is no scientific basis for any new scheme
- there is a danger that schemes and labels are seen as a way to raise production standards
- Against an EU-wide scheme for products from "high nature value areas" which would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products

However, some respondents also made suggestions of issues that should either be addressed in the context of a **new EU scheme** or for which **common definitions at EU level** (not necessarily through a new scheme) would be needed. These include:

- Integrated farming/integrated production
- Environmentally friendly products / use of pesticides; biodiversity; water preservation
- Products making full use of local sustainable resources (water, feed, etc.)
- EU sustainable agriculture label
- Products from high nature value farmland
- Common definitions for the terms "mountain", "island" and "alp"
- Animal welfare
- Climate change / low carbon emissions / energy use of production and transport

³³ COM(2008) 641 final

- Superior product quality (similar to Label Rouge)
- GMO-free food / GMO- free feed
- Products from national and/or regional parks
- Local traditional products / typical products from a specific region
- Compliance with EU farming requirements
- ethical and socially responsible criteria especially for small-scale producers
- worker welfare scheme /social criteria of production
- stricter organic livestock regulation
- a scheme for products from local breeds / protection of local breeds / products from animal breeds in danger of extinction
- a scheme for sparsely populated regions with a low economic activity and unfavourable agroclimatic conditions
- bio-dynamic farming
- EU basic, EU extra and EU superior quality
- a framework communicating quality parameters from feed to food
- harmonisation of requirements for temperature of storage and transport of foodstuffs
- health
- (country of) origin; EU origin
- mandatory labelling of farming methods for meat and dairy products

Conclusion: Option 3.a will be retained for further analysis.

4.3.3. Option 3.b: Establishing common criteria for the development of new EU schemes

As mentioned above, there is a need to introduce common criteria to assess new EU certification schemes for agricultural products and foodstuffs. Criteria would have to be developed in consultation with stakeholders, but based on material examined in the course of this assessment and stakeholder views, such criteria could consist of asking the following kind of questions:

- Is the scheme addressing an identified priority area for EU agriculture policy?
- Is there a problem in the specific policy area that cannot be addressed (or that is caused) by private and/or national or regional initiatives?
- Would the establishment of an EU scheme in the particular policy area solve the identified problem(s)?
- Is the scheme fully in line with principles of sustainability? Does it take an integrated approach to farming requirements or otherwise address the problem of trade-offs?
- Would the administrative costs and burden of an EU scheme be compensated by improvements in other areas (e.g. functioning of the internal market; burden on farmers/producers; consumer interests)?

- Is the proposed new EU scheme coherent and compatible with other EU initiatives in the same policy area?³⁴ Could the problem be better addressed by adjusting another EU initiative rather than creating a new one?
- Is the proposed new EU scheme in line with the Community's international obligations (e.g. WTO laws) towards third country trading partners?³⁵

4.3.3.1. Screening for technical and other constraints

4.3.3.2. Assessment of effectiveness, efficiency and consistency

Conclusion: Option 3.b will be retained for further analysis.

4.3.4. *Option 3.c Development of protected reserved terms corresponding to specifications*

Instead of developing EU schemes for individual policy areas, this option concerns the laying down (by the legislator) of clear, unambiguous definitions, identities, standards and classes, which have to be respected if used at the stage of placing on the market. It is explained in more detail in section 4.5 of annex A.II to the Impact Assessment Report.

Defining reserved terms in the policy areas covered by private and national/regional certification schemes would address the problem of consumer confusion by unclear use of terms and claims made in certification schemes. For example, if the term "mountain" would be defined according to some specification, its (entirely voluntary) use would only be allowed when the specification has been followed.

The main difference between new EU schemes and definitions of reserved terms lies in the fact that the former requires a certification mechanism while the latter doesn't and are enforced as part of general food law, labelling provisions or the instrument under which they were enacted.

Reserved terms are suitable for simple single-issue claims (e.g. "farmhouse", "free range") which can be easily and unambiguously expressed in a few indents in a regulation. More complex farming requirement claims could need a lengthy and detailed specification and would probably require a more elaborate mechanism for application and control, such as certification.

Reserved terms can be implemented through self-declaration by users, combined with a relatively light control mechanism (see under "efficiency" below).

³⁴ For example, the proposed expansion of the EU Ecolabel to processed food has raised concerns about the potential confusion of consumers with the EU organic farming scheme, under which the term "eco" has until now been exclusively reserved throughout the EU for food product of organic farming.

³⁵ The WTO Panel report in the matter of *EC – trademarks and geographical indications* (DS174, 290) addressed the question of access to an EU scheme for producers in other members of WTO.

4.3.4.1. Screening for technical and other constraints

No constraints can be identified for the definition of reserved terms. However, terms that can be defined in scientific or clear language would be best suited. There are likely to be difficulties in defining terms of art and particularly terms having different cultural resonance across the EU.

4.3.4.2. Assessment of effectiveness, efficiency and consistency

Effectiveness: Defining reserved terms will address the problems of consumer confusion and internal market. It does not address the problem of burden on farmers and producers (neither in a positive nor in a negative way).

As regards consumer confusion, defining reserved terms has the potential to lead to greater clarity and consistency in the use of terms on product labels and in certification schemes.

In relation to the smooth functioning of the internal market, it is also assumed that a binding definition of certain terms will improve the free movement of goods in the internal market.

Efficiency: as pointed out above, this option does not require a certification mechanism. Misuse of terms would have to be controlled, but this is the same case as for general labelling requirements and could therefore be combined with official controls Member States apply under Regulation (EC) No 882/2004. Efficiency of this option is certainly greater than the establishment of new EU schemes for single-issue terms.

Consistency: This option is in line with Commission objectives for simplification and reduced administrative burden

Conclusion: Option 3.c will be retained for further analysis.

4.4. Fine-tuned shortlist for further analysis

Following the screening for technical and other constraints as well as the assessment of effectiveness, efficiency and consistency, option 2.a is considered to be too heavy in terms of administrative burden and inconsistent with the Commission's objectives for better regulation, simplification and reduced administrative burdens. It will therefore not be analysed in detail.

The options retained for further analysis are:

- **Option 1: no EU action = status quo (plus further research)**
- **Option 2.b: Develop guidelines for the operation of certification schemes (equivalent to a voluntary standard)**
- **Option 3.a: Development of new (voluntary) stand-alone EU schemes or standards for specific policy areas.**

- **Option 3.b: Establishing common criteria for the development of new EU schemes**
- **Option 3.c: Defining reserved terms corresponding to specifications (see section 4.5 in annex A.II to the Impact Assessment Report)**

It should be noted that Option 2.b (with or without a register) can (but doesn't have to) be combined with either Option 3.a, Option 3.b or Option 3.c. Furthermore, Options 3.a, 3.b and 3.c can be implemented simultaneously.

Option 2.b Guidelines				
Option 3.a new EU schemes		✓		
Option 3.b Criteria for new EU schemes		✓	✓	
Option 3.c Reserved terms		✓	✓	✓
<i>if this option is chosen... ...this option can also be chosen</i>	Option 1 status quo	Option 2.b guidelines	Option 3.a new EU schemes	Option 3.b Criteria for new EU schemes

✓ = combinable

D.5. IMPACT OF OPTIONS

All options retained for further analysis concern voluntary measures. Bearing this in mind, and taking into account the need for proportionality in assessing the impacts of voluntary instruments in an area where currently no direct EU interventions exist, this impact assessment will look mainly at the impacts of options on the identified problem areas and on different stakeholder groups, rather than try to estimate certain effects.

5.1. Option 1: Status quo

5.1.1. Identification of impacts

Economic impacts

Negative economic impacts are expected on the functioning of the internal market and competition, on the operating costs and administrative burden of small and medium enterprises (farms), on consumers' choice and confidence, and on producers in third countries.

Social impacts

Social impacts will be negative as regards governance, participation and good administration.

Environmental impacts

Environmental impacts will be negative to the extent that schemes make misleading claims on environmental attributes and thereby hinder real environmental benefits.

5.2. Option 2.b: Voluntary guidelines for certification schemes

5.2.1. Identification of impacts

Since this option consists of the development of entirely voluntary guidelines, impacts will depend on the extent of uptake of the guidelines by scheme operators and on the extent to which compliance with the guidelines becomes a marketing instrument (i.e., the extent to which this is communicated to and appreciated by consumers). Since uptake is likely to increase over time, impacts (especially negative impacts on participants of non-complying schemes) are likely to increase as well.

Furthermore, impacts will vary depending on whether an incentive mechanism is used to stimulate compliance with the guidelines, and on the nature of such an incentive mechanism.

Economic impacts:

a. Functioning of the internal market and competition:

- Positive impact on the free movement of goods and services by defining common criteria for the operation of certification schemes.
- Positive impact on farmers and producers through the provision of a benchmark for certification schemes which facilitates harmonisation and mutual recognition of schemes, thereby reducing the burden caused by duplication of certification and controls.
- Positive impact on consumers through the expected reduction in the number of non-compliant schemes in the EU. Consumers will be able to trust the claims made by schemes complying with the guidelines to the extent that they (a) are aware of the existence and content of such guidelines, and (b) know whether a particular scheme complies with the guidelines.
- Unclear impact on owners of and participants in existing schemes, who may have to revise their current practices if they want to comply with the criteria put forward in the guidelines. This can lead to adjustment costs both for scheme owners and participants. However, compliance with the guidelines can also lead to greater consumer trust in the scheme (if compliance is communicated to and understood by consumers) and therefore to increased sales and revenues. No direct impact on owners and participants in schemes already compliant with the guidelines, but indirect positive impact in discouraging non-compliant schemes operating in the same field.
- Positive impact on competition if the guidelines lead to greater transparency and efficient functioning of the schemes (e.g. in terms of independent certification). These effects would apply in particular to the differentiation schemes which are most in the public arena. These benefits should also affect post-farm gate assurance and pre-farm gate liability schemes, but to a lesser extent.
- Positive impact on farmers if the guidelines lead to a better balance of power in the food supply chain through greater involvement of stakeholders in the development of schemes.

b. Competitiveness, trade and investment flows:

- Positive impact on producers in developing countries if (a) the guidelines incorporate their concerns and lead to their involvement in scheme development (where appropriate), and (b) the guidelines are being observed by the schemes of greatest relevance to developing country producers.
- Positive impact on international trade to the extent to which the guidelines are seen to be reducing the trade-restricting effect of private standards.

c. Impact on Small and Medium Enterprises:

- Positive impact to the extent that the guidelines help in re-balancing the power between the production end (characterised by a large number of small and medium enterprises) and the retail end of the food supply chain.

d. Operating costs and conduct of business:

- Additional adjustment costs: possible, but likely to be compensated by higher sales and revenues³⁶
- Additional compliance costs: possible, but likely to be compensated by higher sales and revenues
- Additional transaction costs: not likely, rather the contrary (reduced transaction costs due to agreement on common criteria for certification schemes, thereby facilitating mutual recognition and benchmarking of schemes having adopted the guidelines)
- Stricter regulation of the conduct of a particular business: not regulation, but guidance on the conduct of certification schemes for agricultural products and foodstuffs
- Administrative burdens on businesses: The aim of the guidelines is to reduce the administrative burden on businesses by facilitating mutual recognition and benchmarking of schemes, thereby reducing the need for duplication of certification and controls.
- Consumers and households: By establishing EU-wide guidelines for certification schemes, consumers' ability to benefit from the internal market should be enhanced because schemes complying with the guidelines shall enjoy greater acceptance and recognition throughout the EU.
- Third countries and international relations: By developing guidelines for certification schemes which incorporate provisions for the participation of developing country

³⁶ Voluntary participation in certification schemes for agricultural products and foodstuffs is a decision that operators make based on the expected net benefit of this participation. If it turns out that additional adjustment and compliance costs are not compensated by additional sales and revenues, operators will not participate in such schemes, which will then disappear from the market. If compliance with the guidelines turns out to be too costly, schemes will not adopt them.

stakeholders, the EU will take a step towards facilitating third country producer participation.

- Public authorities: The development of guidelines itself has a very limited impact on public authorities. This changes when the additional measure of a register or the different incentive mechanisms are considered which have been outlined above. As soon as the compliance of a scheme with the guidelines has to be assessed (in order to determine whether the scheme would be eligible for public support, or whether it may use the logo, or whether it should be included in the list of compliant or non-compliant schemes), the administrative burden for public authorities increases significantly.

Social impacts:

a. Governance, participation, good administration, access to justice, media and ethics

- Transparency: the guidelines will include criteria which will improve the transparency of certification schemes. They will therefore contribute to the better information of the public about the claims made by certification schemes.
- Participation of stakeholders in scheme development and implementation: the guidelines will include criteria which will ensure the participation of stakeholders (including stakeholders from developing countries, if appropriate) in the development and implementation of certification schemes.

b. Social impacts in third countries

- Contribution to EU development policy: by including provisions on the involvement of stakeholders in developing countries, the guidelines will contribute to the potential of certification schemes to act as "catalysts" for development.

Environmental impacts:

The development of voluntary guidelines for certification schemes does not have any direct environmental impacts. However, by addressing if the issue of trade-offs and potentially misleading claims in environmental areas (e.g. food miles –v– carbon footprint), inadvertent negative impacts on the environment should be diminished.

5.2.2. *Qualitative assessment of impacts that are most significant*

Impacts considered to be most significant are:

- The potential positive impact on farmers and producers (including those from developing countries) through improved benchmarking and mutual recognition of schemes (thereby reducing the need for multiple certification and control).
- The potential positive impact on farmers and producers (including those from developing countries) through greater participation in scheme development and oversight.
- The potential positive impact on the functioning of the internal market.

- The potential positive impact on consumers through greater transparency of claims made by certification schemes.

The potential negative impact (cost) on public authorities through the establishment of a register argues against inclusion of such an option.

Whether or not these impacts will occur depends to a significant degree on the uptake of the guidelines by scheme owners. This, in turn, will depend on the extent to which scheme owners either (a) perceive the guidelines to be beneficial for their schemes (i.e. derive benefit on scheme operations through applying the guidelines), (b) value the indirect benefits provided through an incentive mechanism, or (c) believe that non-compliance with the guidelines will be detrimental for their schemes (i.e., opportunity costs such as loss of market share from not applying the guidelines).

5.3. Option 3.a: Development of new stand-alone EU schemes

5.3.1. Identification of impacts

This section examines the direct costs and benefits of new EU schemes only. It does not look at indirect effects, which would require general equilibrium modelling. It does not examine long-run strategic considerations. It does not attempt to analyse the impacts of any particular new EU scheme, which should benefit from a separate impact assessment on a case-by-case basis.

It is assumed that only differentiation schemes would be considered to be stand-alone EU schemes and neither assurance nor liability schemes are considered.

Economic impacts:

- a. Functioning of the internal market and competition:
 - Positive effect on the free flow of goods and services in the internal market through the harmonisation of terms and concepts.
 - Unclear impact on consumer choice – could be positive through better information on certified products, could be negative if previously certified products disappear.
 - If the scheme follows the "exclusive" model (see box 8), competition issues between schemes in the same policy area will disappear; the scheme will create a monopoly for certification (but not for products, since there will still be many producers). If prices rise, this will be due to greater demand rather than less competition. In this case, the benefits to suppliers of a robustly competitive environment will decline but not disappear.
 - If the 'reference standard model' is followed, certifiers will continue to operate to implement the standard laid down in the EU scheme and provide certification services to suppliers. The competition risks will continue to apply and may even increase given the pan-EU nature of the EU standard, which could increase the tendency of stronger players to foreclose weaker.
 - Positive impact on (the reduction of) market segmentation. An EU-wide scheme will by definition cover the whole of the internal market.

b. Competitiveness and trade:

- By setting a common framework for trade in product having the value added characteristic or attribute, intra Community trade should be facilitated. A scheme that reserved a particular value-adding term to participants in the scheme should diminish the problem of free-riders.
- Compliance with WTO rules would need to be ensured and third country suppliers would derive similar benefits as EU producers from any improvements to the functioning of the single market.

c. Operating costs and conduct of business:

- Any EU scheme will detail requirements that scheme participants will have to follow in order to be allowed to carry the logo. Thus, in the majority of cases, there will be adjustment and compliance costs for scheme participants. However, since participation in the scheme is voluntary, participants will expect a net benefit from certification. If adjustment and compliance costs turn out to be greater than the additional revenue, participants are free to drop out of the scheme, although there may be fixed costs of joining and then further costs of readjusting to production outside the scheme.
- Whether or not a new EU scheme will increase administrative complexity depends on the details of scheme implementation. Based on experience with the PDO/PGI scheme, EU schemes following the "exclusive" model are likely to add to administrative complexity at EU level, while "reference" schemes entail higher administrative burdens at the point the daughter schemes are developed and implemented (whether national or private). In addition the administrative burden of developing and maintaining the reference standard is significant.

d. Innovation and research:

- New EU schemes covering certain aspects of agricultural production methods will define the eligible production methods in a specification. Depending on whether these production methods are new and innovative or traditional, the scheme will either stimulate or hinder the introduction and dissemination of new production methods. Once specified, the defined production methods may be slow to change. Therefore, in the long run, new EU schemes are not likely to lead to innovation in production methods.

e. Consumers and households:

- Unclear impact on prices – certified products will probably be more expensive than non-certified ones, but not necessarily more expensive than other certified products.
- Positive impact on consumers to benefit from the internal market (see under a. above)
- Consumers would be confronted with yet another logo. Unclear impact on consumer confusion if "reference standard" model is chosen, since effect on the number of existing schemes is not clear (if the reference standard is set higher than the standards of most existing schemes, many of them are likely to disappear. If the reference standard is low, most existing schemes are likely to continue).
- Positive impact on consumer information through the harmonisation of terms and concepts.

f. Specific sectors:

- Depending on the policy area covered by the new EU scheme, which will in any case concern the production of agricultural products and foodstuffs, specific regions and sectors will be affected more than others. For instance, an animal welfare scheme will only concern animal husbandry. The effect on farmers and producers within these sectors complying with the scheme requirements is expected to be positive, this presumably being one of the objectives of the scheme in the first place. However, farmers not complying with the scheme requirements may suffer if as a consequence their products lose market share or yield lower prices.

g. Third countries and international relations:

- Any new EU scheme would have to be managed in a way compatible with WTO rules. The United States' contribution to the Green Paper consultation states that

"As the European Commission (EC) considers the creation of quality standards for European Union (EU) Member States, the United States encourages the EC to carefully ensure that the standards and regulations created do not contradict the EC's World Trade Organisation (WTO) Commitments under the Technical Barriers to Trade (TBT) committee [...]"

Similar concerns are raised in the contribution of the Secretariat for Agriculture, Livestock, Fisheries and Food of Argentina.

h. Public authorities:

- The development of a new EU scheme could cause administrative burden both at the level of the Member States (or at regional level within Member States) and at the level of the EU. Based on experience made with the existing EU schemes for PDO/PGI, TSG and organic farming, certification and control functions would have to be allocated and assured. Scheme and logo development would require involvement of stakeholders.

- Enforcement in the marketplace and supervision of the certification-accreditation system

Social impacts:

a. Governance, participation, good administration, access to justice, media and ethics

- Better information of the public: The development of a new EU scheme is likely to draw the public's attention to the particular issue covered by the scheme. It can be assumed that the EU will only take action in a priority policy area that it considers to be of high importance. Consequently, any new EU scheme could be accompanied by an information campaign, a website, press releases etc. which would all contribute to making the public better informed about the issue. Furthermore, EU promotion and/or rural development funds will become available to promote products certified under the scheme. A new EU scheme would thus send a strong signal to the public on the political importance the Commission attaches to the issue at hand.
- Greater involvement of stakeholders: It can be assumed that all Commission standards on the involvement of stakeholders and civil society representatives will be observed in the development of the new EU scheme. Given that the existing schemes are mostly in the hands of private operators, stakeholder involvement will certainly improve.

Environmental impacts:

Environmental impacts will only arise if the policy area covered by the new EU scheme is linked to the environment. The exact impacts will depend on the inclusion of environmental criteria in the specification of the scheme.

5.3.2. *Qualitative assessment of impacts that are most significant*

The following impacts are deemed to be most significant:

- The positive impact on consumer awareness and information through EU action in the chosen policy area, coupled with an information campaign and possibly other support measures.
- The particular positive effects of the scheme in the chosen policy area through compliance of a sufficiently large number of farmers with the scheme specifications.
- The possible negative impact on public authorities caused by the administrative burden that any new EU scheme may bring.

Concerning competition risks highlighted above, the EU standard could include specific provisions for Member States to be attentive to the risks.

This analysis is not going into the details of any particular new EU scheme. For schemes under development or at the discussion stage, such impact assessment is in train or has already been done (e.g. DG SANCO is developing an impact assessment on an animal welfare labelling scheme; DG ENV conducted an impact assessment on a revised

Community ecolabel scheme). For other schemes proposed by various stakeholders, it is too early and beyond the scope of this impact assessment to go into detailed options.

Instead, general impacts of developing new EU schemes have been listed above. These are necessarily vague and will not be sufficient to take decisions in concrete cases. They can, however, serve as a guide when it comes to the question whether an EU scheme is preferable to one or more private schemes in the policy area at hand, or whether the following option (definition of reserved terms) is preferable.

5.4. Option 3.b: Develop common criteria for new EU schemes

5.4.1. Identification of impacts

In the light of the existing EU agricultural product quality schemes, the two in development and pressure to consider further schemes, and the complexity of issues raised as highlighted here, it is necessary to consolidate criteria to be used in consideration of EU schemes. This would ensure coherence both with agricultural policy priorities and coherence with existing schemes. See also section 4.3.3 above for a preliminary list of policy criteria to be applied for new agricultural product quality policy schemes.

Economic impacts:

- Functioning of the internal market and competition: common criteria for the development of new EU schemes is expected to result in greater coherence of EU schemes, thereby overcoming the problem of information asymmetry between farmers/producers and buyers, leading to greater clarity for consumers, and improving the functioning of the internal market.
- Third countries and international relations: The common criteria for new EU schemes will include an explicit check for compatibility of the proposed scheme with WTO rules and other international obligations. The expected impact of these criteria on third countries and international relations is expected to be positive.

Social impacts:

- Governance, participation, good administration: Common criteria for new EU schemes will address issues relating to the need for EU action based on the principle of subsidiarity, proportionality and reduction of administrative burden. They will therefore contribute to the goals of good administration.

Environmental impacts:

- Sustainability is a principle which will be addressed explicitly by the common criteria for new EU schemes. Environmental impacts are therefore expected to be positive.

5.5. Option 3.c: Protection of reserved terms

- see paper A.II -

D.6. COMPARING THE OPTIONS

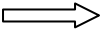
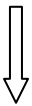
	Advantages	Drawbacks
Option 1: Status Quo	<ul style="list-style-type: none"> + Allows further research to fill information and data gaps before further action is taken + Preferred by a many stakeholders + Relies on ongoing initiatives in the private sector to develop in a positive way 	<ul style="list-style-type: none"> – Not all problems are likely to be addressed by private sector initiatives (transparency, clarity of claims...) – Lack of coherent policy – fails to address issues of threats to single market, anti-competitive situations, and consumer confusion
Focus on process		
Option 2b): Voluntary guidelines for certification schemes (private, national, EU)	<ul style="list-style-type: none"> + option preferred by many stakeholders + may achieve an outcome if combined with incentives for adoption, such as linkage under rural development quality measures and promotion funding; + will enable "best practice" schemes to be identified. + EU shows it is engaged in key issue affecting farmers. + in line with Commission objectives for better regulation, simplification and reduced administrative burdens 	<ul style="list-style-type: none"> – less legally binding than regulation; – guidelines perceived as 'weak' response, compared with regulation; – scheme owners may resent / suspect EU involvement
Option 2b)+: register of schemes	<ul style="list-style-type: none"> + transparency of schemes in conformity with guidelines and those not 	<ul style="list-style-type: none"> – heavy administrative burden for EC; – administrative burden for scheme owners; – undermines voluntary nature of guidelines; – increased risk of legal disputes.
Focus on content		
Option 3a): New stand-alone EU schemes	<ul style="list-style-type: none"> + harmonised concepts and terms in the policy area covered by the new scheme (prevent incoherent developments) + current reality: new schemes requested by various interest groups; 2 new EU schemes in process of creation. 	<ul style="list-style-type: none"> – high administrative burden at EU level; compatibility with WTO rules needs to be assured; – uncertain results; – unclear impact on existing schemes; – risk of policy incoherence.

Option 3b): Develop policy criteria for new EU schemes	+ consolidate coherent approach and avoid ad-hoc development of inconsistent schemes; + diminish risk of developing confusing schemes in marketplace.	– reduce flexibility and opportunity for ad-hoc scheme development
Option 3c): Develop regulation of reserved terms	See paper A.II	See paper A.II

Table 5: Comparison of retained options by specific objectives

Main objectives →	Reduce consumer confusion		Reduce burden on farmers/producers (incl. from developing countries)		Improve functioning of the internal market	
Options ↓						
1. a) Status quo = no EU action	Baseline		Baseline		Baseline	
Focus on process						
2.b) Voluntary guidelines for certification schemes	Situation improved	+	Situation improved	+	Situation improved	+
2.b)+ Register of schemes	Situation unchanged	+/-	Situation unchanged	+/-	Situation unchanged	+/-
Focus on content						
3.a) New EU schemes "exclusive" model	Situation improved	+	Situation unchanged	+/-	Situation improved	+
"reference standard" model	Situation improved	+	Situation unclear	+/-	Situation unclear	+/-
3.b) Policy criteria for new EU schemes	Situation improved	+	Situation unchanged	+/-	Situation improved	+
3.c) Protected reserved terms	Situation improved	+	Situation unchanged	+/-	Situation improved	+

Table 6: Comparison of retained options by effectiveness, efficiency and consistency

Evaluation criteria 	Effectiveness (how well will it solve the problem?)		Efficiency (is this the most we can get for the money?)		Consistency (is it in line with other Commission objectives and strategies?)	
Options 						
1. Status quo = no EU action	Baseline		Baseline		Baseline	
Focus on process (main problems addressed: burden on farmers; internal market)						
2.b) Guidelines	Medium	+/-	High	+	High	+
2.b)+ Register of schemes	Low	—	Low	—	Low	—
3.a)+ Policy criteria for new EU schemes	Medium	+/-	High	+	High	+
Focus on content (main problems addressed: consumer confusion; internal market)						
<i>In the absence of specific proposals and analysis, the impacts of a new EU scheme cannot be assessed</i>						
3.a) New EU schemes "exclusive" model	Possibly High	+	Possibly Medium	+/-	Possibly Medium	+/-
"reference standard" model	Possibly Medium	+/-	Possibly High	+/-	Possibly Medium	+/-
3.b) Protected reserved terms	High	+	High	+	High	+

Conclusion:

- Following the above analysis, the most promising options for addressing the way in which certification schemes work (**process**) are the development of voluntary guidelines for private and national schemes. Based on the assessment the register of schemes looks challenging and the issues of manageability of the register would have to be overcome and the option reassessed before proceeding.
- As regards the **content** covered by certification schemes, the option of developing a new EU scheme needs to be put into a framework of political priorities, needs and subsidiarity

considerations. Each new scheme proposal will have to be evaluated on a case-by-case basis. However, a policy framework for new EU schemes affecting farmers could be usefully elaborated, thus ensuring that schemes are compatible with existing policy (e.g. existing schemes, single market, etc.), properly reflect policy needs and challenges facing the agriculture sector, and can be best achieved only through EU-level action. Given the current enthusiasm for new EU level schemes in the field of agricultural product quality policy, such criteria should be brought forward in the short term.

- On the option of protected reserved terms, see Annex A.II to this Impact Assessment.

D.7. MONITORING AND EVALUATION

7.1. Option 2.b: voluntary guidelines for certification schemes

Core indicators of progress:

- a. existence of the guidelines (short-term, output indicator)
- b. uptake of the guidelines by scheme owners / number of schemes (or share of schemes) which operate according to the guidelines (medium- and long term, output indicator)
- c. improved benchmarking and mutual recognition of schemes: number of such agreements reached following publication of guidelines (medium- and long term, outcome indicator)
- d. improved functioning of the internal market: availability of certified products in countries other than the country of origin of the scheme (medium- and long term, outcome indicator)
- e. stakeholder involvement in scheme development: number/share of schemes having a fair representation of all stakeholders on their development and oversight committees (medium- and long term, outcome indicator)
- f. reduced burden on farmers and producers (including those from developing countries): could be linked to indicator c) above. Also: reduction in the number of farmers having to undergo more than one certification for the same objectives.

Monitoring and Evaluation arrangements:

Since adoption of the guidelines is a voluntary decision to be taken by the owners and managers of certification schemes, monitoring and evaluation would have to be done through specially commissioned studies, repeated at certain intervals.

If the guidelines are combined with a register of schemes, compliance with the guidelines would be checked at the time of entry in the register (in fact, establishing a register of schemes comes close to operating a certification scheme for certification schemes). Self-declaration by scheme owners can be envisaged but would have to be accompanied by independent controls of a certain sample of schemes at regular intervals (e.g., through accredited control bodies). Various options exist for allocating the cost of control (e.g., paid by the scheme operators; subsidised through public funds).

In order to evaluate the success of the guidelines, studies should be launched to assess:

- number or share of farmers who are undergoing certification to more than one standard in the same policy area (e.g., Good Agricultural Practices): before and (some time) after adoption of the guidelines
- costs of different certification schemes at the farm level and associated benefits
- overlap in the requirements of different schemes, and with official requirements (e.g. in the area of cross-compliance)

7.2. Option 3.b: develop criteria for new stand-alone EU schemes

Core indicators of progress:

- a. Existence of criteria (short term, output indicator)
- b. Application of criteria to newly proposed EU schemes (medium – long term, output indicator)
- c. Coherent development of EU schemes (medium- long term, outcome indicator)

Monitoring and Evaluation arrangements:

European Commission internal audit.

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Annex 1: Main post-farm gate safety and liability schemes in Europe

The BRC Global Standards

In 1998 the British Retail Consortium (BRC), responding to industry needs, developed and introduced the BRC Food Technical Standard to be used to evaluate manufacturers of retailers own brand food products. It is designed to be used as a pillar to help retailers and brand owners with their 'due diligence' defence, should they be subject to a prosecution by the enforcement authorities. Under EU food Law, retailers and brand owners have a legal responsibility for their brands.

In a short space of time, this Standard became invaluable to other organisations across the sector. It was and still is regarded as the benchmark for best practice in the food industry. This and its use outside the UK has seen it evolve into a Global Standard used not just to assess retailer suppliers, but as a framework upon which many companies have based their supplier assessment programmes and manufacture of some branded products.

The majority of UK, and many European and Global retailers, and brand owners will only consider business with suppliers who have gained certification to the appropriate BRC Global Standard.

Source: <http://www.brc.org.uk/standards/default.asp>, accessed on 16.12.2008

The International Food Standard (IFS)

The development of the IFS is based on the ever-rising demands of consumers, the increasing liabilities of retailers and wholesalers, the increasing legal requirements and the globalisation of product supplies. All of these points made it essential to develop a uniform quality assurance and food safety standard.

The members of the German retail federation – Hauptverband des Deutschen Einzelhandels (HDE), – of its French counterpart – Fédération des entreprises du Commerce et de la Distribution (FCD) and of its Italian counterparts COOP, CONAD, Federdistribuzione – have drawn up a quality and food safety standard for retailer (and wholesaler) branded food products, which is intended to enable the assessment of suppliers' food safety and quality systems, in accordance with a uniform approach. This IFS Food applies to all the post-farm gate stages of food processing. Retailers from Austria, Poland, Spain and Switzerland also support IFS as their food safety standard.

Source: <http://www.food-care.info>, accessed 16.12.2008

Safe Quality Food (SQF) Program

SQF means Safe Quality Food. The SQF Program is a fully integrated food safety and quality management protocol designed specifically for the food sector. It has been the culmination of 10 years development and is designed specifically for the food industry with application at all links in the food supply chain.

SQF Certification provides an independent and external validation that a product, process or service complies with international, regulatory and other specified standard(s) and enables a food supplier to give assurances that food has been produced, prepared and handled according to the highest possible standards.

The SQF Codes, based on universally accepted CODEX Alimentarius HACCP Guidelines, offers the food sector a way to manage food safety and quality simultaneously.

The SQF program has been implemented by over 5000 companies operating in Asia-Pacific, the Middle East, United States, Europe and South America.

Source: http://www.sqfi.com/sqf_program.htm, accessed 16.12.2008

Dutch HACCP

In 1996 a group of Certification Bodies in the Netherlands developed a standard for food safety management, 'The Requirements for a HACCP based Food Safety System'.

The first version of this standard was published on 15 May 1996 by the National Board of Experts HACCP, a group of experts on Food Safety representing all parties in the (Dutch) food chain. Currently more than 1900 certificates are issued by the associated Certification Bodies.

Summarising the major strong aspects of 'The Requirements for a HACCP based Food Safety System':

- continuous participation of all parties concerned in food safety in the maintenance of the certification scheme, including governmental agencies responsible for food safety;
- pragmatic elaboration of the HACCP principles and steps stipulated in the Alinorm of the Codex Alimentarius in detailed requirements suitable to small as well as large sized food business organisations;
- mature and high levelled set of requirements of a certification scheme;
- practical experience with this system since 1996 and a vast number of certificates issued internationally;
- application of this scheme by a growing number of major, reputable and internationally oriented certification bodies, under the accreditation of a world wide recognised accreditation body (the Dutch Accreditation Council RvA).

Source:

http://www.foodsafetymanagement.info/net-book.php?op=cms&nnl=english&pageid=60&pageid_up=0

ISO 22000

ISO 22000:2005, Food safety management systems – Requirements for any organization in the food chain, provides a framework of internationally harmonized requirements for the global approach that is needed. The standard has been developed within ISO by experts from the food industry, along with representatives of specialized international organizations and in close cooperation with the Codex Alimentarius Commission, the body jointly established by the United Nations' Food and Agriculture Organization (FAO) and World Health Organization (WHO) to develop food standards.

A major resulting benefit is that ISO 22000 will make it easier for organizations worldwide to implement the Codex HACCP (Hazard Analysis and Critical Control Point) system for food hygiene in a harmonized way, which does not vary with the country or food product concerned.

[...]

ISO 22000 is therefore designed to allow all types of organization within the food chain to implement a food safety management system. These range from feed producers, primary producers, food manufacturers, transport and storage operators and subcontractors to retail and food service outlets – together with related organizations such as producers of equipment, packaging material, cleaning agents, additives and ingredients.

[...]

Developed with the participation of food sector experts, ISO 22000 incorporates the principles of HACCP, and covers the requirements of key standards developed by various global food retailer syndicates, in a single document.

Source: <http://www.iso.org/iso/pressrelease.htm?refid=Ref966>, accessed 16.12.2008

Annex 2: Main food assurance schemes in Europe

GLOBALGAP (formerly EurepGAP; see www.globalgap.org).

GLOBALGAP is a private sector body initially established by a group of European food retailers that sets voluntary standards for the certification of agricultural products around the globe. The aim is to establish ONE standard for Good Agricultural Practice (G.A.P.) with different product applications capable of fitting to the whole of global agriculture.

GLOBALGAP is a pre-farm-gate standard, which means that the certificate covers the process of the certified product from farm inputs like feed or seedlings and all the farming activities until the product leaves the farm. GLOBALGAP is a business-to-business label and is therefore not directly visible to consumers. Certification is carried out by more than 120 independent and accredited certification bodies in more than 85 countries. It is open to all producers worldwide. As of July 2008, around 92,000 producers worldwide have been certified to GlobalGAP standards or benchmarked schemes³⁷

http://www.globalgap.org/cms/upload/Resources/Presentations/Cologne/Moeller_Kristian.pdf

GLOBALGAP certificates are issued to individual farmers or farmer groups, with group certification currently accounting for around 70% of all certificates.

Assured Food Standards/Red Tractor Mark (UK; www.redtractor.org.uk)

Assured Food Standards (AFS) is an independent organisation established in the spring of 2000 to manage, develop and promote the Red Tractor Mark that was launched in the summer of the same year. The Red Tractor scheme covers chicken, pork, lamb, beef, turkey, fruit, vegetables, salad, flour and other cereal products, and dairy products. Red Tractor farmers are regularly assessed by independent inspectors to check that they meet exacting standards for food safety and hygiene, animal welfare and protecting the environment. AFS and the Red Tractor mark were set up to help harmonise the approach to standard setting and inspection throughout the supply chain in the UK. AFS is owned by all the links in the food supply chain, from farmers to retailers. AFS consists of 6 wholly-owned individual assurance schemes for combinable crops, produce, chicken, pig meat, milk, beef and lamb as well as a number of separate but equivalent schemes. The Union flag in the Red Tractor logo provides an independently verified consumer guarantee that the product comes from a UK farm.

There are more than 78,000 Red Tractor farmers in the UK, and most sell their produce to one or more of the 400 processors and packers licensed to use the Red Tractor on their packaging.

<http://www.redtractor.org.uk/site/REDT/Templates/GeneralWho.aspx?pageid=14>

Qualität und Sicherheit/QS (DE)

QS is a vertical quality assurance system covering the whole supply chain including input supply, production, processing, retail and marketing in the areas of meat (pork, beef, veal poultry), fruits and vegetables (incl. potatoes) and combinable crops. It was established in 2001 and has currently issued around 117 000 certificates. Its main goal is the assurance of food and feed safety according to legal requirements

³⁷ Owners of Good Agricultural Practice (G.A.P.) standards worldwide can seek to demonstrate equivalence with GLOBALGAP through an independent benchmarking process. Standards that have completed the entire benchmarking procedure, which is operated by accredited certification bodies (CBs) are fully recognised as GLOBALGAP equivalent. Currently, 13 standards are fully approved (mostly in the area of fruits & vegetables and flowers & ornamentals), 2 are provisionally approved (also for fruit & vegetables) and 8 are at the application stage (here also two for salmonides and some for meat) (see http://www.globalgap.org/cms/front_content.php?idcat=29).

(EU food law; hygiene regulations; etc.). At European level, agreements for mutual recognition have been reached with scheme owners in the Netherlands (GMP+, IKB, IKB 2004+), Belgium (GMP, Certus), Denmark (QSG) and Austria (Pastus+) in order to minimise duplication of audits and to facilitate trade in the internal market (see <http://www.q-s-info.de/>).

Annex 3: Internal market implications of certification schemes for agricultural products and foodstuffs³⁸ and corresponding case law

Certification schemes for agricultural products and foodstuffs may need to be assessed for Internal Market compatibility, even if there is no direct State involvement in the scheme. Cases include:

- if the scheme is linked to underlying safety or health legislation or builds upon it;
- if it organises market behaviour in a manner that is implicitly encouraged by the Member State e.g. rules imposed by sports federations.

Certification services are economic activities that fall within the remit of the EC Treaty. They should therefore benefit from the principle of free movement enshrined in Article 49 of the Treaty. ‘Legislative’ cross-border restrictions to their provision must therefore be justified by a general interest objective, be non-discriminatory and proportionate to that interest.

Services of retailers are also subject to Article 49 EC Treaty. They should therefore also benefit from the principle of free movement enshrined in Article 49 of the Treaty. Since Article 49 applies to both the export and the import of services a user (farmer) of such services can contest a restriction that dissuades him or her from having access to those services.

The Commission actively encourages Internal Market compatible certification schemes. For example, in the services sector, the recently adopted services directive encourages the establishment of such codes at European level. A similar provision is to be found in the e-commerce directive. The Commission also supports the functioning of schemes by contesting national restrictions to cross-border certification services³⁹. The aim is to ensure that certification costs remain or become affordable. Where national schemes with established brand recognition exist, in order to avoid any Internal Market compatibility problems the following conditions should be met:

- Non-domestic EU suppliers should be able to benefit from these schemes on the same conditions as national suppliers.
- Non-domestic EU suppliers that have been certified to the same objective quality levels in their home Member State should benefit from the principle of mutual recognition and not be subject to a second round of certification.
- Food products from one Member State and their ‘mark’ should not be restrained from entering another Member State to compete with the local mark.

³⁸ based on a presentation given by Jean Bergevin, DG MARKT, at the Food Quality Certification conference in February 2007, see http://ec.europa.eu/agriculture/events/qualityconference/bergevin_en.pdf

³⁹ European Commission Press release IP/09/187 of 29/01/2009: Following infringement proceedings against Germany, the Court of Justice on 29 November 2007 (Case C-404/05, Commission v Germany; also similar judgment in case C-393/05, Commission v Austria) declared that Germany was in breach of Article 49 of the EC Treaty concerning the free provision of services, by requiring private inspection bodies of organically-farmed products approved in another Member State to maintain an establishment in Germany in order to be able to provide inspection services there. Germany complied with the Judgment of the Court by recently amending its legislation so that private inspection bodies in the field of organic production of agricultural products registered in other Member States are no longer obliged to establish themselves in Germany in order to be able to provide inspection services there. This will allow for cross-border provision of such services.

Case-law prevents certification schemes that conceal barriers to the Internal Market

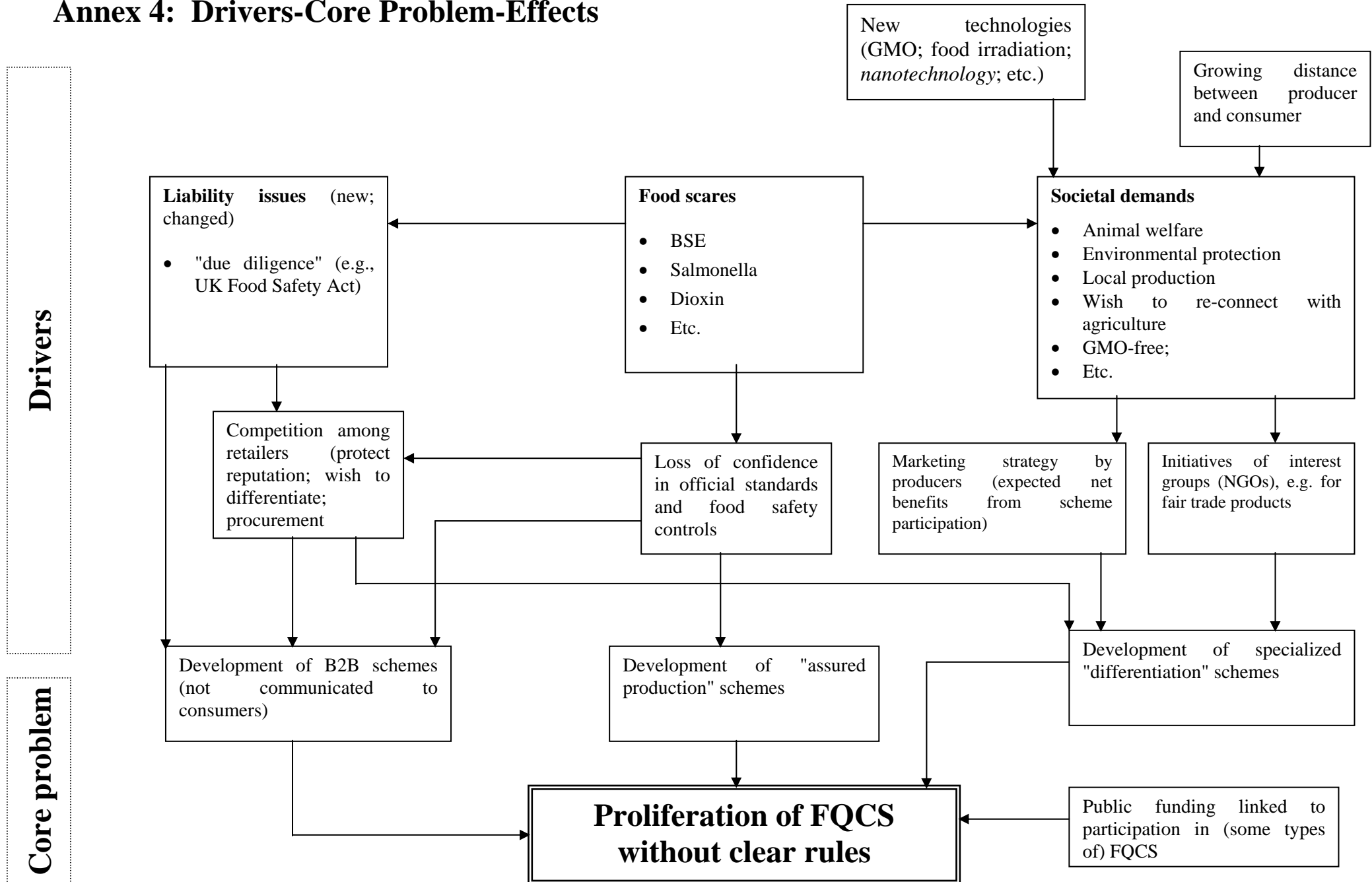
It should be stressed that in standing case law, the Court of Justice held that under Article 28 of the Treaty, all trading rules enacted by Member States which are capable of hindering, even indirectly or potentially, intra-Community trade, are prohibited. It considered in this context that a label laid down at national or regional level should be open to any product fulfilling specific objective criteria (e.g. animal welfare requirements, quality of raw materials used, chemical or microbiological properties etc...), irrespective of the concrete origin of such product. The Court accordingly dismissed a series of labels laid down by Member States that unduly contained such origin requirement, as being not consistent with the aforementioned article 28 of the Treaty (see e.g. the "CMA" judgement of 5.11.2002, case C-325/00, Commission v. Germany, as well as the "labels régionaux de qualité" judgement of 6.3.2003, case C-6/02, Commission v. France).

