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European Commission

Study on control and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU

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Abstract

This study looks into control and enforcement of geographically rooted non-agricultural products protected by intellectual property mechanisms. Based on desk research, stakeholder interviews and an electronic survey conducted for a research sample of 30 real-life products (from several EU Member States and non-EU countries), six existing protection systems are investigated with regard to their control and enforcement mechanisms, with a case study produced for each system: 1) EU collective marks, 2) EU certification marks, 3) national certification marks, 4) national sui generis geographical indication (GI) protection of non-agricultural products, 5) EU sui generis GI protection of agri-food and drink products, and 6) protection systems in non-EU countries. The six protection systems are then compared and analysed with regard to their effectiveness, cost-efficiency and relevance. Lastly, three models for control and enforcement under a potential EU-wide system for the protection of non-agricultural geographically rooted products are developed. Each model represents a different degree of involvement by public authorities in the control and enforcement process.

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List of abbreviations

CMO	Common Market Organisation
EU	European Union
EUIPO	European Union Intellectual Property Office
EUTMD	EU Trade Mark Directive
EUTMR	EU Trade Mark Regulation
FTE	Full-time Equivalent
GI	Geographical Indication
INPI	Institut National de la Propriété Intellectuelle
IP	Intellectual Property
ODG	Organisme de défense et de gestion
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSG	Traditional Specialties Guaranteed

Glossary

Drawing on existing definitions,[1] the following key concepts have been defined for the purpose of this study and are used throughout the report:

- **Geographically rooted product:** a product substantively linked to a specific area by natural factors, human factors and/or the product's history or reputation.
- **Geographical indication (GI):** intellectual property right that protects names and/or signs used on a product indicating that the product originates from a specific territory (country, region or city) and has specific characteristics linked to that origin.[2]
- **Protection system:** one of the following intellectual property protection instruments covered by this study:
  - **Sui generis GI:** intellectual property right that protects geographical names 'as such'. In the EU, this consists in a bureaucratic registration-based system that is organised as follows. First, a producer group drafts the product specification which must meet the formal and substantive requirements of the relevant EU Regulation; second, the application is assessed both at national and at EU level. At the end of the process, the name of the good is registered in the GI register of the EU. Contrary to trade marks, GIs are a collective/open-ended right. Therefore, they do not have owners, but only 'users' or 'beneficiaries'. In general, anyone who complies with the specifications and is located in the area designated therein can freely produce the protected good and use the geographical name.
  - **Individual trade mark:** a sign indicating that a product comes from a specific company. That company has registered the trade mark at the national patent office or the European Union Intellectual Property Office (EUIPO), in case of an EU trade mark, and is the single owner of the right to use the trade mark.[3]
  - **Collective trade mark:** signs that indicate the commercial origin of certain goods and services by informing the consumer that the producer of the goods or the service provider belongs to a certain association, and that the producer has the right to use the mark. The sign is owned by the group of companies that has registered it, and it may be used by the members of the group.
  - **Certification mark:** a name or sign indicating that a product complies with certain standards. Compliance with the standards is controlled by the owner of the certification mark who, however, cannot be itself a producer. Certification marks at EU level cannot, as of 2021, designate geographical origin.
- **Sui generis:** 'of its own kind' or 'as such', meaning a form of legal protection that exists outside typical legal protection systems.
- **Regulation of use:** document describing the functioning of a certification or collective mark (for instance who represents the mark, what products are covered by it etc.) and providing the requirements that must be met by an undertaking to lawfully use it.
- **Non-compliance:** failure to act in accordance with a rule or requirement.

[1] This glossary builds on and expands the glossary used in VVA, Ecorys & ConPolicy, 2020, Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU.

[2] Definition based on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which defines in Article 22(1) that 'Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'.

[3] The name of a territory can typically not be registered as trade mark because it is considered to be for common use.