The Court of Justice indicated in this context that the fact that the use of a label is optional does not mean that it ceases to be an unjustified obstacle to trade, since such label would still unduly promote the marketing of national or regional products of a single Member State.

Although, admittedly, a label might be justified under Article 30 of the Treaty, as an exception to the single market, the Court made clear that a scheme encompassing all agricultural products or foodstuffs originating from a Member State would obviously not qualify as a geographical indication. It should also be noted in this context that the definition of PDOs and PGIs laid down in Article 2 of Regulation (EC) No 510/2006 (the PDO-PGI regulation), should be read on the same line. According to the standing position of the Commission, the PDO-PGI regulation is the exclusive legal instrument available for the protection of geographical indications falling under its scope.

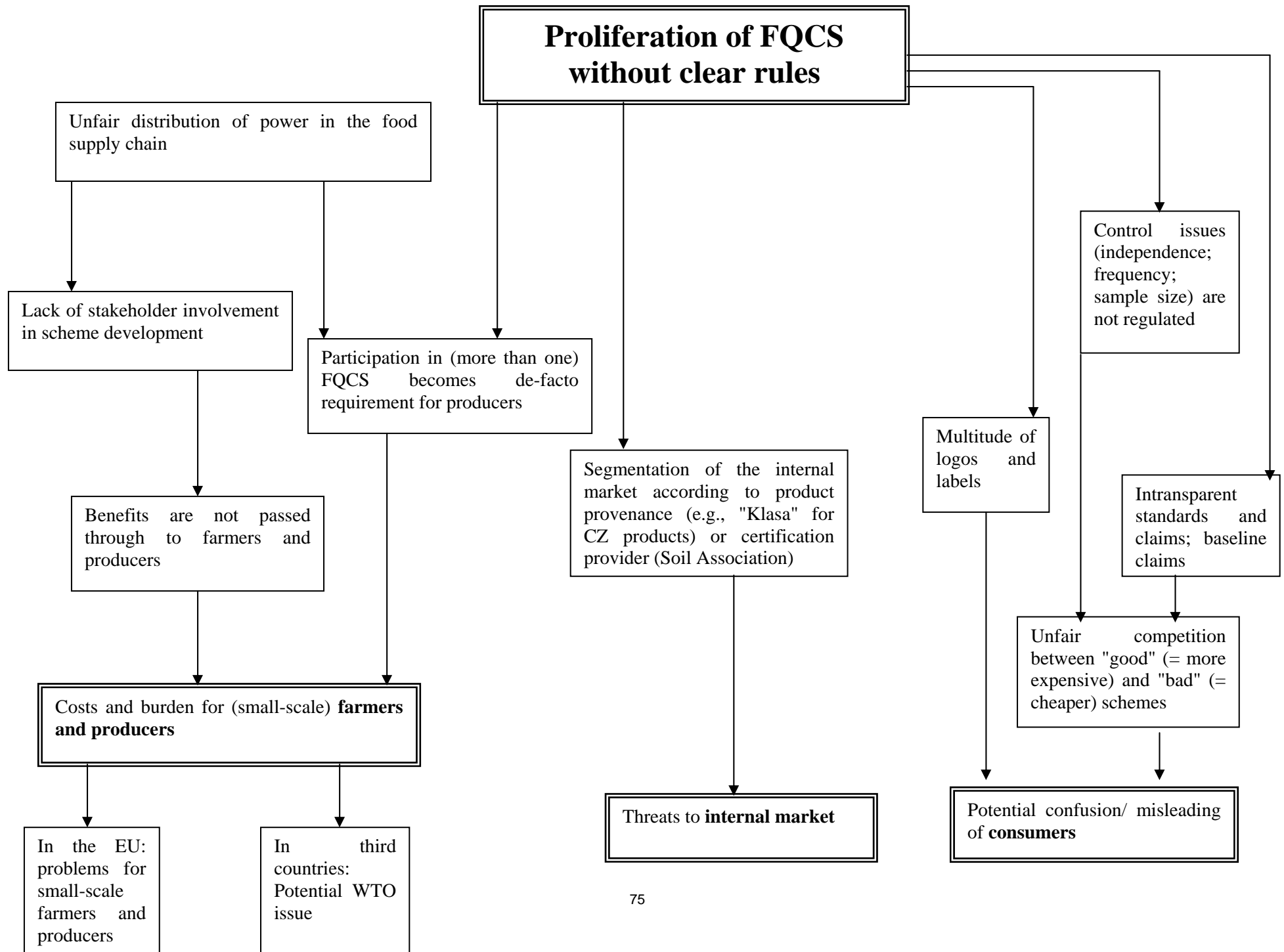
see http://ec.europa.eu/agriculture/quality/policy/workingdocs/fqcs_en.pdf, p. 7.

Annex 4: Drivers-Core Problem-Effects



Core Problem

Effects



Annex 5: Why are food safety and quality standards implemented?

A well-functioning market provides incentives for firms to supply products that embody the characteristics of safety and quality that consumers demand, both because firms derive greater profits from doing so and because their reputation is critical for repeat sales (Mitchell, 2003). Under certain conditions, however, markets may fail to provide the safety and quality that consumers demand or that is socially desirable.

For example, consumers may be unable to judge the safety or quality of a particular food product at the point of purchase or prior to consumption. Because greater safety and quality can increase costs for firms, this lack of information may reduce the firm's incentive to incur those costs. Firms that have a greater level of information about the safety or quality of the products they supply may be able to gain a strategic advantage over consumers or over their competitors, leading to inappropriate price signals or false product differentiation on the basis of safety or quality. This situation is compounded by the fact that the safety and quality characteristics associated with food are typically complex and significant costs can be imposed on consumers when searching for products that meet their own particular demands and assessing their actual characteristics. Such transaction costs can be an impediment to market development.

When consumers eat unsafe food they not only impose costs on themselves (i.e. loss of income for time spent away from work), but they also impose broader costs on society as a whole, through the health care system. Normally, consumers do not take such costs --what economists call 'externalities'-- into account when choosing the foods they buy and thus they tend to demand a lower level of food safety than society as a whole would prefer. Conversely, there can be positive externalities, benefits that accrue to other parts of society beyond the consumers themselves. One example is the protection of the environment when consumers buy 'environmentally friendly' products.

The government may implement food safety or quality standards in an attempt to address such market failures, as a means to achieve levels of safety or quality that are socially desirable and to reduce the associated costs. In extreme cases these may take the form of absolute bans on products. More generally, however, standards specify the ways in which food products are produced and/or their characteristics (for example ingredients, storage conditions etc.). In the latter case, governments may specify the safety and/or quality characteristics of the end product, but leave firms free to choose the most appropriate way in which to grow or manufacture such products. Further, in some cases they may also specify the information that must be disclosed to consumers and the format for this information.

This 'market failure' perspective presents public standards as instruments that correct inefficiencies in markets of food safety and quality. However, even a cursory observation of the prevailing standards environment provides illustrations where public standards have been implemented in the absence of any apparent 'market failure' or some other action may have been able to correct the failure at lower cost. The political economy perspective on standards acknowledges that public authorities are influenced by the interest groups their actions affect, whether private businesses, consumers or taxpayers, and that the standards they implement will reflect, at least in part, the power of these various actors. Thus, it is acknowledged that such private interests can 'capture' regulatory processes and steer them in directions that are to their economic advantage. In such cases, public standards can actually aggravate existing market failures and have considerable distributive impact.

Private standards are implemented by businesses and other entities, individually or collectively. Such standards evolve for very different reasons (see for example Henson and Caswell, 1999). Often they are devised to enhance economic efficiency, by facilitating communication between buyers and sellers or by ensuring the compatibility of product components or products that are consumed jointly. Or they can be the basis of the competitive strategies of firms -- a means to communicate with consumers and enhance reputation. Market signals are sufficient to induce the development of private standards. The role of the government is to ensure that such standards do not constitute or conceal anti-competitive practices.

Source:

http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_challenges_synthesisreport.pdf, p. 33

Annex 6: The evolving debate around climate change/carbon labels

Growing concerns about climate change have led to various attempts at calculating the 'carbon footprint' of a product and conveying this information by means of a label, with the aim to enable consumers to judge greenhouse gas emissions caused by the production and transport of the products they buy.

Some examples (see <http://www.climatechange.org/content.asp?ContentID=5828>):

UK: UK's Carbon Trust has calculated the product carbon footprint (PCF), of over 75 products since 2006 under its pilot Carbon Reduction Label scheme. The Carbon Reduction Label displays the product's carbon content and gives an average carbon content for the overall product group to provide context for comparison. Following the conclusion of the pilot scheme, six UK companies, including Innocent Drinks, Pepsico and UK supermarket chain Tesco, have officially signed up selected products to the UK Carbon Reduction Label.

France: The first French companies to introduce voluntary carbon labelling have been supermarket chains Casino and E. Leclerc. Casino adopted a Life Cycle Analysis (LCA) methodology in early 2006. The resulting 'l'Indice Carbone,' label, which displays the carbon content of individual products, can be found on 26 of its own brand products. The retailer aims to label some 3000 products in total. French retailer E. Leclerc's carbon labelling pilot scheme was launched in April this year in two stores in Northern France and included a total of 20,000 products.

Switzerland: Switzerland's top supermarket chain, Migros, embarked on a product carbon labelling programme in 2007. Consumers can now find seven Migros own-brand products carrying the Climatop carbon label. A further 10-12 are expected to carry the label in coming months. Rather than displaying product carbon content, the label provides confirmation that the product is 20% more carbon efficient than its counterparts within the same product category. MyClimate, the carbon offset company that carries out the carbon calculations on Migros' products, uses a hybrid "economic input-output life cycle analysis" (EIO-LCA) approach involving a detailed LCA on unique aspects of each product and EcoInvent, a global life cycle inventory (LCI) database for calculations on more generic aspects.

United States: In the US, the Washington-based Carbon Fund, an independent non-profit carbon offset provider, developed the 'Certified Carbon Free' label in collaboration with the Edinburgh Center for Carbon Management on the basis of ISO LCA standards, the GHG Protocol and the UK Carbon Trust's (2007) Carbon Footprint Measurement Methodology. Six products, including those of drinks manufacturer Monarch Beverages and organic sugar company Florida Chrystals carry the label with a further five products currently under-going the LCA process. Rather than displaying product carbon content, it indicates that the products' carbon footprint has been calculated, is continually monitored and reported and that the carbon is being offset.

Separately, the California-based Climate Conservancy, a spin-off from Stanford University, established the Climate Conscious label. Using LCA methodology, the label provides a rating (bronze, silver, gold) rather than displaying specific CO₂ content.

Canada: CarbonCounted, a Toronto-based non-profit organization, developed an online database web application, CarbonConnect, which allows companies to calculate PCFs according to existing standards. Once the carbon sources have been certified by CarbonCounted's certified auditors, the company can download the 'Carbon Counted' logo, which displays the product's combined CO₂ and CO₂ equivalent content. Currently, 40 companies, including Standard Chartered Bank and investment bank UBS carry the CarbonCounted label.

Various other projects are in the pipeline, amongst others in Japan, South Korea, Germany, Sweden, and China.

CO2 labelling of food: (How) can consumers consider climate impact in their food purchases? (DuVo study, 2008) http://www.duvo.nl/files/file/CO2_labelling_of_food4ec0b9.pdf

"[...] label initiatives have been launched in a number of north-west European countries with the aim of giving consumers insight into the energy consumption and/or climate burden related to food production. At the end of 2008, none of those initiatives had resulted in broad application. Labelling experiments are taking place in some segments; several sample products list CO2 emissions, while others specify whether or not a product was transported by air. [...]"

The form that the label initiatives take varies from number-based (how many grams of CO2) to symbols ('transported by plane') or logos. Relative scores are also used, analogous to the Energy Label for motor vehicles and appliances. The segment of the lifecycle that has been included in calculations by the various initiatives varies from packaging only to the entire lifecycle, including the disposal and waste phase. In general, labels are tested on simple (fresh) products. Almost no examples are available of composite products (like soup and packaged meals) that have been labelled.

Various methods can be used to calculate the environmental impact of food. The methods generally include some form of product lifecycle analysis. [...] It is often difficult to compare or compile the data because of the differences between datasets, particularly in the methodology and parameters used to express environmental impact. [...] In terms of the environmental burden of dairy farming, for example, agreements need to be reached to coordinate what percentage of the impact should be attributed to milk production, and what percentage should go to meat production.

A single standard method is required if the aim is to compare environmental burden values directly. CarbonTrust, DEFRA and BSI have taken the initiative to develop an international standard for the "Carbon Footprint" expressed in CO2 equivalents. [...]"

It is theoretically possible to calculate the environmental burden at the level of an individual product. Conducting such analyses and adapting them to the frequently changing production chain or product composition is often an expensive exercise [...] After all, the environmental burden caused by the selfsame product may vary widely: There are different varieties of a crop, which may be cultivated in different regions in the world with different production techniques. Furthermore production seasons may vary, the weather is variable as well as the mode of transport, the product composition, the storage mode, as well as the packaging.

These many variables, the absence of a uniform system and the lack of sufficient validated datasets currently make it practically impossible to collect reliable data. It can therefore be stated that it is not feasible at this time to determine the product-level environmental burden on any major scale, so it would not be useful to base consumer information on that principle. [...]"

In designing methods of communicating about energy consumption and greenhouse gas emissions in relation to food, it is important to ensure that the chosen method does not lead to negative consequences for other aspects related to the environment or sustainability, such as water consumption, land use; health, animal welfare or fair trade. Some choices may be diametrically opposed. For example, improving animal welfare could lead to increased energy consumption. The air-freighted label draws attention to the carbon consequences of air freight without placing that issue in the context of the alternatives and without conveying the development benefits for the producers – an issue which the consumer might have given weight to, had it been raised.

Annex 7: Private voluntary standards and the World Trade Organisation (WTO) Committee on Sanitary and Phytosanitary Measures

The Committee on Sanitary and Phytosanitary Measures (SPS Committee) deals with government regulations in the areas of food safety, animal and plant health. At these meetings, WTO member countries have the opportunity of raising specific trade concerns, e.g. if they believe that another country's sanitary and phytosanitary (SPS) measures are more trade-restrictive than necessary for health protection. In June 2005, St. Vincent and the Grenadines raised concerns about GLOBALGAP (formerly EurepGAP) pesticide requirements for banana importation, and the relationship between GLOBALGAP and official EU requirements. Other developing countries shared this concern, wondering what alternatives were available to affected developing countries. The EU's response was that GLOBALGAP standards were not official EU requirements and even if they went beyond official EU regulations, they were not in conflict with EU legislation. [...]

The private standard debate within the SPS Committee

Private standards have repeatedly been discussed in the SPS Committee. The discussions have focussed on three themes:

- **Market access:** Some say that standards set by the private sector can help suppliers improve the quality of their products and gain access to high-quality markets. Others argue that private standards can be more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g., accepting only one way of achieving a desired food safety outcome) than official requirements, thus acting as additional barriers to market access.
- **Development:** The costs of complying with private standards, and the additional costs of certification, sometimes for multiple sets of standards for different buyers, can be a problem especially for small-scale producers in developing countries.
- **WTO law:** While some are of the view that setting standards for the products they purchase is a legitimate private sector activity and not a government one, others insist that the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) makes governments in importing countries responsible for the standards set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of food safety measures and are more trade-restrictive than necessary to protect health.

Health protection and requirements from the government

The concerns of governmental trade officials (particularly in developing countries) of the proliferation of private standards have to be seen in the context of the SPS Agreement [...]. The basic requirement under the SPS Agreement is that measures can be taken only if necessary for health protection, with scientific evidence required to demonstrate this "necessity" [...].

Under the SPS Agreement, the preferred way of meeting the justification requirement is through the use of internationally developed food safety, plant and animal health protection standards [...].

Alternatively, governments can justify national standards if they are based on an appropriate risk assessment, but the measure imposed must be no more trade restrictive than required to achieve the desired level of health protection. [...]

Importantly, the SPS Agreement contains a number of provisions to ensure the transparency of SPS requirements. Not only must governments give advance notice of their intention to modify SPS measures, but they must take into consideration any comments submitted by trading partners, provide associated documents upon request (including risk assessments and the evidence underpinning measures), and ensure that all measures are published promptly.

Food safety requirements are subjected to a different set of legal obligations than what is applied to quality and environmental measures or measures adopted to avoid the deception of consumers. This, in addition to the notification requirements, pushes governments to identify objectives and to clearly separate and distinguish between requirements imposed for health protection and those imposed for other purposes. [...]

Government SPS requirements versus private standards objectives

In contrast to these globally negotiated disciplines on governmental actions, private standards are seen by many developing countries as going in exactly the opposite direction. The private standards address a mix of SPS and other objectives – including social and environmental concerns that are not related to food safety or plant/animal health protection. These private requirements may have no scientific justification, but may address consumer perceptions of what is safe or unsafe, or may reflect production practices common in developed countries but unknown and perhaps unsuitable for developing country producers. [...]

Developing country concerns

[...] There are growing concerns in developing countries regarding the effects of these private standards and the degree of their trade restrictiveness. Suppliers who produce for the export market (toward industrialised countries) face difficulties in complying with private standards such as those required by global retailers and several cases show many have dropped out of the market.

Many developing countries find it difficult to produce goods that meet the internationally agreed food safety standards and when they do meet standards, this is often still insufficient to gain access to many markets, as the private standards set requirements well in excess of those of the Codex, IPPC or OIE.

Private retailers have often imposed and modified their requirements without any advance notice, and with no opportunity for producers in other countries to comment or complain. Recently, some efforts, including the smallholder taskforce at GlobalGAP, have begun to move in a different direction. However, compared to the disciplines that the SPS Agreement places on government regulations, there is little transparency in the development of private standards, and there is no forum for challenging private standards comparable to the SPS Committee or the dispute settlement mechanism of the WTO.

Stanton and Wolff, 2008. <http://www.agrifoodstandards.net/en/filemanager/active?fid=134>

Annex 8: The ISEAL Code of Good Practice

The ISEAL Alliance defines and codifies best practice, at the international level, for the design and implementation of social and environmental standards systems. ISEAL Alliance members are committed to meeting this best practice in order to ensure their systems are credible and accessible. The ISEAL Alliance provides a global framework for the social and environmental standards movement to coordinate, cooperate and build its capacity to deliver positive global impacts.

The vision of the ISEAL Alliance is to create a world where environmental sustainability and social justice are the normal conditions of business.

The mission of the ISEAL Alliance is to strengthen credible and accessible voluntary standards and to promote them as effective policy instruments and market mechanisms to bring about positive social and environmental change.

Credibility Tools

The rapidly growing number of voluntary standards and labels emerging into the marketplace makes it difficult to differentiate credible standards from other claims. The ISEAL Alliance aims to address this issue by creating the tools necessary to improve how voluntary standards are set and to evaluate the credibility of these initiatives.

One such Credibility Tool is the ISEAL Code of Good Practice for Setting Social and Environmental Standards. It is referenced by a range of governmental and inter-governmental guidelines as the measure of credibility for voluntary social and environmental standards. ISEAL Alliance members are prepared to make changes to their practices as a result of learning from each other and meeting the highest common denominator across the board in all aspects of the standard-setting and revision process. The Marine Stewardship Council has for example made changes to its stakeholder consultation process and the Rainforest Alliance has created new guidelines for developing local indicators that ensures its sustainable agriculture standards are accessible and locally relevant.

Compliance with the ISEAL Code of Good Practice ensures that organisations create:

- standards that are developed in transparent, multi-stakeholder processes,
- certification schemes that consumers can trust, and
- relevant, high level performance criteria that create genuine social and environmental change.

The normative documents from which this Code draws are ISO/IEC Guide 59 Code of good practice for standardisation, and the WTO Technical Barriers to Trade (TBT) Agreement Annex 3 Code of good practice for the preparation, adoption and application of standards.

<http://www.isealalliance.org>

Annex 9: Water labelling

Promoting sustainable water use through labelling

The problem

'When will the water run out?' "... the authors have estimated the water footprint of everyday food and drink, which encouragingly shows that one litre of beer consumes less water (300 litres) than one litre of orange juice (850 litres). One kilogram of coffee is reportedly more thirsty (21,000 litres of water) than one kilogram of hamburger (16,000 litres)."⁴⁰

Voluntary initiative:

March 23, 2008, PepsiCo Promotes 'Positive Water Balance' On Labels. PepsiCo India is changing all of the labels on Aquafina, its bottle water brand, to announce that by next year, PepsiCo India will be a positive water balance company. This is the first time PepsiCo has communicated a CSR initiative through its packaging, according to the Economic Times. The labels will urge consumers to partner with the company to "use water wisely so it could be enjoyed by future generations." PepsiCo says it has reduced water usage in its manufacturing plants by over 60 percent, and that it has saved 2 billion liters of water in the process, the article reports. PepsiCo may extend the messaging to other brands at a later stage.⁴¹

'Water footprint' (methodology for measuring)

By definition, the water footprint of a business is equal to the sum of the water footprints of the business output products. The supply-chain water footprint of a business is equal to the sum of the water footprints of the business input products.⁴²

Obligatory labelling:

Anders Berntell, head of the Stockholm International Water Institute (SIWI): "Some kind of labelling of food products when it comes to their water requirements could be a first step," he said. "Then people could see for themselves." Labels might, for instance, highlight water needed for irrigation beyond natural rainfall. ... Berntell said that he knew of no countries planning water labelling of foods.⁴³

⁴⁰ Climate change, increased industrial demand and wanton wastefulness: is 'peak water' upon us? 20.8.2008
<http://www.guardian.co.uk/environment/blog/2009/jan/22/water-climate-change>

⁴¹ <http://www.environmentalleader.com/2008/03/23/pepsico-promotes-positive-water-balance-on-labels>

⁴² Hoekstra, A.Y. (2008) The water footprint of food, In: Förare, J. (ed.) Water for food, The Swedish Research Council for Environment, Agricultural Sciences and Spatial Planning (Formas), Stockholm, Sweden, pp. 49-60.
<http://www.waterfootprint.org/?page=files/CorporateWaterFootprints>. See also: 'An improved water footprint methodology linking global consumption to local water resources: A case of Spanish tomatoes' A.K. Chapagain, S. Orr

⁴³ Interview - 'Water Labels' on Food Could Ease Shortages. 23.8.2006.
<http://www.planetark.org/dailynewsstory.cfm/newsid/37795/newsDate/23-Aug-2006/story.htm>

Annex 10: Stakeholder views expressed in the consultation of the Green Paper on agricultural product quality

Question 14: Are there any pressing issues for which existing schemes and arrangements are inadequate and for which there is a strong case for an EU level scheme? Should the Commission consider mandatory schemes in certain cases; for example, those with a complex legal and scientific background or those needed to secure high consumer participation? If so, how can the administrative burden on stakeholders and public authorities be kept as light as possible?⁴⁴

The majority of respondents are against introducing new EU schemes (although some make specific reference to mandatory schemes and don't express their views of voluntary schemes – see footnote). Some see possibilities for new schemes if certain conditions are fulfilled, and 24% of all respondents (= 50 replies) are of the opinion that new schemes are needed in certain policy areas.

The negative opinion is most pronounced among **national authorities, the farming community, trade and processing organisations**. Only among regional/local authorities, retail organisations, and environmental NGOs is there a majority view that new schemes would be useful (however, total number of answers in these categories are small). Consumers (incl. consumer organisations) are evenly split between proponents and opponents of new schemes, as are third countries. Among academic organisations and other respondents, a small majority can be found against new schemes.

Arguments against new schemes include:

- additional new schemes would confuse consumers;
- quality issues should primarily be in the hands of private operators; schemes will develop as private initiatives, no Commission involvement is necessary. The market is more flexible and responsive to develop products according to consumer demands, without excessive bureaucracy;
- new schemes are not compatible with "better regulation" principles;
- (proliferation of) certification schemes are (is) costly for small-scale operators; scheme participants have no advantage in the market;
- current schemes are already above international market standards;
- legal minimum standards must apply to all products and should not be covered by a scheme; mandatory issues to be addressed through legislation and not through a scheme;
- there is no scientific basis for any new scheme;
- there is a danger that schemes and labels are seen as a way to raise production standards;
- against an EU-wide scheme for products from "high nature value areas" which would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products

Some respondents proposed **criteria for deciding whether a new scheme would be needed or how it should operate**:

- only take action if the size of the problem justifies the additional administrative burden
- only take action if private initiatives threaten the functioning of the single market
- any new scheme should be science based
- new schemes should not hinder the functioning of the internal market

⁴⁴ Please note that the three sub-questions were in general perceived as one single question. Some respondents refer specifically to the need of a new mandatory scheme, while in the majority of cases it is unclear whether respondents mean voluntary or mandatory schemes.

- schemes with complex legal and scientific background should be governed by uniform regulations at EU level
- any new scheme must correspond to policy needs
- before developing any new scheme, first conduct an in-depth consumer study
- try to develop coherent, comprehensive schemes
- need simple and effective schemes with full transparency, assured through participation of farmers in the definition of rules
- new schemes should not lead to higher production costs, certification expenses must be shared by the entire sector; limit costs by facilitating grouping of producers; adapt scheme requirements to enterprise size
- don't include general management practices in certification schemes which makes them too complex
- preference should be given to labelling of single issues (animal welfare; mountains) rather than complex issues (organic)
- use "Système de Garantie Participatif"
- mandatory schemes should be reserved for food safety or health issues

Suggestions were also made on **what to do instead of developing new EU schemes**:

- simplify and/or harmonise existing schemes; increase scheme transparency; integrate new criteria into existing schemes
- introduce fewer but horizontal controls based on risk analysis
- better connect quality systems and official inspections as well as various types of inspections in the fruit & vegetables sector; take scheme participation into account for the allocation of subsidies;
- develop agreed guidance documents for important policy issues (e.g., health, environment, animal welfare, fair trade, traditions, regionality)
- give more visibility to sustainable and organic agriculture
- the EU should allow labelling schemes (e.g., conservation grazing) to be supported by the Member States and exempt from the requirement for State Aid notification where the protection of the environment is a primary aim
- focus more on co- or self regulation and consultation and avoid schemes which have no scientific basis and mislead the consumer
- use local administrations for recognising local products, free certifications by local authorities
- improve communication about existing quality measures and schemes before starting new schemes
- develop a global / comprehensive horizontal approach to quality products rather than multiplying schemes;
- start discussion on sustainable development at EU and global level; develop an integrated approach to sustainable production
- develop different national criteria and actions in order to promote the consumption of local and regional foodstuffs
- harmonise legislation in MS on integrated farming
- integrate and reduce certification burden for food producers
- develop guidelines for the auditing of certification schemes;
- establish a standard product nomenclature where a product name does not mislead the consumer through similarity with the national name of the translated version (e.g. “szalámi” (salami), “kolbász” (sausage), “párizsi” (Lyoner sausage), etc.
- animal welfare rules lead to competitive disadvantage for EU farmers and should be accompanied by a ban of non-complying imports
- begin by enforcing existing rules, e.g. on animal welfare

- harmonise labelling rules on non-GMO products
- integrate rules on environment, climate change and ethical issues in baseline requirements;
- establish observatory on evolution of agricultural practices
- minimum standards that are not met should be mentioned on the label;
- extend the scope of Regulations 509 and 510 to cover all products

However, some respondents also made suggestions of issues that should either be addressed in the context of a **new EU scheme** or for which **common definitions at EU level** (not necessarily through a new scheme) would be needed. These include:

- integrated farming/integrated production
- environmentally friendly products / use of pesticides; biodiversity; water preservation
- products making full use of local sustainable resources (water, feed, etc.)
- EU sustainable agriculture label
- products from high nature value farming (reserved for small-scale producers)
- common definitions for the terms "mountain", "island" and "alp"
- animal welfare
- climate change / low carbon emissions / energy use of production and transport
- superior product quality (similar to Label Rouge)
- GMO-free food / GMO- free feed
- products from national and/or regional parks
- local traditional products / typical products from a specific region
- compliance with EU farming requirements
- ethical and socially responsible criteria especially for small-scale producers
- worker welfare scheme /social criteria of production
- stricter organic livestock regulation
- a scheme for products from local breeds / protection of local breeds / products from animal breeds in danger of extinction
- a scheme for sparsely populated regions with a low economic activity and unfavourable agroclimatic conditions
- bio-dynamic farming
- EU basic, EU extra and EU superior quality
- a framework communicating quality parameters from feed to food
- harmonisation of requirements for temperature of storage and transport of foodstuffs
- health
- (country of) origin; EU origin
- mandatory labelling of farming methods for meat and dairy products

Question 16: Could EU guidelines be sufficient to contribute to a more coherent development of certification schemes?

Across all categories, the **majority of respondents is of the view that EU guidelines would be sufficient** to contribute to a more coherent development of certification schemes. This opinion is most pronounced among national authorities; regional and local authorities; the farming community; processing organisations; consumers and general public (even though a sizeable number here thinks that guidelines are not sufficient); and academic organisations. Somewhat more undecided are trade organisations and NGOs, but overall numbers of respondents in these categories are small.

Respondents who **disagreed with the idea of guidelines** either thought that stricter measures would be necessary (legislation) and that guidelines would not be sufficient to address the coherent development of certification schemes (an opinion most pronounced among the consumers and general public group); or they thought that not even guidelines would be needed since the market is capable of solving the problem without any sort of official intervention (most prominent among the farming community). The latter group points to ongoing harmonisation initiatives in the private sector or at the international level which make EU involvement unnecessary (some even say that EU guidelines will do more harm than good).

Criteria mentioned most frequently for inclusion in guidelines are:

- guidelines based on international standards (ISO 17000 Series and EN 45011);
- respect of international obligations (WTO);
- harmonisation of accreditation, certification and control procedures and requirements among Member States;
- independent certification by accredited bodies;
- internal audit of schemes;
- scheme specifications should be based on objective and scientifically sound criteria;
- scheme specification should be publicly available;
- involvement of stakeholders in scheme development;
- openness of scheme to all producers;
- make special arrangements for small-scale farmers and producers;
- scheme requirements should go beyond legal baseline.

Other comments made in this context refer to the need to spread cost of scheme participation between all actors in the food supply chain, and the need to consult widely and internationally for the development of guidelines.

Question 17: How can the administrative costs and burdens of belonging to one or more quality certification schemes be reduced?

The most frequently mentioned suggestions for reducing the administrative costs and burdens of belonging to one or more quality certification schemes can be grouped into

- (a) **ideas related to the further development of schemes:** encourage mutual recognition of similar schemes; develop one comprehensive scheme that makes all others redundant; involve farmers and producers in scheme development ;

- (b) **ideas related to the certification and control process:** use group certification for small-scale producers; combine audits for different schemes in a single combi-audit package; take scheme participation into account for the purposes of official controls (e.g., for cross-compliance); encourage competition in the certification market to drive prices down; use royalty system to shift costs from small to large producers;
- (c) **ideas related to financial support of scheme participants:** provide subsidies for small-scale producers participating in certification schemes (e.g., through Rural Development or promotion programmes); give tax returns (fiscal incentives) to producers participating in certification schemes; certification of small-scale producers to be done by public authorities (for free); waive certification fees for producers from third countries; make sure that the value added through scheme participation goes to the producers rather than to the certifying bodies;
- (d) **ideas related to information and communication:** inform consumers about scheme benefits so that they are willing to pay higher prices; develop common platform for background farm data to be used by all certification and control bodies; use better IT-programmes; establish online consultation with certification body

Some respondents stated that EU guidelines for certification schemes will facilitate harmonisation and mutual recognition of schemes and thereby reduce costs. However, other respondents felt that the EU has no business in interfering with the costs of these private certification schemes. Since schemes are private, participation is voluntary, and schemes will only survive if benefits are greater than costs. It was also mentioned that downward price pressure among certification schemes can lead to poor inspections and loss of consumer trust.

One respondent pointed out that it will be difficult to mutually recognise the individual quality characteristics of private certification schemes (which can be very different).

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***THIS REPORT COMMITS ONLY THE COMMISSION'S SERVICES INVOLVED IN ITS
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TO BE TAKEN BY THE COMMISSION***

ANNEX A(II): MARKETING STANDARDS

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A(ii) 1. INTRODUCTION

EU marketing standards are regulations that lay down:

- definitions of products, also referred to as ‘product identities’,
- minimum product standards,
- production methods,
- product categories, and
- labelling requirements.

for a significant number of agricultural products and some processed foods.

Other functions of marketing standards, which will however not be taken forward in this report concern¹:

- tools for price reporting,
- eligibility for market intervention measures.

In general, EU marketing standards are designed to facilitate the proper functioning of the internal market and the efficient transfer of products on the domestic or international market. By developing common trading references, trade in products, especially over longer distances, is made easier.

Derived from the general objective, marketing standards may function as a "quality development target" for producers, especially in developing markets. They help establish a quality reputation in an international context as well as providing a tool for obtaining a return on investment when value has been added to products. Standard trading terms also help provide standardised products to the consumer and inform the consumer on product characteristics and/or farming process. Marketing standards are also used to protect consumers from deception and unacceptable practices. For example, the maximum proportion of added water to poultry meat is set in a marketing standard. It is technologically possible to add a much higher percentage of water to poultry meat, which is not a problem from the hygiene and safety perspective, but would mislead consumers.

In most cases, public marketing standards are laid down at EU level. In other cases, national standards exist, as is the case for example for early and ware potatoes².

¹ As marketing standards' prime objective concerns the placing on the market of a product and the fact that market intervention measures are used to a limited extent or are about to disappear.

² Potatoes are only covered in the sCMO with respect to state aid rules. The sector opposes the enforcement of a European quality standard for early and ware potatoes as the potato production

Definitions of certain categories of cheese, and their appropriate labelling, are laid down by CODEX and applied directly by Member States in the EU (without EC regulatory implementation). In addition to public marketing standards, private standards exist. These may be laid down in the context of private quality assurance schemes (see Annex D) or form part of the contractual terms agreed upon by the buyer and seller. In general these private requirements go beyond the requirements laid down in EU public marketing standards.

According to UN/ECE the benefits of marketing standards are:

“The commercial quality standards developed by the UNECE Working Party on Agricultural Quality Standards help facilitate international trade, encourage high-quality production, improve profitability and protect consumer interests.”³

Most EU public marketing standards are laid down in Council Regulation (EC) No 1234/2007 (single CMO); others are laid down in product specific directives, sometimes referred to as the ‘vertical directives’. For an overview of marketing standards, please see Annex I.

Product categories for which marketing standards apply are:

Beef and veal	Cocoa and chocolate products
Coffee extracts	Eggs
Fruit and vegetables, excluding potatoes	Fruit juice
Sugar	Wine
Fruit jams, jellies and marmalades	Honey
Milk	Hops
Olive oil	Poultry
Spirit drinks	Spreadable fats

Sectors covered by marketing standards

The following section provides some background on specific marketing standards for fresh fruit and vegetables, fruit juices, eggs, and veal.

(related to varieties and growing conditions) and the markets (presentation, packaging, ...) are largely differentiated in all EU member states and as the retail sector is defining different quality classes according to the wishes of the consumers

³ <http://www.unece.org/trade/agr/standard/fresh/FFV-Standards.htm>

Fresh fruit and vegetables standards

The first European marketing standards for fresh fruit and vegetables, covering most of the important products (around 20 already) were established in the early 60s within the first Common Organisation of the Market for fruit and vegetables. The marketing standards (at that time called "quality standards") were in fact one of the central element of this first CMO for fruit and vegetables.

They were preceded by national standards in several EU members such as the Netherlands, France, Germany or Italy. In a lot of non EC-founding countries also, marketing standards existed (Spain, South Africa, USA), some even before the start of the XXth Century (for Citrus fruit trade in particular).

They had been already subject to a certain degree of harmonisation/discussion within the framework of 1951 Geneva Protocol on standardization of fresh fruit and vegetables and dry and dried fruit intended for international trade, managed by the UN Economic Commission for Europe (UNECE) (UNECE and in particular the Working Party on Agricultural Quality Standards also covers standards on dry and dried produce, meat, egg products, cut flowers and seed potatoes). OECE and then OECD also interested themselves very early to these issues for facilitation of international trade. The creation in 1985 of a Codex Committee on Fresh Tropical fruit and vegetables, transformed in 1995 into a Codex Committee for fresh fruit and vegetables allowed the development of another forum for international harmonization of fruit and vegetables standards. All these institutions are committed to cooperate and avoid having different standards for the same products.

Main justifications of such marketing standards (as described in the recitals of the Regulation mentioned above) are facilitating trade on the base of fair competition, helping producers to meet consumer expectations and keeping off the market unsatisfactory products, thus contributing to higher profitability for producers.

There are different concrete elements in marketing standards for fresh fruit and vegetables.

*** Definition of product.**

Usually for fresh fruit and vegetables, this is not a complicated issue. In certain cases however, the definition, the delimitation between different fruits or vegetables, delimitation between the large number of hybrids in small citrus fruit, some names with more added value on the market than others may create difficulties. The definition section of marketing standards has also been used to define different types of products of a certain fruit or vegetable (round tomatoes, oblong tomatoes, ribbed tomatoes, cherry or cocktail tomatoes).

*** Minimum requirements**

Standards provide for all fresh fruit and vegetable basic requirements concerning their fair, sound and marketable character, with some variation depending on products: cleanliness, wholeness, absence of decay or other type of deterioration, of pests and of strong pests damage, of unusual smell and/or taste, of other severe defects specific to the products concerned.

For fruits (and some vegetable like tomatoes), maturity should be acceptable, avoiding under-maturity. Many fruit can go on ripening after harvest (so-called climacteric fruit), for example, peaches, kiwifruit, avocados, etc....: in these cases, standards try to define a minimum physiological stage allowing the fruit to properly continue it's ripening process after harvest (including after having been purchased by the consumer). In several cases, objective maturity indexes reflecting these problems have been adopted: minimum or maximum sugar level (e.g. apples, table grapes, peaches, and melons), juice contents (e.g. citrus fruit), acidity level and/or sugar-acid ratio (e.g. table grapes), dry matter (e.g. kiwifruit), etc...

*** Classification & sizing**

Standards for classification in 2 or 3 quality Classes: Extra Class (“superior quality”), Class I (“good quality”) and Class II (above minimum requirements). This “quality classification” is relying on the degree of defects (skin defects, development defect, misshapen, etc...). Compliance with standards implies the products are classified according this “quality classification”.

Standards also provide for means to size fruit and vegetables. Three elements are defined:

The way the size of a certain fruit or vegetable should be sized (diameter, weight, count,...),

the degree of uniformity in size required in the same package, this can be set by a maximum difference between the smallest and the largest fruit in the same package (e.g.: 5mm for Class I apples) or by fixed size scales (e.g.: tomatoes and citrus fruit),

a minimum size and for few cases a maximum size, (e.g.: courgettes and asparagus). Historically, minimum sizes are supposed to reflect a minimum stage of development but the development of other maturity criteria has weakened the justifications for laying down minimum sizes.

Contrary to “quality classification”, sizing is not always compulsory. Many vegetables in particular, as well as Class II products shall usually not be sized.

* Other elements in marketing standards for fresh fruit and vegetables

Marketing standards also provide for some further elements on uniformity of products (products packed together should be of same quality Class, type, origin, and, where appropriate, size and variety). Packages should be clean and fit for the fruit and vegetables concerned. The visible fruit and vegetables in a package should be representative of the full package.

The standards also include some tolerances in terms of quality classification and sizing.

* Labelling

Finally the marketing standards require some elements to be labelled on any package of fruit and vegetables: name and address (or code allowing tracing it back) of the packer, name of product if not visible, quality Class and country of origin. Depending on the products, extra information can be required: type or variety of product where this information is not self-evident from the appearance of the product (varieties of apples, pears, oranges, etc...); size when products are sized, in few cases crop year (when products can be kept long in storage: walnuts), etc...

Reform of the fruit and vegetables sector in 2007

In implementing this 2007 reform, the Commission decided in November 2008 to introduce a general marketing standard (GMS) for fresh fruit and vegetables⁴. This GMS includes minimum requirements and some elements concerning presentation (uniformity, packages) and labelling (including country of origin). Neither quality classification is required under this GMS, nor sizing. However, products in compliance with UN/ECE standards (which remain as before and incorporate all the elements listed above including quality classification and sizing) are considered to be in compliance with the EC GMS.

At the same time, the Commission has repealed 26 specific EC marketing standards on fruit and vegetables out of the 36 existing and maintained the specific marketing standards for 10 families of products (apples, citrus fruit, kiwi fruit, lettuces, peaches and nectarines, pears, strawberries, sweet peppers, table grapes and tomatoes). The 10 families of products represent 75% of intra-

⁴ The general marketing standard covers the 72 fruit and vegetables listed in Part IX of Annex 1 of Regulation (EC) 1234/2007 excluding fruit and vegetables covered by specific marketing standards and non cultivated mushrooms, capers, bitter almonds, shelled almonds, shelled hazelnuts, shelled walnuts, pine nuts, saffron.

Community trade. It should be noted that an eleventh fruit (bananas) is still covered by a specific marketing standard.

This modification also foresees that Member States may exempt from the specific marketing standards, products presented for retail sale to consumers for their personal use and labelled "product intended for processing" or with any other equivalent wording. Controls by Member States of compliance to the GMS and the 10 remaining specific standards have been also simplified, allowing Member States to rely more on assessment of risk of non-compliance in order to target their control activities. This Regulation will apply from 1.7.2009.

Fruit juices

Since 1975 definitions of fruit juices and nectars have been laid down at EC level, justified by the fact that differences between national laws concerning fruit juices and nectars intended for human consumption could result in conditions of unfair competition likely to mislead consumers, and thereby have a direct effect on the establishment and functioning of the common market.

Three main products defined are: « fruit juice »; « fruit juice from concentrate »; and « Fruit nectar ». The directive also includes a list of authorised ingredients, treatments and substances.

At international level, an ad-hoc *Codex alimentarius* taskforce has amended the *Codex alimentarius* standards on fruit and vegetables juices a few years ago.

In Europe, there is a well-organised association of fruit juice producers (AIJN), significantly representative of the sector⁵. This organisation elaborated a code of practice which their members implement and which is regularly updated. This code of practice sets quality requirements and criteria for the evaluation of identity and authenticity of fruit juices. It includes, for example, the minimum brix (soluble solids) levels for the main fruit juices from concentrate, giving clear references for the EU requirement "organoleptic and analytical characteristics at least equivalent".

During the 2007 Reform, the Commission proposed to replace the fruit juice Council Directive by a Commission regulation to introduce the concept of co-regulation and to entrust AIJN with the powers to enact its code of practice. The Council rejected this proposal. The Commission is now in a position where parts of the AIJN code of practice are being proposed as Commission directive amending the fruit juice directive.

⁵ AIJN membership covers the national associations of 16 MS (AT,BE, CY, DE, DK, ES, FI, FR, HU, IE, IT, NL, PL, PT, SE, UK); except CZ, other MS do not have a national association.

Eggs

In 1975 Common Market Organisation for eggs provided for the setting of marketing standards which relate in particular to grading by quality and weight, packing, warehousing, transport, presentation and marking of eggs. Purpose of such standards was to contribute to an improvement in the quality of eggs and, consequently, facilitate their sale: whereas it is therefore in the interest of producers, traders and consumers that marketing standards should be applied in respect of hen eggs suitable for human consumption. Currently, Council reg. 1234/2007 (Single CMO) art 116, 121 and Annex XIV, and Commission reg. 589/2008 provide for marketing standards for eggs at the EU level.