- **Verification:** control (for instance via product tests and other checks) to verify that a product has the required product characteristics and/or that it has been produced with the required materials and according to the required production steps.
- **Control plan:** in the context of GIs, the control plan is a protocol devised by the control body in charge of checking the quality of a given product. Generally, it details the conditions for verification of compliance with product specifications, the frequency of the controls, the procedures, and so on.
- **Monitoring:** control of the market (both offline and online) to ensure, among other things, the correct use of the protected signs and to protect consumers from misleading and fraudulent practices, for example non-authentic products using a protected GI or mark.
- **Enforcement:** in the field of intellectual property, the process of making someone respect the exclusive rights granted by an intellectual property right. With regard to trade marks, the enforcement mechanism prevents anyone different from the owner or their licensee from using the protected sign. In the case of GIs, among other things, it stops any misleading use of the protected name, for example its use on products that have not been produced according to the specifications.
- **Ex officio enforcement measures:** informal but widely used term that stands for safeguards that EU Member States must provide for the protection of GIs without the need for any prior claim or request by the producers.

Executive summary

A study to understand how enforcement under existing systems for the protection of geographically rooted products works

In the EU, there exist **thousands of products that are deeply rooted in a certain region** and whose characteristics are inseparably linked to that geographical origin, be it due to the use of local raw materials, specific local conditions (geology, climate etc.), local traditional know-how, or a combination of these. Well known examples of such products include pottery from Bolesławiec (Poland), marble from Connemara (Ireland) or cutlery from Solingen (Germany). These products are often valuable for the territory concerned in that **they are a source of jobs and attract tourism, thereby being of economic importance**. Moreover, the manufacture of these products in their region of origin usually forms **part of the regional cultural heritage and traditions**. The visibility and authenticity that geographical indications (GIs), protected under intellectual property legislation, give to a product can help its producers to remain competitive in the market, protect them from counterfeiting and misleading practices and, in general, contribute to the sustenance of the local communities.

The EU has a longstanding system in place for the *sui generis* protection (meaning a specific protection in addition to general intellectual property protection) of geographical indications of agricultural products and foodstuffs, wines, spirit drinks and aromatised wine products. However, **as of 2021 no such system exists at EU level for the protection of non-agricultural geographically rooted products**. Over the last 10 years, the European Union has thus begun to consider the introduction of an EU-wide system for the protection of GIs for non-agricultural products. Following a series of studies, European Commission Communications and European Parliament Resolutions, both the Commission and the Council of the EU have expressed, in November 2020, their readiness to **consider the creation of an EU-wide GI protection system for non-agricultural products**.

In this context, the purpose of this study is to provide further evidence, analysis and advice **specifically on the control and enforcement aspects of national, European and international systems for the protection of geographically rooted products**. In its focus on enforcement, this study is complementary to previous studies (published in 2013 and 2020) which focussed on general legal and economic aspects of GI protection. This study pursued three main objectives:

1. To **collect and synthesise data** on control and enforcement mechanisms under existing EU and national protection systems,
2. To **assess the effectiveness, cost-effectiveness and relevance** of the existing control and enforcement mechanisms,
3. To **develop recommendations for control and enforcement** under a potential EU system for the protection of geographically rooted non-agricultural products.

Six existing GI and trade mark-based protection systems from the EU, Member States and non-EU countries

In a first step and to achieve the first objective, research into existing protection systems was conducted to **form the basis for the comparative assessment and the**

development of recommendations. Six protection systems that are currently or could potentially be used to protect geographically rooted products set the scope of the research:

- EU collective marks,
- EU certification marks,
- National certification marks,
- National sui generis GI protection of non-agricultural products,
- EU sui generis GI protection of agricultural, food and drink products,
- GI and trade mark protection systems in non-EU countries.

The scope covers both **trade mark-based protection systems** (meaning general intellectual property mechanisms that are not designed to protect specifically geographically rooted products) and ***sui generis* GI protection systems** (designed specifically for the protection of geographically rooted products).