The main functions of the standard are: 1. facilitate trade; 2. set size classifications; 3. provide basic information to consumers; 4. reserve value-adding terms

1. Definition of the product qualities to facilitate the trade on the internal and international markets (A and B eggs). Eggs are classified in 2 categories A and B, depending of certain parameters, which are based on international standards (UN-ECE). Only A eggs can be commercialised as "table eggs", B eggs can be used by the industry as egg products only. For A eggs the denomination "extra" or "extra fresh" can be used on a voluntary basis up to the 9th day after eggs are laid.

2. Size classification:

A eggs are classified by weight in 4 categories. This classification allows comparisons between comparable products on the EU market and producer prices may be very different between categories of size.

Example of price quotation by size on the German market (05.02.2009).

	<i>weight</i>	<i>€/100 pieces</i>
XL	>73g	11.40
L	>63g / <73g	10.20
M	>53g / <63g	9.50
S	<53g	5.80

Such classification and comparison between comparable products also allows the Commission to follow prices trends in the EU. Price reporting system provides that on a weekly basis, Member States communicate the "selling price in packing stations for eggs in class A from caged hens, being the average of categories L and M". Without having such obligatory classifications and compulsory price reporting, it would be difficult for the Commission to have the data to be able to follow price and market trends.

3. Providing information to consumers (methods of production, durability, etc.).

Indication of the method of production (defined precisely and based on animal welfare parameters) shall be labelled on the eggs (code) and the pack (wording). The 4 denominations on farming method to be used are exclusive:

<i>code</i>	<i>wording</i>
<i>(on egg)</i>	<i>(on box)</i>
0	"Organic"
1	"Free range"
2	"Barn"
3	"Cage"

Producer prices also differ depending of the farming method since eggs value on the retail market is different. Table eggs imported from third countries that are produced under equivalent farming methods may be labelled using the same indications of farming method. Alternatively, the expression "non-EC standard" shall appear on the pack, and an indication that the farming method is "not determined" on the egg.

Indication of origin appears through the ISO code included in the producer code on the egg.

4. Protect value-adding terms. This allows products which have particular characteristics or attributes to be distinguished from standard production (e.g. "free range"). Production costs are substantially different depending of the farming method. Since the indication of the farming method is mandatory, and the reserved terms are exclusive, consumers can easily select the value-added product and at the same time they are less likely to select the standard product by mistake since it too must be labelled ("cage"). In this way the marketing standard aims at guaranteeing a fair financial return to the producer of the value-added product.

Veal

Until recently, the production and marketing of the meat of bovine animals aged twelve months or less varied depending on the Member State. Essentially, two major types of production system exist. In the first, the animals are fed mainly on milk and milk products and are slaughtered, generally at around six or seven months. In the second, the animals are fed almost exclusively on cereals supplemented with fodder, and are slaughtered at an age of ten months and above.

The first type of production system exists in almost all the Member States, but has developed in five of them in particular (FR, IT, NL, BE and DE). The second, on the other hand, is known and has developed in only a small number of Member States, mainly NL, DK and ES.

Meat produced under these two systems was generally marketed under one single sales description, at least on the main consumer markets in the Community. No reference was made to the type of feed received by the animals or their age at the time of slaughter.

Experience showed that this practice had a direct effect on the establishment and functioning of the single market: ex slaughterhouse, there were price differences of about EUR 2 to EUR 2.50 per kg between meats produced under the two systems.

This practice also caused confusion for consumers as regards the actual characteristics of the product they were buying. After several years of discussions between the different stakeholders, it was very difficult to find a compromise.

Finally, at the beginning of 2007 the Council agreed a compulsory labelling scheme for veal in two categories, meat from animals of 8 months or less (Category V), and meat from animals of 8-12 months (Category Z). Member States have chosen specific terms for the two kinds of meat, according to the custom, consumer expectations and specificities in each market, e.g. for category Z, the meat is labelled 'jeune bovin' (BE and FR), and 'jongrundvlees' (BE) and 'beef' (UK), but 'rosé kalfsvlees' (NL) and 'rosé veal' (EI). Thus, the marketing standard assures that the product categories are harmonised throughout the EU while it is sold to final consumer using the respective national terms.

Examples of marketing standards for certain processed agricultural products covering the composition, quality and production method include the following:

Wine

'wine' can only be produced from grapes and produced in accordance with approved oenological practices; imported wine must comply with practices approved in the EU or by the OIV, which sets the international standard.⁶

Chocolate

The definition and composition of product labelled as chocolate was the result of protracted discussions within the EU owing to differences in consumer expectations and differences in manufacture in different Member States. As a result, 'chocolate' has a defined product identity, which permits the inclusion of up to 5% of certain vegetable fats other than cocoa butter – which must be indicated on the label. Various other designations of chocolate are defined, including 'milk chocolate', for which special labelling provisions apply in three Member States. The chocolate directive, which took some 30 years of negotiations, shows how difficult it can be to agree product identities for processed products applicable throughout the EU.⁷

Milk

Drinking milk rules were revised in 2007. Formerly, drinking milk could only be sold in three categories according to fat content: milk with a fat content falling between two classifications could not be sold. However, in the ten new Member States a series of specially negotiated derogations applied for their home market based on their domestic situation at the time of accession. In 2007 this was changed to allow the sale of all drinking milk, EU-wide, whereby milk with a fat content between the compulsory designations must indicate the percentage fat content.

<i>fat content of drinking milk compulsory indication (equivalents in each language)</i>	<i>Marketing until 2007</i>	<i>Post-2007</i>
	at least 3.5%	
1.8%-3.5%	whole milk _____ whole milk (only in certain Member States with derogations) % fat	
	at most 1.8%	
at least 1.5%	semi-skimmed milk	semi-skimmed milk
0.5-1.5%	(only in certain Member States with derogations) % fat	
not more than 0.5%	skimmed milk	skimmed milk

⁶ Regulation (EC) No 479/2008.

⁷ Directive 2000/36/EC of the EP and of the Council relating to cocoa and chocolate products intended for human consumption.

International aspects of marketing standards⁸

Through its *Scheme for the Application of International Standards for Fruit and Vegetables*, the OECD facilitates the adoption of quality standards to present production, trade and marketing conditions, promotes uniform quality control procedures and disseminates quality assurance guidelines. The OECD applies the UN/ECE fresh fruit and vegetable standards to the 47 products listed below.

These international standards are designed for products moving in international trade between and to UN/ECE or OECD member countries. They are intended for application at the point of dispatching control. Of these UN/ECE fresh fruit and vegetable standards, there is no EU equivalent for bilberries and blueberries, early and ware potatoes, raspberries, rhubarb, Chinese cabbage and broccoli.

⁸ See ADAS Consulting Limited and the University of Reading

Annonas, Apples and pears, Apricots, Artichokes, Asparagus, Aubergines, Avocados, Beans, Bilberries and Blueberries, Broccoli, Brussels sprouts, Headed Cabbages, Carrots, Cauliflowers, Chinese Cabbages, Cherries, Citrus fruit, Cucumbers, Courgettes, Cultivated mushrooms, Edible sweet chestnuts, Fennel, Fresh figs, Garlic,	Horse-radish, Kiwifruit, Leeks, Lettuce and endives, Mangoes, Melons, Onions, Peaches and Nectarines, Peas, Plums, Potatoes, Early, Ware, Seed, Radishes, Raspberries, Ribbed celery, Rhubarb, Scorzonera, Spinach, Strawberries, Sweet peppers, Table grapes, Tomatoes, Watermelons, Witloof chicory.
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OECD and UN/ECE fruit and vegetable standards

A(ii) 2. PROBLEM DEFINITION

2.1. Problem identification

In addition to the benefits of EU marketing standards, a number of potential difficulties are also apparent. These potential difficulties may be grouped in two categories – process related and content related.

Process related potential problems refer to difficulties resulting from the procedure that is followed to establish EU public marketing standards:

- An asynchronous development between EU public marketing standards and market trends, which may lead to lack of flexibility in operation and prohibitions on the retail sale of innovative or sub-standard, but safe and hygienic foodstuffs⁹;
- Farmers and producers are confronted with various rules on farming methods and standards from other sources, public or private, that vary, overlap and in cases may be duplicative.

Content related potential problems refer to difficulties that result from the actual content of EU marketing standards, the product requirements, compliance and control duties:

- Complying with EU marketing standards requires efforts from farmers, packers, processors, even if the farmer does not want to make use of specific elements of the marketing standard, as they are compulsory;
- Controlling and enforcing EU marketing standards is burdensome and costly for Member State authorities, whereas at the same time private controllers, in the context of private quality schemes or hired by retailers, may also carry out controls
- Inspections on compliance with EU marketing standards is burdensome to operators (farmers, packers, processors, traders, retailers)¹⁰;
- Unintended side effects of obligatory regulation: see box.

Is the marketing standard favouring unblemished responsible for pesticide use?

Some stakeholders are concerned that pesticides may be used in order to perfect the visual appearance of fruit and vegetables (see for example, "The hidden price of cosmetics" (Friends of the Earth 2002)¹¹. The accusation is that pesticides are used in

⁹ See ADAS Consulting Limited and the University of Reading, an economic evaluation of marketing standards – horticulture and eggs, May 2003, page viii: "Marketing standards can have side effects. By removing from the market produce which is fit for human consumption, they can reduce supplies in the short term even though there are no overall shortages. They also unnecessarily restrict consumer choice in those situations where the quality criterion is effectively cosmetic rather than organoleptic". Also, same study, page 19: "Marketing standards and grades may inhibit product innovation and the extent of variety and novelty in a market."

¹⁰ Commission working document COM(2009)16; "Reducing Administrative Burdens in the European Union Annex to the 3rd Strategic Review on Better Regulation" identifies that: "in a majority of priority areas, "cooperation with audits and inspections by public authorities" is the most expensive activity for businesses; such cooperation often mobilises highly qualified staff for a fairly long time".

¹¹ http://www.foe.co.uk/resource/briefings/supermarket_british_fruit.pdf and http://www.foe.co.uk/resource/briefings/pesticide_supermarket_food.pdf

circumstances where they are not needed for, say, plant health reasons. Blemishes in fruit may be a consequence of disease that needs to be treated for the health of the plant and the crop. However, more difficult is to determine whether farmers are using the pesticides to meet consumer demand for unblemished produce or whether it is only to meet a marketing standard. The Friends of the Earth document refers to retailer demands that go beyond the EU marketing standard, which points to consumer demand or at least retailer interpretation of consumer demand. In the organic sector, some effort is put into educating consumers that they should expect small blemishes and imperfections in produce as a positive characteristic¹². This also supports the case that retailer/consumer demand rather than the standards are behind the drive for perfect-looking produce.

The **core problems** on which the impact assessment will focus are:

- The asynchronous development of EU marketing standards and market trends as a result of a time consuming and often cumbersome process of updating and modernising EU marketing standards.
- The efforts that have to be made by farmers, operators and Member States' authorities to comply with, implement and enforce EU marketing standards.

2.2. What are the underlying drivers of the problem?

The underlying drivers of the problem are:

- With constantly changing market conditions and consequently evolving consumer demands, markets face an increasing trend toward differentiation of products.
- Within this dynamic market place and its increasing trend toward differentiation farmers, producers, operators face multiple sets of rules and requirements, stemming from different sources; public and/or private.
- The decision-making structure for adapting EU marketing standards is time-consuming and often cumbersome. It is therefore difficult to ensure in parallel adaptation of marketing standards to the latest market developments.

2.2.1. Market conditions

Market conditions change as a result of many factors. These include financial, energy and economic issues as well as environmental and societal influences. They have an effect on the supply and demand side, on producers and consumers. Examples of changing market conditions and trends include the increased search for low priced products during times of a financial downturn, consumers looking for environmentally friendly produced food or products whose production and distribution generates a low carbon footprint.

¹² http://www.ifoam.org/growing_organic/1_arguments_for_oa/criticisms_misconceptions/misconceptions_no19.html

Consumers are on the lookout for products that meet their changing and developing requirements. Evolving market conditions and drivers have an impact on operators, as operators try to anticipate these developments and differentiate their product from that of competitors, whilst responding to these changing market conditions. Such differentiation may result in different packaging, quality, size, shape or colours of products. Suppliers may respond to evolving market demands from consumers but may just as well try to develop a new trend via the introduction of a new and different product.

2.2.2. *Multiple sets of rules*

Farmers and operators face demands, product requirements from different sources, private or public, which may apply to some products and not to others. The requirements are sometimes overlapping and may in other respects be duplicative. This maze of rules can lead to duplication of efforts, as for example is the case with controls. These may be carried out by more than one official control authority – one to control application of the marketing standard and a separate body to inspect application of hygiene and safety rules. In addition, private control services (such as certifiers) may need to control compliance with private standards. A grower or cooperative may have to cooperate several times with controllers visiting his premises, for public and for private control purposes.

Other examples to illustrate the various rules an operator may face are measures related to the identity (generally concerning its method of production) or to labelling, not regulated in marketing standards but in horizontal rules. These horizontal rules also apply to products subject to marketing standards and concern for example rules on labelling of net weight or date of minimum durability, on the possible use of additives, etc.

2.2.3. *Decision making structure*

At the moment, updating of specific EU marketing standards is a cumbersome and time consuming process, which results in a regulatory framework that lags behind market innovation and consumer demand. Where the rules are obligatory terms, in that the operator has no alternative (such as not labelling the product), the effect will be more significant than where the marketing standard rule is optional. This asynchronous development may be an incentive for private parties to develop standards that go beyond public standards. However, if the rule is obligatory, the public standards may obstruct the placing on the market of non-conform but safe and hygienic product.

In addition, the implementation of, the practical follow up to changes in the regulatory framework takes time and may go together with costs for growers and producers, for example with regard to changes that affect labelling.

Since the first adoption of EU marketing standards, the number of Member States, the geographical area but also the marketing "landscape" has grown and developed. With a varied market situation, consumer preferences, climatic conditions and production structures it may now take longer to find common ground on EU marketing standards.

2.3. Who is affected, in what ways and to what extent by the problem?

Several economic parties are affected by these problems: The first party concerned are farmers. They produce food products and ingredients for retail and for the processing industry that have to comply with applicable marketing standards.

Other parties affected by marketing standards are found upstream, trading companies, food processors, retailers and consumers.

Finally, administrations are affected as they are involved in developing and enforcing the correct implementation of marketing standards.

2.3.1. Farmers, first processors and packers

Farmers are affected in the sense that they deliver products that respect requirements set by trading partners as well as marketing standards. This conditions their production process and farm management. Marketing standards therefore have an important effect on the output delivered by a farmer in terms of quantity and quality as well as on the income generated by the farmer's products.

Process

From a farmer's or operator's perspective, marketing standards may prevent the placing on the market of a product that is new, innovative but for which EU marketing standards have not made provision yet. Alternatively, the marketing standard may prevent the retail sale of products that are basically safe to consume but do not correspond to the minimum quality requirements laid down in the EU marketing standard.

For example, in the fresh fruit and vegetables sector, depending on the crops and the possibility to easily process them, products in theory fit for consumption but not complying with the standards are not-harvested or sent to waste. The proportion of such fruit can be minimal (cases of not very perishable and easy to process fruits such as citrus fruit and apples) or represent up to 10% of the total production for products difficult to process or more perishable (carrots, cauliflower)¹³.

In the egg sector, approximately 5-6% of eggs do not comply with the conditions for class A, table eggs. These eggs may then be classified as class B and are destined for use by the industry.

In their daily activities, farmers and operators may be confronted with a wide set of requirements. Requirements laid down in EU marketing standards, contractual requirements that have been agreed upon and which may vary between buyers as well as conditions set out in private certification schemes, to which farmers/operators have signed up. These various requirements may be complementary, additional or contradictory and may lead for example to an operator having to install several, different processing lines in order to be able to comply with these various conditions.

¹³ An example provided by a British retailer states that up to 15% of its harvested carrots and up to 20% of its harvested onions that are safe to eat but go to waste as they are not in compliance with the requirements set out in EU marketing standards and may therefore not be placed on the market.

Content

Farmers incur costs and have to make investments in order to comply with EU marketing standards. An example for compliance costs concerns the costs associated with sizing and grading of products. This is done via the use of grading machines (representing an investment) that require an operator (personnel costs). According to a 2003 study,¹⁴ the average costs of preparation for the market, including sorting, packing, labelling and quality control is estimated to be 26% of annual sales. That same study estimates that the costs to businesses of rejection/downgrading of produce due to produce not meeting the requirements of the official marketing standards is less than 1% of sales. Even in the absence of obligatory marketing standards, farmers and packers will choose to grade their products if and as required by the market.

What's more, mandatory changes in policy can also lead to additional costs for farmers/operators as the changes may require for example the design and printing of a new label.

In most Member States, inspection is free-of-charge for operators, where the cost is covered for by the administration at national level (UK, FR) or regional level (ES). Globally, in the case of fruit and vegetables and eggs in the UK (ADAS evaluation study), the total inspection costs is estimated to represent around 0.1% of the total turnover of the sectors concerned.

Farmers and packers incur costs for respecting standards, cooperating with inspections (administrative burden). In some Member States, they contribute directly to the costs of controls, when these are carried out on demand. Such is the case in the Netherlands for example, where costs associated with inspections on imported/exported products are charged to the operator.¹⁵

Stakeholders say:

- public controls are often bureaucratic and take a lot of time
- enforcement of (parts) of marketing standards reduces administrative burden as otherwise each business would draw up separate specifications.
- procedures should be simplified and the costs lowered. Control could be transferred to self-control.
- EU standard requires resources and difficult to fulfil by small operators and is to the disadvantage of small and medium sized enterprises.

2.3.2. *Food processors and retailers*

Process

¹⁴ ADAS Consulting Limited and the University of Reading, an economic evaluation of marketing standards – horticulture and eggs, May 2003.

¹⁵ See: www.kcb.nl; Costs consist of a basic annual registration fee of 60€ a start-tariff for each inspection of 45,45€ and a further tariff of 1,42€ per minute

Food processors and retailers in most cases require their supplies to comply with standards which go beyond the requirements laid down in marketing standards or, in other cases, these private standards function as complementary conditions. Official marketing standards may form the basis of private requirements. For enterprises without sufficient reach to impose their private standards, recourse to EU-level and indeed global standards, should facilitate trade.

With regard to retailers, the ADAS study states:

The EU standards were acknowledged by all large retailers as having played a significant role in improving the quality of produce on the UK marketplace in the past. The standards formed part of the basis for development of all of the major retailer's own product specifications, which now cover supply to these outlets. However, while the largely cosmetic quality criteria covered by the standards remains important, the retailer specifications also include a wide range of other quality and presentational criteria which are not included in the EU Standards, e.g. taste, texture, shelf life, specific packaging requirements and so on.

All of the representatives of the national multiples stated that the EU Standards do not add anything to their own specifications, having no impact on quality, availability, range or price of produce on offer. They did not believe that they would encounter any problems in quality should the Standards be withdrawn immediately, even for imported product. This is a result of the direct supply arrangements which are in place even for relatively minor lines.

The smaller, regional retailers also have detailed crop specifications in place for their major product lines. However, they are currently more reliant on the EU standards for minor lines, particularly for imported product, where sourcing may be carried out through an intermediary and there is no direct contact with the producer. The standard may therefore currently form the quality base line for any purchase of unseen product.

None of those interviewed believe that product lines covered by the Standards are of any better quality than those for which no Standards exist, or that there was any difference in return to the producer or in price to the consumer between the two types of product (only between 50% and 60% of produce sold is currently thought to be covered due to the exclusion of 3 major lines - potatoes, bananas (at retail level) and broccoli). They strongly believe that, if the Standards are to remain in place, they should apply to all fresh produce. However, the preferred alternative is that they should be removed completely. The current position is potentially confusing to all involved in the chain, including, most importantly, the consumer.

The Standards are now seen as one of the least important factors in maintaining and improving fresh product quality, lagging well behind consumer demand, retailer specifications, food safety legislation and production industry codes of practice.

Abolition of the Standards would have no impact on the quality or availability of product in the multiples and, following a potential small cost to write or rewrite some of their crop specifications, the only financial impact on the retailers would be a small positive one due to reduced loss of staff time.

Content

Costs for verifying compliance with marketing standards is associated with value of production. To illustrate, in the honey sector these costs may amount to around 40€ per metric ton.

Stakeholders say:

- the current legislative approach is appropriate

2.3.3. *Consumers*

Process

In the present situation, marketing standards may deny consumers the opportunity to purchase products that are sound and safe but do not meet the requirements laid down in marketing standards. For example, it was until recently difficult for consumers to purchase cooking-grade fruit on the retail market.

The above not only applies to blemished or odd-looking products, but also to innovative products. Marketing standards will limit the range of products consumers can choose from.

Moreover, the various information elements and terminology on a label a consumer is confronted with may be confusing. It is not clear what the relation is between the various "messages", whether they concern the same issue, are they complementary etc.

Content

Consumer does not seem to be affected.

The ADAS study states:

From a consumer standpoint, there was not felt to be a rationale for the involvement of a government inspectorate except to monitor/control food safety risks. They felt that the market could function fairly through consumer choice rather than regulation. There was some indignation that there are inspectors for minimum quality standards. Little value was placed on the Class I and Class II system. Given a government inspectorate, they saw no harm in paying for it as taxpayers, since they believed that any costs in the marketing chain find their way to the end-consumer anyway

Stakeholders say:

- From the consumers' point of view, uniform EU legislation is advantageous.
- Il y a déjà trop d'information sur l'étiquetage des produits.

2.3.4. Public authorities

Process

Public authorities are first of all concerned as marketing standards are laid down by the legislator. In addition, there are several international intergovernmental forums where marketing standards are discussed and where the EU and/or the Member States are represented (in particular *Codex Alimentarius*, but also for specific commodities UNECE, OECD, OIV, IOC, etc...).

Content

Secondly, the enforcement and control on the respecting of marketing standards is a role mainly carried out by public authorities, which have to allocate, at national and/or regional level, the necessary resources for this task. To illustrate, in England and Wales a staff of approximately 93 is engaged in the development and enforcement of standards in the horticultural sector, which costs about GBP 3.2 million per year¹⁶.

Stakeholders say:

- Public controls are often bureaucratic and take a lot of time.
- A simple and effective inspection system is necessary
- Marketing standards can be controlled by private parties under supervision of the public authorities.

2.4. How would the problem evolve without a change in policy?

Without a change in policy the existing situation would continue, that is ad hoc development of EU marketing standards, applied largely obligatorily.

With regard to the regulatory aspect, as in the past, public marketing standards will continue to trail commercial practices, therefore needing a constant updating. Moreover duplication of efforts, in particular as a result of the existence of commercial standards will continue.

2.5. Does the EU have the right to act?

Marketing standards are currently laid down within the framework of the Common Organisation of the Market for a good number of products by the EU. In order to change or continue the existing situation the EU should take action or decide to refrain from taking action.

¹⁶ ADAS Consulting Limited and the University of Reading, an economic evaluation of marketing standards – horticulture and eggs, May 2003, page vi.

The Treaty foresees that a common organisation of the market in agricultural products shall be established in order to attain the objectives set out in Article 33.

A(ii) 3. OBJECTIVES

3.1. General objective

To improve the functioning of the market in agricultural products¹⁷;

To find an appropriate and clear (set of) instrument(s) that will enable setting the conditions for a smooth disposal of agricultural products. This/these instrument(s) should create a common language for market partners; ensure a clear mutual understanding between buyer and seller. Moreover, the (set of) instrument(s) should enable the producer to receive a reward for adding value to a product and provide accurate information to the consumer. At the same time this (set of) instrument(s) should be clear and simple and reduce burdens to farmers whilst not hindering the placing on the market of sound and safe products.

3.2. Specific objective

Building further on the distinction between process (development of marketing standards) and the content of marketing standards.

Process:

- To promote flexible employment of marketing standards, which keep up with changing market conditions.

Content:

- To reduce burden for compliance with EU marketing standards for farmers and operators;
- To maintain a certain minimum level of quality in the market place which may function as a quality development target.
- To establish terms of reference for buyers and sellers, which allow producers to obtain a fair return for value added products.
- To Reduce the control burden on public authorities and the burden associated with controls on farmers and operators.

A(ii) 4. POLICY OPTIONS

The policy options presented below are divided in two different types. The first type of options concern the process, the way marketing standards are developed. Options one to seven fall into this first process-category.

¹⁷ Products listed in Annex I, mainly

The second type of policy option concerns the content of marketing standards. In this case, option 8, which is the policy option on reserved terms.

The policy options in the process category are considered as mutually exclusive. It is however possible to apply option 9 on reserved terms in combination with one or more process policy options.

4.1. No EU Action

Taking no EU action with regard to marketing standards actually means a complete removal of marketing standards from Community legislation and all the tasks associated with the implementation and enforcement of the EU marketing standards.

Consequently, the basis on which the sale of sound and safe products may have been prohibited will no longer apply. Moreover, the regulatory environment on standards and product requirements will become less complex.

Without EU marketing standards, public terms of reference disappear at an EU level. In practical terms, traders may make reference to internationally agreed standards in the absence of EU standards.

In the absence of community marketing standards, it is not excluded that Member States develop national, divergent marketing standards. This would have substantial negative effects on the functioning of the internal market.

Another consequence is that the already existing private requirements will take over the role of EU public marketing standards. This is certainly the case in markets where a substantial volume of produce is sold via retailers.

Finally, doing away with public EU marketing standards also has as a consequence that there is no longer a need for controls and inspections, thereby reducing the burden to national authorities. It also reduces the administrative burden to farmers and operators, as they no longer have to comply with public marketing standards and no longer have to cooperate with audits and inspections for EU marketing standards.

4.2. International standards

In this option, EU laws (and producers, traders and retailers) could simply make reference to internationally agreed standards instead of developing EU specific marketing standards. It could for example be foreseen to refer in Community legislation to internationally agreed standards that have been developed by UN/ECE. A recent example of referring to internationally agreed standards, in this case it concerns methods of analysis can be found in the wine sector. In the wine reform it was decided that the methods of analysis determining the composition of products shall be those recommended by the International Organisation of Vine and Wine (OIV).

In a sector without public EU standards, the potato sector, international UN/ECE quality standards for early and ware potatoes are used as a guideline for minimal standards for early and ware potatoes by the potato trade. Referring to international standards in

Community legislation has as an advantage that these standards are widely agreed, also with third country trading partners.

A drawback of making reference to internationally agreed standards is that these standards are available in the languages in which they have been adopted (English, French and Russian, in the case of UN/ECE standards) and not all Community languages. This may place certain farmers, traders and operators in a disadvantaged position.

Also, developing discussing and deciding upon standards at an international level requires participation and allocation of staff resources of the associated members.

Finally, on an international level, with a large number of participants, covering a large market with possibly a wide variety of product characteristics and market developments, finding common ground and agreement on standards may be a time consuming process.

Stakeholders say:

- Making direct reference to international standards would facilitate international harmonisation and reduce emergence of 3rd countries standards, however they may be too general and not address regional specificities.
- Codex and UNECE could be relevant even if Codex can be very bureaucratic and favour imports and not exports.

4.3. EU marketing standards

4.3.1. Status quo

In this option, the existing provisions on EU marketing standards will continue to apply.

Maintaining a status quo will mean that the lack in flexibility in operation will continue to exist. Safe and hygienic foodstuffs will be banned from being placed on the retail market. Farmers and operators will continue being confronted with all kinds of rules including the potential duplication of efforts.

What's more, the level of administrative costs arising from EU legislation will remain unchanged.

At best the system will not deteriorate, at worst it will lead to increased difficulties. In case of an increased rate of changes of market conditions, marketing standards may become obsolete quicker.

Stakeholders say:

- Maintaining the current status is the optimal solution.
- We only agree with the current legislative approach.
- Keep current approach for the benefit of both producers and consumers. Stakeholders should be more involved in the decision making process.

4.3.2. *Simplification*

Simplification of marketing standards means a harmonisation of standards where possible. When simplifying marketing standards, elements that are shared by some marketing standards can be harmonised, obsolete provisions may be removed and the legal act(s) will be drafted in line with the latest legal drafting principles; all with a view to simplify and render the legal framework more transparent.

In this option, neither the process nor the content related difficulties will be substantially addressed. Simplification allows primarily for a more transparent and coherent legal framework.

Derived from that, whilst harmonising the policy framework, it is not excluded that beneficial changes may be made for example with regard to control arrangements, which could result in a reduction in burden associated with them, both for controlling authorities, as well as for farmers and operators.

Stakeholders say:

- La recherché d'une simplification et d'un allégement des mécanismes ne doivent pas être le prétexte d'une dérégulation qui déstabiliserait les marchés.
- In the framework of European legislation, a simplification of the path of adoption and modification of the standards would be desirable.
- Procedures should be simplified and the costs lowered. We also feel that control could be transferred to a so-called self control.

4.4. **Co-regulation**

Co-regulation is the process whereby a Community legislative act entrusts the attainment of clearly defined objectives by the legislator to parties which are recognised in the field such as economic operators, the social partners, non-governmental organizations, or associations. For marketing standards, the legislator would concentrate on the essential aspects of the legal act, whereas representatives of the parties concerned would be asked to complete the legislation and lay down the technical data and specifications on the basis of their experience.

This approach implies setting a regulatory framework in which the deadlines and mechanisms for implementation, the methods of monitoring the application of the

legislation and any sanctions are set out. The legislative authority also determines to what extent defining and implementing the measures can be left to the concerned parties. Such provisions, for example sectoral agreements, must be compatible with Community law and must be in the interests of the public.

Co-regulation must be transparent. Members of the public must have access to the act and to the implementing provisions. Sectoral agreements and means of implementation must be made public in accordance with arrangements that have yet to be defined. The parties concerned must be considered to be representative, organised and responsible by the Commission, Council and European Parliament and must be recognised in the field.

Co-regulation combines the advantages of the binding nature of legislation with a flexible self-regulatory approach to implementation that encourages innovation and draws on the experience of the parties concerned. A drawback is the need to set up monitoring arrangements.

Co-regulation shares the advantage with self-regulation that policy is made, implemented by practitioners close to what is actually happening in the market. The procedures for drafting standards can be simpler and allow more flexibility and faster adjustment in a dynamic market environment.

Co-regulation is associated with costs for stakeholders as they are involved in drafting the legal framework.

In addition, when applying co-regulation, a certain level of organisation of the sector is required. In case the sector has a high level of fragmentation, co-regulation may be difficult to achieve. At best it is an incentive to develop certain structures and ways of cooperation by the sector.

In practical terms, co-regulation seems to have found limited use and a "tension" with competition policy exists¹⁸ as "such arrangements can only be effective if the sector concerned is more or less covered by a small number of identifiable actors who can represent the sector vis-à-vis the authorities and ensure implementation of the agreements".

Stakeholders say:

- Co-regulation is important for product identity and can be used for creating obligatory marketing standards.
- The advantage of co-regulation would consist in the higher relevance for the practice. Disadvantage results from the higher burden for operators in the chain.
- The public should be consulted prior to adoption.
- There could be different approaches: co-regulation for new innovative products, marketing standards with simplification, for others, respecting international standards.
- It would not guarantee enough controls.

¹⁸ See "Alternative Methods and EU Policy-Making; what does "co-regulation" really mean?" by Dr Edward Best, in EIPASCOPE 2008/2

4.5. Self-regulation

The operators in the sector concerned can be entrusted to lay down and monitor marketing standards, including product identities, product classifications and reserved terms. Where international standards exist, these can simply be used by producers and traders in commercial transactions.

Traders and business people in a particular sector can take the initiative themselves to develop reference standards or codes of practice. This process is known as self-regulation. Self-regulation does not involve a legislative act.

The ability to use self-regulation largely depends on the existence of bodies and processes to support self-regulation, including the building up of consensus amongst market players on the contents and the monitoring of enforcement.

Self-regulation may provide greater speed, responsiveness and flexibility as it can be established and altered more quickly than legislation. It may therefore be preferable in markets that are changing rapidly.

Self-regulation needs to be an open and transparent process as it may provide an opportunity for collusive arrangements amongst rivals. In some cases however self-regulation may prepare the ground for industries to abstain from competing and to coordinate their actions to fence off competition by newcomers to the disadvantage of consumers. This could also be true for liberal professions characterised by a high level of self-regulation by professional bodies. Price fixing, recommended prices, advertising regulations, entry requirements, reserved rights and rules governing business structure and multi-disciplinary practices enacted by such bodies may indeed be restrictive and harmful for consumers.¹⁹

Costs for public enforcement are low, as any disputes are resolved between the parties concerned, e.g. by arbitration. Self-regulation has the advantage that policy is made, implemented and enforced by practitioners close to what is actually happening in the market. The procedures for drafting standards can be simpler and allow more flexibility and faster adjustment in a dynamic market environment. At the same time, the technical regulations are only applicable to those businesses that have undertaken to respect them (also referred to as "inter pares" arrangements, or arrangements between signatory parties).

Free riders may benefit of the general reputation of the sector without fully respecting the rules laid down. This may potentially endanger the self-regulation approach and its expected results.

The Commission is required to scrutinise self-regulation practices in order to verify that they comply with the general provisions of the EC Treaty and to report on the fact they are, or not, satisfactory in terms of representativeness of the parties concerned.

¹⁹ See the Commission's report of 9 February 2004 on competition in liberal professions; http://europa.eu.int/comm/competition/liberal_professions/final_communication_en.pdf.

Stakeholders say:

- Self-regulation is drafted by all economic actors in the food chain in an equitable and transparent way. Implementation and control of marketing standards through self regulation should be adequate, comparable and compatible with EU legislation. Self-regulation would be preferable to legal norms.
- Self-regulation should only be attempted by properly constituted representative bodies.
- It could be allowed only on a case by case basis, for example only in the case of direct sales by farmers to consumers.
- It would add costs to enterprises.
- It could be only for additional requirements, for very specific products or in areas not regulated by the EU or by international standards.
- Few actors would be involved and as the power in the food chain is not balanced enough due to conflicting interests, the strongest actor of the food chain would impose its rules to the other actors.

4.6. Replacement of product specific EU marketing standards, by a general base standard

This policy option foresees the replacement of all specific EU marketing standards by a general base standard.

It would mean a complete removal of specific marketing standards from Community legislation, as has been done for 26 marketing standards in the fruit and vegetables sector.

According to the ADAS study:

- Horticultural traders considered the EU Marketing Standards to have less effect on the quality of fresh produce than retailers' demands, consumers' demands, competition from imports, food safety legislation and the industry's own voluntary codes/standards.
- The costs of the official standards were generally less than 1% of firms' sales. 85% of businesses in the marketing chain would make no changes if the standards were abolished.

This first step of removing specific marketing standards would be accompanied by laying down a general standard, applicable to all products. This will avoid the need (or the legal possibility) for Member States to introduce stricter, national rules, which could lead to a fragmentation of the single market.

As a result of introducing a base standard, the reason for which the sale of sound and safe products may have been prohibited will no longer apply. In the fruit and vegetable sector, a general standard was introduced, requiring products to be to be sound, fair and marketable, as well as indicate the country of origin. The general standard also specifies

that products in compliance with UN/ECE standards (which remain as before and incorporate all the elements listed above including quality classification and sizing) are considered to be in compliance with the general base standard.

The number of requirements faced by farmers and operators will be reduced as a result of the abolition of product specific EU marketing standards.

In this option it is likely that compliance costs for operators will be reduced. It will also reduce control costs, as controls will only address the base standard and not the detailed requirements laid down in product specific marketing standards.

The absence of specific public standards will not automatically mean that there are no standards at all. The standards and requirements presently in use by the private sector will continue to exist or be further developed, and they will continue to be able to refer to the international standards and apply them on a voluntary basis.

Stakeholders say:

- Minimum marketing standards must be set at EU level.
- Recent reform of fruit and vegetable standards is a good example.
- If there is compliance with common, general standards of hygiene and product safety, the marketing standards can be left to self-regulation.

4.7. Combined approach

Under the New Approach to the regulation of standards for non-agricultural products, voluntary standards have proved to be efficient to ensure the free circulation of products in the Single Market, whilst providing a level playing field for interoperability, safety, security, environmental protection and quality. The basis of the New Approach is to place the essential requirements or base standard in legislation (as in Option 4.6) and technical specification in standards agreed by industry using self-regulation (Option 4.5) or co-regulation (Option 4.4).

For industrial products, compliance to standards provides a presumption of conformity to legislation and in particular safety legislation. However in the agricultural sector, safety and hygiene is regulated under an entirely separate structure, based on the General Food Law (“farm to fork”). Not only should marketing standards not cut across the GFL legislation, but greater coherence, for example in the matter of controls, is desirable. Nevertheless, within the scope of agricultural product marketing standards, the New Approach model is worth examining further.

The system's credibility is based on the following:

- Flexibility: as it leaves it to public authorities to intervene only where public action is necessary (legislation), whilst voluntary technical standards are agreed amongst stakeholders (farmers, consumers, retailers, etc.)
- Better regulation principles: reducing legislation to the minimum base standard decreases administrative burden, allowing stakeholders to decide themselves voluntarily on further rules;

- Coordination with international standardisation: Provided the technical standard-setting bodies have the capacity, they can develop relations with international standard setting bodies, such as UN/ECE and ISO, promoting the development of common standards at European and international level ;
- Commitment: since standards are developed by stakeholders, i.e by those operators who will implement those standards,
- Transparency: as all stakeholders have a say in the standards development process, either during discussions in committees or during public enquiries performed in all Member States on each single draft standard;
- Consistency: as each European standard, whilst remaining voluntary, must be implemented as a national standard in all EU and EFTA countries, and any conflicting national standard shall be withdrawn;
- Availability: as all standards are available in each national standards body, in the national language;
- Consensus: all standards are developed by consensus of all parties involved. The stronger the consensus is, the wider the application of the standard by market players can be ensured.

The viability of the system on the model of CEN would depend on the participation in standards setting. Existing structures ensure that all stakeholders are consulted on every proposal and not only those represented on the national standards setting organizations. In addition particular attention is paid to the consultation in sectors where there are many SMEs. Costs of standards development, however, are paid for by stakeholders.

Standards may be revised as often as necessary, and a review takes place at the latest every 5 years. Workshop agreements, for example, can be reached in 6 to 12 months. Self- regulation through European standards makes it impossible for some stakeholders to fence off competition, as consumer organisations are part of the standards development process. Free-riders do not get a chance to succeed, as they cannot claim compliance to a European standard. European Standards are based on a large and strong consensus of stakeholders, which is a robust guarantee for a wide application.

Stakeholders say:

- La voie du CEN pourrait être explorée.
- Producers should be involved in the drafting of marketing standards.

Farmers to be given more freedom to classify their product.

4.8. Reserved terms

This option concerns the laying down of optional, clear, unambiguous definitions, identities, standards and classes, which have to be respected if referred to at the stage of placing on the market. This could apply in a vertical, product-specific manner, but also in a horizontal, general way to several products.

Reserved terms tell buyers that the product on which the reserved term is used corresponds to an identity, a defined farming method or a product characteristic. They are intended to provide the consumer with useful, accurate, technical information and help farmers to secure an additional financial return for additional production efforts.

Reserved terms may apply to a specific product, vertically, such as for eggs, but may also be applied across products, horizontally, such as "mountain", indicating that the product was produced in a mountainous region.

When deciding to make use of reserved terms, a producer voluntarily accepts the requirements of that term and commits to placing a product on the market which meets the terms of reference that correspond to the reserved terms.

A buyer or consumer can then rely on the fact that the product corresponds to these requirements and may expect a consistent quality of such a product, corresponding to the buyer's or consumer's expectations.

In this option it is foreseen that reserved terms, horizontal and vertical, are laid down by the legislator, when relevant and with an obvious and pressing need for such terms.

To illustrate, in the United States, quality standards are applied as voluntary tools²⁰:

Agricultural Marketing Service's quality grade standards, grading, certification, auditing, inspection, and laboratory analysis are voluntary tools that industry can use to help promote and communicate quality and wholesomeness to consumers. Industry pays for these services and since they are voluntary, their widespread use by industry indicates they are valuable tools in helping market their products.

Control on the use of reserved terms

Reserved terms can be an integral part of an agreement between supplier and purchaser. When signing an agreement the two parties agree to deliver/purchase a product that meets the conditions set out in the terms of reference for a particular reserved term. In case of conflict/arbitrage between buyer and seller, an independent service may intervene to control the actual quality of products and verify compliance with the conditions set out in the reserved terms. The costs for such an intervention will be borne by the parties that have requested the intervention.

²⁰ See: www.ams.usda.gov

When a product is placed on the retail market, using a reserved term voluntarily, such term should not mislead the consumer.

Stakeholders say:

- The sector would not communicate on negative aspects.
- Farmers to be given more freedom to classify their products to avoid industrialisation.
- It would be possible as soon as the rules are decided at EU level and uniformly applied.
- Producers will be weakened vis-à-vis retailers.
- It should however not mislead consumers.

4.9. Fine-tuned shortlist for further analysis

Technical screening

The first option described above, no EU action and complete removal of marketing standards from Community legislation, does not seem an appropriate way forward. As it leaves "the field unoccupied" it is possible that divergent, national marketing standards may be introduced. Such could have serious and negative consequences for the functioning of the internal market and the smooth disposal of agricultural goods on the market. For this reason, option 4.1 will not be assessed further.

The option on international standards whereby Community legislation would make direct reference to internationally agreed standards does not seem feasible as a legally enforced instrument. First it may take too long to update standards. Secondly, as international standards are available in only a few languages, EU operators may have the disadvantage of not being able to access the standards in their own language. However, the use of international standards as an optional reference for traders in the marketplace remains always possible.

The combined approach, based on the CEN model for standard setting for non-agricultural products overcomes many of the deficiencies of choosing self- and co-regulation or international standards alone. However, three factors distinguish the position in the agricultural sector: first, the standards to be set could not provide the guarantee of compliance with hygiene and safety provisions under the General Food Law; secondly, the control of marketing standards should be brought closer to other food law controls by the Member States, and thirdly, it is not at all clear in a sector as fragmented as the agricultural sector that the technical standard setting body would be sufficiently representative and that the body would be able to reach agreement.

A status quo, no change to EU public marketing standards will not be assessed further as it does not address the potential difficulties identified.

The options on co-regulation and self-regulation alone will not be included in the further assessment as in general the high level of fragmentation in the agricultural sector seems incompatible with these instruments for which a certain degree of organisation on a representative level is required. However, they will be retained in consideration of the

combined approach, based in part on the New Approach, that is a legislated general base standard and technical standards set by a new body which can determine EU technical standards by reference to international standards or by self regulation.

Shortlist

From the policy options listed above, the following options will be taken forward and impacts will be evaluated.

Option 4.3.2: Status quo– simplification;

Option 4.6: Replacement of specific EU marketing standards, by a general base standard;

Option 4.7: Combined approach;

Option 4.8: Reserved terms.

Options 4.1, no EU action, 4.2 international standards, 4.3.1 status quo, 4.4 on co-regulation and 4.5 on self- regulation will not be taken into consideration for further assessment.

A(ii) 5. IMPACT OF OPTIONS

Options concerning **marketing standards**: impacts on:

- Flexible employment of marketing standards;
- Speed up the process of establishing standards;
- Simplify the functioning of EU marketing standards;
- Reduction in burden for farmers and operators;
- Maintain a certain minimum level of quality;
- Stable set of terms of reference;
- Reduce the control burden on public authorities

5.1.1. *Impact matrix*

Herewith an assessment of impacts compared to status quo/no change at all.

	1) Simplification	2) Replacing specific standards by general standard	3) Combined approach	4) Reserved terms
Flexibility	/	++	+	++
Speed up process	/	/	+/-	+/-
Simplify	+	++	+	+/-
Reduce admin burden	/	++	+	++
Minimum quality level	/	/	/	N.A.
Stable set	/	+	+	++
Reduction of control burden	/	++	+	++
Return on added value	/	--	+	++

5.1.2. *Simplification*

The prime advantage of the option simplification is an improvement of the regulatory framework, with a view to making it more transparent, easier to work with and harmonised.

The drawback of this option that it will not bring changes to for example the asynchronous development of EU marketing standard and market conditions and the administrative burdens to farmers and operators.

5.1.3. *Replacing specific by general standard*

The advantages of this option are first of all a simplification of the regulatory framework, a reduction of administrative burden to farmers and operators as well as that it allows for the sale of ugly or innovative products.

A drawback of this option is that primarily in developed markets the base standard will not function as a quality target. However, in developed markets, with a high level of retail sale and private quality schemes, the quality target element in marketing standards was already very minimal.

5.1.4. Combined approach

Advantage of the combined approach is that it allows for involving all stakeholders in the establishment of standards, with their experience, being close to the market, and provides the possibility of aligning to international standards.

Drawbacks of the combined approach may be found in a high degree of fragmentation of the farming sector, with approximately 14.5 million farmers, not to mention processors and retailers and the fact that the terms of reference of a standard have to be acquired.

5.1.5. Reserved terms

Advantages of reserved terms are first of all that use, employment of reserved terms is optional. The flexibility is offered to farmers to decide if they would like to make use of them. Farmers no longer have to make efforts, investments to comply with certain requirements unless they decide otherwise. This optional employment of terms can also lead to a (substantial) reduction in administrative burden to farmers. In addition, the use of reserved terms is an effective tool for farmers to communicate about the value they have added to products and ensure a reward for those additional efforts.

A drawback of the use of reserved terms may be that they are laid down by the public legislator, which may take long. Moreover, operators will not employ reserved terms for negative aspects.

A(ii) 6. COMPARING THE OPTIONS

	Advantages	Drawbacks
Option simplification.	A simplified and coherent framework.	It does not address the issues identified; no increase in flexibility for example, not a reduction of administrative burden for farmers and operators.
Replacing specific by general standard	A very lean legal framework, which allows for the placing on the market of ugly or innovative products. It is likely to lead to a reduction in administrative burden to farmers.	The general base standard may not necessarily function as a "quality target" in some markets.

Combined approach	The combined approach rests on the voluntary nature of the marketing standards (beyond matters set in the baseline legislation). It provides a mechanism to develop trading rules and standards that the stakeholders can agree and has been shown to work in non-agricultural sectors. It is compatible with continued fruitful development of international standards, which is important for the international aspect.	<ul style="list-style-type: none"> - articulation with the GFL structure needs to be assured - the farming sector may simply be too fragmented to be able to staff the technical committees; - other attempts to find industry agreement on technical issues in the agriculture sector have shown that consensus can be difficult.
Reserved terms	Its optional or voluntary character, as farmers can pick and choose from the "reserved terms" menu; they will have more flexibility in their operations. It provides a tool to farmers to obtain a reward for adding value to a product.	<p>Reserved terms are laid down by the legislator, which is a process that may take some time.</p> <p>Operators will not communicate on negative aspects.</p>

Comparison of retained options by effectiveness, efficiency and consistency

Evaluation criteria	Effectiveness		Efficiency		Consistency	
Options						
1. Status quo = no EU action	Baseline		Baseline		Baseline	
2. Simplification	Low	-	Low	-	Medium	+/-
3. Replacing specific standards by general standard	High	+	Medium	+/-	High	+
4. Combined approach	High	+	Medium	+/-	Medium	+/-

5. Reserved terms	High	+	High	+	High	+
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6.1.1. Identification of impacts

6.1.1.1. Simplification

Economic impacts:

- a. Functioning of the internal market and competition: Hardly any impact is expected.
- b. Competitiveness, trade and investment flows: Hardly any impact is expected.
- c. Impact on Small and Medium Enterprises: Hardly any impact is expected.
- d. Operating costs and conduct of business: Hardly any impact is expected.
- e. Administrative burdens on businesses: Hardly any impact is expected.
- f. Consumers and households: Hardly any impact is expected.
- g. Third countries and international relations: Hardly any impact is expected.
- h. Public authorities: Hardly any impact is expected

Social impacts:

- Transparency: As a result of simplifying the regulatory framework, the EU legal provisions on marketing standards will become clearer and more transparent.
- Participation of stakeholders in scheme development and implementation: Hardly any impact is expected.
- Contribution to EU development policy: Hardly any impact is expected.
- Environmental impacts: Hardly any impact is expected.

Qualitative assessment of impacts that are most significant

Impacts deemed to be most significant are:

- A simplification of the legal framework related to marketing standards.

6.1.1.2. Replacing specific standards by a general base standard

Economic impacts:

a. Functioning of the internal market and competition: The option will have a positive impact. It will first of all do away with the ban on placing of the market of ugly or innovative products. Secondly, it may lead to a reduction in compliance costs as well as a reduction in burden associated with controls.

b. Competitiveness, trade and investment flows: This option will have a positive impact on innovation, it may increase consumer choice and reduce costs to enterprises.

c. Impact on Small and Medium Enterprises: For especially small and medium enterprises, a reduction in compliance costs/administrative burden will have a positive impact on their daily running of the business.

d. Operating costs and conduct of business: Businesses will have more autonomy on how to market their products and the compliance costs currently associated with preparing products for placement of the market will reduce. Moreover, costs associated with letting comestible produce that does not correspond to marketing standards go to waste will no longer exist.

e. Administrative burdens on businesses: The administrative burden to farmers and operators are expected to come down as a result of this option. The reason for this is twofold; first of all the costs for complying with detailed conditions and requirements laid down in marketing standards no longer exist. Secondly, as cooperating with inspections is concerned, the costs for cooperating should also come down as inspections will only concern a simple, general base standard and not the detailed conditions and requirements laid down in marketing standards.

f. Consumers and households: As in the option of simplification it will be possible to market odd looking products, as well as innovative products that may have been banned under detailed marketing standards, it is expected that consumer choice will increase.

g. Third countries and international relations: Hardly any impact is expected

h. Public authorities: The impact of this option on public authorities consists first of all out of a reduced inspection activity. Secondly, a general base standard will not require updating or modifying as frequently as detailed, specific marketing standards do.

Social impacts:

- Transparency: This option will increase transparency as it replaces detailed, specific standards by a single, general base standard.
- Participation of stakeholders in scheme development and implementation: Hardly any impact is expected
- Contribution to EU development policy: Not much of an impact is expected, although it is not excluded that some of the benefits obtained by this option, in particular the sale of ugly or odd looking produce may have somewhat of a positive impact for suppliers from developing countries, but may be limited by the perishing of produce.
- Environmental impacts: Hardly any impact is expected

Qualitative assessment of impacts that are most significant

Impacts deemed to be most significant are:

- Products will no longer be banned from placing on the market, as long as they are sound, fair and marketable.
- Providing a potentially wider consumer choice, either at the lower end of the market for ugly products, or at the high end of the market for highly innovative products.
- A reduction in compliance costs and administrative burden to farmers.
- A decrease in control activities for public authorities.

6.1.1.3. Combined approach

Economic impacts:

a. Functioning of the internal market and competition: The option will have a positive impact. It will first of all do away with the ban on placing of the market of ugly or innovative products. Secondly, it may lead to a reduction in compliance costs as well as a reduction in burden associated with controls. It is expected that as a result of this option, competition will benefit. Producers have increased flexibility in how to market their products, choosing the option that best fits their operations from a cost-benefit point of view.

b. Competitiveness, trade and investment flows: This option will have a positive impact on innovation, it may increase consumer choice and reduce costs to enterprises.

c. Impact on Small and Medium Enterprises: For especially small and medium enterprises, a reduction in compliance costs/administrative burden will have a positive impact.

d. Operating costs and conduct of business: A benefit of this option is that standards developed under the new approach are optional. Farmers, operators decide for themselves, in negotiations with their buyers, which terms to use, depending on the costs and benefits the use of one or several terms may generate. In addition, a farmer or operator wanting to use a standard has an additional cost as the terms of reference of this standard need to be purchased.

e. Administrative burdens on businesses: The level of burden on business depends on the choices made by farmers and operators. Moreover, they may have a burden; spending time and resources for the development of marketing standards.

f. Consumers and households: In this option, consumers are involved in the setting of standards. Moreover, consumers and households may benefit from this option as it is a flexible scheme, it may lead to products being supplied against lower prices. On the other hand, consumers benefit from the use of a clearly defined set of terms, which provides transparency and confidence in products marketed by the use of reserved terms.

g. Third countries and international relations: third country traders may not be involved in the setting of standards, but may very well employ and benefit from these standards when placing products on the European market. Moreover, from an international perspective, it would be possible to translate/implement international standards.

h. Public authorities: The role of public authorities changes as a result of this option in particular with regard to the control of marketing standards.

Social impacts:

- Transparency: as all stakeholders are involved in the development of standards, the procedure is very transparent. However, standards that are developed via the new approach are not publicly available.
- Participation of stakeholders in scheme development and implementation: In this option, stakeholders will be actively involved in setting marketing standards.
- Contribution to EU development policy: Not much of an impact is expected, although it is not excluded that some of the benefits obtained by this option may have somewhat of a positive impact for suppliers from developing countries.

- Environmental impacts: Not much of an impact is expected. It is not excluded that if the use of a reserved term for example with regard to environmentally friendly production method turns out to be beneficial to a farmer or operator, the employment of such a term will increase and the environment may benefit from such an increase.

Qualitative assessment of impacts that are most significant

Impacts deemed to be most significant are:

- Flexibility of employment of marketing standards. Farmers and operators have a choice on employing standards, taking into account the costs and benefits associated with the use or reserved terms;
- Stakeholders are involved in the setting of standards
- A reduction in the control tasks of public authorities

6.1.1.4. Reserved terms

Economic impacts:

a. Functioning of the internal market and competition: It is expected that as a result of this option, competition will benefit. Producers have increased flexibility in how to market their products, choosing the option that best fits their operations from a cost-benefit point of view.

b. Competitiveness, trade and investment flows: A system of reserved terms will enable framers and operators to communicate on the value they have added to a product and obtain a return for this added value as well.

c. Impact on Small and Medium Enterprises: This option provides operational flexibility to small and medium sized enterprises, as they can freely pick and choose from the reserved terms menu, depending on the costs and benefits.

d. Operating costs and conduct of business: A benefit of the use of reserved terms is that they are optional. Farmers, operators decide for themselves, in negotiations with their buyers, which terms to use, depending on the costs and benefits the use of one or several terms may generate.

e. Administrative burdens on businesses: The burden level associated with this option is entirely dependent on the choices made by the farmer operator.

f. Consumers and households: Consumers and households may benefit from this option as it is a flexible scheme, it may lead to products being supplied against lower prices. On the other hand, consumers benefit from

the use of a clearly defined set of terms, which provides transparency and confidence in products marketed by the use of reserved terms.

g. Third countries and international relations: Suppliers of agricultural products may benefit from this option as much as domestic operators do.

h. Public authorities: Public authorities will continue laying down definitions, identities, standards and classes. A possible impact may be seen in the number of reserved terms to will be developed. Secondly, as far as controls are concerned, it is expected that the workload will be reduced.

Social impacts:

- Transparency: The option of reserved terms allows for communicating certain characteristics of products. Conditions, terms of reference for reserved terms are clearly defined and as such, consumer are well informed about what to expect from a product for which a reserved term is used. Moreover, especially horizontal reserved terms may prevent confusion about certain claims and terminology.
- Participation of stakeholders in scheme development and implementation: Hardly any impact is expected
- Contribution to EU development policy: Not much of an impact is expected, although it is not excluded that some of the benefits obtained by this option may have somewhat of a positive impact for suppliers from developing countries.
- Environmental impacts: Not much of an impact is expected. It is not excluded that if the use of a reserved term for example with regard to environmentally friendly production method turns out to be beneficial to a farmer or operator, the employment of such a term will increase and the environment may benefit from such an increase.

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Qualitative assessment of impacts that are most significant

Impacts deemed to be most significant are:

- Flexibility of employment of marketing standards. Farmers and operators have a choice on employing standards, taking into account the costs and benefits associated with the use or reserved terms.
- Reserved terms are a tool for obtaining a reward for adding value.
- A reduction of control tasks for public authorities.

A(ii) 7. MONITORING AND EVALUATION

A further ex ante evaluation is foreseen in the form of a more detailed impact assessment which will accompany any relevant legislative proposals.

The evaluation will primarily focus on the issues listed above, in particular a flexible employment of marketing standards as well as reducing administrative burden to farmers and operators and providing farmers with a tool to obtain rewards for creating added value.

Once policy changes are implemented, regular monitoring may take place. These monitoring activities could relate to an ex post evaluation with regard to a reduction in administrative burden as well as to the disposable income of farmers and their rewards received for adding value to agricultural products.

Annex I: Overview of marketing standards and their legal bases

Beef labelling

Function of the standard	Current way of regulating
1. Consumer confidence	1. Community legislation Regulation (EC) N° 1760/2000 from the European Parliament and the Council, Commission Regulation (EC) N° 1825/2000 (implementing rules)

Cocoa and chocolate products

Function of the standard	Current way of regulating
1. Definition of what are chocolate and other cocoa products including rules on the process (authorised ingredients, in particular vegetable fats) 2. Information to consumer through labelling based on definitions and rules defined above	Council Directive 2000/36/EC

Coffee extracts and chicory extracts

Function of the standard	Current way of regulating
1. Definition of what are coffee extracts and chicory extracts 2. Information to consumer through labelling (sales designations defined and other characteristics – "decaffeinated" etc...)	Council Directive 1999/4/EC

Eggs

Function of the standard	Current way of regulating
1. Definition of the product qualities to facilitate the trade on the internal market (A and B eggs, methods of production etc). 2. Providing information to consumers (methods of production, durability, etc). 3. protect products which are sold with "mention valorisante" from standard production (e.g. free range) 4. Inform consumer about the origin	1. Community legislation (Council Regulation (EC) No 1234/2007, Commission Regulation (EC) No 2295/2003), * Règlement (CE) n° 2271/75 du Conseil (OCM)

Fresh (and processed) fruit and vegetables

Function of the standard	Current way of regulating
<ul style="list-style-type: none"> • Definition of product (base-line) by reference to a botanical classification (latin name) - minimum quality requirements (products are sound, clean, loyal, etc...). In some cases, this includes physical or chemical minimum parameters (e.g. top define minimum maturity requirements) • Labelling requirements providing information to consumers (Class, size, variety, origin, other particulars specific to one or the other fruit or vegetable ("pipless", date of harvest, etc...)) 	<p>Norms are set at Community level; there may be in addition some remaining national standards (potatoes in several MS, some other products in some other MS, e.g. shallots in France, Chestnuts in Italy, etc...),. Following adoption of R 1182/2007, the fruit and vegetables marketing standards are currently under revision, with a view to reduce the number of products covered by a specific marketing standard.</p> <p>However, most of the norms are copies of international norms (UN/ECE).</p> <p>Products list :</p> <p>Fresh fruits: apples, pears, citrus fruit (except grapefruit), , kiwis, peaches and nectarines, strawberries, table grapes, bananas</p> <p>Processed fruits : dried grapes</p> <p>Fresh Vegetables : lettuce and other salads, sweet peppers, tomatoes, .</p> <p>Legal base : R 1234/2007, with the exception of bananas (R. 404/1993)</p> <p>Commission Regulation (EC) No 1580/2007</p>

Fruit juice

Function of the standard	Current way of regulating
<ol style="list-style-type: none"> 1. Classification: definition of different types of products: fruit juice, fruit juice from concentrate, nectars, etc... 2. Minimum requirements: rules on authorised ingredients for all products covered (types of sugar added, pulps, cells and aromas added, rules on addition of acids and carbon dioxide) and minimum sugar contents for nectars. 3. Information to the consumer: labelling rules: type of product (distinction between juice and juice from concentrate), addition of sugar and other ingredients mentioned above, national derogations 	<p>Norms set at Community level (Council <u>Directive</u> 2001/112/EC)</p>

Fruit jams, jellies and marmalades, chestnut puree

Function of the standard	Current way of regulating
<p>1. Classification: definition of different types of products: jam, extra jam, jelly, extra jelly, marmalade, jelly marmalade, sweetened chestnut purée.</p> <p>2. Minimum requirements for end-product (authorised additional ingredients for all products covered (honey, fruit juice, pectins, citrus peel, etc...)) and for raw material (treatment authorised for raw materials (freezing, heating, concentrating of raw material, additives,))</p> <p>3. Information to the consumer - Labelling rules : type of product, sugar and/or fruit contents, other requirements (presence of sulphur dioxide)</p>	<p>Norms set at Community level (Council <u>Directive</u> 2001/113/EC)</p>

Honey

Function of the standard	Current way of regulating
<p>1. Definition of what is honey. In this way the standards protect the consumer.</p> <p>2. Establishment of the conditions of competition between honey and competing products, avoiding distortion (avoidance of "false honey" being offered on the market)</p> <p>3. Deepening of the market (protect products which are sold with "mention valorisante" from standard production (e.g.monofloral honey)</p> <p>4 Inform consumers about origin.</p>	<p>Council Directive 2001/110/EC</p>

Hops

Function of the standard	Current way of regulating
<p>1. Obligatory certification following EU criteria exist to maintain the quality and the image of European hops.</p>	<p>1. Community legislation (Council Regulation (EC) No 1234/2007, Commission Regulation (EC) 1850/2006)</p>

Milk: Drinking milk

Function of the standard	Current way of regulating
1. Consumer protection and information, avoiding false competition and maintaining the natural image of milk: by defining the characteristics of what is milk (protein content) and 3 specific kinds of fat categories: whole milk, semi skimmed milk, skimmed milk.	1. Community legislation (Council Regulation (EC) No 1234/2007)

Milk and milk products: preserved milk

Function of the standard	Current way of regulating
1. Definition of products and product names (e.g. condensed milk, milk powder) authorised treatments (e.g. protein standardisation) Protection of the natural composition of these products in the interest of producers and consumers. 2. Establishes conditions of competition, avoiding distortion.	1. Community legislation Council Directive 2001/114/EC

Milk and milk products protected designations

Function of the standard	Current way of regulating
1. Definition of what is milk, protection of the natural composition of milk products in the interest of producers and consumers 2. Establishes conditions of competition between milk and competing products, avoiding distortion.	1. Community legislation (Council Regulation (EC) No 1234/2007, Commission Regulation (EC) 445/2007)

Olive oil

Function of the standard	Current way of regulating
1. Classification: definition of the different product categories (extra virgin oil, virgin oil, lampante olive oil, refined olive oil, "olive oil", etc...) 2. Minimum requirements: physical, chemical and organoleptic characteristics of olive oil products as well as detailed methods of analysis to be followed for the determination of the related criteria. 3. Information to the consumer: labelling rules applicable at retail stage for type of product: (origin, cold extraction, organoleptic properties, etc...., for blends with other seed oils and of foodstuffs containing olive oil as ingredient 5. Rules on control arrangements by MS and reporting.	. Community legislation (Council Regulation (EC) N° 1234/2007 (Descriptions and Definitions of olive oil), Commission Regulation (EEC) No 2568/91 (minimum physical, chemical and organoleptic characteristics of olive oil products and methods of analysis thereof), Commission Regulation (EC) No 1019/2002 (rules on labelling and controls)).

Poultry

Function of the standard	Current way of regulating
<p>1. Having fixed standards allows one to compare similar products. In this way it improves competition on the internal market.</p> <p>2. Minimum quality criteria to protect consumers (eg. maximum water content)</p> <p>3. Protect products which are sold with "mention valorisante" from standard production (e.g. free range)</p> <p>4. Inform consumer about the origin</p>	<p>1. Community legislation (Council Regulation (EEC) No 1234/2007, Commission Regulation (EEC) No 1538/91), * Règlement (CE) n° 2777/75 du Conseil (OCM), Règlement (CE) n°2782/75 du Conseil (production et commercialisation)</p>

Spirit drinks

Function of the standard	Current way of regulating
<p>1. Consumer and producer protection by definition of a list of types of spirits. Definition also covers production processes to be followed for most spirits.</p> <p>2. Consumer information through specific labelling requirements, compulsory (e.g. sales designation defined above,...) or voluntary (ageing, blending,...)</p>	<p>1. Community legislation (Council Regulation (EEC) No 110/2008; Commission Regulation (EEC) No 1014/90 on definition, description and presentation of spirit drinks</p>

Spreadable fats (butter, margarine and blends)

Function of the standard	Current way of regulating
<p>1. Standards create a level playing field for similar products. In this way it improves competition on the internal market.</p> <p>2. Consumer protection: by defining the minimum characteristics of butter, margarine and blends, the consumers have a certain guarantee on the product they buy.</p>	<p>1. Community legislation (Council Regulation (EC) No 1234/2007, Commission Regulation (EC) 445/2007</p>

Sugar

Function of the standard	Current way of regulating
<p>1. Definition of the product in the context of import quota management (raw sugar is recalculated into white sugar equivalents).</p> <p>2. Quality criteria for intervention.</p> <p>3. Definitions by vertical directive of types of sugar (white, semi-white, extra-white, etc...) and rules on labelling of products named according these designations. Harmonised method of analysis for the determination of the colour of sugar.</p> <p>4. The trade has other, more precise standards. The EU does not interfere.</p>	<p>1. Community legislation (Council Regulation (EC) No 1234/2007, Commission Regulation (EC) No 952/2006).</p> <p>2. Council Directive 2001/111/EC</p> <p>3. Standards applied by the trade are not regulated.</p>

Veal definition

Function of the standard	Current way of regulating
<p>1. Provision of a clear description of the product for consumers</p> <p>2. Avoidance of a distortion of competition between producers using different definitions of veal..</p>	<p>Council Regulation (EC) No 1234/2007 on the marketing of the meat of bovine animals aged 12 months or less.</p>

Wine

Function of the standard	Current way of regulating
<p>1. Consumer protection: by defining what wine (and their different types) and wine products (vinegar etc...) are, including the authorised production processes.</p> <p>2 Providing consumer information by regulating the labelling of wine (including both compulsory labelling requirements and voluntary labelling requirements).</p> <p>3 Protecting the interests of certain producers by regulating quality standards and labelling of wine.</p> <p>4. Methods of analysis : harmonised implementation of quality and labelling requirements above</p>	<p>1. Community legislation Council Regulation (EC) No 1234/2007 (as of 1-8-2009)</p> <p>* Labelling : Commission Regulation (EC) No 753/2002</p> <p>* Oenological practices : Commission Regulation (EC) No 1622/2000</p> <p>* Methods of analysis : Commission Regulation (EC) No 2676/90</p> <p>* Documentation and registers : Commission regulation (EC) No 884/2001</p>

ANNEX E(1-6) : PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

ANNEX E(1) : INTER-SERVICE AD-HOC GROUP

ANNEX E(2): REPORT ON THE STAKEHOLDER HEARING ON 11-12/05/2006, DG JRC/IPTS 30/11/2006

ANNEX E(3): CONCLUSIONS OF THE CONFERENCE, 'FOOD QUALITY CERTIFICATION: ADDING VALUE TO FARM PRODUCE'(5-6.2.2006)

ANNEX E(4): RESULTATS DE L'ENQUETE AOP-IGP-STG (2007)

ANNEX E(5): INDICATIVE LIST OF EVENTS RELATED TO THE GREEN "PAPER CONSULTATION

ANNEX E(6) : OPINIONS EXPRESSED ON THE GREEN PAPER

ANNEX E(1) : INTER-SERVICE AD-HOC GROUP

Support from Commission DGs and services (COMP, DEV, ECFIN, ENTR, ENV, MARE, MARKT, REGIO, RTD, SANCO, SG, SJ, TAXUD, TRADE) was provided primarily through the ad-hoc IS steering group convened during preparation of the Green Paper, which met 4 times for the purposes of this impact assessment on:

- 20 November 2008 – inter-service group meeting
- 22 January 2009 – Inter-service steering group meeting
- 18 February 2009 – Inter-service steering group meeting
- 27 February 2009 – Inter-service steering group meeting

**ANNEX E(2): REPORT ON THE STAKEHOLDER HEARING 11-12/05/2006,DG JRC/IPTS
30/11/2006**

[see pdf file]

ANNEX E(3): CONFERENCE CONCLUSIONS, 'FOOD QUALITY CERTIFICATION: ADDING VALUE TO FARM PRODUCE', 5-6.2.2006,

[see pdf file]

ANNEX E(4): RESULTATS DE L'ENQUETE AOP-IGP-STG 2007

1. INTRODUCTION

Organisée en 2007, l'enquête AOP-IGP proposait d'évaluer auprès des groupements et des producteurs les effets socio-économiques engendrés par l'enregistrement d'une dénomination. La participation était volontaire.

Résumé:

- Cinq pays représentent 86.8 % des réponses : Italie, Grèce, Portugal, Espagne et France, réparties sur les huiles et matières grasses, produits à base de viande, fromages, fruits et légumes et viande frais.
- Les coûts liés à l'enregistrement sont divisés en trois catégories : l'adaptation au cahier des charges, contrôles et inspections et marketing.
- Les deux tiers des participants à l'enquête confirment les effets économiques positifs de l'enregistrement sur leurs résultats; or, les producteurs considèrent que la valeur ajoutée induite par l'enregistrement bénéficie davantage aux grossistes et à la grande distribution qu'aux producteurs; cela varie néanmoins selon la catégorie de produit.
- Les deux tiers des participants indiquent qu'ils utilisent le logo
- Les problèmes signalés concernent la reconnaissance des AOP/IGP par les consommateurs, des difficultés dans l'approvisionnement en matières premières conformes aux cahiers des charges en raison des délimitations géographiques, la multiplication des normes au niveau communautaire et national et l'insuffisance des contrôles.
- Les propositions visent une assistance communautaire au niveau de la communication, une clarification des règles concernant l'utilisation d'un produit enregistré comme ingrédient, un champ élargi de la protection assurée par l'enregistrement, une assistance technique aux groupements qui souhaitent obtenir un enregistrement ainsi que la création dans les E-M d'organismes chargés de contrôler le respect des enregistrements

2. LE PROFIL DES PARTICIPANTS

- (1) 143 réponses ont été enregistrées lors de l'enquête en ligne ce qui correspond à 134 dénominations différentes. En effet, plusieurs participants pour une même dénomination ont été enregistrés (notamment pour deux huiles d'olives italiennes).
 - 88% des participants sont des groupements de producteurs ; les groupements sont de taille très variables : de quelques producteurs plusieurs milliers (d7¹).
 - Seuls 17 producteurs indépendants ont répondu au questionnaire en ligne, notamment en matière de productions d'huile d'olives (d7).
- (2) Les participants sont originaires de 13 pays différents mais 5 pays se distinguent par un taux important de réponses : Italie, Grèce, Portugal, Espagne et France (d4).
- (3) Les réponses ont été principalement enregistrées dans 5 catégories de produits : les huiles d'olives et matières grasses, les produits de la viande, les fromages, les fruits et légumes, et la viande fraîche (d5).

¹ Cette indication entre parenthèses renvoie au numéro de la diapositive correspondante dans la présentation globale (PowerPoint).

- (4) Certaines dénominations enregistrées emploient plus de 10 000 personnes (Max: 30 000) de manière directe ou indirecte : la réglementation relative aux AOP-IGP représente donc un enjeu essentiel (d13).

3. LES PRINCIPAUX RESULTATS

- (1) L'enregistrement a conduit dans près de 60% des cas à une hausse de la production (d10). En revanche, cette hausse de la production ne s'est pas entièrement traduite par un accroissement du nombre de producteurs : seulement 43% des groupements et des producteurs indépendants ont constaté une augmentation du nombre de producteurs (d11).
- (2) Un tiers des participants à l'enquête constate une augmentation de l'emploi après l'enregistrement (d13).
- (3) En matière de vente, l'impact de l'enregistrement est très net, ce qui témoigne d'une amélioration de l'identification du produit et de sa reconnaissance :
- d'une part, il permet d'accéder à de nouveaux débouchés : les supermarchés, les magasins d'alimentation et les restaurants (d15) ;
 - d'autre part, il permet d'élargir son marché : au niveau national et au niveau communautaire (d16) ; près d'un tiers des participants ont ainsi déclaré que leurs clients appartenaient désormais au marché national et non plus au marché régional (d16).
- (4) L'enregistrement engendre parfois de nouveaux coûts (d105) notamment liés aux exigences imposées par le cahier des charges.
- 40% des participants ont observé une augmentation du prix de vente supérieur à l'inflation (d19) qui est principalement expliquée par l'enregistrement (d21). L'enregistrement est le signe d'un savoir-faire et d'une valeur ajoutée qui distingue les produits enregistrés de leur substitut et justifie un prix supérieur sur le marché (d22).
 - Toutefois, 45% des participants ont vu le prix de leur produit évoluer au même rythme que l'inflation (d19) ; l'évolution du prix s'explique alors essentiellement par des raisons indépendantes de l'enregistrement (d21).
 - Il faut noter que l'augmentation des prix semble avoir été plus importante chez les distributeurs que chez les grossistes, probablement au détriment des producteurs (d21).
- (5) Les effets sur la région de production du produit enregistré sont plus nuancés au niveau global (d25 et d26) ; ils varient en fonction du produit et du pays (en raison d'une forte concentration des réponses). Cependant, il est possible de relever :
- L'impact globalement positif sur les revenus, l'emploi, le tourisme, l'implantation de nouvelles infrastructures et le soutien au développement rural ;
 - L'impact nul en matière de croissance démographique ou sur les paysages. Toutefois, les producteurs d'huiles d'olives et de matières grasses (d54) font état d'un impact positif sur les paysages.

4. ÉVALUATION DES COÛTS DE LA PROCEDURE D'ENREGISTREMENT

- (1) Les réponses sont partagées en matière d'évaluation du coût de la procédure d'enregistrement : une faible majorité des participants à l'enquête évoque un coût d'enregistrement (d28), mais les deux tiers indiquent un surcroît de travail administratif (d31). En reprenant les questions de l'enquête, il est possible d'identifier trois grandes catégories de coûts.

- (2) Les coûts liés à l'adaptation aux normes du cahier des charges :
- 25% des participants évoquent la nécessité de procéder à des investissements : les montants indiqués sont d'ampleur très variés de quelques centaines d'euros à plusieurs millions d'euros² (d28) ;
 - 25% des participants relèvent le coût engendré par l'achat d'ingrédients conformes aux cahiers des charges, notamment en raison de la région de production (d29) : l'enregistrement impose en effet une rigueur supplémentaire dans l'approvisionnement.
- (3) Les coûts liés aux contrôles et aux inspections (d30) : près de 50% des participants les mentionnent ; leurs montants dépendent du type de produits.
- (4) Les coûts liés au marketing : près également de 50% des producteurs ont dû faire face à des coûts pour renouveler leurs étiquettes et assurer la promotion de la dénomination. Quatre sources principales de financement sont indentifiables : les fonds communautaires, l'Etat, les collectivités territoriales et les groupements privés. Beaucoup de groupements de producteurs ont organisé une campagne de promotion après l'enregistrement : elles mobilisent parfois des moyens financiers conséquents (>100 000 euros) sur plusieurs années.

5. ÉVALUATION DES EFFETS ECONOMIQUES

- (1) Les deux tiers des participants confirment les effets économiques positifs de l'enregistrement sur leurs résultats (d34).
- (2) En revanche, les producteurs considèrent que la valeur ajoutée induite par l'enregistrement bénéficie davantage aux grossistes et à la grande distribution qu'aux producteurs (d35).
- En matière d'huiles d'olives et de matières grasses, le partage apparaît plus équilibré (d50) ; il peut s'expliquer par le plus grand nombre de réponses issus de producteurs indépendants.
 - En matière de fromages comme de produits de la viande, les producteurs considèrent que c'est la grande distribution qui profite le plus de la valeur ajoutée (d63 et d75).

6. UTILISATION DU LOGO

- (1) Les deux tiers des participants indiquent qu'ils utilisent le logo communautaire (d37).
- (2) 49% des participants indiquent faire face à des utilisations ou des évocations illégales de leur dénomination (d39).

7. PROBLEMES ET PROPOSITIONS DES PRODUCTEURS

A la fin de l'enquête, les participants pouvaient expliciter leurs problèmes spécifiques ainsi que faire part de leurs propositions.

7.1. Problèmes (d105, d106) :

- Reconnaissance des AOP/IGP par les consommateurs et les pays tiers ;

² Il convient de considérer avec prudence cette évaluation dont la formulation dans la réponse est ambiguë : il n'est pas évident de savoir si ce montant correspond aux investissements nouveaux ou aux coûts fixes pour un producteur qui voudrait s'installer et produire conformément aux cahiers des charges.

- Procédure :
 - o Critique de l'art. 5 du Règlement (CE) n°510/2006 sur l'organisme pouvant introduire une demande d'enregistrement ;
- Mise en œuvre :
 - o Difficulté dans l'approvisionnement en matières premières conformes aux cahiers des charges en raison des délimitations géographiques ;
 - o Multiplication des normes au niveau communautaire et national ;
 - o Absence/manque de concurrence entre des produits qui semblent indifférenciés et interchangeables ; pression à la baisse des prix ;
 - o Critique du partage de la valeur ajoutée qui malgré l'augmentation des coûts bénéficie parfois essentiellement à la grande distribution.
- Contrôle
 - o Insuffisance des contrôles sur le marché communautaire ;
 - o Inexistence des contrôles dans les pays tiers.

7.2. Propositions (d107, d108) :

- Communication
 - o Améliorer/faciliter l'accession au soutien financier pour assurer la promotion du système AOP/IGP auprès des consommateurs ;
 - o Mener une campagne de communication au niveau communautaire et à destination des pays tiers.
- Règlementation
 - o Clarifier les règles relatives à l'utilisation d'un produit enregistré comme ingrédients ;
 - o Définir des conditions plus stricts d'enregistrement en intégrant notamment des critères environnementaux ;
 - o Élargir le champ de la protection assurée par l'enregistrement aux savoir-faires afin de tendre vers des brevets industriels ;
 - o Etendre au niveau mondial la réglementation relative aux AOP/IGP.
- Procédures
 - o Assurer une assistance technique aux groupements qui souhaitent obtenir un enregistrement.
- Contrôle :
 - o Créer dans les États membres des organismes chargés de contrôler le respect des enregistrements.

ANNEX E(5): INDICATIVE LIST OF EVENTS RELATED TO THE GREEN PAPER CONSULTATION

Presentations in Advisory groups:

Advisory Group on Hops: 23/10/2008

Advisory group on olive oil: 10/11/2008

Advisory Group on Fruit and vegetables: 12/11/2008

Expert group on marketing standards: 24/11/2008 + 16/03/2009

Advisory Group on Milk: 01/12/2008

Advisory Group on Simplification: 12/12/2008

Advisory group on Spirits: 27/02/2009

Participation in events

In order to inform stakeholders and to encourage them to contribute to the Green Paper, DG AGRI representatives participated in a number of events in Member States. This offered as well the opportunity to inform stakeholders and the general public about the follow-up of the Green paper and the Impact Assessment exercise.

- **12 November 2008:** Meeting organised by the European Commission delegation in Berlin and the Netzwerk Europäische Bewegung Deutschland. The Green Paper on "Agricultural Product Quality" was presented to 40 participants covering the whole range of producers, labourers, consumers, interest groups, policy makers and public authorities.
- **17 November 2008:** Seminar on the protection of designations of food products organised in Brussels by the Italian Institute for Foreign Trade. The Green Paper on "Agricultural Product Quality" was presented by Daniele Bianchi (member of Cabinet Agriculture Commissioner Mariann Fischer Boel). A discussion followed the presentation.
- **18 November 2008:** Informal seminar organised by the German Dairy Association, the permanent representation of North Rhine-Westphalia and the German Central Marketing Association (CMA) in Brussels. The Green Paper on "Agricultural Product Quality" was presented to around 20 participants representing various sectors of German agriculture and food production.
- **2 December 2008:** Conference on the Green paper on "Agricultural Product Quality" with the participation of Agriculture Commissioner Mariann Fischer Boel organised in Brussels by AREPO (Association des Régions européennes des produits d'origine).
- **3 December 2008:** Round table on the future of geographical indications in the European Union organised by Maria Petre (MEP), OriGIn (Organisation for an International Geographical Indications Network) and CNAOC (Confédération Nationale des Appellations d'Origine Contrôlée). The Green Paper on "Agricultural Product Quality" was presented by Daniele Bianchi (member of Cabinet Agriculture Commissioner Mariann Fischer Boel).

- **6 February 2009:** Séminaire "Produits agricoles et agroalimentaires de montagne: un nouveau cadre de référence européen, pour quels marchés?" organised in Lyon by ISARA-Lyon. A presentation of the Green paper was made and was followed by a discussion concentrating on "mountain products".
- **24 February 2009:** Salon international de l'Agriculture à Paris. Participation of DG AGRI officials to the "Quality Day" devoted to the future of agricultural product quality policy. A presentation on quality policy and Green Paper was made.

Feedbacks obtained during those events have been important to feed the Impact Assessment process and the conclusions of this report.

Opinions expressed during the consultation on the Green Paper on agricultural product quality

Disclaimer: this Commission working document does not represent the view of the Commission. It was intended to detail opinions expressed by respondents to the consultation on the Green Paper on agricultural quality policy. It supported Commission services when drafting the Impact Assessment prior to the Communication on agricultural product quality policy.

A summary of those opinions as well as a presentation of the methodology and statistical data was presented in the Conference organised by the Czech Presidency on 12 and 13 March 2009 in Prague and is available on-line: http://ec.europa.eu/agriculture/quality/policy/consultation/contributions/summary_en.pdf

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1. THE OPINIONS RECEIVED

1.1. Question 1

How could the requirements and standards met by farmers that go beyond product hygiene and safety be made better known?

The overwhelming majority of respondents suggested publicly-funded promotion campaigns and a variety of media methods to get the message across, such as new bar-code technology to convey information about a food. Farmers and retailers should participate.

Most respondents said the message should concentrate on the positive input of farmers in meeting requirements. However, some also wanted there to be a focus on requirements not followed (allegedly) in third countries.

Most **authorities** wished to see publicity campaigns for consumers financed by the EU, in which farmers organisations participate. Communication messages should be easy for consumers to understand. One suggested involving retailers in awareness-raising and training about the origin of food. One authority considered that sufficient information was already available and another that the EU model was already strongly supported by citizens.

Awareness-raising campaigns, which should be non-discriminatory for trade, were also mentioned by a third country organisation.

Most **local authorities** recommended an information campaign, underlining the EU requirements followed by farmers that do not exist elsewhere. Other recommendations included: using labelling and information at point of sale to close the information gap between producer and consumer ; and taking steps to improve consumer confidence.

Most **farming organisations** asked for a greater communication effort to consumers, using modern methods of communication and undertaken by EU or Member State authorities. The European model of farming should be highlighted. One said controls were more effective with smaller enterprises. Several thought that farmers should be encouraged to farm in a more sustainable way and reward achievement.

Many farming organisations argued for more communication and labelling on production standards or promoting EU quality standards and origin of production. One group said the EU logos should be distinguished from each other and made compulsory for participants. On farm group said meeting baseline standards is not enough as consumers already expect this ; another said consumers were already sufficiently aware. Another said this should be done at national level as safety and hygiene standards are different in different Member States. EU farmers followed higher hygiene and safety standards than in 3rd countries, which added costs that were not imposed on 3rd country producers. The concept of "l'agriculture paysanne", built on sustainability and support for rural society, should be developed and defended, including for farmers in developing countries. One organization suggested using new technologies to allow consumers to be able to trace product from packaging codes to its origin.

Individual farmers said improving communication between the producer and consumer so the consumer receives relevant information when shopping. Promotion and information campaigns, seminars and brochures etc. should be used to get the message across.

According to **processors**, promotion funding is needed at EU level, possibly focused on PDO-PGI. Labelling that makes clear EU standards have been met could be useful. State aids for promotions should be limited. EU-funded campaigns could be useful to make consumers aware of EU requirements, but some argued that promotion of adhering to EU standards should be left to the market as a selling point. Use voluntary labelling to better inform consumers about production standards.

Retailers argued for communication campaigns by authorities and farming groups should be used

One respondent suggested that TV commercials should be used

Consumers and members of the public suggested using better labelling and point of sale information as well as media sources. One suggested it could be focused on issues such as non-GMOs and absence of pesticide traces. Development of more EU

labelling schemes was proposed, such as for climate change and animal welfare. Using symbols and logos and inform consumers. But first EU rules need to be harmonised. Certification schemes should be developed with independent controls. Promotion campaigns should be used

Consumers and members of the general public argued for development of a communication campaign and development of a symbol showing EU provenance. Better information or education to consumers should be undertaken, underlining the attributes of different origins, for example. Clear and easy to understand quality schemes at national level could be set up.

NGOs said the EU should demand same standards of hygiene, environmental compliance etc from 3rd countries as from EU and promote raising of standards to EU levels at international level.

Most **'other' organisations** recommended an information campaign, underlining the high EU requirements followed by farmers and benefits of modern techniques or explaining what standards really mean (e.g. in animal welfare area). Publicity for PDO-PGI was recommended. One organisation recommended limiting publicity to farming systems that contribute positively to the environment (soil, water, biodiversity and climate) and/or animal welfare. Some organisations were concerned that EU requirements are not high enough to justify specific promotion. Other recommendations included: clarifying who is responsible for quality (producers, not authorities), and allowing the private sector to make the publicity through branding or through specific schemes that connect farmers with consumers.

What would be the advantages and disadvantages of developing new EU schemes with one or several symbols or logos indicating compliance with EU farming requirements, other than those related to hygiene and safety? Should a non-EU product which complies with EU production requirements be also eligible to use such an EU quality scheme?

The vast majority of respondents in all sectors opposed the creation of an EU logo to signal compliance with EU requirements.

Arguments given were that it would confuse consumers who would think that the logo indicated a positive attribute beyond the baseline, costs of control and paperwork, feasibility of developing a scheme.

Most **authorities** said the risks were the creation of confusion ; increasing costs and paperwork and prices ; increasing the crowded nature of labels ; overloading information for little meaning.

Advantages: guarantee respect for EU standards ; consumers will have more information and be reassured ; there may be a small benefit in terms of clarity if EU logo can replace many others. However one authority argued that specific labelling must be linked to additional effort. Concerning use by a non-EU country: one opposed; ; and one supported:. Better to concentrate on publicity campaigns and existing PDO-PGI schemes

A **third country** body advised against the proliferation of logos

Local public authorities recommend informative labelling covering, e.g. origin of raw materials, place of transformation. Combining origin and conformity with EU requirements could create confusion. A logo for respect of EU requirements should be clear and non-confusing; existing logos should be better promoted. Controls by public authorities would be burdensome and could be done also by operators.

Most **farmer representatives** opposed a new EU logo scheme, arguing it would add nothing to official controls and cause confusion for consumers concerning origin (e.g. 'CE' mark on toys made in China) ; add costs and burdens. Higher level standards than the minimum, such as integrated production, should be promoted. A few respondents favoured the logo arguing that 3rd country exporters follow lower standards, provided the logo is promoted with an information campaign, but the logo should be limited to EU producers

Most farming bodies (unregistered) opposed the logo as it would increase costs, not give added value and confuse consumers. A few respondents did not object to an EU-requirements logo and one, in a sector described as 'vulnerable' to imports, strongly supported identification of product that meets EU requirements. A few said, if adopted, it must be open to 3rd country producers, although a few respondents argued for a different logo (or no logo) for produce of 3rd countries. A few respondents said EU requirements should be promoted in 3rd countries, or EU value-adding schemes like integrated production, promoted, also in 3rd countries. One respondent wanted further study before a new logo was considered.

Most **individual farmers** opposed the concept of a logo signalling compliance with EU requirements,

since consumers would not appreciate it and expected certification logos to represent tougher conditions. Some supported an EU-requirements logo

A **trade** organisation said that a logo showing compliance with EU rules makes no sense

Bodies opposed a new logo for compliance with EU requirements. One said non-confirming growers will continue to sell more cheaply without the logo

One processor respondent did not oppose, but most **processors** (registered) did not want to see an EU requirements logo as it would not have meaning and there was very little commercial interest, costs and inspections would increase and use of the EU requirements logo on (complying) 3rd country import would confuse consumers.

Most processors did not support a new logo scheme as it would not have any meaning for consumers and be difficult to implement. One respondent said that sectors where there are not significant imports should not have the EU logo applied.

A **retailer** said they were not persuaded that a new EU logo is needed. It should be analysed from the perspective of adding a Community dimension, e.g. functioning of the single market; utility to consumers and economic operators; visibility and controls burden. One retailer favoured an EU requirements logo, while one other did not: preferring an added-value logo, such as organic, integrated production or HNV farming product

Most **consumer groups** opposed creation of a new EU logo as it would cover too many types of different product. One group thought the EU logo would be a good solution.