To ensure that the research would not only produce theoretic findings but also show real-life practices of control and enforcement, **a research sample of 30 existing products from 17 countries** was selected. The products from the sample were investigated through desk-research and semi-structured interviews with relevant stakeholders. In addition, an electronic survey with producers of geographically rooted products from all EU Member States (thus going beyond the research sample) was carried out. As a result of the research, **six case studies (one for each of the existing protection systems covered) were produced** that provided the evidence base for the following steps of the study. The research covered four phases of the control and enforcement process: 1) the definition of **product characteristics** and the link to the territory, 2) the **verification** that products meet the required standards, 3) the **monitoring** of the use of the geographical name on the market, and 4) the **enforcement and sanctioning** of infringements.

A high diversity of local and regional strategies for enforcement that reflects the diversity of geographically rooted products

To respond to the second objective, the six protection systems were compared and assessed. **Each protection system was assessed with a view to how effective, cost-effective and relevant they are** for ensuring the characteristics and quality of the products and eliminating infringing products from the market.

All protection systems are in principle effective, but there is a high degree of diversity among the individual producer groups' approaches to enforcement

Overall, all phases of the control and enforcement process have been assessed to be effective for the six different protection systems. **Verification procedures** are in place for most of the examined GIs/marks and show that instances of users of GIs/marks deviating from the product requirements are very rare and usually unintentional. **Monitoring of the market** is in practice not done for many GIs/marks for a variety of reasons: some producers lack the necessary resources, whereas others simply do not see any need for it because infringements are rare and not seen as a threat. With this caveat, monitoring is generally assessed to be fairly effective when it is carried out. **Enforcement** at national level is assessed to be effective in eliminating infringing products from the market; however, for most GIs/marks enforcement steps are rarely taken (often linked to the fact that there is also little monitoring to identify infringements). In most cases, the formal enforcement mechanisms (e.g. legal action before a court) and sanctioning measures can be avoided by recourse to less formal means (for instance a registered letter to the misuser).

In practice, the choice of verification, monitoring and enforcement tools, and consequently their effectiveness, **are generally not limited to any specific protection system**. By

itself, every protection system can be used effectively to eliminate infringing products from the market. Instead, **employment of the various tools strongly depends on the individual strategies, preferences and resources of each producer group**. The research has shown that the motivations of producers and other stakeholders behind protecting their products are indeed highly diverse. Some mainly need a tool for intellectual property protection or want to develop their commercial brand, while others (especially regional authorities) rather aim to protect their regional cultural heritage and traditions and to support territorial development.

Costs depend mainly on the intensity of product verification and the level of involvement of public authorities

From a general perspective, costs are considered low to medium for each protection system, depending on various factors. **The costs incurred for producers highly depend on the verification procedures implemented, which are usually the highest cost factor**. These verification costs range from zero in some cases (no verification conducted) to more than EUR 20,000 for an independent verification of a single company in other cases (this were the maximum costs observed, for complex verifications in a large-scale industry). For GIs in the agri-food and drink sectors, verification costs generally range from a few hundred euros for farmers to a few thousand euros for processors. Effectiveness to ensure that the required product characteristics are met tends to increase if there is an independent verification.

For public bodies, the level of costs depends on the type of scrutiny of the application for new GIs/marks. This is a few hundred euros for trade marks with a legal assessment of the application (but no technical expertise on the application and no assessment of the link to the territory) and can reach several tens of thousands of euros under the EU *sui generis* GI protection of agricultural, food and drink products.

Regarding monitoring and enforcement procedures, the costs vary significantly depending on the intensity of these activities. Light monitoring and enforcement action (meaning no specific tools for monitoring and no legal action to court) generally generate negligible costs and are effective in most (often more than 95%) of the cases. Costs for taking more formal measures, like legal action before a court, can be significantly higher. The actual costs depend on the strategy of each producer group (to what extent the infringements are seen as an issue that needs to be fought through monitoring and enforcement).

GIs are more relevant than trade marks if the protection of geographically rooted products is considered to be in the interest of the wider public

Some of the existing protection systems (EU certification marks and the majority of national certification marks) are at present not relevant for the protection of geographical names as they cannot be used for this purpose. EU certification marks would therefore have to be modified to become a relevant protection system. **When it comes to the definition of the origin link and the product characteristics, a major difference between the existing systems is the involvement of independent public authorities.** Authorities are involved in all the GI systems (meaning they verify these definitions) but not in any of the trade mark-based systems, for which the criteria are defined by the owner of the mark. This difference plays a role especially if it is considered that geographical indications should not only be a private right but also carry an element of public interest.