Several **consumers/general public** favoured an EU requirements logo as this would encourage international compliance with, and awareness of, EU requirements such as animal welfare. Some consumers opposed on the ground of an overload of information. Others opposed, citing potential consumer confusion and preferring a national logo or were concerned it would have no real meaning for consumers

Academic bodies in favour of the logo said it would enhance trust in product labelled in conformity with EU requirements (398); Those against said it would have no meaning for consumer; controls costly and burdensome; standard comparison will be difficult, create confusion ; not reflect consumer demand, open to 3rd country producers

NGOs opposed the logo, as this would not carry any significant meaning for consumers; another body was in favour, as it would increase transparency but the cost of compliance would have to be taken into account. One NGO said if EU logo is proposed, it must be open to developing country exports

Most '**others**' opposed a new EU logo scheme. Problems include: logo would be misinterpreted to indicate higher quality not baseline; consumers will not trust the logo; baseline levels of regulation need to be updated frequently; public safety and hygiene standards fixed by law and controlled by public authorities are a sufficient guarantee for consumers; costs of control and bureaucracy; cause confusion; minimum standards in animal welfare are not high enough to be promoted. One said the EU should continue to promote EU standards in 3rd countries. The cereals sector relies on private quality assurance. If the logo is implemented it should be open to 3rd country producers also, but this would be difficult. A few respondents supported the EU logo idea which should cover environment, social welfare, ecology and animal welfare, and would help distinguish products that do not meet EU requirements.

What would be the advantages and disadvantages of having an obligatory indication of the place of production of primary products (EU/Non EU)?

Most national authorities, regional authorities, producers and consumer groups supported the indication of the place of farming. About half thought 'country' labeling would be better than 'EU' and a minority insisted that only country or region would suffice.

Processors opposed almost unanimously, citing the difficulties of traceability and costs. They also claimed the consumer was not interested in origin of raw materials for processed foods.

A number of producers and other organisations recognized that for some sectors and for some processed products, place-of-farming labelling would be very difficult to implement. They recommended a product-sectoral approach. Several asked for meat to be compulsorily labelled for origin as soon as possible.

Most **national authorities** support indication of EU/non-EU place of farming., but some say it should be the country (or region) name given. It should not be confused with PDO-PGI. However,

place-of-farming labelling could increase costs. Some argue for voluntary labelling of place of farming on the ground that only if there is strong support for such labelling from producers, will it work. One argued for a sector-by-sector approach and general rules should be dealt with as proposed in the Labelling Regulation proposal. One opposed obligatory labelling of place of farming.

Any labelling scheme should be non-discriminatory.

Most **regional authorities** support indication of EU/non-EU place of farming as a benefit to the consumer and local producers, but it may increase costs for processing industry; some argue for a sector-by-sector approach. Some insist that country labelling should be used in preference to EU/non-EU. Some oppose or think it will not have much impact or be problematic for some products (such as salt)

Producer bodies are mainly in favour of place-of-farming labelling, which will assist transparency in the market ; some argue for a case-by-case approach, as country of origin labelling is already applied for fruit and vegetables, but should be applied to all meats especially lamb. Place-of-farming labelling will, however, increase costs and is not realistic for all processed products.

Farm groups were in favour of place-of-farming labelling, e.g. the EU flag, in particular to help consumers and favour rural development and facilitate 'local' production with environmental benefits. Some said it would only have meaning for consumer at country level (not 'EU'). Place-of-farming labelling could be problematic for processors and could impose costs and lead to harm in the event of a food scare. A few opposed obligatory place-of-farming labelling.

"EU' place of farming labelling was supported by most respondents and would assist consumers, e.g. in assessing how far food has travelled, and bolster confidence. However, there is a risk in the event of a food scare that origin labelling will hurt other producers. For livestock products the origin of feed should be noted as well.

EU/non-EU' place of farming logo would be efficient to indicate EU standards, but also risky in case of disease outbreak.

Two **trade** respondents opposed EU/non-EU place of farming labelling as imposing unnecessary costs and adding burdens for small agricultural holdings

Processors in general opposed obligatory EU/non-EU place of farming labelling, which would be

difficult for processing industry since they need multiple sourcing to maintain quality of raw materials throughout the year input to processes. One processor asked for compulsory origin labelling to be avoided for beef (repeal existing) and other meats and especially for preparations of meat products. One argued that all reference to origin risked distorting the rules of competition. Re-labelling and difficulties of multiple sourcing must be taken into account. One said consumers do not appreciate EU/place of farming (but might be interested by 'country'). One processor organization said consumers were interested in such labelling and inferring additional quality attributes from the place of farming. A few processors were in favour on ground that it would increase consumer information and be a source of information for consumers.

A retailer said EU/non-EU place of farming labelling would let consumers know whether the product came from the EU. This retailer prefers EU/non-EU to country.

A **retail** body said that EU/non-EU labelling could be useful for raw agricultural products of lightly processed (fruit and vegetables, meat, poultry..), but not for processed products since the raw materials are not the decisive factor in the purchase. A second retailer also supported EU/non-EU.

Four **consumer groups** that responded supported EU/non-EU place of farming labelling in particular on processed product. One preferred country origin and another argued that consumers could more easily choose 'local' products.

Most **individuals** who responded supported obligatory place of farming labelling (EU/non-EU) as a distinct advantage to consumers and to assist traceability. Some said the level must be 'country' and not 'EU', but one insisted on EU level to avoid damaging the single market. Some difficulties are also foreseen, such as legibility of labels

Academic observers said EU/non-EU place of farming could be interesting for consumers, to distinguish local food (food-miles) and justify price differences, and exercise their right of choice. Several said the country name should be used.. Place of farming labelling could cause problems for processors

One **NGO** argued that origin of product should be traced obligatorily through the chain, but be voluntary for the retail sale, including for organic product. Another said place-of-farming labelling would create difficulties for processors using materials from different countries.

Other comments on EU farming requirements

Other comments on EU farming requirements included the suggestion to add the name of producer on packaging, the request that any scheme must apply to all product from inside the EU and outside, the fear that consumers would be confused if the indication of the place of farming appeared alongside a Protected Denomination of Origin (PDO) label, and the warning that too many logos would confuse consumers.

Add name of producer on packaging. Where EU standards are respected for imported product: how can this be controlled? Need a transparent system without too many burdens

Mandatory country of origin labelling should be extended to all meat. Any scheme must apply to all product from inside the EU and outside. Consumer will be confused by a place of farming logo and the PDO logo. A general EU quality logo would be useful. Greater harmonization of farming methods is needed in the EU. Failure to include these non trade concerns in WTO has left farmers at a competitive disadvantage. An EU logo is essential to underpin safety, said one. Origin of raw material must also be shown.

The multiplication of logos is causing confusion.

EU and non-EU pork must meet the same standards

No new labels are needed. Origin of raw materials is preferable to country of origin labelling

Labelling should remain voluntary and an integrated production label or high nature-value label should be developed.

One respondent doubted adherence by farmers to EU farming requirements. EU origin is not enough (want country). More labelling requirements will confuse the consumer. Origin of raw materials is needed. A coherent framework is needed: for baseline products, no logo, but use place of production of raw materials; for value added characteristics, use a system of indicators. EU and non-EU logos should be differentiated by color. Do not make labelling compulsory. Controls will be important

Fair trade should be promoted by Commission as a tool for support of farmers in developing countries

Certification should go beyond baseline schemes to value-added schemes.

1.2. Question 2

How does laying down product identities in marketing standards in EU legislation affect consumers, traders and producers? What are the benefits and drawbacks?

The vast majority of respondents was in favour of keeping EU-level product identity definition as they were. Support was lower from national administration but still majority. Some asked for simplification of the present rules – including a significant number of national administrations. Few supported the deletion of EU-level product identity definitions.

Given the support, a large number of benefits were quoted. They focused in majority on two aspects: consumer protection and consumer information on one hand; fair competition and transparency of the market on the other hand.

Drawbacks mentioned included extra costs, reduction of choice for consumers and increase of waste, bureaucracy and the need for flexibility for local conditions or old varieties.

National authorities were in majority in favour of product identities being laid down in marketing standards. An important minority in favour called for simplification, particularly for F&V, and/or to limit the number of products/sectors covered to the strict necessary. A little minority was completely against any marketing standards.

One **third country** was in favour of defining product identities, except when there is protectionism underlying (accusing olive oil EU rules to be protectionist)

Regional and local authorities unanimously supported laying down the definition of product identities in EU marketing standards. Only one suggested simplification (and at the same time an extension of the scope). There was also a suggestion that more sectors should be covered.

There was an overwhelming support from **farming organisations** to maintaining product identity defined at EU level, a small percentage of them asking for simplification (e.g. limit to sectors where free market fails, derogations for local and/or organic production). Few organisations considered that such issues should be left to the market.

Only three **individuals from the farming sector** clearly took position (in favour) on the need for product identity definitions in marketing standards

and none against. The others expressed themselves only on benefits and drawbacks.

Trade organisation or firms were mainly in favour of EU defined product identities. One recognised their benefits but stressed the need for them not to be too prescriptive.

Processing organisations or societies were in a vast majority in favour of maintaining product identity defined at EU level while some asked for simplification (e.g. for carcasses definitions which can be simplified). Deregulation should be envisaged if sector requests it. Few opposed in principle to the concept of marketing standard. Legal certainty was mentioned as a benefit while innovation handicapped and lower quality produced were quoted as drawbacks. Few answers seemed to be linked to a specific problem (e.g. soy milk; "fresh" meat; veal definition)

Consumers' organisations were in favour of product identities to be defined at EU level. One of them would accept some simplification while another one thought that simplification would confuse consumers.

As regard the opinion of **individual consumers**, they supported product identities defined at EU level, some expressed unclear opinions (balanced benefits and drawbacks) and other were against mainly because criteria for the definition are not the correct ones (should only be the taste or the method of farming).

Academic organisation, think tank and Universities were largely in favour. 2 asked for a simplification of contents or a reduction of number of products concerned. 2 other were against because it went against free trade or because there was no need of such definition at EU level. Drawbacks quoted included less flexibility for commercial private negotiations, too technical, difficult to implement by producers and to control efficiently, and a need to follow international standards.

Others organisations also supported the current approach, with just one contribution opposing any public intervention in this field, among others because it may encourage black market. One answer stressed the need to avoid over prescriptive provisions, another one the need to base standards on other criteria than aesthetical (taste, regional origin, date of harvest...) Derogations for organics were requested.

Should the retail sale of products that do meet hygiene and safety requirements, but do not meet

the marketing standard for aesthetic or similar reasons, be allowed?

If so, should such products require specific information for the consumer?

If no, please explain

Most of respondents were in favour of allowing retail sales of such products, except a significant minority of farming organisations including some European Federations. They were afraid that it would define a lower quality standard vis-à-vis the current production and will increase price pressure on quality products.

There was no clear trend as to the need of any specific labelling for such products. However, some ideas were expressed such as the products could be labelled "non-standard products" or "indented for processing". They it could be sold under other names or on different display units and the harvest/picking date could be indicated.

Only one **national authority** opposed the proposal, favouring shipment to the processing industry. It would however accept derogations when unaesthetic aspect is due to a ban on chemical treatment. Another suggested it for direct sales.

Nobody opposed a specific labelling. A voluntary labelling was suggested, as well as an additional category, specific selling places, or a label like "Off-class".

Only one **regional or local authorities** opposed the idea.

It was suggested that compulsory categories would become voluntary and to regulate the possibility to have "irregularities" and impose to justify them.

Farming organisations supported it in majority but warn that smaller sizes should not meant that fruits could be picked before maturity. Other ideas expressed included:

- other names should be used
- should be labelled "indented for processing"
- could be labelled "non-standard products"
- should not be sold as 1st grade/quality
- using the term "vieux" for cheeses having passed the sale date.

These organisations were usually in favour of a specific labelling

Individuals from the farming sector were almost unanimously in favour, a majority supporting a specific labelling. They requested a "terroir" term to be defined and a specific classification for those products. The fear that it would lower prices and penalize farmers at the end was also expressed.

Trade organisation or society clearly supported it. Some organisations supported a labelling for non-processed products but not for processed products while another was against any specific labelling.

2 Fruit and vegetables organisations were against the proposal as it would lower the quality, as product sold normally to processing industry would be sold to consumers

Processing organisation or society were largely in favour. A specific labelling was requested by several respondents. Ideas expressed included:

- Indicate the harvest date
- Sell the products under another commercial name
- Sell the products on separate shelves or display units
- Explain why the product is unaesthetic (traditional production method)
- Precise date of picking & class origin

Retail organisation or society unanimously supported the proposal, asking for specific information might be needed. They suggested that price could be lowered and explanation provided to consumers, or "not graded" indicated

Consumers organisation asked for information, did not think it was necessary or suggested to sell these products in designated places such as markets, indicating "non standard" products. One organisation welcomed the review of the F&V marketing standards.

Consumer / general public expressed a huge support, sometimes requesting additional information; one suggested creating a category "off-standard" sold cheaper

Those against consider that it would undermine years of efforts to sell products of better quality on the market and that overripe fruit releases ethylene which speeds up the decomposition of surrounding fruits - those fruits should therefore be sold in specific shops.

Registered academic organisation / think tank / University expressed their support, one organisation mentioned that it would be beneficial for small producers, especially in mountain regions.

Additional information would be welcomed and they should meet quality requirements such as freshness, maturity...

Among **other organisations** one feared a lowering of the quality standards but would support it for PDO and PGI.

Could compulsory quality and size classifications be made optional as 'optional reserved terms'?

Opinions were in general split as to the need for such classifications to be compulsory or voluntary. National administrations, producers and processing operators appeared to favour compulsory classification.

Arguments against these optional reserved terms included fears that this would lead to a lack of information (problem of market transparency), and that producers would be weakened vis-à-vis the retailers. On the other hand voluntary classifications may open markets to new products and reduce costs.

National authorities were especially against for fruit & vegetables, basic foodstuffs, when marketing standards already exist or when there is a need of basic quality requirements. Derogation should be envisaged. Those in favour thought it would be feasible for certain products & the size or for non-basic foodstuffs. Legal definitions were requested. Any details affecting the product quality was asked to appear on packaging.

One **third country** expressed its preference for voluntary norms, only indicative. Another one would encourage optional size and quality classification and consider CODEX standards, as well as encourage more liberal standards, moving away from size classifications. It insisted on not creating identities that only reflect the EU-produced characteristics (ex: gala apples).

Regional/local authorities were split (50-50): some regions argued that marketing standards should remain compulsory, other supported optional classification and some asked them to be delegated to private certification systems.

A majority of **farming organisations** opposed it for the following reasons:

- producers would be weakened vis-à-vis the retailers
- lost of readability for consumers, provide info to the consumers

- help comparing prices
- however norms have to adapt, evolve
- grading is essential for fruit classification
- fear that would increase imports
- different sizes should however be allowed

Those in favour said that:

- It would reduce costs
- It would be possible as soon as the rules are decided at EU level and uniformly applied
- Consumers make their choice on taste
- It should however not misled consumers

2 suggested a case by case approach.

Individuals from the farming sector were also split (50-50). Some said yes if it was up to the producer and if the consumer was informed and that it would help new products to access the market. Other said that it was needed for some products like potatoes.

Trade registered organisation or society were either in favour, for unprocessed food or against as they said there was a risk of unfair competition.

Processing organisation or society were in majority against as these standards had proven to be beneficial for both producers & consumers and that the EU should avoid proliferation of optional terms as well as there is a risk that it would lead to less transparency. For spirits, a fixed bottle size regime provides consumer protection & supports industry investment. It could be however envisaged on a case by case basis.

Contributions from **consumers / the general public** mentioned that size is not related to quality, grading is superfluous, quality & size should be an issue for market forces and retailers would know when size has to be mentioned. Other highlighted that it would be confusing, it was needed for market transparency, consumers were used to it, it explained the price, guaranteed a certain price and quality and that consumers needed objective criteria to make their choice and preferred to have a uniform product (25)

Registered academic organisation / think tank / University were rather in favour in particular as regard the compulsory indication of size. According to one contribution, these standard increased prices. However, the proposal would enable products not filling these standards to be sold. Other contributions, against, argued that they helped comparing prices, avoiding too many private rules

and were important in particular for quality classification (compared to size). There was therefore a proposal to create a new class of products "Off-grading"

Other organisations rather oppose the idea, as these standards help the trade and consumers to make their choice. Those in favour consider that the proposal would enable other products to access the market as products of old traditional cultivated plants & livestock breeds that do not always conform to modern concepts of "attractive".

1.3. Question 3

To what extent is it necessary to lay down definitions of "optional reserved terms" in marketing standards at EU level? Should definitions for general terms describing farming methods in particular sectors, such as "mountain products", "farmhouse" and "low carbon" be laid down at by the EU?

There was a very large consensus in favour of "optional reserved terms" to be defined at EU level in marketing standards. Only one category of stakeholders (processors) was rather against such definitions.

The same arguments in favour of reserved terms were often found: harmonisation, transparency for consumers, facilitation of intra trade, and protection of added value for producers. However, it was also commonly agreed that proliferation and unnecessary costs should be avoided.

Terms to be defined in priority would be "mountain" and "farmhouse", as there seemed to be a real lack of harmonisation and minimum criteria for them. The support for a "low carbon" definition was less unanimous.

Opinions in favour of definitions included:

- Improves transparency for the consumers. As long as terms used for marketing purpose are not defined there is a risk of misleading for consumers. It is generally recognized that behind these terms which valorise the products (sold at a higher price) there are consumers' expectations concerning the farming method.
- Improves harmonisation. It may happen that the same terms are used in different Member States but do not correspond to the same methods of production, of definition. Several answers limit the necessity to develop definitions to cases

where particular terms are used in several Member States.

- Facilitates intra trade: EU definitions allow comparison between comparable products.
- Avoids distortion of competition: such terms if clearly defined protects added value and guarantees a fair financial return to producers. As long as these terms are not defined they may be used in an abusive manner which results in distortions of competition.

The arguments to oppose self-regulation included:

- For certain operators (mainly processors), horizontal rule on labelling (notably the general prohibition to mislead consumers) is sufficient.
- Certain terms may be very subjective (i.e. "fresh", "natural", "low carbon", etc.) and therefore too difficult to define at EU level. National guidelines could be sufficient.
- Too costly since controls will be needed
- Consumers prefer brands rather than labels
- Processors who are mainly against EU definition of reserved terms including "mountain" consider it would possibly mislead consumers
- EU is not able to follow consumers trends, too much information on the labels

1.4. Question 4

To what extent could the drafting, implementation and control of marketing standards (or parts of them) be left to self-regulation?

A clear majority of respondents was against self-regulation. This was a particularly shared opinion among National authorities, regional and local authorities, farming registered organisations with only one respondent in favour in each of those categories of respondent. Processing and retail organisations were also clearly against.

Their arguments against self regulation included the fact that marketing standards are useful tools to compare prices and quality, the fact that self-regulation would lead to lower quality. The risk that the strongest actors of the food chain would impose their rules on the others as a result of the imbalance of power in the food chain was also mentioned. It may also create different

standards in the single market and therefore lead to distortions of competition between producers and between operators.

Most of the respondents in favour of self-regulation were also in favour of safeguards: rules drafted by all actors in a transparent way; responsibility of the controls left to the EU authorities or at least comparable and compatible with EU legislation.

The arguments to oppose self-regulation included:

- Marketing standards are useful tools to compare prices & quality
- It would lead to lower quality, as the quality is the adjustment tool of prices
- It would add costs to enterprises
- Few actors would be involved and as the power in the food chain is not balanced enough due to conflicting interests, the strongest actor of the food chain would impose its rules to the others actors
- It would create different standards in the single market and therefore lead to distortions of competition between producers as well as a lack of harmonisation.
- It would lead to inefficiency as well as reduce credibility for operators and distortion of competition between operators
- It would lead to product standardisation, and maybe to a proliferation of private standards

Other comments from contributions opposing self-regulation:

- A consultation with the actors of the food chain would be welcome
- A cooperation between the retail sector and the authorities is expected as well as a code of Practice to complement the legislation
- Controls should be performed by the public authorities
- The creation of an independent "European Food Trading Agency" would help
- Self-regulation should not apply to the environmental and the animal welfare field

Opinions in favour of self-regulation requested however:

- A common EU basis should be agreed first

- The definition of the standards should be drafted by all actors in a transparent way
- The responsibility of the controls should be left to the EU authorities or at least comparable and compatible with EU legislation
- Public intervention should be possible when consumers are misled
- Food safety matters should be left to regulators and self regulation used for other issues (size, visual look)

Other comments on self-regulation:

- It could be allowed only on a case by case basis, for example only when direct sales by farmers to consumers
- It could be only for additional requirements, for very specific products or in areas not regulated by the EU nor by international standards
- It has already been done in certain regions or sectors and worked well.
- It enables a flexible approach to different market across Member States and a quicker response if changes are needed

If marketing standards (or parts of them) remain governed by EU law, what would be the advantages and disadvantages, including in respect of the administrative burden, of:

- using co-regulation?*
- referring to international standards?*
- keeping the current legislative approach (while simplifying the substance as much as possible)?*

Co-regulation received a mitigated support from the majority of respondents. Some organisations from the wine sector and the trade sector considered that co-regulation would lead to more relevant practices but also to higher costs for the operators while national authorities as well as farming organisations largely opposed it, warning that the power in the food chain is unbalanced and that this would lead to some actors imposing their rules.

Referring to international standards was in general not opposed, as long as it neither lowers EU standards nor reduces the EU capacity to modify its standards. As far as the trade, processing and retail sectors were concerned,

they were overwhelmingly in favour of such standards.

A clear majority would favour keeping the current legislative approach while simplifying. Simplification should mean simplification of procedures and not a lowering of EU standards. The retail sector would also like more harmonisation.

Some organisations of the farming sector however supported co-regulation suggesting achieving it through voluntary code of practices or applying it for innovative products.

Other comments on marketing standards:

- More harmonisation is needed as well as higher involvement of stakeholders.
- It is suggested to involve the normalisation organisations
- Simplification should not lead to national standards and should not mean lowering the EU standards
- Simplification
- Current marketing standards are simple enough
- There could be different level: co-regulation for new innovative products, marketing standards with simplification for others, respecting international standards
- The procedures should be simplified, not the content
- The interpretations of marketing standards by Member States should be harmonised
- There is a risk that keeping the current approach would mean no evolution of the legislation, a periodic review would be needed
- The current approach is heavy and slow
- Some contributions supported the simplification of the fruits and vegetables marketing standards, other regretted it

Other comments on co-regulation:

- It could be considered on a case by case basis
- It may bring some benefits in terms of product identities
- It should stay at EU level without subsidiarity
- A legal framework would be needed

- The control of the public authority would be needed
- It would be more flexible
- Only if all stakeholders would be involved
- Controls based on risk assessment and market related penalties should be applied
- It would be better than self regulation
-
- It would lead to confusion
- It should not be used to discriminate certain producers
- Public should be consulted prior to adoption
- The strongest actor of the food chain would impose its rules to the others actors, small producers would not have their voice heard and consumers' rights would not be respected
- It would not guarantee enough controls

Other comments on international standards:

- Codex and CE-ONU could be relevant even if Codex can be very bureaucratic and favour imports and not exports
- It is important that all standards are enforced consistently in all the Member States
- It would facilitate trade, facilitate the comparison between products from 3rd countries, international harmonisation and reduce emergence of specific 3rd countries standards
- They may be too general and do not address regional specificities
- The operators should be consulted first
- They are irrelevant when EU has higher standards but useful for non-EU products (e.g. yak meat)
- They would reduce EU room of manoeuvre to change its standards
- Once adopted, the EU would have to change its way of participation in the standard setting bodies: wider consultation, more transparent, decision making at the stage of proposal

1.5. Question 5

Is there a need to clarify or adjust any aspects of the rules laying down the rights of geographical indication users and other users (or potential users) of a name?

About half of the contributions made clear that the current framework laying down the rights of geographical indication users and other users is sufficient. Different issues have been raised by the other half of contributions. Among the aspects for which clarifications have been asked most often, were the need to clarify the rights, duties and tasks of applicant groups (National Authorities did not raise it though); the application of articles 13 and 14 of Regulation (EC) No 510/2006 and the use of geographical indications as ingredients (this issue is treated more extensively under question 8).

Although national authorities did not raise it, **the issue which was asked most often to be clarified were the rights, duties and tasks of applicant groups.** This was done by several regional authorities, farming organisations, a trade organisation, many processing organisations, some individuals of the general public, academic organisations and quality organisations (within the category other). In this regard more specific items were asked to be clarified such as: the ownership of the intellectual property right of the geographical indication, the right to determine the volume of production, the right to determine the use of a geographical indication as an ingredient, the defence and protection of the geographical indication, the right to make certain operations obligatory in the area, the promotion of the geographical indication, the right to adapt the size of the logo to the specificity of the product. While the majority simply asked to clarify the issue, some farming organisations, regional authorities, individual consumers and quality organisations asked to give more powers to producer groups in relation to these issues. Several trade and processing organisations expressed against this.

The 2nd most cited issue was the need to clarify the application of articles 13 and 14 of Regulation (EC) 510/2006. Few respondents (one national authority and one other organization) have asked to better define the concepts mentioned in article 13 of Regulation (EC) 510/2006. Some farming organisations asked to define a clear borderline between trademark protection and geographical indication protection and suggested to

limit the registration of trademarks containing geographical indication terms. A similar idea was expressed by a national authority who wanted to have tighter rules for use of geographical names, especially by trademark holders. Some individuals from the farming sector asked to reinforce protection against trademarks that try to link themselves to geographical indications. A consumer organisation highlighted that confusion arises when a trademark uses very similar or identical terms as a geographical indication for a product from the same category. One academic organisation indicated it would be better for the consumer if only a geographical indication could use geographical names.

One quality organisation within the category others, considered there is a need to explain to national trademark offices and the Office for the Harmonization of the Internal market (OHIM) not only the application of articles 13 and 14 of Regulation (EC) 510/06 but also the articles 44 and 45 of Regulation (EC) 479/2008 and articles 16 and 23 of the Regulation (EC) 110/2008. This organisation expressed that by virtue of these legal provisions, trademarks' applications identical or confusingly similar to a geographical indication must be refused. A retail organisation expressed concern about the refusal of trademarks with a connotation of label because they potentially could be competitors to PDO/PGI quality labels. One other organisation and a national authority expressed some concern concerning the coexistence provisions of article 14 (2) of Regulation (EC) 510/2006. One farming and one processing organisation explained that article 14 (2) of Regulation (EC) 510/2006 and article 44 (2) of Regulation (EC) 479/2008 should be more consistent. One processing organisation expressed that for some earlier registered spirit names which have been listed in Annex III of Regulation (EC) 110/2008, the rights of other users might not have been properly weighted as they will not have gone through an objection or opposition procedure at EU level.

As for the use of a geographical indication as an ingredient, some farming organisations asked for clarification for the relation between article 13 (EC) of Regulation 510/2006 and the Labelling Directive 13/2000. Some suggested to establish a framework for the use of geographical indications in food. One processing organisation suggested a common guiding document referring to some common principles. Several processing organisations, mainly from the dairy sector, said the ability to use the name of the PDO/PGI is free. They considered that

the name of a PDO/PGI shall be used in line with the basic principles laid down in the EU Labelling Directive 13/2000.

What criteria should be used to determine that a name is generic?

Through all the contributions which have been received in answer to this question, the jurisprudence of the European Court of Justice has been highlighted as the most important source to take into account when determining if a name is generic or not. Some suggested working on a case by case basis on the basis of this jurisprudence of the European Court of Justice (ECJ) and the current criteria included in Regulation (EC) No 510/2006.

In addition several respondents highlighted one or more specific criteria, like: situation in the country of origin; perception of the consumer; lack of a link with the geographical area; existence of a standard in the Codex Alimentarius; duration of the use of a name etc. There were mixed feelings on establishing (or not) a list of generic names. In total more than 20 different criteria have been proposed.

Some member states mentioned specifically that the situation in the country of origin should be a criterium. Although few member states suggested establishing a list of generic names, several expressed against such a list or thought that the making up of such a list would be problematic.

The regional authorities mentioned most often as criteria the lack of a link with the geographical area and secondly the duration of the use of the name.

When referring to specific criteria, farming organisations most often referred to (in ascending order): the perception of the consumer; the lack of a link with the geographical area; the existence of a standard in the Codex Alimentarius; the duration of the use of a name; the situation in the country of origin and the existence of a definition in international agreements (such as the Stresa Convention).

Among the criteria mentioned by the trade organisations were included: the existence of a standard in the Codex Alimentarius; the fact if a name is mentioned in the footnotes of Regulation (EC) 1107/96; the existence of a definition in international agreements or being mentioned in annex B of the Stresa convention; the fact if a name has a been registered as a geographical indication

and the existence of a registration as a TSG. In addition, some trade organisations asked to place greater emphasis on craft expertise, specialist books and business papers when assessing commercial usage of a name.

A majority of processing organisations who responded, referred to the existence of a standard in the Codex Alimentarius. Also, it was suggested to take into account if a name was mentioned in the footnotes under Regulation (EC) 1107/96; look at the percentage of total production produced inside and outside the defined geographical area; the duration of the use of a name and the existence of a registration as a TSG. Several processing and trade organisations, mainly from the dairy sector, indicated they were in favour or open to discuss about a list of generic names. Some dairy organisations suggested to include in EU legislation a rule whereby the applicant has to prove the non generic character of the product or foodstuff in question. Still within the dairy sector, it was proposed to take into account when a member state has declared part of the name of registered geographical indication as generic. Few processing organisations, mainly from the wine and spirits sector, thought it was not necessary to determine criteria.

Retail organisations mentioned as main criteria the fact if a name is used for products produced outside the geographical area and the length of the use of a name.

No criteria were suggested by consumer organizations. One consumer organisation said that in case it is proven that a geographical name corresponds with a product which has a specificity due to a certain geographical area, the geographical name in question should not fall within the generic field.

As for the general public, the following criteria were mentioned most often: the place of production of the raw materials; the place of production, transformation and packaging; the lack of a link with the geographical area and the duration of the use of a name. Some said the current criteria were sufficient and others thought it is not necessary to establish criteria to determine if a name is generic.

Academic organisations emphasized the situation in the country of origin and the perception of the consumer as main criteria.

Within the category 'others', more specifically for the quality organisations, the situation in the country of origin and the perception by the

consumer were most frequently suggested as criteria.

Are any changes needed in the geographical indications scheme in respect of:

– the extent of protection?

– the enforcement of the protection?

– the agricultural products and foodstuffs covered?

• **the extent of protection?**

Whereas a majority of processing organisations, general public and academic organisations expressed against any changes with regard to the extent of protection, a majority of farming organisations, regional authorities and quality organisations (category 'other') were in favour. As for national authorities opinions were equally divided.

It was requested by several respondents to extend the TRIPS (Trade-Related aspects of Intellectual Property Rights) protection of wines and spirits to all other products and to create an international register for geographical Indications (GI's). At the same time it was asked to improve the protection outside the EU through bilateral agreements with third countries (this issue is treated also under question 7).

Some suggested to make a differentiation according to the export possibilities to third countries thereby concentrating mainly on products having export potential outside the EU and the risks of abuses.

Few respondents emphasized the need to explore the possibilities of establishing a system at the level of member states for local products produced on a small scale.

Few respondents proposed that the extent of the protection should cover the use of geographical names in the domain names, such as the ccTDLs (the country code top level domains of Member States, such as .fr, .it, etc. as well as .eu).

• **the enforcement of the protection?**

Within all categories it was estimated there is a need for a better administrative enforcement of protection within and between Member States. To a lesser degree, some indicated the enforcement of protection in third countries is a problem.

A majority of respondents emphasized that this should be done by clarifying and harmonizing at EU level the responsibilities, investigation procedures and sanctions of national control bodies to guarantee an equal application in all Member States.

Different options in this regard have been proposed: the creation of EU guidelines; the inclusion of an explicit reference in article 13 (EC) of Regulation 510/2006; the establishment of an EU structure, such as an European Agency for geographical indication to facilitate the management and the protection of GIs (both within the EU and in third countries).

Some contributors stated the need for a clear identification of competent authorities in charge of protection. In addition, some respondents indicated cooperation between competent authorities and control bodies in different member states should be reinforced.

One processing organisation stated that in order to have a credible system, controls should be done by independent bodies respecting the norm ISO 45011.

- **the agricultural products and foodstuffs covered?**

In contrast to the processing sector where a clear majority expressed against any extension, a majority of the general public, national and regional authorities, academic organisations/think tanks and quality organisations expressed in favour for extension of the scope of products. About as many farming organisations were in favour and against an extension.

Suggestions for new products to be covered included processed products, distillates for human consumption not made from wine, natural products (e.g. wild berries), ice-cream based on milk and water, artisan products, textile, cigars, silk or wood. However, some organisations explicitly expressed against including non-agricultural products.

List of suggestions for extensions received:

- non-agricultural products
- all food products
- processed products
- receipts (e.g. traditional)
- cooked meals and culinary preparations

- distillates for human consumption not made from wine
- natural products (e.g. wild berries)
- ice-cream based on milk and water
- boiled, raw, filled pasta
- precooked foods
- local animal races (special attention to races in danger of extinction)
- cooked or barbecued meat products
- vegetables consumed mainly cooked or precooked
- artisan products
- textile
- cigars
- silk
- leather
- products of the sea
- wood

A farming organisation and quality organisation proposed not to have a formal list of eligible categories, but a general definition of the concept of a geographical indication (possibly accompanied by an indicative list). This would allow an assessment of the applications on a case by case basis and avoid future legislative interventions.

Should the use of alternative instruments, such as trademark protection, be more actively encouraged?

A majority of respondents stated that geographical indications and trademarks are not alternatives but two systems distinct in nature that should co-exist.

Some stated both systems could be complementary. Several farming organisations indicated that collective trademarks could be interesting to use in the case of international trade in certain 3rd countries. Collective trademarks could be an alternative to geographical indications for certain typical local productions linked to an area having a limited economical impact. Few processing organisations, within the dairy sector, asked to encourage the use of collective trademarks not linked to protected denominations of

origin/protected geographical indications (PDOs/PGIs).

1.6. Question 6

Should additional criteria be introduced to restrict applications for geographical indications? In particular, should the criteria for protected geographical indications, as distinct from protected designations of origin, be made stricter to emphasise the link between the product and the geographical area?

The majority of respondents were against introducing additional stricter criteria for geographical indications. It is not the high number of names which weaken the system but the lack of communication. A vast majority of respondents asked for a better communication on current schemes and European symbol before adding new criteria.

More flexible criteria regarding the origin of raw materials were asked mainly by French contributions. The origin of the raw materials should be indicated if there would be a risk of misleading the consumers (see also question number 9 below).

Reinforcement of control by the Member States and a harmonised application among them was part of the raised issues as well as the need for an Agency to help the registration and management, harmonisation of implementation of legislation and controls. Besides, there was a proposal to merge the PDO and PGI schemes with a more flexible approach to origin and use of raw materials from outside the area.

Arguments against stricter criteria

- Stricter criteria do not have to be introduced in order to reduce the number of registration. High number of names protected is an indication of the success of the system, raise the notoriety of the schemes and show the diversity of gastronomic tradition.
- No need for adding criteria but more rigour in the interpretation of the current ones in order to reinforce the credibility of the system. The criteria and the differences between PDO/PGI/TSG should be define more clearly. A harmonised application of the registration criteria among Member States is also important;

- Already very strict criteria and long procedures specially taking into account the distribution of the premium price (the producers receive only small part of it);
- Additional criteria would discriminate countries where the system is not yet very well developed;
- It will be unfair for new applicants in relation with the names already registered. In this context the existing protected names should be revised;
- It would cause higher costs for producers and could force producers out of the market;
- Criteria based on the production volume and the size of the producers group should not be added. The small producers shall have access as well, they are important for the economy of the region. The volume of production should not be a condition but seen as a result of the protection.
- Keep the differences between the PDO and PGI. Strengthening the link for PGI will be confusing with PDO
- Difficult discussion WTO The relation between the additional criteria and TRIPS shall be analysed as well
- The proposal could be premature as the Commission funded research on the economic value of PDO/PGI is expected to begin in 2009

More flexible criteria regarding the **origin of raw materials** were asked mainly from France. Allowing raw materials to come from a larger area than the geographical area will support the development of the region, the preservation of traditional production methods of "proximity supplying", the use of local knowledge.

Arguments in favour and proposed stricter criteria

- Too many names protected and broad concept of GIs will dilute the value;
- Difficult position in the negotiations, the list of GIs in trade agreement should be limited;
- Strengthening the link between product and geographical area for PGI, restriction of the raw materials to geographical area. This will respond to consumers' expectation that raw materials and the production of the end product are at the same place. Better traceability.
- Economic criteria linked to the production volume and potential for export should be introduce, proposal mainly from Italy. This will

lead to protection at 2 levels: only national protection for GI produced in small quantity and marketed only in local areas and protection at EU level for product which present a potential for export.

- Restriction of the origin of raw materials will encourage production in the processing area, too often the raw materials are sold outside the geographical area for processing.
- Deeper checks to avoid registration of "madeup" products;
- Better definition of the geographical area (a given region) and obligation to have the name of the region included
- Requirements to prove the anteriority use of the name

A repetitive issue was the measures to be taken in order to **avoid consumer confusion**. In this context, if risk of misleading the consumers, the origin of the raw materials should be indicated.

Reinforcement of the control by the Member States and a harmonised application among them was among the raised issues as well as the need for an Agency to help the registration and management, harmonisation of implementation of legislation and controls among Member States and a proposal to merge the two systems in one with a more flexible approach to the origin and use of raw materials from outside the area.

Should specific sustainability and other criteria be included as part of the specification, whether or not they are intrinsically linked to origin?

If so, what would be the benefits and drawbacks? If not, please explain

A large majority of respondents from different sectors, with the exception of National authorities and individual consumers/farmers, were opposed to specific sustainability and other criteria. Among the number of those who expressed against such criteria, main disadvantage mentioned were the risk of consumers confusion and the risk of a reduction of benefits. Some who objected thought that this criterion could be made voluntary.

Respondents in favour underlined as main advantages better consumer information or the need to introduce environmental criteria. They also suggested that the criteria be voluntary.

The majority of respondents in favour from the National Authorities sector and consumers sector, and the minority of respondents from other sectors underlined as main advantages better consumer information or the need to introduce environmental criteria. A few were aware of increase in costs or the risk of consumers' confusion.

Observations appearing throughout the contributions in different sectors include:

- some mention a **risk of confusion with organic farming**, as sustainability is already included there
- **disadvantage** in the difficulty to explain to third countries; is not required at WTO level
- A few express disadvantage that sustainability is not a priority criteria for quality (conflict between modern ideas of sustainability and traditional production methods), it would be difficult to link it to production area of PGIs (long supply lines), would make monitoring compliance and audit more difficult
- a few respondents stated that sustainability criteria could be resolved with a quality sign: "low carbon emission"
- individual responses referred to **advantages** like incentive to adopt best practices; reinforce local and regional participation; possibility to manage production volumes; producers could ask higher prices
- A few underlined that Producer Groups could prepare cahier des charges and educate farmers on sustainability criteria
- advantage in advocating good consumers perception on environment and animal welfare, but would need to be defined, as additional criteria could be introduced like maintenance of local identity, culture, gastronomy

1.7. Question 7

What kind of difficulties do users of geographical indications face when trying to ensure protection in countries outside the EU?

There was a general concern of the lack of protection of GI in 3rd countries, mainly expressed by farming organisations and some Member states, but also by consumers (France).

Stakeholders identified problems they face when exporting EU products bearing geographical

names protected as PDO and PGI. Third country organisation mentions that international trademark and fair trading regimes provide enough protection for brands.

The first set of problems concerned the protection provided by TRIPS. Stakeholders underlined the difficulties to enforce the protection provided by TRIPS, mainly because it was complex to prove the GI "status". Infringements of GI rights were also difficult to prove. Major problem was also the low level of protection provided by TRIPS (especially for products other than wine and spirits), and that the protection was reduced by the scope exceptions enshrined in Article 24.

The second set of problems was the relation to trademarks, when a previous trademark had already registered the name.

The third set of problems referred to the generic use of the protected name or its translation.

Problems related to counterfeiting were often mentioned as well as the fact that the EU did not sufficiently enforce bilateral agreements.

One third country mentioned that many EU Geographical indications are presently generic terms in third countries, as results of European immigration. It was also mentioned that the main problem for EU GI's is that they are not competitive;

Some respondents, mainly from Italy, have also mentioned misuse or deceptive presentation of place of origin of the product, as to European Member states.

Beside the intellectual property problems, stakeholders have also pointed out the lack of understanding of the "GI concept".

Some stakeholders, mainly from France, were also surprised by the fact that EU regulations on GI's is open to third countries and no reciprocity is existing in majority of third countries.

What should the EU do to protect geographical indications in the most effective way in third countries?

A majority of respondents supported the negotiation of bilateral and multilateral agreements in the framework of the World Trade Organisation (WTO) - a majority mentioned the TRIPS Council. Some

stakeholders did ask for more proactive and strong positions in both arenas, bilateral and multilateral. As regard multilateral negotiations, a majority of stakeholders supported the creation of a legally binding register for GI's, for wine and spirits but also open to all goods.

It was also mentioned the inclusion of GI's in the scope of Anti-Counterfeiting Trade agreement (ACTA). In bilateral agreements, although GI provisions should be included in every agreement, the idea to select strategic countries was raised by stakeholders in several responses.

One Member state recalled that protection granted to names of some Member States becomes a burden for the rest of the EU in the international arena. It was also mentioned that no preferential treatment as economic support for activities in third countries should be granted to GI's.

On the **multilateral negotiation**, majority of stakeholders supports:

- The creation of a legally binding register for GI's, for wine and spirits but also open to all goods.
- The extension of protection existing for wines and spirits to all goods;

Concerning **Bilateral agreements negotiations** they shall be considered in the perspective of the difficulty to conclude multilateral agreements. Some concerns have been raised as to bilateral negotiations:

- It has been mentioned the need to negotiate bilateral agreements that cover all agricultural products and not limiting it to wine and spirits.
- Objectives of the negotiation should be both ensure protection and enforcement of protection.
- Although GI provisions should be included in every agreement, especially in free trade agreements (FTA), the idea to select **strategic countries** has been raised by stakeholders in several responses.

The issue of the **number of GI's to be protected** in a bilateral agreement has also been raised in the context of the consultation. An important number of stakeholders have raised concerns on the long list of names for which protection is seek in a bilateral agreement, and ask for a pragmatic approach consisting in creation of reduced list for each negotiation. The list should be drafted following economic/export and risk of usurpation criteria. On the opposite side, other stakeholders mention the need to protect all the registered PDO/PGI, as it

would prevent future usurpations of notoriety, and serve to protect the concept of GI's as itself. CEPS organisation required further dialogue with the Commission on this delicate issue.

It has also been mentioned also to concentrate on **strategic trade partners** to negotiate against imitation and aiming to restore evaded and usurped GI names.

Several **new ideas** have been proposed by respondents aiming to **ameliorate GI protection** through an external policy:

- To increase protection against counterfeited products. Inclusion of GI's in the scope of Anti-Counterfeiting Trade agreement (ACTA) was mentioned by several respondents.
- Majority of stakeholders mention the need to increase communication and information of the GI system and the protected names in third countries as a mean to ameliorate protection.
- To create an European body that would have as main objective to monitor regularly markets and registers as to European PDO/PGI in third countries.
- Further coordination between Member states.
- Bilateral initiatives aiming to prevent conflicts on trademarks.
- European Union could create a program aiming to support right-holders of PDO/PGI facing legal court challenges in third countries.
- To sponsor technical projects to put in place GI *sui generis* systems in some third countries. Under this approach it was also mentioned the need to reinforce GI policy through cooperation agreements.
- Assist marketing, accompany placement of the products, assist and encourage market analysis, encourage purchase of products.
- Negotiate WIPO adhesion of the European Union.

1.8. Question 8

Have any difficulties arisen from advertising of PGI/PDO ingredients used in processed products/prepared foods?

While negative answers (i.e. no difficulties arisen) were expressed explicitly, in a significant number of answers respondents simply declared

themselves in favour of new rules on the advertising of PDO/PGI as ingredients without explicitly indicating whether actual difficulties had already arisen. Half of national authorities answers declared explicitly that no difficulty have arisen so far.

A majority of respondents was in favour of laying down rules on the use/advertising of PDO/PGI as ingredients so as to prevent misleading consumers.

This opinion is especially pronounced among farming organisations and academic organisations.

The most frequent **suggestions concerning possible rules** may be grouped into:

- need for an authorisation of the producer group (or a duty to inform the national authority)
- advertising only if the PDO/PGI is the only ingredient of the same class in the processed product;
- Definition of a minimum requirement expressed as a % threshold to allow the advertising of the PDO/PGI registered name on the label.

Concerns about the effectiveness of controls of the rules' implementation and the need for *ex officio* protection were raised by a few respondents.

A number of respondents across categories is in favour of the use and advertising of PDO/PGI as ingredients, provided that consumers are not misled. No further details is provided in those answers.

The negative view on the need of rules is most pronounced in trade organisations' answers (however the numbers of answers are small).

A number of respondents against possible rules on the advertising of PD/PGI as ingredients indicate that the Labelling Directive 2000/13/EC already lays down adequate rules to protect consumers.

1.9. Question 9

What are the advantages and disadvantages of identifying the origin of raw materials in cases where they come from somewhere else than the location of the geographical indication?

All sectors, besides the processing organisations, were in a large majority favourable to the identification of the origin of raw materials, mentioning as the main advantage better consumer information and awareness. Many

mentioned that it would be justified and/or positive in the case of PGI. Some expressed that this information should stay rather optional.

The processing organisations were in a large majority against identifying the origin of raw material, mainly mentioning as a disadvantage the confusion of consumers. Some expressed the fact that it would not add anything to quality, or that it would be irrelevant for PGI.

Among the other sectors, a minority was against, mentioning as the main disadvantage the risk of confusion of consumers (underlining it in the case of PGI) and higher costs.

There are comments appearing throughout the contributions in different sectors:

- potential problem and **disadvantage for processed products**, due to too much information on the label, and limited space (authorities, retail sector and academic/think tanks). The consumers sector had a favourable response for identification of raw materials for PGI processed products. The trade sector suggested identification is not relevant for PGI's.
- individual contributions stated the problem in the fact that it is not always possible to **source raw material from GI area** (authorities, farming organisations, trade)
- some farming organisations and consumers underlined that **only EU/nonEU** identification should be used, backed individually by regional authority and think tank
- opinions on the advantage of identification of only **main ingredients** linked with opinions on identification depending on the % of raw materials used (ceiling) suggested by farming org., consumers, think tank. Additionally individual respondent pointed out the importance to identify the terms 'bassin de production' and 'ancrage territorial' mentioning practices of raw material sourcing wider than defined GI area.
- disadvantage in **increase of costs** is mentioned by a number of contributions (authorities, consumers, think tank) with retail thinking that higher costs will be a result of changes in packaging as the source of raw material change or because of restrictions on source as a result of identification.
- a few suggest as disadvantage that consumers could have a negative reaction to products with raw material identification (farming org.,

consumers, think tank) with the perception of quality lost (regional authority), one opinion advocating that it would be good to explain to consumers the difference between quality and nonquality.

- quality & origin are mentioned individually by farming and processing sector

Besides the general trends and comments underlined above, there are **different sectoral ideas** highlighted in the consultation.

Individual contributions among **National Authorities** contradicted each other mentioning the obligatory or voluntary identification for PGI's. A respondent insisted on product sourcing at local level and an indication for outsiders: "origin – outside zone". One respondent referred to publicity for areas as an advantage.

A view from **Regional/Local Authorities** mentions to include a norm excluding GMO's.

In the **Farming Organisations sector**, one respondent suggested indication with a derogation only in case of natural disasters in the GI region. One respondent argued it would be sufficient to modify the logo to include: "remotely sourced ingredients".

In the **Processing Sector** individual expressed that a problem can arise if raw material is more renowned than GI name. One respondent suggests describing the term raw material.

The **General Public/Consumers**, a favourable opinion mentions as advantage competition at local level.

Among **Academic Organisations/Think Tank/University** some state as advantage that identification would favorize local sourcing of raw materials.

Among **Environmental NGO** a contribution suggests flexibility when raw materials are temporarily unavailable in the GI area and sourcing has to come from outside. One opinion underlines that sometimes the quality of raw material is better from outside the GI area than from within.

1.10. Question 10

Should the three EU systems for protection of geographical indications be simplified and harmonised? If so, to what extent?

Alternatively, should they continue to develop as separate registration instruments?

The majority was in favour of the harmonisation of the 3 systems: agricultural products, wine and spirits, but keeping their specificity. The processing and trade organisations majority supported the current situation with 3 harmonised but separate systems.

The merging of the 3 systems, with a single register, was supported by third countries' respondents and some of the farmers' organisations.

The consumers were generally in favour of simplification and more coherence.

The harmonisation of 3 systems will contribute to increased understanding of rules and better recognition by the consumers. It will facilitate the communication and promotion, the exports and will increase the credibility in negotiations. They deal with similar problems therefore the certification and supervision could become simpler and cheaper. The harmonisation shall allow keeping the specificity of the sector and avoid ending up with the lowest common denomination.

Among the proposed issues to be harmonised are:

- Common definitions. Some respondents required possibility for PDO protection for spirit;
- Procedures. The objection period should be harmonised and appropriate consultation shall be introduced in case of objections for wine and spirit;
- Extend the level of wine protection to other categories;
- The rules for use of quality symbols;
- The monitoring of registered names;
- Harmonisation of control and shortening of proceedings;
- Relations with TM

Among the arguments for **keeping the systems separate** are the recent legislation for wine, the systems are quite new, they are well understood and they are already harmonised to a certain point so there is no need for further harmonisation. The current systems are adapted to the specificity of the products, harmonisation will be difficult and will imply bigger administrative burden so the proposed solution is simplification in each of the system. Only clarification is needed and harmonisation of

the interpretation among the Member States. These opinions are shared mainly by processing, trade non-registered organisations and some of the farmers' organisations.

Few answers are favourable to a total merge of the systems because too many signs confuse the consumers and this will also provide a better position in trade negotiations.

The harmonisation into one system but with 3 sub-specifications was also suggested.

The creation of a European agency which will contribute to shortening the procedures and eliminate the distortions among Member States was also mentioned.

Precise evaluation of the benefits before taking a decision was asked by some farming organisations.

1.11. Question 11

Given the low take-up of the TSG scheme, is there a better way of identifying and promoting traditional speciality products?

Several stakeholders saw the way forward in simplifying and streamlining the provisions of the scheme: most pronounced ideas seemed to be that only registration with reservation of the name would be possible. Other improvements that were suggested are simplification of the procedure and control provisions, new logo, and extending the scope.

Some stakeholders called for a communication and/or promotion scheme while others were in favour of *status quo*.

As an alternative to TSG stakeholders most frequently proposed that a reserved term be defined. Other suggestions included its replacement by the introduction of guidelines or "code des usages" at EU level, conversion of existing TSG to GIs system, replacement with a national system, and to have recourse to trade marks. Sometimes simply a deletion of the scheme was proposed.

It has to be noted that in the consultation considerable support was expressed to TSGs scheme while pointing out its importance.

There were also claims that traditional products were linked to local know-how and therefore an instrument of protection at regional level for local artisanal products made according to traditional methods is needed.

1.12. Question 12

What factors might inhibit the development of a single EU market in organic products?

There was a very wide range of suggestions of factors that could be inhibiting the development of a single EU market in organic products. However, there were also voices saying that there is no problem at all and that it is premature to ask that question since new EU-wide legislation applies only from 1 January 2009.

Many comments focused on the consumers and their lack of information in general. Other comments indicated that consumers tend to associate organic production with local production and that they really prefer local or regional produce. Supplying local market is more in line with the organic idea (protecting the environment).

Many contributions also mentioned the difficulties linked to the still small scale of production explaining that the local market is more in reach. Another great obstacle identified was the lack of one well-known logo – even if opposed by others. The foreseen ECO label on food would be a threat for such a logo. Other comments, often coming from new Member States, were that the organic market is not structured enough in some places (lack of distribution channels, little interest of the processing sector...)

The organic trade indicated the many different private organic standards – only recognised in one Member State – as a potential obstacle to trade as well as local, regional or national origin denominations.

There were quite a few comments on the lack of common rules in the EU and the problem of different interpretations of EU legislation. Many comments, in majority from Spain and Italy, underlined the need for improved controls.

There were some voices concerned about imports, saying that controls and certification should be the same as in the EU.

Answers could be structured by looking on the different important players and structures for the organic market, but since the organic market is differently structured in the various MS or regions of the EU, some attention needs to be given to the

geographical origin of the comments. The different comments can sometimes be opposing each other due to the different structures and their therefore different implications for a single market.

Consumers

Many comments focus on the consumers and their lack of information in general, but also in particular.

Some of the comments were:

- Lack of coordinated information towards the consumer
- Huge imbalance between conventional, integrated and organic agriculture, advantages of organic production should be made more visible, its effect on the environment should be acknowledged and objective information given to consumers
- Lack of information on health risk and benefits
- Confusion about what organic stands for - experience from local milk being understood as "organic milk" and thereby capturing sales from organic milk
- Lack of coordinated marketing support and interference by the EU often deferring consumers - only old guidelines in EN, leaflet on EU Regulation refers to old legislation

More information can lead to more consumer confidence in organic production and control. Some comments were that there is a general lack of consumer confidence, some were indicating that consumers have doubts about the controls in and outside the EU that consumers wonder whether the controls are sufficient or think that there are no independent controls.

Other factors when looking at consumer confidence were:

- The different organic standards could be misleading consumers
- Lack of transparency
- Lack of consumer confidence - due to long supply chains
- Consumer and organic production are too far away from each other
- Lack of scientific prove in order to promote the different qualities of organic products
- Scandals due to not adapted control and vigilance and fraud

- Production along motorways

There can also be found comments concentrating on the different requests by consumers and that consumers might think that the certifier is more important than the producer.

Others focus on the quality and the price of organic products:

- The difficulty of communication comes from a confusion of the production method and the quality of the products
- Consumers do not want to pay higher prices
- Quality is not always according to price premium - there is an unjustified gap between what the consumer pays and what he gets
- Different production methods lead to different qualities
- Prices cannot be controlled
- Prices of organic products and the competition from other alternative products
- Financial crisis is greatly affecting the consumer
- Lack of demand
- Lack of purchasing power in a part of the EU
- Organic production of wine does not guarantee quality - important to consumers
- Organic production of wine is not recommended - it will only confuse the consumer

There is quite some concern about GMOs and whether it will be possible to keep them out of organic products. Many are concerned about the GMO threshold of 0,9% and that EU legislation accepts contamination with GMOs in organic foodstuffs.

Some comments were:

- The GMOs will kill organic farming
- The discussion on GMOs will harm the organic sector, when the "green genetic technique" will be introduced in the whole EU. This will be a main obstacle for further development

Other comments indicate that consumers tend to associate organic production with local production and that they really prefer local or regional produce. As demand is regional, distribution should be regional too. There should not be any long transports, which can harm the environment and which will cause externalities for society.

Supplying local market is more in line with the organic idea (protecting the environment). One comment was also that there is a lack of indication of origin.

When looking on how the consumer can identify organic products and on the organic labels, a range of different comments are suggesting different obstacles. Particularly the lack of one logo or that it is not known, but also that it is generally difficult for the consumer to identify organic products. One great obstacle identified is the foreseen ECO label on food with its higher environmental requirements.

Some other comments:

- Consumers cannot understand many different logos - use of private/national logos
- Current situation with several logos may disturb trade and mislead consumers
- Change of logo
- Different private logos with their different guaranties of higher standards could harm the credibility of the official EU logo
- Obligatory EU logo is a threat to private logos
- There are new higher requirements on the other products
- It is catastrophic with the different nearly identical EU logos. They are very unattractive (one even symbolising a virus). They do not even follow minimum marketing standards.

Organic production

In connection with organic production and the growing demand of organic products there were described different obstacles why it seems to make it difficult to persuade more farmers to convert to organic production:

- Lack of information - producers
- Technically difficult to produce in an organic way
- Current farming technologies
- Too many different requirements
- Bureaucratic quality schemes are an impediment
- Organic production is difficult
- Organic poultry production is difficult
- Not enough methods for biological plant protection

- Increasing specialisation of farms
- The climate
- Production costs
- Higher production costs, because of the requirement of traceability
- Certification costs
- Overall costs
- Low cost-effectiveness
- Less productivity

Some say bad politics (on policies, subventions, coherence, public information) are inhibitors for the development of the single market. Where others think as long as there is no proven benefit of organic production there should not be spent any EU money on it.

Other comments on that line are:

- Lack of commercial strategy and most importantly of incentives
- Lack of adequate rural development policies - organic production method is in a crisis
- Development funds are missing
- Lack of coordination between supply and demand - planning together
- Too few incentives for farmers to convert
- Producers quit when they do not get more subsidies
- Lack of economic incentives to convert big areas
- The pressure on land and the slowing of prices
- Price speculation

Many have been commenting on the difficulty of the still small scale of production and that therefore the local market is more in reach.

Other comments often from new MSs, were the market structure for organic production has not yet developed were:

- Lack of marketing strategies for small scale economies
- Not enough produce
- Small producers - manufacturers and growers
- Lack of cooperation between farmers
- Small number of producers
- Small production area

- Only few products of flawless origin and quality
- There are too many non-reliable products on the market
- Varying quality and quantity
- Lack of organic feed
- Local and climatic differences
- Only few services for distribution
- Differences in distribution
- Present support system helps producers, but not traders
- Lack of distribution channels - organic market remains very fragmented
- Transportation problems
- Little interest of the processing sector
- Farmer has no incentive to sell his produce directly to the consumer

Many from the farming sector are complaining about different factors that cause distortions of competition in the different MS:

- Different support in MS
- Different application of legislation in MS
- More restrictive national rules
- Minimum EU standards and the possibility of applying stricter rules
- Differences in standards from country to country
- Poor regulation of organic poultry and egg production
- Different certification costs
- Too few control bodies on the market
- As other factors inhibiting a single market for organic products were mentioned: (not sure why??)
- West European agricultural organisations
- Food lobby

Organic trade

There are different factors in organic trade that had been commented one is the increased protectionism through local, regional or national origin denominations, the other is the many different

private organic standards that might be an obstacle of trade.

There are different often opposite opinions on what is really the problem:

- Barriers come from the basic law on certification and lack of compliance with community organic production
- No sufficient guarantees for the consumer by the Regulation
- Different requirements/standards in the EU
- Private certification bodies should not be allowed to have additional requirements
- One single certification process cannot fit to all circumstances
- Private standards should be allowed, but they and their different logos will not encourage a single market
- Certification in one MS is not recognised in another - recertification to other private standards necessary
- Arbitrary behaviour of some MS with their in "gold plated" standards where common EU standards should be enough

Other comments concern the competition of organic products:

- Competition of organic products with each other - similar products
- Competition with traditional products
- Competition from other certification schemes e.g. "natural production"
- Overlaying commercial schemes competing with each other
- Many commercial schemes with their own rules and costs
- Strong position of different marketing organisations in the MS
- Multinationals have too many requirements
- Conventional food chains and the multinationals
- As long as traders prefer their national certification body, there will be no free trade

There were only a few concerns about imports from third countries particularly from China and South America (Brazil) where consumers lost their confidence.

There are some voices concerned about:

- Cheap produce/raw materials from third countries
- Imports in the EU are too difficult (complex)
- Lack of import controls
- Control and certification should be the same as in the EU
- The European requirements have been changed frequently. As a result quite a few producers have given up organic production"

Organic legislation

There are quite a few comments on the lack of common rules and that the new Regulation should have improved the situation, but that some MS want to keep their own rules particularly their private rules. Many see a problem with the harmonisation of production rules in the EU, which could also be the same comment that there are different interpretations of EU legislation.

Other comments on that line were:

- Too much flexibility from one to the other country
- By accepting lax standards
- Lack of harmonisation of glasshouse cultivation - NL glasshouse horticulture cannot be called organic (should we write that ??)
- Problem with the definition of additives coming from natural sources - the production might not be organic

Lack of controls, lack of independent or weak controls, lack of harmonisation of controls, certification and sanctions are of great concern. Even though one comment from one authority was that older MS have an advantage that they are more in compliance, many of the concerns on control come from Italy and Spain.

Other comments on this issue were:

- Problems with control of non-authorised products
- Commission did not continue supervision of national control systems
- Inadequate control of the whole production chain - particularly outside the EU
- Requirements and control should be the same in and outside the EU

- Greater demand might decrease consistent monitoring and supervision
- Lack of communication between certification bodies

There are a few comments on the lack of some EU legislation still to be adopted on some grey zones, as for instance for wine, caterers, rabbits etc.

As for wine:

- The incoherence of the CMO for wine and organic farming
- Problem with names of organic wine

How can the single EU market in organic products be made to work better?

Many contributions suggested that there should be significantly more promotion towards consumers: public and private, with EU giving support to stakeholder promotion campaigns and education of stakeholders on promotion.

Protecting high confidence in organic products would also be important. To strengthen consumer confidence, it would be essential for different private standards to be completely transparent. Private labels should be able to demonstrate their additional claims.

It was suggested that there was a need for a new development plan or a complete implementation of the action plan. It was particularly suggested by the new Member States to support the development of an organic market, strengthen marketing and create better conditions for distribution channels, in order to reach all the shops.

It was also suggested to develop a common system for the operation of an organic market with well-established import controls and information mechanisms.

The trade sector suggested that the EU monitor the derogation granted by the Member States, in order to avoid distortions of trade.

The need to check the functionality of the new legislation before taking up new issues was also mentioned. It was emphasised that the Commission should work closer together with professionals and stakeholders that work on a national level. Harmonised interpretation of EU legislation would be needed. It was suggested that there should be a better cooperation

between the authorities of the different Member States.

Another important issue was the improvement of control systems and their auditing both by the MS and by the Commission. There were many different suggestions ranging from centralised controls at EU level to controls by private bodies that need to be EN 45011 accredited.

Consumers

Many suggest that there should be much more promotion to consumers - public and private and that the EU should give support to stakeholder promotion campaigns and education of stakeholders on promotion.

More specific was suggested:

- EU-wide promotion campaign of sustainable agriculture with a clear explanation of all criteria, requirements and use of inputs in organic farming, but not only on organic farming
- More subsidies for the promotion of organic production to producers and stakeholders
- More information on the external costs of other products in respect to the environment and health
- Environmental groups should stop advertising – consumers do not trust them
- More information to the consumer about quality - what is truly organic
- Adapted promotion, organic should be defined the same way everywhere, productive, but respecting the environment and healthy processing. This should be underpinned by research.
- More information on packaging counters

Protecting high confidence in organic products is important. It is one of the key elements - consumers have to be sure of high standards. To strengthen consumer confidence it is essential that the different private standards must be completely transparent. Private labels must be able to demonstrate their additional claims.

Suggestions along that line were:

- Consumer confidence depends on the credibility of the standards and the controls

- Control and certification needed - only certified products should be sold as organic
- International cooperation between control bodies and competent authorities to avoid fraud
- Organic production and consumption should develop together – closer ties should be promoted between producers and consumers
- Active consumer organisations

Local products are very important to the consumer. Products should come from their own country. It was suggested that it would be better to envisage a regional than an international market.

Additional comments and suggestions:

- Favour seasonal and local consumption
- Support local production in line with sustainable development
- Organic produce should only be traded local or regional, to trade commodities further away is against Article 3(a)(iii) the responsible use of energy. Organic produce traded further away should therefore be more expensive - radius not more than 200 km
- Only producers that produce environmentally sustainable should be allowed to be organically certified
- Standards for environmental and animal protection
- By obliging production systems to be sustainable
- Production and consumption should in principal be local, if transportation needed the product should cost correspondingly more
- Value the regionalisation of production - organic and origin should work together to win over more credibility
- Should there be only one organic market? Transport over long distances is not coherent with the organic principles of taking care of the environment – producers should have to make a CO₂ balance of their production
- The main challenge is to improve the organoleptic quality of organic products
- New rules on organic products and their origin are bad, products which are only to 50 or 70% organic must not be considered organic

Consumers are very concerned of chemicals and GMOs, therefore it was suggested to forbid all

chemicals and GMOs in all agriculture and to enforce controls and sampling.

Other suggestions were:

- No GMOs should be allowed at EU level
- Delete 0,9% GMO threshold

There can also be found comments concentrating on the different requests by consumers. It is suggested that the market will only develop as much as it is meeting the expectations of the consumers. As they are different in the different MS, different national rules should be allowed.

Additionally prices are still also an important issue:

- Reduce tax on organic products or think of other incentives to keep consumer prices down

There is a strong position for only one organic logo in all MS and against using additional national or private labels. It is suggested, not to use the ECO label on non-organic food, which is considered to be against the EU organic Regulation.

Further comments on the use of logos and labelling:

- Introduction of a logo for sustainable production instead of the ECO label
- Private certifying bodies should not be allowed to advertise their own brand on the products they certify
- New EU logo should be created quickly - be attractive, practical to be used in all languages, easy to recognise
- Launch, support and promotion of one obligatory logo
- Logo with the indication EU organic / non EU organic - and indication of origin for ingredients
- By putting in place a regime of coexistence of clear logos - European/national
- It is important that the consumer knows the Commission's role in making a new EU organic logo
- No further logos - do not change logo again
- Adopt German Bio seal would be most efficient - wide known
- Better marketing and labelling
- Would be good, if it would be allowed to label food that is compatible with organic as "organic food"

- Important to defend the organic labels against other misleading labels
- International cooperation to address derivatives besides the organic Regulation should be improved

Organic production

In connection with organic production and the growing demand of organic products there were described different obstacles why it seems to make it difficult to persuade more farmers to convert to organic production. There are different suggestions what could be done to improve the situation.

It is generally suggested that farmers should be more trusted than certification schemes, which do not necessarily support good organic farming practices.

Besides more promotion to farmers and an increase of their benefits, the following suggestions could be noted:

- Focus on producers (subsidies, communication) - incentives to go organic
- Legal base should be more strict with more variation
- Farmers and producers need a simple text, new brochure with examples needed
- Lower administration costs: simplify quality schemes, cut amount of required documentation
- Single registration scheme - registration costs should not be a burden
- Minimum risk levels should be set
- Technical support and research – e.g. develop better biological defence agents
- Codex alimentarius should apply also to organic technical information - will be more useful and will increase the profitability of organic farming
- By boosting demand
- Support public subsidies to farmers to keep prices on a reasonable level and to allow conversion
- Area-based payment is not efficient, support for products would be more efficient
- Support the building of organic enterprises - help producers
- Support building of networks - unite producers

- Role of producer organisations should be reinforced
- Subsidies needed to cover the high costs of bakeries
- Encourage organic production in the most preserved regions
- Financial support needed to cover the investment and the risk of conversion
- Financial support for certification and supervision of production/processing
- Organic farming should be economically sustainable
- Enlarge organic acreage
- Cost ability to meet demand
- More subsidies to facilitate conversion
- Abolish all subsidies and environmental payments in the EU
- The same subsidies to all organic farmers
- Harmonised application of rules
- By correctly applying the harmonised rules in certification and control
- Allow group certification
- Harmonise the conditions for certification, for example in collectives

It is suggested that there is a need for a new development plan or a complete implementation of the action plan. It is particularly suggested by the new MS to support the development of an organic market.

Following suggestions down that line:

- More dialog and cooperation between the organic stakeholders
- More coherence with EU rural development policy
- Without promotion, communication, training and subsidies the organic market will get worse
- Research and development projects - public and private
- EU-wide network agency
- It would be worth it to make a impact assessment on organic farming on society costs and benefits
- It is not up to a government or the EEC to favour one production method over the other

- Stop supporting just one production form and opposing another. Every production form must have its place. They are complementary and will find a balance on the market themselves
- Important not to promote one system over the other

Organic trade

There are different suggestions on whether or not there should be private standards, which could be an obstacle for trade in the EU. It is also suggested that the EU should monitor the granted exception by the MS to avoid distortions of trade.

Suggestions are the following:

- Leave market alone
- No private standards - organic farmers should harmonise their standards
- When MS are delegating organic certification, then they should prevent the private control bodies from increasing requirements and thereby costs
- Harmonisation of the different private certification schemes and their recognition of each other
- Minimum standards should be implemented in the national certification schemes
- Do not create stricter nation rules that will rise costs and will create new distortions in the EU
- Private standards are important for the development of organic farming
- Organic certification in one MS should be valid in all MS, just as a drivers licence
- The regulation on organics could be incorporated into the GlobalGap - would simplify regulation and improve integrity
- Be careful with parallel private accreditation
- The marketing of products should be controlled just as the production - control of all stages of production

It is strongly suggested to strengthen marketing and to create better conditions for distribution channels. Many of these suggestions were from our new MS. But also old MS are asking for a better structured market by better organised distribution chains particularly long chains, in order to reach all the shops.

Several suggestions were:

- Sector needs more integrated supply chains
- Reflect on the structure of marketing chains
- Support the development for cooperation of small farms, as well as collective harvesting and distribution
- Supply and logistics need to be improved across the entire production chain
- Market presence of producer organisations should be expanded
- More organised chains of production
- Development of coherent long-term policy strategies to encourage further supply Information system allowing European exchange of organic products, more organic products should be used in organic production and less conventional

It is suggested to develop a common system for the operation of an organic market with well-established import controls and information mechanisms.

However, different suggestions on imports could be noted:

- Reduce imports - facilitate conversion to avoid competition with organic products from third countries
- Supervision of the control system in all MS needed particularly for imports
- Same control standards and frequency in third countries
- Equivalence of imported products must be guaranteed
- Reliability of controls, particularly for foreign products
- Products from third countries should be controlled just as often and as thoroughly
- All EU countries and third countries should have the same certification and control standards
- Certification and importation should not be unnecessary complex
- Simplification of import rules
- Requirements for imported products should not change more often than every 5 years

Organic legislation

New Regulation seems to be easier to implement, was one comment, another was that it is necessary to regulate better. It could mean that there is, as also expressed, a need to check the functionality of the new legislation before taking up new issues.

However, there were suggestions on new issues:

- Plastic wrapped products and non-recyclable packaging even if it is pollution free should be discouraged - buying wrapped products should be more expensive than buying from the counter
- Develop all policies of quality food products according to sustainable development
- Harmonisation needed in aquaculture and wine production
- Common standards for processing needed
- In the elaboration of the rules for organic wine the compliance with the specific regional characteristics must be ensured, just as in the CMO of wine specific zones are defined
- For the development of organic wine, the development of rules and controls respected by the chain are necessary - standards should be supported by "The International Organisation of Wine and Vine"
- No products should be allowed outside the scope
- Enlargement of the scope to catering and non-food products e.g. cosmetics
- Bio-dynamic farming should be legally acknowledged at EU level and its development should be supported

It was suggested to wait and see the effect of the harmonisation of rules to be applied from 2009. However, when working on new common EU standards, amending 889/2008, it is emphasised that the Commission should work closer together with professionals and stakeholders that work on a national level. The Commission should publish plans for how to change 889/2008 and a blog on the website so regional and national stakeholders can come with their comments. Roots of organic production should be respected, consumer perception is not the same in all MS.

The following suggestions were made:

- Complete harmonisation of the requirements and application for the production and the processing in all MS

- Harmonisation of control of storage is needed
- Complete harmonisation of certification requirements - should not be higher than EU Regulation and not different from other MS. Avoid these differences due to subsidiarity in the new rules
- Simple code to the highest not to the lowest standard
- Harmonise rules in the EU - common EU standard should be valid everywhere
- Overall parameters should be defined at EU level, but many requirements should be set by MS
- Harmonisation of poultry rules - certain technical provisions in the legislation need to be improved, e.g. the definition of slow growing poultry strains.
- Use the help of experienced organisations

Harmonised interpretation of EU legislation is needed. It is suggested that there should be a better cooperation between the authorities of the different MS. EU should support a forum where MS can meet and discuss the implementation of the different rules. Necessary to improve information exchange between MS.

Another important issue is the improvement of control systems and their auditing both by the MS and by the Commission. There have been many different suggestions all from centralised controls at EU level to controls by private bodies that need to be EN 45011 accredited.

More suggestions along this line:

- Improve control systems by simplification and harmonisation
- More efficient and independent control
- Control by public authorities might be the solution
- If a MS is delegating certification authority to a private certification body, it should prevent that body from increasing certification requirements"
- Certification and control system should be centralised at EU level
- Only EU control or a provision on mandatory national controls
- Harmonisation of certification in all 27 MS

- Organisation of certification should change every 2 years to ensure credibility
- Cooperation between the competent authorities and the certifiers
- Control bodies should be independent without relation to the controlled operators EN 45011 accredited
- Only products certified by accredited control bodies should be allowed to be labelled as organic - EN 45011 or EN 17020
- It would be better, if the control bodies were audited by the Commission, and if they had to respect the European standard EN 45000
- Certification body accredited in one MS must be able to operate in all other MS
- Harmonised sanctions in and outside the EU
- More resources for surveillance
- More intensive exchange of information between MS necessary

Other comments to question 12

Many other comments were made related to organic farming while often not directly related to the functioning of the single market.

In particular, Genetically Modified Organisms (GMOs) were regularly mentioned. Fears were expressed that GMOs may destroy the organic farming sector.

No changes/measures necessary:

- After the changes in 2007 no other changes are necessary
- No factors known
- Development of organic should be left to the "invisible market hand"

On the further development of organic farming:

- Development of organic farming should have high priority
- New Agency for EU organic production should be created
- New organic action plan from 2013 with indicators and budget
- One essential problem is the lack of cooperation of between the competent authorities for

organic. A special coordination committee should be created at EU level including market actors

On the term one single market:

- To talk of a single market in organic farming is an insult
- Organic products compete with regional and local products. Its rather about consumer perception than about facts
- Important that the common organic market will not destroy the local organic market
- Preference for local, regional or national or EU products should not be considered an obstacle to develop one single market. It is the consumers choice the market is trying to respond to

On fraud:

- EU consumers trust organic products
- Important that the organic products do not loose credibility, growing demand could increase risk of fraud
- More and more fraud is noted
- Monitoring organic production is important and cooperation between the monitoring bodies needs to be increased

On GMOs:

- Threshold for GMO has harmed the sectors image
- Region Wallonnie is against the tolerance of 0,9% GMOs in organic produce when it is incidental and technical unavoidable
- Cases should be established against GMO

On organic imports:

- Developing the single organic market could also favour massive imports, which would not solve agri-environmental problems in Europe
- When the place of farming has to be indicated then there is a risk that imported organic products will be rejected by the consumer without any reason

On EU organic legislation:

- 834/2007 and 889/2008 should be understood as minimum requirements
- 834/2007 and 889/2008 should not be perceived as minimum requirements, the rules are quite clear

- Inspection bodies should be able to set additional standards, important for the development of future legislation
- General need to improve the Regulation, while maintaining highest organic farming standards
- The Regulation in force allows certain flexibility, which includes derogations from the production rules
- Although the Commission may set specific conditions for the application of these derogations, it is not excluded that their application is different depending on the country of production
- It seems that there are different levels of organic farming

On the situation in the UK:

- Retailers in the UK have responded to consumer demand, market has grown significantly during the last years without intervention of the EU. Difficult to see what the EU could do further
- Recent promotion campaign did not have any effect in the UK, as consumers are making their choices on the basis of quality, added value and provenance
- Market has grown because of consumer demand – retailers have worked with suppliers to ensure they source products to satisfy the rapid rise in demand
- Retailers in the UK do not support the use of a mandatory logo under the new Regulation. Consumers will not know what it means and it will only add to the clutter on labels.

On food safety:

- Organic products should not get exceptions from normal requirements on food safety, environment and animal welfare
- Organic products get economic support. It is the aristocrats in Brussels that are because of their etiquette promoting one type of production. This is not acceptable because: people who buy these products are not from the poor or the middle class of the European citizens. On top of that the quality of these products are not without risk, e.g. micotoxines in cereals or the illnesses of the pork (remember why the Moslems do not eat pork) If we continue like this, we will get serious sanitary problems, less products to nourish the Europeans, we will get dependent on third countries and of course

dependant on climate conditions. We want to ensure that we can feed the European citizens, but we will just gain the opposite. Sorry, but this is governmental interference.

Coordination with other standards:

- The organic and IG standards must be coordinated
- Would be important to clarify the compatibility of eco label for food with requirements of organic products

On pesticides:

- The EU is going against its desired direction by imposing the registration for all pesticides thereby favouring big companies and diminishing the number of possible products
- Integrated Pest management/integrated crop management are one of the best available tools to ensure sustainable agriculture

1.13. Question 13

To what extent has use of the graphic symbols for the EU's outermost regions increased awareness of products from the outermost regions?

Contributions underlined the limited awareness of consumers and the fact that the logo is not noticeable on their territory.

Several contributions suggested communication campaigns to better inform consumers.

How should these initiatives be developed in order to increase the volume of quality agricultural products originating from the outermost regions?

Several contributions suggested that this scheme would be more relevant to consumers if it had a strong message or offered them added-value, which could be fair-trade, quality or taste.

Some contributions also suggested that GIs should be encouraged in this context while others underlined that a clear marketing strategy would be more effective.

Collective promotion actions should also be put in place.

1.14. Question 14

Are there any pressing issues for which existing schemes and arrangements are inadequate and for which there is a strong case for an EU level scheme? Should the Commission consider mandatory schemes in certain cases; for example, those with a complex legal and scientific background or those needed to secure high consumer participation? If so, how can the administrative burden on stakeholders and public authorities be kept as light as possible?³

The majority of respondents was against introducing new EU schemes (although some made specific reference to mandatory schemes and did not express their views of voluntary schemes – see footnote). Some saw possibilities for new schemes if certain conditions are fulfilled, and one fourth were of the opinion that new schemes would be needed in certain policy areas.

Only among regional/local authorities, retail organisations, and environmental NGOs was there a majority of view that new schemes would be useful. Consumers were evenly split between proponents and opponents of new schemes.

Some respondents proposed criteria for deciding whether a new scheme would be needed or how it should operate, e.g. if there is a threat to the functioning of the single market. Suggestions were also made on what to do instead of developing new EU schemes (e.g. simplify and/or harmonise existing schemes).

Some respondents also made suggestions of issues that should either be addressed in the context of a new EU scheme or for which common definitions at EU level (not necessarily through a new scheme) would be needed.

Arguments against new schemes include:

- Additional new schemes would confuse consumers;
- Quality issues should primarily be in the hands of private operators; schemes will develop as

private initiatives, no Commission involvement is necessary. The market is more flexible and responsive to develop products according to consumer demands, without excessive bureaucracy;

- New schemes are not compatible with "better regulation" principles;
- (proliferation of) certification schemes are (is) costly for small-scale operators; scheme participants have no advantage in the market
- current schemes are already above international market standards
- legal minimum standards must apply to all products and should not be covered by a scheme; mandatory issues to be addressed through legislation and not through a scheme
- there is no scientific basis for any new scheme
- there is a danger that schemes and labels are seen as a way to raise production standards
- Against an EU-wide scheme for products from "high nature value areas" which would be too complex and costly to administer, with limited consumer interest in an EU-wide label for such products

Some respondents proposed **criteria for deciding whether a new scheme would be needed or how it should operate:**

- only take action if the size of the problem justifies the additional administrative burden
- only take action if private initiatives threaten the functioning of the single market
- any new scheme should be science based
- new schemes should not hinder the functioning of the internal market
- schemes with complex legal and scientific background should be governed by uniform regulations at EU level
- any new scheme must correspond to policy needs
- before developing any new scheme, first do an in-depth consumer study
- try to develop coherent, comprehensive schemes
- need simple and effective schemes with full transparency, assured through participation of farmers in the definition of rules

³ Please note that the three sub-questions were in general perceived as one single question. Some respondents refer specifically to the need of a new mandatory scheme, while in the majority of cases it is unclear whether respondents mean voluntary or mandatory schemes.

- new schemes should not lead to higher production costs, certification expenses must be shared by the entire sector; limit costs by facilitating grouping of producers; adapt scheme requirements to enterprise size
- Don't include general management practices in certification schemes which makes them too complex
- preference should be given to labelling of single issues (animal welfare; mountains) rather than complex issues (organic)
- use "Système de Garantie Participatif"
- mandatory schemes should be reserved for food safety or health issues

Suggestions were also made on **what to do instead of developing new EU schemes:**

- Simplify and/or harmonise existing schemes; increase scheme transparency; integrate new criteria into existing schemes
- Introduce fewer but horizontal controls based on risk analysis
- better connect quality systems and official inspections as well as various types of F&V inspections; take scheme participation into account for the allocation of subsidies
- Develop agreed guidance documents for important policy issues (e.g., health, environment, animal welfare, fair trade, traditions, regionality)
- Give more visibility to sustainable and organic agriculture
- The EU should allow labelling schemes (e.g., conservation grazing) to be supported by the Member States and exempt from the requirement for State Aid notification where the protection of the environment is a primary aim
- Focus more on co- or self regulation and consultation and avoid schemes which have no scientific basis and mislead the consumer
- use local administrations for recognising local products, free certifications by local authorities
- improve communication about existing quality measures and schemes before starting new schemes
- Develop a global / comprehensive horizontal approach to quality products rather than multiplying schemes;
- start discussion on sustainable development at EU and global level; develop an integrated approach to sustainable production
- Develop different national criteria and actions in order to promote the consumption of local and regional foodstuffs
- harmonise legislation in MS on integrated farming
- integrate and reduce certification burden for food producers
- develop guidelines for the auditing of certification schemes;
- establish a standard product nomenclature where a product name does not mislead the consumer through similarity with the national name of the translated version (e.g. "szalámi" (salami), "kolbász" (sausage), "párizsi" (Lyoner sausage), etc.
- animal welfare rules lead to competitive disadvantage for EU farmers and should be accompanied by a ban of non-complying imports
- begin by enforcing existing rules, e.g. on animal welfare
- harmonise labelling rules on non-GMO products
- integrate rules on environment, climate change and ethical issues in baseline requirements;
- establish observatory on evolution of agricultural practices
- minimum standards that are not met should be mentioned on the label;
- extend the scope of Regulations 509 and 510 to cover all products

However, some respondents also made suggestions of issues that should either be addressed in the context of a **new EU scheme** or for which **common definitions at EU level** (not necessarily through a new scheme) would be needed. These include:

- Integrated farming/integrated production
- Environmentally friendly products / use of pesticides; biodiversity; water preservation
- Products making full use of local sustainable resources (water, feed, etc.)
- EU sustainable agriculture label
- Products from high nature value farmland (reserved for small-scale producers)

- Common definitions for the terms "mountain", "island" and "alp"
- Animal welfare
- Climate change / low carbon emissions / energy use of production and transport
- Superior product quality (similar to Label Rouge)
- GMO-free food / GMO- free feed
- Products from national and/or regional parks
- Local traditional products / typical products from a specific region
- Compliance with EU farming requirements
- ethical and socially responsible criteria especially for small-scale producers
- worker welfare scheme /social criteria of production
- stricter organic livestock regulation
- a scheme for products from local breeds / protection of local breeds / products from animal breeds in danger of extinction
- a scheme for sparsely populated regions with a low economic activity and unfavourable agro climatic conditions
- bio-dynamic farming
- EU basic, EU extra and EU superior quality
- A framework communicating quality parameters from feed to food
- harmonisation of requirements for temperature of storage and transport of foodstuffs
- health
- (country of) origin; EU origin
- mandatory labelling of farming methods for meat and dairy products

Other comments:

- Several respondents expressed their **worries about an extension of the Ecolabel** to food or processed food products. Most of them felt that this would lead to confusion with the organic agriculture label.
- Other respondents also stated the need to clarify the relation between organic farming and the proposed animal welfare label and to have the new EU organic logo as soon as possible.

- One respondent regrets that the EU hasn't waited for the outcome of this consultation before changing the PDO logo
- Rapid change in distribution channels leads to less local consumption; non-organised small-scale producers search for ways of getting a fair share of the value added for traditional and innovative products

1.15. Question 15

To what extent can certifications schemes for quality product meet the main societal demands concern in product characteristics and farming methods?

A majority of respondents supported the idea that food quality certification schemes (FQCS) structure the demand, create confidence or increase it on the market, especially between farmers and consumers. Moreover, private schemes are more flexible, can rapidly adapt to new criteria, are more open to societal demands, e.g. kosher or fair trade and create added value.

There were frequent references to the usefulness of FQCS for geographically marginal areas, as well as references to organic labelling or (French contributors) to Label Rouge, seen as an exemplary case of strong link from producers to consumers.

Producers were more reluctant to responding to new demands. Certification should aim more at providing information than at improving quality according to them. Development NGOs mentioned that it would help opening the EU market to producers from developing countries. Consumers objected that it was not logical to answer societal expectations through labelling. FQCS were efficient only when and if control would be independent.

To what extent is there a risk of consumers being misled by certain schemes assuring compliance with baseline requirements?

The schemes assuring compliance with baseline requirements should only be used in business to business operations and not communicated to the public. They could create confusion and mislead consumers. A risk of confusion between private labels and public ones was mentioned as

well as the fact that too numerous FQCS would create confusion.

National authorities and consumers in particular considered that FQCS should go further than minimal requirements, and that baseline requirement had to be controlled by public authorities. There was a risk that consumers would believe that only the labelled products fulfil the minimum requirements, whereas all do so.

Retailers supported the idea that one should communicate only when there is a real added value.

The need of complementary information to be given to consumers (Internet was mentioned as a possibility or information campaigns) was also mentioned.

What are the costs and benefits for farmers and other producers of food (often small or medium-sized enterprises) in adhering to certification schemes?

Greater added value and better market access were mentioned in a majority of contributions as a benefit for farmers and other producers of food.

Benefits mentioned included: it was a good way to fight unfair competition and to help structuring the food chain; if the schemes were well managed, costs were limited and profits might be important (trade organisations).

There was an added value expected as well through product advertising, fame, promotion. SMEs have more difficulties; FQCS gave better confidence to consumers, allowed harmonisation for international trade and more transparency (processors).

Costs mentioned included: private controls were very expensive; too many FQCS would lead to confusion; multiplication of criteria meant high costs; procedures, multiplication of controls (farmers' organisations); constant evolution of societal expectations made it difficult for producers to follow and adapt; adhering to FQCS meant additional costs and not adhering to them meant being excluded from certain markets.

Should a more active involvement of producers' organisations be promoted?

All responses were positive except from 4 contributors (3 consumers and one academic) who feared that this would lead to conflicts of interest.

Other comments included:

- producers' organisations should especially care for the defence and grouping of small producer's and small productions, regroup supply;
- they have to act as a rebalancing factor in front of retail; they have to act in informing general public on products as well as on production methods;
- they have to act concertedly with consumers and public authorities;
- they should be supported from EU funds; they should be independent;
- they have an irreplaceable part to push towards simplification of the system;
- They can contribute towards reducing costs (mutualising expenditures); they can mobilise and organise supply.

Few answers from new Member States mentioned the weakness of such organisations in their agriculture.

1.16. Question 16

Could EU guidelines be sufficient to contribute to a more coherent development of certification schemes?

The majority of respondents was of the view that EU guidelines would be sufficient to contribute to a more coherent development of certification schemes.

This opinion was most pronounced among national/regional authorities; the farming community; processing organisations; consumers and general public (even though a sizeable number here thinks that guidelines are not sufficient); and academic organisations. Somewhat more undecided are trade organisations and environmental NGOs, but overall numbers of respondents in these categories are small.

Respondents who disagreed with the idea of guidelines either thought that guidelines were not sufficient and stricter measures (legislation) would be necessary (an opinion most pronounced among the consumers and general public group); or they thought that not even guidelines would be needed since the market was capable of solving the problem without any sort of official intervention (most prominent among the farming community). The latter group pointed to ongoing harmonisation initiatives in the private sector or at the international level which would make EU involvement unnecessary (some even said that EU guidelines will do more harm than good).

Criteria mentioned most frequently for inclusion in guidelines are:

- guidelines based on international standards (ISO 17000 Series and EN 45011);
- respect of international obligations (WTO);
- harmonisation of accreditation, certification and control procedures and requirements among Member States;
- independent certification by accredited bodies;
- internal audit of schemes;
- scheme specifications should be based on objective and scientifically sound criteria;
- scheme specification should be publicly available;
- involvement of stakeholders in scheme development;
- openness of scheme to all producers;
- make special arrangements for small-scale farmers and producers;
- scheme requirements should go beyond legal baseline.

Other comments made in this context refer to the need to spread cost of scheme participation between all actors in the food supply chain, and the need to consult widely and internationally for the development of guidelines.

1.17. Question 17

How can the administrative costs and burdens of belonging to one or more quality certification schemes be reduced?

The most frequently mentioned suggestions for reducing the administrative costs and burdens of belonging to one or more quality certification schemes can be grouped into ideas related to the further development of schemes: (e.g. mutual recognition), ideas related to the certification and control process: (e.g. group certification; combine audits; encourage competition in certification market), ideas related to financial support of scheme participants: (e.g. provide subsidies for small scale producers; tax returns; certification by public authorities for free) and ideas related to information and communication: (e.g. inform consumers about scheme benefits so that they are willing to pay higher prices; common platform for farm background data).

- **ideas related to the further development of schemes:** encourage mutual recognition of similar schemes; develop one comprehensive scheme that makes all others redundant; involve farmers and producers in scheme development ;
- **ideas related to the certification and control process:** use group certification for small-scale producers; combine audits for different schemes in a single combi-audit package; take scheme participation into account for the purposes of official controls (e.g., for cross-compliance); encourage competition in the certification market to drive prices down; use royalty system to shift costs from small to large producers;
- **ideas related to financial support of scheme participants:** provide subsidies for small-scale producers participating in certification schemes (e.g., through Rural Development or promotion programmes); give tax returns (fiscal incentives) to producers participating in certification schemes; certification of small-scale producers to be done by public authorities (for free); waive certification fees for producers from third countries; make sure that the value added through scheme participation goes to the producers rather than to the certifying bodies;
- **ideas related to information and communication:** inform consumers about scheme benefits so that they are willing to pay higher prices; develop common platform for background farm data to be used by all certification and control bodies; use better IT-programmes; establish online consultation with certification body

Some respondents stated that since schemes are private, participation is voluntary, and schemes

will only survive if benefits are greater than costs.

However, other respondents felt that the EU has no business in interfering with the costs of these private certification schemes. Since schemes are private, participation is voluntary, and schemes will only survive if benefits are greater than costs. It was also mentioned that downward price pressure among certification schemes can lead to poor inspections and loss of consumer trust.

One respondent pointed out that it will be difficult to mutually recognise the individual quality characteristics of private certification schemes (which can be very different).

1.18. Question 18

How can private certification schemes be used to assist EU exports and promote European quality products in export markets?

The majority of the respondents were in favour of receiving assistance to export EU products. They stressed the need for promotion, information and communication. Some proposed recognition of international standards. Many people highlighted the need for a credible system, which will have a real export value.

All the **member states** were in favour of assisting EU exports. The majority of them asked for promotion, communication, image building and identification of key characteristics for each target market. Some proposed mutual recognition of international certification schemes, while some others asked for transparent and homogenous rules set by EU.

The **third countries** replied that there should not be any discrimination against non EU products and that the private and the international certification schemes facilitate market access.

Local authorities were also in favour and they proposed WTO standard/ mutual recognition/ promotion/ facilitating contacts.

The majority of the **farming registered organisations** were also in favour, if certification schemes meet the needs of the market. They also proposed communication and promotion. Few said that this initiative must be left to the private sector.

Almost everybody from the **farming non registered organisations** was in favour. Few replied that certification schemes cannot achieve

this or are that they are against private certification schemes. More than one third of the contributors mentioned promotion, communication, support, label, information, even though some stressed that this should be a private initiative and that certification schemes depend on consumers' confidence. Some say that the importing countries should determine the criteria, some others proposes common EU/ international standards/guidelines and procedures. Finally, one said that the products should be promoted not the certification schemes.

Individuals from farming sector were also in favour, if the certification schemes meet consumers' demands. One suggests support according to art. 32 of Reg. 1698/05.

Trade registered organisations believe that this task is not for the EU and they do not recommend any public support to private certification schemes, but communication and awareness rising.

Most of the **processing registered organisations** were also reluctant. Some said that no public support is needed, while some others said that certification schemes give value to products and that Reg. 3/2008 could be used.

Retailed non registered organisations said yes through cooperation and bilateral agreements

Consumer's non registered organisations said that this may be an uncertain strategy both within and outside EU.

Consumers were more reluctant. Many of them stressed the need for transparent standards, coherent and homogenous criteria in EU, globally accepted certification schemes and procedures. Few stressed the need for controls and consumers' confidence, while few were against public support to private certification schemes.

Registered academic organisations said yes, if the standards are credible and they highlighted the products' specificity.

Non registered academic organisations expressed no clear view. Some mentioned international /uniform standards, while some others stressed the need for confidence and controls. Some of them were against these schemes, while few suggested that this is not a work for the public sector.

50% of the **environmental NGOs** are against the private certification schemes, while 50% proposed that certification should be done according to international standards.

The **development NGOs** proposed to increase awareness on fair trade and that Commission should prepare guidelines.

The **other organisations** had a diverse approach. Some said that private certification schemes are not credible, while some others stressed the need for controls, international certification schemes and mutual recognition at EU level.

How can the EU facilitate market access for producers in developing countries who need to comply with private certification schemes in order to supply particular retailers?

Many of the contributors proposed technical and financial aid. A lot of them proposed equivalent standards even if this idea was opposed by a majority of farmers' organisations and some national and regional authorities who did not want to facilitate the access to the EU market. Few organisations proposed to lower the standards for developing countries. Finally, several organisations mentioned origin issues, ethics, animal welfare, organic products and fair trade.

Most of the **member states** supported the idea of financial and technical aid. Some proposed a set of minimum standards. Few replied that EU and non EU countries should use the same production standards.

The **third countries** were in favour proposing technical aid/dialogue and mutual recognition of certification schemes, so that double certification is avoided.

The big majority of the **regional and local authorities** proposed cooperation/ guarantee of the identity of the product in order to meet EU consumers' demands. One proposed the development the logo "ethic" at WTO level.

A lot of **farming registered organisations** said that no additional access should be granted.

Some others proposed common private certification schemes, mutual recognition/ harmonisation/benchmarking.

Some of **farming non registered organisations** were against this approach, while some others said that these products/procedures should comply with EU requirements. Finally, some proposed harmonisation of legislation/ equivalent rules, EU/private logos and information/funding.

All the **individuals from the farming sector** said that the 'rules of the game' should be the same for everybody.

Processing registered organisations proposed equivalency, mutual recognition and an EU legal framework to increase transparency and efficiency of the schemes.

Many of the **processing non registered organisations** said that this is not a Commission's task. Some asked for mutual recognised international standards, some others proposed communication and few said that industry could manage this issue by itself.

50% of the **retail non registered organisations** replied that this has been already achieved by dialogue (GlobalGAP), while the rest 50% asked for information/equivalent certification schemes.

Consumers non registered organisations said that developing countries should be assisted to comply with certification schemes and that cooperatives should be encouraged

A lot of **consumer's non registered organisations** oblige non EU suppliers to abide by certification schemes.

Most of **consumers** said that certification schemes are very expensive for producers from developing countries and that there is a need for education. Some said that this out of the scope of the EU. Few proposed that they have to respect some minimum standards. Some others proposed harmonisation of private standards, reduction of burdens and administrative cost and subsidies to small holders in order to acquire products from developing countries.

The **registered academic organisations** stressed the need for know –how and inspection / certification.

Most of the **registered academic organisations** proposed assistance and awareness. Some stressed the need for confidence and accreditation. Some said that an EU - wide certification schemes could be extended to third countries but it is difficult to ensure control and supervision.

Environmental NGOs proposed easiest access to the EU market with lower standards.

Development NGOs would like to increase public awareness and information, support research, facilitate market access for organic farming and provide funding to producers cooperatives and NGOs that promote fair trade in EU.

Other organisations: Welfare and organic organisations want to promote these schemes to third countries, by offering trading opportunities, training, know-how and funding.

1.19. Question 19

Respondents are invited to raise any other issues concerning agricultural product quality policy that have not been covered.

This last question generated respondents' conclusions on the GP as well as very many divergent comments. The largest amount of replies concerned the support of promotion campaigns and better communication of the agricultural quality policy to the citizens.

A large number of replies concerned the simplification issue, the limitation of the role of the State and the need for harmonisation of the control practices at EU level.

Voices advocated the review the colour scheme of the new PDO logo and to use symbols in different colours for products from third countries. A few respondents mentioned the creation of a European Agency for Quality while there were also voices clearly against the creation of such an agency.

Some others concerned the obligatory labelling of GMO products or their offspring. One respondent suggesting that meat from animals fed with GMO should be labelled.

Few respondents wanted climate change issues and environment to be addressed more efficiently, an obligation to mention carbon balance and take into consideration the employment factor in the quality policy.

Some respondents underlined the importance to ensure the respect of high standard for all products processed and/or commercialized within the EU.

Voices advocated a **merging** of the PDO PGI signs into one term, **review** the colour scheme of the **new logo** and use symbols in different colours for products from third countries, introduce reasonable time (ex. 12 months) limit for accepting objections against registration, evaluate the policy every 10 years, common interpretation of the norm 45011 in all MS, create a common audit system to decrease audit pressure. Additionally one respondent considered that the **whole country** should be

defined as a region in the register, other respondents wanted **proportionate size of logo** to be able to put it on small foodstuff (like cheeses), voices advocated to make the **cahier des charges public** (by for ex. Putting them on a webpage), a contribution wants wild fish to be in the scope of Reg. 834/2007. One contribution underlined that the new Regulation of Food Information will be a disadvantage, because of national labelling rules that will restrict free movement of goods between MS.

Some replies concerned the issue of the **definition of quality**, and the imposition of additional terms: 'recipe', 'vegetal variety' or 'race'.

Some others concerned the obligatory **labelling of GMO** products or their rejection, with one respondent suggesting that meat from animals fed with GMO should be labelled.

A few respondents mentioned the **creation of a European Agency** for Quality, or that this task could be taken by the OHIM, while there were **also voices clearly against** the creation of such an agency.

Besides those main trends, there are a **number of other ideas** appearing throughout the contributions in different sectors.

- One respondent mentions that Art 13 of Reg. 510/2006 does not provide for sanctions neither identifies the actors in charge of control and sanctions. Need for clear identification of the holder of the IPR of GIs. As consortia in Italy are recognised as organisations representative of the totality or producers, the holdership of the IPR should be recognise to them. In case the consortium does not cover the totality of producers, the Ministry would be the title holder under national law (art. 14 L 526/99). That same respondent considers temporary stopping of registration of vegetal varieties at EC level, assessing whether there are applications for homonymous GI, proposals on production programming: flexibility on instruments aimed at withdrawing supply and marketing, programming in line with market conditions, prohibition of auction to the bottom to buy PDO/PGI, prohibition buy below the cost. On the consortium issue a respondent stated that producers in consortiums have high compliance costs, face antitrust norms which limit the instruments of adaptation of offer to the evolution of demand.

- a few contributions suggested the introduction of a territorial mark, regulating of the 'short

chain' or 'km zero', underline seasonality of products

- a respondent wanted climate change issues to be addressed more efficiently, obligation to mention carbon balance, take into consideration the employment factor in areas in the quality policy, one supports producers organisations, another the use of quality for horticulture agriculture, one suggestion to create a label 'biodiversity for all', a suggestion to have a logo for meat products respecting the environment
- GI system should not interfere with GLOBALGAP or similar
- important quality products should be controlled by the FVO
- a few contributions on food safety: is not a quality trait but a condition to put products on market whether imported or produced domestically, making food safety to a marketing tool would render irrelevant microbiological criteria, MRL for contaminants or residues for plant protection products set by the legislator.
- one respondent mentioned that some of the requirements of Dir. 2000/13/EC on labelling foodstuffs prevent European farmers from informing consumers properly of the qualities of foodstuffs they produce (art. 2(1)(iii)). Recommendation to allow specific characteristic of the product to be listed on the label if this serves to inform the consumer better, even if a similar foodstuff has the same characteristic, ex: natural mineral water comes from a protected water bed.
- an idea that it would be interesting to give information on the price paid to the producer (discrepancy in price paid to producer and price paid by final consumer – strong retail chain)
- last but not least, some respondents underlined that the principal interest is to assure high standard for all products that are processed and/or commercialized inside the EU

2. LIST OF CONTRIBUTORS

Contributions from registered organisations

Danish Dairy Board	BE	European Livestock and Meat Trading Union (UECBV)	
Pernod Ricard	BE		BE
EUCOLAIT	BE	Dairy UK	UK
Cooperativas Agraria	ES	AIDA Associazione Italiana di diritto alimentare	IT
Save Foundation	DE	AREFLH	FR
NFU	UK	European Citizens' Seminars e.V.	DE
Assolatte	IT	ECPA aisbl	BE
CELCAA	BE	American Chamber of Commerce to the European Union (AmCham EU)	US
Anonymous			
FICT - ADEPALE	FR	Coop de France	FR
Avigers	FR	A.R.E.P.O.	FR
Dintec	IT	Groupe Carrefour	BE
Forschungsgruppe Lebensmittelsicherheit	AT	Euro Coop	BE
PROVIEH	BE	Danish Food and Drink Federation	DK
Associação dos Criadores de Bovinos de Raça Mirandesa	PT	Assemblée Permanente des Chambres d'agriculture	FR
BioForum Vlaanderen vzw	BE	Qualité et origine	FR
Demeter	SI	Provision Trade Federation	UK
Association des producteurs fromagers fermiers de Corse	FR	Federalimentare	IT
Aphrodite Delights Ltd	CY	Limousin Promotion	FR
Freshfel Europe	BE	ERPA	FR
ASS. TAL-BDIEWA (ATB)	MT	Eurogroup for Animals	BE
Malta Organic Agriculture Movement	MT	Euromontana	BE
CNAOC	FR	FederBio	IT
QUALIFICA	PT	Synalaf	FR
CEVI	FR	FLR (Fédération Label Rouge et IGP)	FR
CEEV-Comité Européen des Entreprises Vins	BE	Sylaporc	FR
BIO AUSTRIA	AT	FIL Rouge	FR
CNAOL	FR	Asociación de Industrias de la Carne de España (AICE)	ES
Institut de Recherche en Agriculture Biologique pour l'Europe (IRABE)	FR	INTERBEV	FR
		Organization for an International Geographical Indications Network (oriGIn)	CH

Contributions from public authorities

Sveriges Riksdag	SE	Costantini-Assistenza e sviluppo delle produzioni locali-	
Bundesrat	DE	Agenzia Regionale per i Servizi di Sviluppo Agricolo	IT
Waltraud Wolff (SPD- Bundestagsfraktion)	DE		
Office fédérale de l'agriculture OFAG	CH	Ministerium für Ernährung und Ländlichen Raum	DE
Związek Województw	PL	The Scottish Government for Rural Affairs and Environment	UK
Agriculture and Horticulture Development Board	UK		
Provincia di Forli-Cesena, Ass. Pol. Agro-Ali.	IT	Ministry of Agriculture, Agriculture and Forestry Division	SE
ZWRP Union of the Voivodeships of the Republic of Poland	PL	Provincia di Parma	IT
Marszałek Województwa Warmińsko-Mazurskiego	PL	Ministeriet for Fødevarer, Landbrug og Fiskeri	DK
		Bundesministerium für Gesundheit Familie und Jugend	AT
Embassy of Australia, Australian Mission to the European Union	BE	Conseil national de la Consommation CNC	FR
Ministerie van Landbouw, Natuur en Voedselkwaliteit van Nederland	NL	Wojewodstwo Pomorskie	PL
German Government	DE	Province Limburg	NL
Natural England	UK	Prefecture of Preveza	EL
Regione Piemonte	IT	Junta de Andalucia	ES
		Direcção Regional de Agricultura e Pescas do Norte	PT
		Regione Marche	IT

US Mission to the EU	US	Vlaamse Overheid Departement Landbouw en Visserij	BE
Department of Agriculture	CY		
Ministry of Rural Dev. & Food	EL	Ministry of Agriculture of the Republic of Latvia	LV
Ministry of Agriculture	SK	Republic of Estonia Ministry of Agriculture	EE
Ministry of Agriculture and Rural Development	HU	Ministry for Rural Affairs and the Environment	MT
Région Midi-Pyrénées	FR	Ministry of Agriculture	LT
Regione Emilia-Romagna	IT	MMM.FI	FI
Industrial Property Office of the Czech Republic	CZ	Ministry of Agriculture of the Czech Republic	CZ
Departamento de Agricultura Pesca y Alimentación del		Ministry of Agriculture, Forestry and Food	SI
Gobierno Vasco	ES	DEFRA	UK
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Comunità Montana dell'Appennino Reggiano	IT	Spozywczych	PL
Conseil General de l'Aude	FR	Ministry of Agriculture and Food	BG
Διεύθυνση Γεωργικής Ανάπτυξης Πρέβεζας	GR	Ministry for Resources and Rural Affairs	MT
Ministerio de Medioambiente y Medio Rural y Marino		Folketinget	DK
	ES	Finnish Food Safety Authority Evira	FI
République Française	FR	Secretaría de Agricultura, Ganadería, Pesca y Alimentos	
SPW Département du Développement Direction de la		de la Republica Argentina (SAGPYA)	AR
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Unregistered organisations

Assured Food Standards	UK	Alsace Qualité	FR
CNA - Confederação Nacional da Agricultura	PT	Feagas	ES
The Wine and Spirit Trade Association	UK	Meat Southwest	UK
Martin Propollo	ES	Corvinus University	HU
Szatmari	HU	Association Afidop	IT
AICIG	IT	APCA	FR
CNA	IT	GQNPC	FR
CISE	IT	Irqua	FR
FNLI	BE	AFNOR	FR
GMO-free European Regions Network	ES	Αφοι Αργυράκη AEBE	EL
Rural Development Department, Agricultural and Research and Development Centre	MT	CECRV	ES
Union of Agricultural Economists	BG	Fédération Nationale d'Agriculture biologique	FR
Association of Poultry Producers	BG	Association Bleu-Blanc-Coeur	FR
GQNPC	FR	LTO Groieservice	NL
IRQUA	FR	Verening van Sausfabrikanten	NL
CNIV	FR	Nederlandse Margarinefabrikanten	NL
Eucofel	BE	Verein Münchener Brauereien e.V.	DE
Assomela	IT	Productschap Tuinbouw	NL
SMM Schutzgemeinschaft für Milch und Milcherzeugnisse	DE	KSL Matmerk	NO
Solveks Mira Frukt Ltd.	BG	Milchindustrie-Verband e.V.	DE
Association de défense de l'oignon doux de Cévennes	FR	FLAI Nazionale	IT
Anonymous		COPAGRI UIMEC UIL	IT
Istituto di Diritto Agrario Internazionale e Comprato	IT	CERVIM – QUART	IT
CONFCOOPERATIVE Forli-Cesena	IT	Groupement Européen des Producteurs de Champignons	FR
COLDIRETTI Emilia Romagna	IT	Anheuser-Busch Inbev	BE
Unternehmen Milch	DE	CLCV	FR
Frankischer Weinbauverband e.V.	DE	UNAF	FR
Food Institute of Kaunas University of Technology	LT	Assocaseari	IT
White House Consultancy	UK	AIJN (European Fruit Juice Association)	BE
Conaf	IT	AICV	BE
SIT - Istituto Salumi Italiani Tutelati	IT	Deutscher Weinbauverband	DE
Irish Cattle and Sheep Farmers' Association ICOSA	IE	European Agriculture and Health Consortium	BE
VLAM - Vlaams Centrum voor Agro- en Visserijmarketing vzw	BE	FIAB - Spanish Fed. of Food and Drink Ind.	ES
Soil Association Certification Ltd	UK	MARQUES	
Lohmann & Co. AG Zentrales Qualitätsmanagement	DE	INTA	BE
Päivittäistavara kauppa ry (Finnish Grocery Trade Association)	FI	National Beekeeping Associations	UK
Fédération Nationale Ovine FNO	FR	Vereniging van ned. Glucosefabrikanten	NL
FDSEA 88	FR	Nederlandse Vereniging van Producenten van Ontbijtgranen	NL
FDSEA 64	FR	Nederlandse Vereniging van Soepenfabrikanten	NL
Association des Produits Porcs du Sud Ouest APPSO	FR	LandbrugsRaadet	DK
Skarpalezos-Marinis Co	EL	Interpore Auvergne Limousin (IPAL)	FR
Producentow Zywnosci Ekologiczne Ekopolsk	PL	Association des Interprofessions Porcines de Montagne	FR
Le Cochon de Bretagne	FR	VNU-FA	DE
Produktu Regionalnego i Lokalnego	PL	UPEMI	PL
Catalonia Qualitat	ES	Baromfi Termék Tanács Poultry Product Board BTT	HU
Federação Agrícola dos Açores	PT	Lietuvos Vartotoju Asociacija Lithuanian Consumers'	
Acrefa	ES	Association	LT
Polski Klub Ekologiczny	PL	Estonian Consumer Production Board	EE

Federation of the Food and Drink Industries of the Czech Republic	CZ	Lithuanian Institute of Agrarian Economics	LT
Baking Industry Union	HU	Peel Holroyd and Associates	UK
Food Fighters 2008 - Danish Meat	DK	Niederegger Lübeck	DE
CIBC/IMV/IBC	BE	Cooperative Union of Slovenia	SI
ACYCSA	ES	Zentralverband Gartenbau e. V. ZVG	DE
Latvijas Valsts auglīkopības institūts	LV	Bayerischer Brauerbund e. V.	DE
Confederation of the Food and Drink Industries of the EU (CIAA)	BE	Centre National Interprofessionnel de l'Economie Laitière	FR
Biedrība Zemnieku saeima	LV	Finnish Dairy Association - Finnish Food and Drink Industries Federation	FI
BIOEKSPERT Certification Body for organic farming	PL	Fédération des entreprises du Commerce et de la Distribution FCD	FR
Országos Húsipari Kutatóintézet Kht.	HU	Chambre d'Agriculture et d'Alimentation de la République slovaque	SK
Vignerons Indépendants de France	FR	NEULAND e.V.	DE
Hungarian National Committee for EOQ	HU	Confédération Paysanne et FADEAR	FR
Magyar Ásványvíz Szövetség és Termékτανács	HU	Fédération ProNaturA	FR
Assoziation ökologischer Lebensmittel Hersteller (AoeL) [Association of organic food producers]	AT	EFNCP European Forum on Nature Conservation and Pastrolism	UK
Comité des Salines de France	FR	AVIALTER	ES
Fermiers de Loué	FR	F I V I Federazione Italiana Vignaioli Indipendenti	IT
CEPPARM	FR	APRAM Association des Praticiens du Droit des Marques et des Modèles	FR
Biologica	NL	Consortium du Jambon de Bayonne	FR
Melon du Quercy	FR	Verein Geografischer Herkunftsschutz (VGH)	AT
C R I G P Botillo del Bierzo	ES	Union der Deutschen Kartoffelwirtschaft	DE
Chambre Régionale d'Agriculture d'Auvergne	FR	Verband der Fleischwirtschaft	DE
Τάκης Παπαϊωάννου Ατδ	CY	Syndicat des Prod Pelardon	FR
Union porcine rhone-Alpes	FR	Stichting Voedingscentrum	NL
RIFOSAL	IT	British Retail Consortium	BE
APETAL	PT	Rimi Baltic Group	LV
Centrale Organisatie voor de Vleessector (COV)	NL	Latvijas Biškopības biedrība	LV
Amalthia Trading Ltd Andreas S Agrotis ASA LTD	CY	Agriculture and Horticulture Development Board Meat Services	UK
VLAM – Streekproducten	BE	ASOPROVAC	ES
Inštitut za trajnostni razvoj	SI	Consejo Regulador I G P Judías de El Barco de Ávila	ES
SIDAM	FR	Αγροπεριβαλλοντική Ομάδα Βιοκαλλιεργητών Δυτικής Ελλάδας	EL
Dairy Australia	AU	IFOAM EU Group	BE
Association of Poultry Processors and Poultry Trade in the EU countries	BE	Culinary Heritage (Europe) Småland	SE
Svenskmjolk	SE	Consejo Regulador I G P Lenteja de la Armuña	ES
Central Union of Agricultural Producers and Forest Owners	FI	Synabio	FR
UFCS	FR	Consorzio del Formaggio Parmigiano-Reggiano	IT
Eurocommerce	BE	Productboard Poultry and Eggs	NL
Country Land and Business Association Ltd	UK	Association Interprofessionnelle des Herbes de Provence	FR
Dutch Produce Association	NL	ATLA (Association de la Transformation Laitière Française)	FR
Ensa	BE	Consejo Regulador I G P Garbanzo de Fuentesauco	ES
COPA-COGECA	BE	Unión de Pequeños Agricultores y Ganaderos (UPA)	ES
KRAV	SE	Camera di Commercio I A A di Trento	IT
Mārketinga Padome	LV	ELO asbl - European Landowners' Organization	BE
Latvijas gaļas liellopu audzētāju asociācija; Latvijas Zemnieku Federācija	LV	ISARA-Lyon	FR
Latvijas Lauksaimniecības universitāte un Latvijas Bioloģiskās lauksaimniecības asociācija	LV	Fair Trade Advocacy Office	BE
FRUITVEB	HU	FNSEA	FR
Országos Fogyasztóvédelmi Egyesület	HU	AK Wien	AT
Lietuvos žemės ūkio bendrovių asociacija	LT	European Spirits Organisation	BE
Association française des producteurs de sel marin de l'atlantique récolté manuellement	FR	Association Francaise des Indications géographiques	FR
Latvian State Institute of Agrarian Economics	LV	Συμβούλιο Αμπελοοινικών Προϊόντων	CY
Euragro Agriculture and Rural Development	HU		
FEPEX	ES		

European Dairy Association – EDA	BE
Food Drink Federation	UK
Confederazione Nazionale Coldiretti	IT
FNSEA-FNP	FR
Federation of Swedish Farmers	SE
QS Qualitat und Sicherheit Gmbh	DE
CONFAGRICOLTURA	IT
Taste Council of Ireland	IE
Origen España	ES
Compassion in World Farming	UK
O'Connor and Company	BE
Fairtrade Finland	FI
IOBC Commission "Integrated Production: Principle and endorsement"	CH
Confederazione Italiana Agricoltori	IT
Chambre Régionale d'Agriculture de Franche-Comté	FR
IRQUALIM	FR
Association Force Ouvriere Consommateurs	FR
BLL Bund für Lebensmittelrecht und Lebensmittelkunde	DE
ANIA	FR
INAPORC	FR
ANAS (Italian Pig Breeders Association)	IT
Federation of Hungarian Food Industries	HU
Chambre régionale d'agriculture d'Aquitaine	FR
Association Interprofessionnelle du Haricot arbaïs	FR
CLITRAVI	BE
CEJA	BE
ARIBEV-ARIV	FR
IRQUA-Normandie	FR
FACW Filière Avicole et Cunicole Wallonne (asbl)	BE
Consorzio Prosciutto Parma	IT
Hellenic Quality Foods SA	EL
Asociación española de Empresas de la Carne – ASOCARNE	ES
LTO	NL
Groupe Lactalis	FR
Malta Organic Agriculture Movement	MT
Chambre régionale d'Agriculture Rhône-Alpes	FR
Les éleveurs de Challans	FR
Kreisimkerverband Duisburg	DE
Genista Research Foundation	MT
Fundación del Jamón Serrano	ES
J. Turull-Gremi Pastisseria	ES
Chamber of Agriculture and Forestry of Slovenia	SI
BEurope Ltd.	MT
Quality Meat Scotland	UK
Organisme de Défense et de Gestion REGAL	FR
The Potato Processors' Association	UK
Deutscher Raiffeisenverband e.V.	DE
Deutscher Bauernverband	DE
BioKurier	PL
Bundesinnungsgruppe Lebensmittel und Natur	AT
Cermet	IT
Van der Staay Barendrecht b.v.	NL
Advantage West Midlands	UK
Collectif de Remises en Causes. R.E.C.	FR
INCOFRUIT - (Hellas)	EL
Technical University of Munich	DE

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ANNEX A(I): COMMUNICATING ABOUT PRODUCTS FARMED IN THE EU

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A(i) 1. INTRODUCTION

Quality and standards are issues for every farmer and buyer, whether dealing with commodities produced to basic standards or with value-added quality products in which Europe excels. In general terms, EU farmers follow high standards of farming in matters such as animal husbandry, use of crop protection products in a way that does not harm the environment, and all aspects of food production standards.

The minimum farming requirements laid down in EU law guarantee that the farming practices and methods themselves meet society's diverse expectations. Each farming obligation is designed to meet a public policy objective, such as environmental care, animal health and nutrition, plant health, and animal welfare standards. These requirements have been introduced according to the democratic process. As such, application of farming requirements contributes significantly to the reputation, standards and quality of EU agricultural product, both in terms of product characteristics and farming attributes.

The efforts made by farmers to comply with the letter and spirit of these rules is a strength of EU agriculture and one that should be recognised and valued by citizens — and by consumers. Calls have been made to examine the possibilities for labelling that highlights to consumers where agricultural product has been farmed or that foodstuffs that have been produced in compliance with EU farming requirements.¹

A(i) 2. PROBLEM DEFINITION

2.1. Problem identification

European farmers are required to follow minimum farming requirements that reflect society's expectations. These requirements provide European citizens with important benefits in terms of values such as food production systems which are broadly sustainable, environmentally-friendly and supportive of regional and rural development objectives. In addition, the model of food production in Europe respects many societal demands such as minimum animal welfare standards, and carefully reflected restrictions on use of plant production products, additives, animal feed, and veterinary drugs.

¹ European Parliament, 1998: Report on quality policy for agricultural products and agri-foodstuffs, Committee on Agriculture and Rural Development, Rapporteur Mr Jan Mulder, A4-0280/98.

Commissioner Fischer Boel, highlighted the need to “undertake further study on a possible EU quality or EU standards label”, concluding the Conference on Food Quality Certification – Adding Value to Farm Produce, Brussels, 5-6.2.2007.

Council Conclusions, 16.12.2008, 17169/08 ADD 1, section 4.7: “Invites the Commission ... to begin considering appropriate mechanisms for consumer information that would provide much greater transparency on the methods and conditions of production and characteristics of products, in accordance with international trade rules”.

With arguably one exception², agricultural product that has been produced in compliance with EU farming requirements is not required to be identified as such at the point of sale for consumers. In many sectors however, the origin and place of farming is given to consumers. In other cases, and in the absence of any voluntary labelling, consumers are not informed of the production requirements nor the place of farming of the product.

To what extent do consumers look for specific production standards or information on place of farming in the food they buy?

According to a Eurobarometer survey conducted in 2005, the most important 'levers' identified by consumers when buying food were quality (42%) and price (40%). However, the term 'quality' was not defined and, as is pointed out in the Eurobarometer survey, a number of the other elements in the question are quality-related. The results are given in the box on the next page.

Even excluding the global category of quality, it can be seen that 'production method' and 'origin' are quite low down in terms of priority (9th and 10th) after 'appearance', 'taste', 'health', 'family preference', 'habit' and 'food safety'.

Further research cited in the Commission's impact assessment report on general food labelling issues highlights that, when consumers are prompted about origin or production method labelling, much stronger support is forthcoming. The number of consumers considering origin labelling important is 78% (and higher) according to studies in Nordic countries and 80% in the UK, etc.³

Concerning production method, studies on animal welfare and concerns over pesticide residues indicate that, as with origin, when prompted, consumers declare information on these elements to be of far greater importance than is apparent from an unprompted list of most-important factors. This was illustrated in relation to animal welfare in Special Eurobarometer 229 "Attitudes of consumers towards the welfare of farmed animals"⁴ which found "[a] slight majority of citizens of the European Union (52%) state that they never or very rarely think about the welfare and protection of animals when they buy meat, compared to 43% who state that they consider animal welfare most or some of the time when purchasing meat. 43% is of course extremely high compared with the 7% of consumers who spontaneously mentioned production method (any production method) as a factor in their purchases.

² Egg labelling rules require 'cage', 'barn', 'free range' or 'organic' to be indicated on eggs. Council Regulation (EEC) No 1907/90.

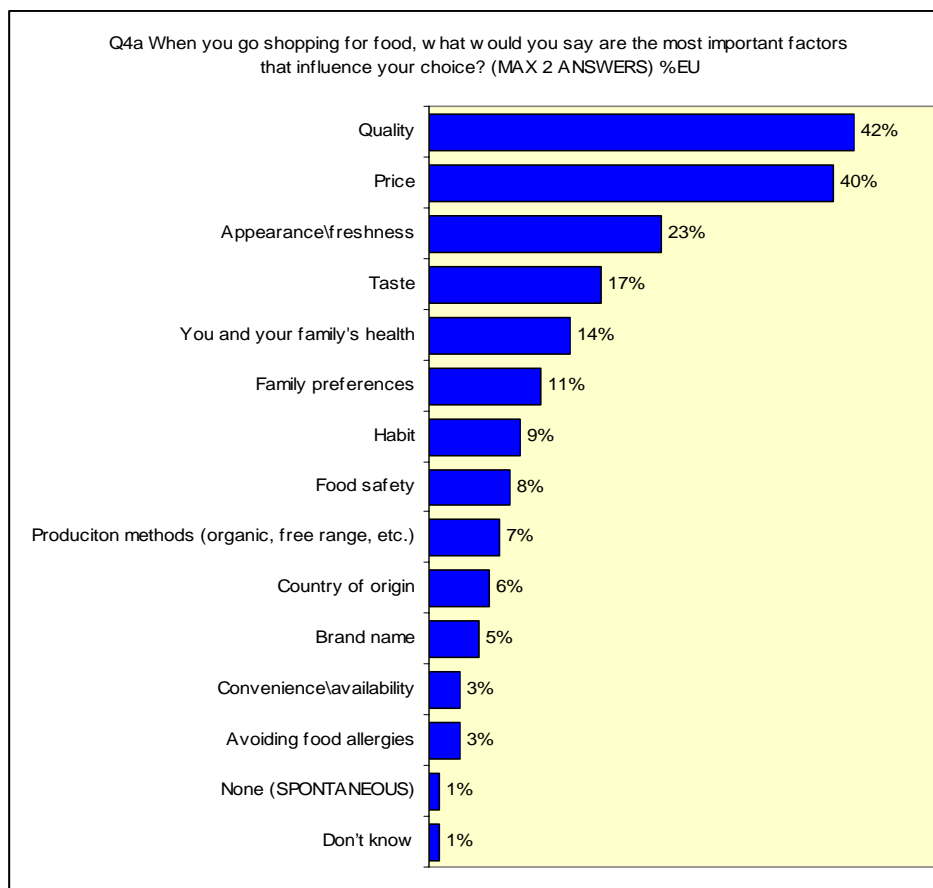
³ Impact assessment report on general food labelling issues, 30.1.2008, SEC(2008) 92, pp. 21-22.

⁴ http://ec.europa.eu/food/animal/welfare/euro_barometer25_en.pdf

1.2.2 Attitudes to food purchasing⁵

- Europeans consider quality and price as most important levers when purchasing food -

When purchasing food, two out of five Europeans guide their choice by the quality (42%)⁶ and the price (40%) of food. Around a quarter are guided by the appearance/freshness of the food (23%), followed by taste at 17%, health at 14% and family preferences at 11%. The findings here further illustrate that “health” per se is not the primary preoccupation of consumers with respect to food and does not appear to be the most important lever in guiding consumers’ food choices. On this note it is worth pointing out that at the country level, Malta (24%), the Netherlands (21%) and Denmark (18%) are where the highest proportions of citizens say that health is one the most important factors influencing their food purchases; however in all three countries these scores follow behind price and quality.



Box: Extract from Special Eurobarometer 238 survey, Risk Issues, published February 2006. p.9.

Organic farming is a specific production system, the product of which is widely available on the market. Production method concerns are central to the organic concept, notably the use of natural resources, preventive crop protection methods, restricted use of pesticides mostly from animal, plant or microbial origin, high animal welfare standards, and environmentally sustainable production techniques. The relatively low share of

⁵ Special Eurobarometer report 238 Risk Issues, Feb 2006
http://www.efsa.europa.eu/cs/BlobServer/General/comm_report_eurobarometer_en2.pdf?ssbinary=true

⁶ Eurobarometer note: "We should bear in mind that a number of the aspects covered in this question are quality-related aspects, such as appearance/ freshness, taste and production method."

organic products of between 1% and 5% of total turnover of food products⁷ is consistent with the message that while farming practices are an important factor for consumers *when prompted*, this does not translate into a concern of a majority or even a sizeable minority of consumers when purchasing decisions are made, even where the value-added product is clearly labelled and marketed.

The finding that a top concern for consumers is price from data gathered in the relatively prosperous period of 2005 is likely to be even more significant in times of recession.

Therefore, as far as EU farmers are concerned, there is probably no great demand from the market place for all agricultural products to be labelled to indicate where it was farmed or compliance with particular EU farming practices and requirements. This suggests that in general consumers are not informed on the farming methods or place of farming of ordinary (non-value-added) products at the moment of purchase. Farmers therefore face a communication difficulty that fundamental information about the farming input to a product — its place of farming and/or the farming requirements followed — are not available to consumers at the point of purchase.

2.2. What are the underlying drivers of the problem?

Societal demands cover many process or farming requirements on EU farms. Effective rules include traceability and record keeping, tracking EU-farmed animals from the birth to slaughter. Detailed records must be kept, *inter alia* on substances used in production such as veterinary drugs, feed, biocides as well as test results needed for use of certain products. Such record keeping is also a particular requirement for poultry and is under consideration for pig rearing.

Beyond safety and hygiene, **care of the environment** has been at the forefront of consumers', or at least citizens', demands from farming for many years. This was reflected in the CAP reform of 1992 with the introduction of the agri-environment accompanying measure to the CAP, which became a central part of rural development programming. The current strategic guidelines⁸ plan for measures to:

be used to integrate these environmental objectives and contribute to the ... commitment to reverse biodiversity decline by 2010, to ... establishing a framework for Community action in the field of water policy, and to the Kyoto Protocol targets for climate change mitigation.

Environmental issues have grown in political significance and have again come to the fore as the “new and ongoing challenges” in the Health Check⁹. The regulatory

⁷ http://ec.europa.eu/agriculture/organic/files/eu-policy/data-statistics/facts_en.pdf
Organic farming in the European Union Facts and figures, 2005, EC DG Agriculture and Rural Development, p. 21.

⁸ COUNCIL DECISION on Community strategic guidelines for rural development (programming period 2007 to 2013), OJ L 55, p.20, 25.2.2006.

⁹ ‘Preparing for the “Health Check” of the CAP reform’, 20.11.2007, COM (2007) 722, Communication from the Commission to the Council and the European Parliament.

response¹⁰ at EU level has had significant impacts on EU farmers in addition to the integration of environmental care into retailers' private standards.

In the livestock sectors, a significant societal driver on farming requirements is the **ethical consideration of animal welfare**. Two issues on animal welfare need to be distinguished:

- In this paper, minimum compulsory animal welfare requirements, as part of farming requirements are relevant;
- In a separate Communication on labelling of animal welfare, the issue of labelling as a means of encouraging and promoting higher levels of animal welfare by differentiated product labelling is planned¹¹.

Livestock farmers are required to observe minimum EU animal welfare standards. These standards are important not only to ensuring a high level of animal welfare but also in improving animal health and productivity. They can contribute therefore to more effective production systems which are also more in tune with societal demands.

Finally, producer and consumer expectations concerning the **composition, quality and production method** of certain processed agricultural products has resulted in obligatory production requirements for agricultural products placed on the market.

Consumers — when prompted — want information on where food has been farmed and how it has been produced, and farmers want them to have this information. EU farming requirements reflect the legitimate choices of society and as such, are a positive aspect of EU production. However, they can only communicate this if the product's farming method or place of farming can be identified.

2.3. What regulatory measures are already in place?

The issue is already addressed to an extent by existing legislation, although not in a consistent way:

Obligatory production system labelling

Egg production method labelling: Eggs sold on the EU market must be labelled according to their method of production (cage, barn, free-range, organic).¹² For poultry meat, farming method indications are precisely defined and farmers must comply with specifications laid down to use the reserved terms. However, the indication of farming method is not mandatory.

Place-of-farming labelling can also serve as a proxy label to indicate that a product has been farmed in line with the requirements in the place shown.

¹⁰ See Appendix 2, section 6.

¹¹ Agenda planning reference 2009/SANCO/037

¹² Council Regulation (EC) No 1028/2006, Commission Regulation (EC) No 2295/2003.

Obligatory place-of-farming or origin labelling has been adopted for:

- fruit and vegetables (Regulation (EC) No 1234/2007, Article 113A)

Under the single CMO¹³ "The products of the fruit and vegetables sector which are intended to be sold fresh to the consumer, may only be marketed if... the country of origin is indicated." For a crop product, 'country of origin' equates to 'country of place of farming'. This requirement applies to fruit and vegetables covered by the single CMO (does not apply to potatoes, coconuts, etc.), but does cover thyme, basil, rosemary, etc. Processed fruit and vegetables are not covered.

- honey (Directive 2001/110/EC);

The country of harvest shall be indicated on the label. However, if the honey has been harvested in more than one country, the indication may be replaced by one of the following: "blend of EC honeys"; "blend of non-EC honeys", or "blend of EC and non-EC honeys". This indication does not apply to honey used as an ingredient in a processed product.

- beef (Regulation (EC) No 1760/2000);

Beef and beef product (including veal) must be labelled for retail sale with an indication of:

- the Member State (or third country) where the animal was born,
- the Member State(s) (or third country/ies) where fattening took place and,
- the Member State (or third country) where slaughter took place.

If the beef is derived from animals born, raised and slaughtered in the same Member State or third country the indication on the label may be given as "Origin + (country name)". This rule applies to product sold as beef (fresh, chilled or frozen), including thin skirt, minced meat, trimmings and other cut meat. It does not apply to meat preparations¹⁴.

- Eggs

In-shell eggs are labelled on each egg with the ISO code for the country of origin.

- imported poultry (Commission Regulation (EC) No 543/2008);

Country of origin indication is mandatory in the case of imported poultry meat sold at retail. In practice imported poultry meat is nearly all imported as preparations or processed in the EU. Currently EU marketing standards do not apply to preparations of poultry meat.

- olive oil (Commission Regulation (EC) No 1019/2002)

With effect from 1.7.2009, olive oils in the "virgin" and "extra-virgin" categories must be labelled according to their place of production: for EC-produced oils, this is the place of pressing the oil and the place the olives were grown; if these are different places, the form "olive oil obtained in X from olives harvested in Y" must be used. Blends of different olive oils of the EU must be labelled 'EU origin'. Olive oil from 3rd countries must be labelled with

¹³ Regulation (EC) No 1234/2007, Article 113A(1).

¹⁴ Defined in Regulation (EC) No 853/2004: "fresh meat, including meat that has been reduced to fragments, which has had foodstuffs, seasonings or additives added to it or which has undergone processes insufficient to modify the internal muscle fibre structure of the meat and thus to eliminate the characteristics of fresh meat"

its origin according to the non-preferential rule of origin. It is forbidden to label origin of ordinary olive oil or oil composed of refined olive oil and virgin olive oils.

- wine (Annex IV of Regulation (EC) No 479/2008);

Wine labelling must indicate both the place the grapes were harvested and the place they were turned into wine, using expressions such as "wine of ...", "produced in ..." or "product of ..." for wines from one place. For blends and wines made in one place from grapes harvested in another: "European Community wine"; "blend of wines from different countries [of or outside] the European Community"; "blend from ..."; "wine obtained in ... from grapes harvested in ..." etc.

- organic: (Council Regulation (EC) No 834/2007 as amended by Council Regulation (EC) No 967/2008);

With effect from 1.7.2010, all pre-packaged organic food that is produced in the EU must be marketed using the EU organic logo, which is currently in the process of design. All uses of the EU logo must be accompanied by an indication of the EU or non-EU place of farming of the ingredients. Where the ingredients all come from the same country, that name can be used.

- Pre-packaged food¹⁵ for which to not label the origin could mislead consumers (Directive (EC) No 2000/13).

What private and market instruments are already in place?

Quality assurance schemes have been established by retailers and/or by farmers in order to certify the production method at a defined level of good practice, which may be at or a margin above minimum EU requirements. The main schemes operating in the EU include: GlobalGAP (formerly EuropeGAP), which covers all farming sectors; QS, originating in the meat sector in Germany, but now extended to Netherlands, Belgium and Denmark and covering other sectors (fruits, vegetables, potatoes); Red Tractor (all sectors except eggs, which are covered by the similar Lion scheme), operating in the UK.

QS and Red Tractor provide for a consumer logo, thus enabling consumers to identify the scheme associated with product. GlobalGAP assures the quality standard only to the retailer (who may then put on their own logo) and QS and Red Tractor are also used in this way (to communicate to the trade). For example 75% of UK combinable crops (cereals, oilseeds; protein crops)¹⁶, which by their nature are hardly ever sold to consumers without processing, are certified.

Annex D of this project addressed the issue of assurance schemes in more detail and cross-reference is made to there.

In addition, retailers may choose voluntary labelling to describe the farming production method or place of farming. However, this information is normally only provided where

¹⁵ Under the current proposal for a Regulation on the provision of food information to consumers (COM(2008) 40 final and SEC(2008) 93), this provision would apply to all foodstuffs, whether or not pre-packaged.

¹⁶ See: http://www.ukagriculture.com/food/assured_combinable_crops_scheme.cfm .

the retailer can identify a value adding characteristic, such as free range or environmentally compatible production. Voluntary labelling of production method or origin does not extend to all agricultural products, and does not cover the whole spectrum of farming requirements¹⁷.

2.4. How would the problem evolve without a change in policy?

Producer/retailer action

Voluntary action could be taken at the initiative of retailers and/or farmers, in response to consumer demand, competitor pressure, or NGO pressure, including:

- Development of voluntary origin and/or place of farming labelling;
- Development of 'single issue' certification schemes, such as for integrated production, use of pesticides or animal welfare;
- Development of food assurance certification schemes and retailer purchasing policy.

In the absence of overt consumer demand for origin or place of farming labelling, retailers may be reluctant to provide for such labelling which would draw attention of consumers to the product's origin. For similar reasons, information on production method, are unlikely to be indicated on labels voluntarily.

Higher standards, however, could be labelled as a positive selling point for product – given the high premium some consumers place on given production methods when prompted. NGO action could also be influential.

Ad-hoc compulsory labelling: regulation of origin and production method

Compulsory production method labelling, particularly in relation to animal welfare, could be developed in those sectors where the most intensive methods are used (e.g. pigmeat, poultry, and veal sectors).

Place-of-farming labelling could be extended by sector according to demand and justification. Until now only raw agricultural products and single-ingredient processed products are subject to compulsory place of farming labelling.

Environmental compliance labelling and wider production method labelling (e.g. covering pesticides) is, based on the absence of initiative to date, unlikely to be developed. However, the issues of water use and climate change impact are rising in significance and ad-hoc action at EU level here should not be ruled out.

2.5. Does the EU have the right to act?

Legislation for agricultural product, including marketing in the EU is enabled under Article 33 of the Treaty.

¹⁷ Under Commission labelling proposal, COM(2008) 40 final, voluntary labelling of all meat products would have to follow the beef model, thus requiring the place(s) of farming to be indicated (birth, fattening and slaughter).

2.6. Should the EU act?

The problem arises due to the conflict of two demands:

- society demands certain minimum production standards and requirements are followed and applied obligatorily in the EU;
- in the marketplace, retailers do not consistently require information to be provided and so consumers are not normally aware of those minimum requirements nor of the place it has been farmed.

Consumers, when prompted, regard origin and production method information as useful information to assist purchase decisions.

The problem is unlikely to be addressed by the market and if addressed at all, public action will be required. However, ‘no-action’ is not to be excluded.

Should action be considered at EU-level or at Member State level? Obligatory labelling of place of farming or the definition and labelling of production method have the potential to disturb the internal market. There is no guarantee that similar or compatible definitions of farming requirements and detailed rules on place of farming could be decided on by Member States acting separately. Thus, if action were to be taken on a problem that is EU wide and in a way that upholds the integrity of the single market, the action can be justified at EU level.

A(i) 3. OBJECTIVES

To communicate information about place of farming and farming requirements to buyers and to consumers.

To provide recognition in the market to farmers and producers of agricultural product who meet societal expectations in the form of production requirements.

A(i) 4. POLICY OPTIONS

4.1. Options and initial screening

The following options will be examined in relation to agricultural product:

- (1) Status quo plus: Extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product
- (2) Obligatory EU logo indicating compliance with EU farming requirements;
- (3) No EU action, which equates to continued use of voluntary private schemes that certify compliance with a privately-defined farming standard.

4.1.1. Status quo plus: Extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product

One option raised in public consultations is to extend compulsory labelling of the place of farming. Currently, in general labelling law, there is no compulsory place of farming labelling, nor origin labelling, except in the marginal circumstance that consumers would be misled as to origin if the product's origin were not labelled. However, in sectoral legislation there are multiple examples of obligatory labelling of place of farming: wine, beef and veal, honey, eggs, fruit and vegetables (except potatoes), imported poultry for sale as meat, eggs, olive oil (from July 2009), and EU-produced organic product (from July 2010). The current list of agricultural products on which labelling of place of farming is required is quite eclectic and has grown up ad hoc as the marketing rules for different sectors have been developed. It is not easy to explain the rationale for requiring the place of farming labelling for beef but not for lamb, and for honey, but not for butter.

When prompted, consumers are interested in knowing the place of farming, not least in processed products. However, their preference is clearly for country of origin labelling rather than EU/non-EU. The place indicated tells consumers something about the product. A country or regional origin can convey information on the quality, particularly for products associated with a particular place and on the distance over which it has been transported (food miles). An EU/non-EU label can only convey information common to the EU – such as the applicability of EU farming requirements.

Stakeholders say:

Green paper responses:

Practically no respondent linked the issue of labelling of place of farming with product hygiene or safety considerations.

Farming groups generally favoured compulsory place-of-farming labelling, mostly at country-level rather than EU/non-EU, but in general thought it had to be considered sector-by-sector; "not realistic for all product" said several, but there was a general view that beef labelling requirements should be extended to all meat. Organic bodies recommended extension of the organic rules for labelling the place of farming ('EU' or 'non-EU') to all sectors but pointed out the potential difficulties for processed products.

National authorities are divided on the issue. Those in favour of place-of-farming labelling say it is 'highly desirable from consumer point of view', another that it would 'help to build consumer confidence', and for one, consumer demand was the determining factor. One responded that sufficient publicity would be needed to make the link to EU farming requirements, but others said that consumers are well aware about EU farming model and environmental requirements in particular and that consumers do infer additional information from knowing the origin. Several authorities responded that only 'country' of farming would be useful, but not smaller than country (to avoid confusion with PDO-PGI labelling). Product-specific consideration is needed. The few regional bodies that responded favoured a regional or EU/non-EU indication more than the country indication, while the reverse was true for national bodies.

Individuals, including farmers, were generally in favour of origin or place of farming labelling, but almost unanimously preferring 'country' rather than 'EU/non-EU'. One exception was a respondent who argued for EU/non-EU to 'prevent national market protection by Member States'.

Arguments against from public bodies and others include the risk of increasing prices and burdens on packers owing to the need to adjust labels ('an advantage for consumers, a disadvantage for agri-food businesses').

A third country body underlined that any labelling scheme should be non-discriminatory to 3rd countries.

Several NGOs thought 'EU' too broad to carry meaning to consumers and a smaller territory was needed to convey information such as food tradition and distance travelled.

Representatives of processors were strongly, though not unanimously, opposed to obligatory place-of-farming labelling. Few retailers responded, one view was that it is feasible for raw products and very-lightly processed, but loses value for processed products.

Academic organisations (etc.) were in favour of some kind of obligatory labelling of place-of-farming, but few supported EU-level. Some considered the labelling would be helpful to address 'food miles'; one said it should be accompanied by promotion campaign. Opponents of any place-of-farming labelling said this should be left to the market.

Similar divisions were evident from stakeholders consulted on the options retained in the **Quality Policy Advisory Group** on 26.2.2009. Industry underlined in particular the difficulties of indicating origin for highly processed and mixed foods, such as bread, beer and pate made with a mixture of meats, and place of farming of animal feed (in respect of meat products). Support for place of farming labelling (at country level) was most pronounced from farming groups and consumer representatives, as well as an animal welfare representative.

4.1.1.1. Assessment of effectiveness, efficiency and consistency

Effectiveness: Labelling of food with the place-of-farming of the product or, if processed, of the ingredients is a simple way of communicating that single fact. EU farmers are seeking to convey to consumers where the product has been farmed, as well as the farming requirements followed. An indication of EU place-of-farming does not therefore directly address the second part of the problem. However, even here, since the application of EU requirements is, by definition, coterminous with the territory of the EU, a link can be made between the two. Therefore in terms of effectiveness, a place-of-farming indication has 'medium' effectiveness.

Efficiency: A labelling mechanism is much simpler to implement and control than a certification scheme or complex message. No certification scheme is needed as a place-of-farming requirement can be implemented by a labelling rule. Place-of-farming is straightforward for raw materials and processed foods provided the processor has the information. For processors, for those that have the information on the place of farming, there will not be a particular difficulty. However, for those processors that do not know the provenance of the raw materials foods, place-of-farming labelling presents a difficulty. The efficiency of this option would be 'medium'.

Consistency: Currently, obligatory place-of-farming, origin, etc. labelling applies in 7 sectors. Different concepts are used and some of the labelling indications are quite complex. The products to which labelling is applied are either raw materials or single ingredient processed goods. However, a proposal has been made to apply place-of-farming labelling to meat preparations. In this light the current position is inconsistent and a new approach to obligatory labelling could result in greater consistency. Such labelling would increase the administrative burden of official controls, although these are understood to be light and there would be an increased burden for manufacturers of mixed-ingredient goods. The consistency of this option vis-à-vis current place of farming labelling requirements is 'medium' to 'high'.

The Commission's proposal for the provision of food information to consumers, preserves the status quo regarding obligatory labelling of origin or provenance. In its impact assessment¹⁸ of 30.1.2008 the option of horizontal obligatory labelling of origin or provenance was considered from the perspective of consumers and the food industry¹⁹ but not retained. The current obligatory sectoral legislation requiring origin or place of farming labelling was referred to in the background (section 3.5.3), but the focus of the IA remained on the question of horizontal labelling. In this light, and notwithstanding the novel element in the current IA of considering farmers as stakeholders, it would be inconsistent with the work undertaken in 2008 to consider at this time an option for horizontal labelling.

The present option is intended to pick up from the work done in 2008 and continue the reflection in relation to agricultural products covered by Annex I of the Treaty. The factors that distinguish this option (*extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product*) from policy issue 3 in the 2008 IA (*clarification of the use of origin labelling on foods*) and are the following:

- consideration of farmers as stakeholders (the 2008 IA took the perspective of consumers and processing industry only);
- consideration of the concept of place of farming (which again targets the farming input to food) rather than the more complex question of rules of origin and provenance;
- consideration of a sectoral and obligatory place of farming in the frame of the CMOs, wherein 8 sectors are already legislated, plus organic (the 2008 IA focussed on horizontal rules);

In the light of these distinctions, the consistency of this issue with the 2008 IA is 'medium', with the proviso that to discuss horizontal labelling of place of farming would render consistency as 'low'.

4.1.1.2. Conclusion

Extending compulsory place-of-farming labelling is supported by a variety of stakeholders, with the notable exception of organisations representing the processing industry. However, those who support mostly prefer country-level labelling rather than EU/non-EU labelling. Few respondents considered the impact on the single market and one who did opposed country-level labelling. In terms of efficiency and effectiveness, this option is only "medium" since the message ("place of farming") does not directly refer to the problem (assisting the communication of EU requirements). Support for compulsory place-of-farming is highest for raw and basic agricultural product, notably meat, and single-ingredient processed product (wine, olive oil, etc.) and diminishes in proportion to the degree of processing of a product. Low support and very strong opposition is recorded for highly-processed products, but as these are outside Annex I,

¹⁸ SEC(2008) 92

¹⁹ 'farmers' were not considered as stakeholders for the purposes of the IA, which was primarily focussed on labelling on food packaging affixed by food manufacturers (see sections 3.3 and Annex I of the IA report, op cit).

they are anyway not within the remit of this current study. In terms of consistency with existing regulation on place of farming and current proposals, the consistency is 'medium'.

This option is retained for further analysis.

4.1.2. *Logo option: Obligatory EU logo signalling compliance with EU farming requirements*

A logo (or conceivably a labelling term) indicating compliance with EU requirements could be developed. This would appear on all agricultural product farmed in the EU and signal that base-line farming requirements had been followed.

The following technical difficulties may be identified:

- it is not clear that consumers would value a logo that indicated compliance with minimum farming requirements.
- if the scheme relied on farmer-declaration or presumption of adherence to standards, it would lack the credibility of a certified assurance scheme;
- if a full certification system were established, covering all EU farming requirements, it would give rise to significant burdens of recording and certifying exactly which requirements had been observed and in what way.
- the logo would need to be open to 3rd country product which had been farmed in line with EU requirements or their equivalent. It would also need to be compliant with the Community's WTO obligations.

The question of using labelling to indicate compliance or non-compliance with EU farming requirements was considered in a recent study, *Qualified Market Access*,²⁰ for the Commission. The study primarily examined options for tariff measures qualified market, but also analysed the potential for a labelling scheme to inform consumers. The relevant part of the text is reproduced at Appendix 2. This highlights that labelling indicating compliance with basic requirements without any value added component would risk confusing consumers and fail to benefit producers. The label would lack sufficient credibility.

Two further technical issues need to be covered:

- Firstly, not all EU product would qualify for the logo since some farmers might not be in full compliance with the EU requirements. Breaches of environmental legislation are a case in point, and breaches of animal welfare legislation do not of themselves prevent marketing of the product.

²⁰ 'Qualified Market Access', CARIS Centre University of Sussex, *Holmes, Rollo, Winters, Dawar and Mathis*, October 2008 for European Commission DG TRADE. [*Publication reference / link*]

- Secondly, it is not always clear what are the EU requirements at the level of the individual farm. Environmental directives are implemented by Member States in a way that meets their own environmental circumstances. In some cases the Commission has opposed the Member States' application of directives, which opens the question whether any of the product from a Member State that has not correctly transposed a Directive can be said to be in compliance with EU obligations. An example of the kind of dispute that can arise has recently been in the ECJ (see box).

French intensive poultry rearing under scrutiny at ECJ: French rules on intensive poultry production do not respect the EU Directive 96/61/EC on Integrated Pollution Prevention & Control (IPCC) & the French decree in question should therefore be annulled, the European Court of Justice (ECJ) ruled this week*. The main objections relate to the coefficients applied, which allow over-intensive systems for quails, partridges & pigeons to receive prior authorisation even if they exceed the 40 000 place limit in the Annex I of the Directive, with the Court ruling that these birds also count as “poultry”.

* For more on the case www.curia.europa.eu & enter C-473/07 into “Case-number”.
AGRAFACTS, 23.1.09.

These difficulties could be overcome by establishing an EU certification scheme that would test compliance against a defined standard of 'good agricultural practice' established for the purposes of the scheme. This could be built on the model of the private assurance schemes. However as mentioned above the administrative burden of such a scheme, compulsory for every farmer, would be high, and the complexity of developing the scheme covering all EU farming requirements, would be extreme.

4.1.2.1. Assessment of effectiveness, efficiency and consistency

Effectiveness: In principle an EU logo, if well designed, could be successful in communicating farming attributes to consumers. The design would be a challenge since there is such a range of farming practices, concerning all types of livestock and crop farming. The risks of poor design include:

- Logo is only conveys part of the message. For example consumers believe it attests requirements are followed with regard to crop protection products, but is not associated with animal husbandry.
- Logo is misinterpreted to mean something it does not: e.g. it is seen as an indicator of safety or of origin.

The private baseline schemes that exist in the market normally do not convey information to the final consumer, since they are used in business-to-business transactions. The logo could be accompanied by a promotion campaign or internet information on its meaning.

Assuming a logo were chosen that did successfully convey compliance with EU farming requirements, it is doubtful that consumers would be interested in the information. Consumers expect that all EU product has been produced in conformity with EU farming requirements and thus a marketing claim on these lines would have limited appeal.

Efficiency: A logo or certification scheme is suited to verification of complex messages. In fact, given the wide range of requirements to be covered, only a logo backed up by certification would have the necessary credibility.

However, the burden of developing and running a certification scheme, for the farmer and for the verifying authority would be high. Development of the scheme would require reliable knowledge, farm-by-farm, of the EU requirements that apply. Where these requirements are contained in Directives that have been implemented and approved by national or regional authorities, the identification of the EU requirement (as distinct from any additional Member State requirement) could be difficult to determine.

Given the burdensome development and running costs, and the lack of interest from consumers, the efficiency would be rather low.

Consistency: The development of an EU logo and certification scheme signalling compliance with EU farming requirements is not consistent with the Commission's objectives for simplification and reduced administrative burdens.

Stakeholders say:

The EU label options was discussed in depth at the **Stakeholder Hearing** on “Food Quality Schemes”, 11-12 May 2006 – Brussels²¹, and views were overwhelmingly negative from the panels representing farmers, traders, food processors and retailers. Consumers, although invited, were not represented, and Certifiers, although present did not comment on this option. The main views expressed were:

Farmers believe there is no need for a logo confirming compliance with EU regulations, because the law is a prerequisite and since every product will bear the logo it cannot serve any useful purpose.

Traders are not in favour of an EU QAS. Authorities should ensure consistent application of food safety laws across EU Member States – plus greater consumer confidence and an open trading environment.

Food processors also consider that no European logo confirming compliance with EU regulations should be created.

Retailers questioned whether the EU scheme would conflict with existing legislation and how the massive cost to promote it EU-wide would be financed. An EU quality mark is likely to be seen as just another logo. Moreover, retailers believe that compliance with EU regulations should not be used as a marketing tool. Creation of an EU quality mark also generates questions among retailers, such as “What will happen with products without a logo?” or “How can we prevent the reality/perception of a new barrier to trade with third countries?” In conclusion, retailers are highly sceptical about the costs and benefits of developing an official EU quality mark.

These negative views were largely echoed in the stakeholder panel that closed the Conference on food quality certification²² held 5-6 February 2007.

Responses to the **Green Paper** were also overwhelmingly negative. Many respondents said a new logo would only cause confusion; that it would not have a useful meaning and might mislead consumers that higher standard than the minimum had been followed. Many pointed to the high compliance costs of controlling compliance. Of those who supported the idea of an

²¹ http://foodqualityschemes.jrc.ec.europa.eu/en/documents/ReportSTKHHearing_final.pdf

²² http://ec.europa.eu/agriculture/events/qualityconference/index_en.htm

EU logo, some argued that it should not be available for product from 3rd countries. A relatively high proportion of individuals compared with organisations supported the EU requirements logo idea.

Stakeholders meeting in the **Quality Policy Advisory Group** on 26.2.2009, which was asked for views on the options in this paper, concurred with the Commission's exclusion of this option.

4.1.2.2. Conclusion

In conclusion, an EU label or logo signalling compliance with EU requirements has so many technical obstacles, and considerable stakeholder opposition, that this option is not retained for further analysis.

4.1.3. No EU action, which equates to voluntary use of private schemes that certify compliance with a defined standard of farming practice.

See paper D.

This option is retained for further analysis.

4.2. Fine-tuned shortlist for further analysis

Following the screening for technical and other constraints as well as the assessment of effectiveness, efficiency and consistency, option 2 (Obligatory EU logo signalling compliance with EU farming requirements) is considered to be too heavy in terms of administrative burden, inconsistent with the Commission's objectives for better regulation, simplification and reduced administrative burdens, and is not supported by stakeholders. It will therefore not be analysed in detail.

The options retained for further analysis are:

- Option 1: Status quo plus: Extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product
- Option 3: No EU action, which equates to use of voluntary private schemes that certify compliance with a privately-defined farming standard.

A(i) 5. IMPACT OF OPTIONS

5.1. Status quo plus: Extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product

5.1.1. Impacts

The option potentially covers all agricultural products placed on the retail market, that is products included in Annex I to the Treaty. The following products are not covered by this option or covered only to a very minimal extent:

- Fisheries products, which are subject to separate labelling requirements;
- Products such as flax and animal feed that are not foods;
- Products that by their nature are nearly always processed before sale (cereals, grains, oilseeds) or not sold at retail at all (live animals).

The main products concerned are:

- Raw agricultural products and meat (fruit and vegetables, meat, milk, eggs)
- Single-ingredient pressed or processed products (wine, dairy products including cheese, olive oil, coffee, tea, fats and oils, sugar, tobacco)
- Other processed products within Annex I of the Treaty (chiefly preparations of meat containing more than 20% meat and preparations of vegetables and fruit.)

Economic impacts:

The impact on prices for mandatory country of origin labelling was considered in the 2008 IA²³. Estimates by USDA (ERS) in 2004 at levels between 0.06-0.26% for pork, 0.07-0.24% for sheep (although these estimates are considered to be high). Estimates prepared for the Food Standards Agency Australia and New Zealand in 2006 estimated the average cost of applying country of origin labelling to packaged and processed fruit and vegetables at 1.4% (described as very significant) with the rate depending on the size of company and the number of origins of the ingredients. A study considered to be more realistic in the light of modern tracking procedures from New Zealand put the median cost at 0.48% of turnover.

Functioning of the internal market and competition:

Provided the place of farming chosen is EU/non-EU, the impact on the free movement of goods and services in the single market will be limited and the costs to industry will be lighter.

Impact on farmers and producers in the EU may or may not be positive. It will enable EU farmed products to be more easily identified. Provided this is what consumers seek then

²³ Page 54.

farmers will benefit. However, consumers may seek other characteristics and farming attributes.

Impact on processors will be negative insofar they need to frequently alter labels as a function of purchases. For multi-ingredient processed product, the difficulties of identifying the place of farming of all, or the main, ingredients could be formidable and will add costs. In particular it is not clear is the origin of every significant ingredient would have to be identified, or only the main ingredient (which would have to be defined in the case of multi-ingredient products).

While consumers (unprompted) have no strong desire to seek out place of farming labelling, they show great appreciation to know the place of farming when specifically asked. However, for EU consumers, only country or regional labelling has resonance, and EU/non-EU label is not regarded as specific enough to convey useful information. For processed goods, if the labelling requirement results in a price increase, consumers would lose.

SME farmers and producers of single ingredient processed agricultural product will be able to better communicate the place of farming with the consumers.

Negative impact on SME processors that use a diversity of sources and have to relabel frequently. However, this impact will be slight.

Operating costs and conduct of business:

Administrative burdens on businesses: labelling rules will require traceability and separate recording on the place of farming of ingredients with associated costs.

Consumers and households: place of farming labelling will enable consumers to be informed about the farming attributes and requirements more easily.

Public authorities: provided inspections of place of farming labelling are integrated into existing control structure, the impact on control authorities will be modest.

Social impacts:

Transparency: the labelling will contribute to better information to the public. Labelling of place of farming may give some consumers useful information on production style, climate, and (possibly subjective) information about the quality of the product.

Environmental impacts:

As one aim of the labelling of place of farming will be to make better known the environmental compliance efforts that farmers achieve, provided this is successful, then the benefit to the environment in terms of better understanding of environmental requirements will be significant.

International considerations

Any labelling of place of farming must be WTO compatible and not be motivated by a desire to impede imports. International comparisons show that country or origin labelling, usually combined with place of farming clarifications, is being introduced in

some leading OECD economies (see Box) and indeed is required for conformity with many international standards (e.g. UN/ECE fruit and vegetable standards; Codex cheese standards).

Obligatory country of origin and place of farming rules in selected countries

Australia: Standard 1.2.11 – Country of origin requirements: Packaged food must carry a separate statement identifying the country where the food was produced, made or packaged. Definitions and criteria for use of the following terms are prescribed: 'Product of [country]' 'Produce of [country]' (indicating that the ingredients of a processed food were also farmed in the country named), 'Made in [country]', 'Made in Australia from local and imported ingredients' or 'Made in Australia from imported and local ingredients'²⁴

US: COOL On 16.3.2009, provisions come into effect requiring country of origin labelling (COOL) for beef, lamb, goat meat, pork, chicken, fish, perishable agricultural commodities, and peanuts, ginseng, pecans and macadamia nuts. Commodities covered under COOL must be labelled at retail to indicate its country of origin. Commodities are excluded from mandatory COOL if the commodity is an ingredient in a processed food item.²⁵

Canada: country of origin labelling is required in several agricultural sectors.

Korea: country of origin labelling applies.

There is a question whether it is preferable from an international perspective to require imported product to be labelled as place of farming "non-EU" or "country". If this is a problem, the choice could be given, to label the country of the place of farming or alternatively 'non EU'. Likewise within the EU, the requirements could be a choice between 'EU' and 'member state' place of farming. In the recent case of olive oil labelling, while EU producers will have to identify the place of harvest as well as the place of pressing, for imported olive oil, 'origin' according to the non-preferential rule was adopted.

5.1.2. Qualitative assessment of impacts that are most significant

Impacts deemed to be most significant are:

- The potential positive impact on farmers and producers: this is greater for country labelling than for EU/non-EU labelling.
- The potential negative impact on processors: this is greater for country labelling than for EU/non-EU labelling.
- The potential negative impact (cost) on public authorities through control expenses.
- The potential positive impact in terms of consumer information.

²⁴ Country of Origin Labelling, 1st edition March 2006, A guide to standards 1.2.11 – country of origin requirements (Australia only). Food Standards Australia New Zealand.

²⁵ USDA press release 12.1.2009.

5.1.3. Conclusion

Requirement for labelling of place of farming on agricultural products could be an effective way of communicating basic information to consumers. It is supported by farmers and consumers who are favourably disposed to seeing information on the place of farming, and (especially for highly processed or mixed products), opposed by the processing industry.

Estimates of cost impacts vary greatly, by a factor of 10 from 'not significant' to 'significant', in studies conducted in other countries. The only conclusions that can be drawn are that costs are considerably higher for highly processed and mixed products — most of which are outside the scope of agricultural product covered by Annex I.

Therefore in considering taking forward obligatory sectoral place of farming labelling for agricultural products, several issues could be usefully further clarified:

- costs in the EU context, especially in the light of traceability requirements;
- labelling regime for mixed products that fall within the 'agricultural products' heading, specifically whether place of farming of all, some or one ingredient(s) required.

A(i) 6. COMPARING THE OPTION (WITH STATUS QUO)

	Advantages	Drawbacks
<p>Status quo plus: Extending existing compulsory indication of place-of-farming (EU/non-EU or country) to cover agricultural product</p>	<ul style="list-style-type: none"> – Prevents place-of-farming from being concealed by anonymity by retailers; – Draws attention of consumers to an information item they value (although not as much as country level); – Preferred by a (significant) share of stakeholders; – shown by schemes in other countries to be likely to be WTO compatible, but some flexibility (e.g. "non-EU <i>or</i> name of country") may be needed to ensure measures are not barriers to trade. 	<ul style="list-style-type: none"> – Only an indirect link to arming practices; – burdensome for processors, especially for mixed and highly processed foods; – lack of cost impact data in the EU context.

Table 5: Comparison of retained options by specific objectives




Main objectives →	Communicate place of farming and farming requirements to buyers and consumers		Provide recognition to farmers who meeting societal expectations in the form of production requirements	
↓ Options				
1. no EU action	Baseline		Baseline	
2. place of farming label	Situation improved		Situation improved	

Table 6: Comparison of retained options by effectiveness, efficiency and consistency

Evaluation criteria →	Effectiveness (how well will it solve the problem?)		Efficiency (is this the most we can get for the money?)		Consistency (is it in line with other Commission objectives and strategies?)	
Options ↓						
1. no EU action	Baseline		Baseline		Baseline	
2. Place of farming label	Medium	+/-	Medium	+/-	Medium to Low	

APPENDIX 1. OVERVIEW OF EU FARMING REQUIREMENTS

1. HYGIENE AND SAFETY

After adoption of the **General Food Law**²⁶ (GFL) a set of specific requirements listing the obligations for food producers, for producers of food of animal origin and for feed producers and users were also adopted²⁷. This framework legislation places the primary responsibility for food safety on the producer. The legislation introduced at all levels except primary production of Hazard analysis and critical control point (HACCP) for food safety control systems and the application of codes of good practices.

Livestock farmers are affected by legislation on the disposal of animal by-products²⁸, that sets out tight conditions for the safe disposal of such waste products.

One of the most important provisions stipulated by the GFL is the requirement for traceability. Food businesses shall have in place systems to trace back all batches of food placed on the market.

Animal identification requirements for bovine animals²⁹, sheep and goats³⁰ and for pigs³¹ contain strict requirements for tagging (including electronic identification devices), and the keeping of records.

Specific requirements on primary producers consist generally in record-keeping. This is designed to increase accountability in production and ensure traceability.

EU requirements on genetically modified organisms (GMOs)³² and GM food and feed³³ establish an authorization procedure and traceability and labelling rules. In some third countries, these materials and their presumed economic benefits, are more freely available.

Example:

Animal identification and farm registration. A full traceability system for bovine animals ensures that all animals are individually identified within few days from the birth and all

²⁶ Regulation (EC) No 178/2002

²⁷ Regulations (EC) No 852/2004, (EC) No 853/2004 and (EC) No 185/2005 respectively.

²⁸ Regulation (EC) 1774/2002

²⁹ Regulation (EC) 1760/2000

³⁰ Regulation (EC) 21/2004

³¹ Directive 92/102/EC

³² Directive 2001/18

³³ Regulation (EC) 1829/2003 and Regulation (EC) 1830/2003

movements are recorded in a database which allow the traceability from birth to final sale of each bovine cut at retail. EU Farmers are the starting point of the sophisticated EU food chain and keep records, *inter alia* on substances used in the production such as veterinary drugs, plant protection products, biocides as well as analytical results to justify certain uses.

2. ANIMAL NUTRITION

Feed materials are regulated under a number of measures³⁴ which include prohibited materials, prohibited practices, and labelling requirements for the feed (not for the final product), such as: materials not allowed in the manufacture of compound feedingstuffs; feedingstuffs not allowed for animal nutrition; and limits for contaminants in feed materials and compound feedingstuffs. Animal nutrition is a key element in the production of food of animal origin.

Example:

Animal feed requirements: following a series of major food safety crisis in the EU linked to animal feed, farmers must comply with detailed rules on animal feed, such as restrictions on the use of certain proteins of animal origin, certain feed materials, swill feeding in pig fattening, which are all management measures intended to reduce risks.

3. ANIMAL WELFARE AND TRANSPORT

Community legislation concerning the welfare conditions of farm animals lays down minimum standards, including the ‘five freedoms’ (freedom from hunger and thirst; freedom from discomfort; freedom from pain; freedom to express normal behaviour; and freedom from fear and distress). National governments may adopt more stringent rules provided they are compatible with the provisions of the Treaty. General animal welfare requirements for all farmed animals³⁵ are supplemented by specific requirements, such as animal housing, for pigs³⁶, calves³⁷, and laying hens³⁸. A proposal is under discussion in Council on broiler welfare.

The **Animal Transport Regulation**³⁹ comprised a reform of EU rules on animal transport and identified the chain of all those involved in animal transport, defining ‘who is responsible for what’ thus facilitating more effective monitoring and enforcement of the new rules. It also introduces stricter rules for journeys of more than 8 hours, including a substantial upgrading of vehicle standards.

³⁴ Commission Decision 2004/217/EC; Directive 2002/32/EC, Regulation (EC) No 1831/2003, Directive 96/25/EC and Directive 2002/2/EC.

³⁵ Directive 95/58

³⁶ Council Directive 91/630/EC

³⁷ Council Directive 91/629/EC

³⁸ Council Directive 1999/74/EC

³⁹ Regulation (EC) No 1/2005.

The animal welfare requirements, particularly in the pig and calf sectors and to an extent for poultry and laying hens, have the effect of banning certain production systems.

Example:

Welfare rules for laying hens. The Laying hens directive (Council Directive 1999/74/EC) identifies three types of rearing systems for laying hens (cage, barn and free-range and organic). For 'cage', the current minimum standard is use of 'not enriched cages' where laying hens have at least 550 cm² of cage area per hen. Since 1.1.2003 'not enriched' cages may not be built or utilised for the first time; by January 2012 at the latest this system must be prohibited and the minimum requirement in the EU for all egg production will become 'enriched cage systems' where hens have at least 750 cm² of cage area per hen.⁴⁰ For in-shell-eggs, the farming production method has to be indicated on the box and on the eggs – enabling consumers to make an informed choice.

4. PLANT HEALTH

Approval and use of plant protection products (PPP) are dealt with under a Directive⁴¹. Member States, when granting the authorisation for placing a formulation on their market, shall ensure that the conditions for use established at Community level for the active substance are met, that the proper use of these authorised PPP is described on the label so that farmers comply with these rules. As a result of the review programme of the existing active substances initiated under this Directive, a number of PPP have been withdrawn. In 2009, the Directive will be replaced by a Regulation which will simplify the existing legislation and increase the protection of human health and the environment. In parallel, a new Directive on the sustainable use of pesticides will enter into force. It will provide rules to address risks from the use of pesticides and contribute to a better and more intelligent use of pesticides.

The regulation on maximum residue levels⁴² (MRLs), covers the setting of MRLs and the monitoring and control of pesticide residues in products of plant and animal origin that may arise from the use of plant protection products.

Example:

Approval of plant protection products and animal health products. EU farmers only have access to pesticides and veterinary products that have been through a thorough approval procedure, which limits in certain cases the availability of substances that are effective in agronomic terms, but which have unacceptable effects on human health or on the environment. In addition, rules to be adopted in 2009 will ensure that the products are correctly used by farmers (e.g. training, safety procedures, maintenance of equipment, etc.).

⁴⁰ The 3 systems are: 'enriched cages' where laying hens have at least 750 cm² of cage area per hen; 'not enriched cage systems' where hens have at least 550 cm² of cage area per hen; and non-cage systems with nests (at least one for 7 hens), adequate perches and where the stocking density does not exceed 9 laying hens per m² usable area.

⁴¹ Directive 91/414/EEC.

⁴² Regulation (EC) No 396/2005

New legislation will impose the use of integrated pest management standards in plant production. This will become the baseline.

5. ANIMAL HEALTH

Concerning **veterinary drugs**, similar requirements for approval and use as for PPP are laid down in the Veterinary Drugs Directive⁴³. The issues of approvals and non-availability are similar as for PPP. Anabolic drugs (hormones, and beta-agonists) are banned for use in livestock production⁴⁴.

6. ENVIRONMENTAL COMPLIANCE

Some 20 environmental measures, mainly directives, are listed in the Annex. They cover:

- Protection of biodiversity (e.g. Habitats and Wild Birds Directives). Farmers managing land within certain identified zones may be required to refrain from specified farming practices.

Example:

Under the **Habitats Directive** (Directive 92/43/EEC), Member States will designate sites of Community importance as Special Areas of Conservation (SACs) and adopt conservation measures involving, if need be, appropriate management plans and other measures which correspond to the ecological requirements of the natural habitat types and the species of Community interest. Special Protection Areas (SPAs) designated under the Birds Directive (Directive 79/409/EEC) need to be managed in accordance with the ecological needs of habitats of birds. SACs and SPAs form together the Natura 2000 network. It is for the Member States to establish the most appropriate methods and instruments for implementing the directives and for achieving the conservation objectives of Natura 2000 sites, which can include imposing site-specific obligations or production restrictions (e.g. use of fertilisers or pesticides) on farmers.

- Water measures. The Water Framework Directive, adopted in 2000, provides a framework for a number of water-related measures, such as the Groundwater Directive, Drinking Water Directive and the Surface Water Directive, within comprehensive water management plans based on water catchments. The Nitrates Directive requires farmers to limit application of N-fertiliser within specified vulnerable zones.

Example:

The **Nitrates directive** (Directive 91/676/EEC) imposes limitation on the land application of fertilisers in designated Nitrates Vulnerable Zones, covering in particular the capacity and construction of storage vessels for livestock manure, periods when application is prohibited, conditions of application on steeply sloping ground and near water courses. It also limits the

⁴³ Directive 726/2004/EC.

⁴⁴ Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists

application of livestock manure on agricultural land to a maximum of 170 kg nitrogen per hectare per year.

- Waste disposal measures. These include the Waste Framework Directive, Packaging Waste Directive and Hazardous Waste Directive, which lay down restrictions on the disposal of various wastes notably into water sources.
- Emissions. The Integrated pollution prevention and control (IPPC) directive lays down requirements applicable to intensive farming operations over a certain size. The sectors currently affected are pig and poultry, processing of meat and milk and processing of fruit and vegetables. Under other EU legislation, prohibitions have been placed on the use of methyl bromide (with exceptions) and certain tractors that cause air pollution.

Example:

Directive 2008/1/EC (“the IPPC Directive”) requires industrial and agricultural activities with a high pollution potential to have a permit. This permit can only be issued if certain environmental conditions are met, so that the companies themselves bear responsibility for preventing and reducing any pollution they may cause.

IPPC concerns new or existing industrial and agricultural activities with a high pollution potential, as defined in Annex I to the Directive (e.g. intensive livestock farming).

Livestock farming installations covered by the Directive are installations for the intensive rearing of poultry or pigs with more than:

- (a) 40 000 places for poultry;
- (b) 2 000 places for production pigs (over 30 kg); or
- (c) 750 places for sows.

- GMOs. An authorisation procedure for the release of GMOs into the environment is governed by a directive and regulation (see also section 2).
- Good Agricultural and Environmental Condition (GAEC). GAEC applies under cross compliance rules to beneficiaries of farm support. From the perspective of the farmer who receives direct payments and certain environmental measures under rural development programmes, GAEC is an obligatory requirement.

For most of the environmental requirements, the details of obligations on farmers are set by Member States. For those measures where the Member State must identify specific zones, evidently farmers located outside the designated zones are not subject to the measures or are subject to general requirements.

7. OBLIGATIONS AND LABELLING RULES CONTAINED IN CMOs, MARKETING STANDARDS

Marketing standards

CMO regimes, in general, contain or are completed by product marketing standards (quality requirements, classification, etc.) that must be met for all product placed on the internal market. These standards relate to descriptive elements of products,

such as size, shape, appearance, etc.⁴⁵ Rules are adopted in tandem with discussions in international bodies such as UN-ECE or CODEX, and the EC participates actively in the development of standards in various sectors.

Wine

Under the CMO rules for wine, the use of oenological practices, including additives and processing aids, is restricted and subject to certain limits. These requirements are in line with OIV⁴⁶ accepted rules.

Eggs

Rules for the marketing of eggs (Council Regulation (EEC) No 1907/90) lay down that a producer code and method of production must be indicated on the label. The categories are 'cage', 'barn', 'free range', or 'organic'.⁴⁷

Poultry

Under poultry marketing standards, the origin must be indicated in the case of imported fresh meat and reference to the method of production is allowed. The different denominations for extensive systems are defined with regard to minimum age at slaughter, bird density, inside/outside access, and rules on feed. Other rules regulate maximum water content for frozen and chilled poultry.⁴⁸

Beef

A comprehensive system of identification of bovine animals is laid down in Regulation (CE) n° 1760/2000. This includes ear-tags, database information, animal passports and individual registers. In addition, beef must be labelled at all stages of marketing and production (carcass, cuts, etc.) with, among other matters, the origin expressed as the Member State where the animal was born, raised and slaughtered.

⁴⁵ Examples can be found in CMOs for fruit and vegetables; rice; cereals; sugar, etc. See Annex for references to legislation.

⁴⁶ Organisation Internationale de la Vigne et du Vin.

⁴⁷ See also section 2.3 Animal welfare.

⁴⁸ See also section 2.3 Animal welfare.

APPENDIX 2: LABELLING FOR PPMs

Extract from 'Qualified Market Access', Holmes et al, 2008.

1.4.1. Labelling

We start with the possible simplest case. If we suppose that some consumers wish their own consumption satisfies the standard and that they are willing to pay (some of) the cost of its doing so. The utility of the standard is private to those consumers and will be pursued willingly if the cost is less than the utility on the margin paid. In this case the obvious solution is labelling⁴⁹, for it enables producers to demonstrate to consumers that they have met the standard and claim a premium on the price for doing so. Profit maximisation will drive them to do so. There will emerge two versions of the product – the non-PPM one as before and a PPM one - and assuming constant costs and competition in both markets, the latter will command a premium r equal to the cost of meeting the standard. Producers are indifferent about which they produce – both generate normal profits – but consumers potentially reap additional surplus. The non-PPM⁵⁰ consumers are unaffected, whereas those who care about the standard will be indifferent if they value it at just r but gain utility if their valuation is higher. Some of these may place such a high value on meeting the standard that they were previously not consuming at all, or at least consume more once they know that production meets the standard. The absence of any labelling results in undistinguishable versions of a product. Consumers expect, and hence producers deliver, the non-PPM version of the product. That is, in the absence of the labelling, no-one would be willing to incur the cost of meeting the standard because they would not be able to claim any reward for doing so. Everyone pays the same price, but some consumers suffer dis-utility because they suspect or know that their consumption is violating their principles.

If costs of production and of achieving the standard are not constant, the analysis becomes more complex. It is likely that the diversion of demand reduces demand for the non-PPM good and so drives down its price. Producers who for some reason cannot meet the standard within the premium paid for PPM-goods will lose, but their consumers will gain. Conversely, if the standard does not cost anything to achieve, but still commands a significant premium from consumers, it is possible that as the price of the PPM-good increases sufficient consumers switch to the non-PPM version that its price increases too. The result is that output of the non-PPM good actually increases. [footnote: Mattoo, A. and Singh, HV. Eco-labelling: policy considerations . *Kyklos*, 1994. 47 (1), pp53-65] Producers gain and consumers lose.

In order to pursue a labelling solution, the labelling has to be credible: there has to be a way in which firms are induced to label honestly. If they do not, the labels are devalued and in the limit the market collapses back to the single non-PPM good. The threat of litigation and a free press may be able to achieve this. Alternatively the industry may be able to set up a certification process with sufficient independence to ensure firms' honesty. The next step is to make the certification official: firms are not obliged to label that they do or do not adhere to the standard, but if they claim to do so, this fact must be verified by the government or a government accredited agency. Provided that the costs of certification are covered by the industry (and indirectly their customers, of course) this seems an efficient use of the government's reputational capital, provided of course that they are capable of certifying honestly. If some of the costs are publicly funded, it becomes a subsidy to the standard and would need to be justified by some sort of public interest argument. We turn to this case below.

A further extension of this line of thought is to compulsory labelling, whereby the government insists that all varieties of the good be labelled as either satisfying or not satisfying the standard. This is not quite the same as food labelling, where calorific values and nutrient values have to be displayed. In the latter case labelling refers to a continuous variable, so that 'no label' could not be

⁴⁹ This text refers to labelling *in compliance with the standard* (i.e. equivalent to the 'EU logo' option).

⁵⁰ PPM: Production Process Measures, i.e. farming requirements.

equated with either no calories or infinite calories. In the case of an on-off standard 'no label' might reasonably be thought of as indicating no standard. Governments might not be convinced that in the absence of a label consumers are clear what standard actually applies which might justify a compulsory label. Also the presence of an 'off-standard' label might be a way of encouraging consumption of 'on-standard' products where the premium consumers are willing to pay does not cover the cost of implementation of the standard or simply signalling government approval of a voluntary standard.

Finally, labelling can turn into a barrier to entry – an anti-competitive practice – if the certification process is not cheaply and rapidly available to firms that can achieve the standard. For example, the licensing of medical practitioners is frequently controlled by the medical profession itself, with the result that it can control the number of doctors below competitive levels.⁵¹ It is plain in this case that, if the labelling is effective, it achieves all that we desire. Those who value the standard can observe it, while those who do not, don't.

1.4.2. The limits to labelling

Labelling could be a solution to the policy issue raised by QMA proponents, as long as individual consumers care and are affected only by the costs and benefits of their own consumption choices. As soon as one person's choice creates spill-over effects for other persons, and especially when these are negative and costly externalities for the persons affected, than the issue become more complicated. Labelling would not be sufficient anymore to ensure that all individuals make consumer choices that have no externalities on others. Mandatory regulation of market access would become the only solution in that case.

⁵¹ Broscheid, A and Teske P.E. Public Choice, Vol. 114, Numbers 3-4, March 2003, pp. 445-459(15).