With regards to monitoring and enforcement, apart from routine customs and anti-counterfeiting controls, public authorities are only actively involved (i.e. performing monitoring and enforcement activities on their own initiative) in the case of EU *sui generis* GI protection of agricultural, food and drink products (although the exact nature and extent of this involvement strongly depends on each Member State). **Having support from public**

bodies to complement the enforcement activities of the producer group is relevant for producers that do not have sufficient resources to monitor the market and enforce the protection fully on their own. On the other hand, many producers do not see any need for monitoring and enforcement and would thus also not need any public support. For monitoring and enforcement on online markets, the tools available under the different protection systems are similar and thus equally relevant. How to tackle online monitoring is not so much an issue of the choice of protection system but rather of the individual strategy of the producer group.

The enforcement tools available are more or less similar for all protection systems, ranging from informal notifications and negotiations to formal civil and criminal law sanctions (such as injunctions, fines, damages, seizures, imprisonment). In the vast majority of cases, infringements can be eliminated by informal measures (e.g. sending a notification to the infringing party). The low use of legal measures does however not mean that they are not relevant. Firstly, there are still cases (even if they are rare) where informal measures are unsuccessful and recourse to legal measures becomes necessary. Secondly, **the fact that legal sanctions could potentially always be used against the infringing party can also be considered a deterrent** that makes the informal measures (first warning) so effective.

Three models of control and enforcement that respond to the needs of stakeholders in different ways

On the basis of the assessment of the existing control and enforcement mechanisms, **recommendations in the form of three models** for control and enforcement under a potential protection system at EU level were developed in line with the third objective of the study. The main feature that distinguishes the models is the extent of public involvement in the different phases of the control and enforcement process.

Model I: Setting of criteria, verification, monitoring and enforcement under private responsibility

Model I leaves the responsibility for the entire enforcement process to the producers. The producer group is the owner of the mark, defines the product characteristics and other eligibility criteria, monitors the market and enforces the protection if needed. The model gives producers a lot of flexibility, but it also means that **the effectiveness of control and enforcement is fully dependent on private resource mobilisation** (by owners, individual producers, or producer associations). If producers do not want to spend or do not have the resources required for monitoring and enforcement, there will be no such activities. This takes into account the fact that for many producers, infringing products are not seen as substantial threat to revenue so monitoring/enforcement is not the priority.

Model II: Setting of criteria and verification under mixed public-private responsibility, monitoring and enforcement under private responsibility

Under Model II, public authorities are involved in the definition and verification of the origin link and product characteristics. This reflects the understanding that a geographical indication can be more of a ‘public good’ with no explicit ownership by private parties. The GI is managed by a management organisation representing the concerned producers that is in turn **supervised by a national public authority**. The authority reviews the origin link and product characteristics (during the application) as well as the verification plan elaborated by the management organisation. The administrative costs (borne by the public authority) and reporting costs (borne by the management organisation) would therefore be higher than in Model I. Monitoring and enforcement of the GI are done by the management organisation, who would have the delegated responsibility to enforce the GI protection.

Model III: Setting of criteria, verification, monitoring and enforcement under mixed public-private responsibility

Model III foresees an involvement of public authorities in the setting and verification of product characteristics and a designated management organisation that are similar to Model II. In addition, **monitoring and enforcement would also be a shared responsibility** of public bodies and the management organisation. Authorities can do monitoring on their own and are able to take enforcement actions that are complementary to the activities of the producers and producer group.

The following table provides a comparative overview of the different models showing how each model responds to the needs of the different stakeholders, as well as the estimated costs.

Summary of the three proposed models

Stakeholder group		Model I	Model II	Model III
Producers / producer groups	**Main advantages and disadvantages**	• Full control over definition of product characteristics • High flexibility regarding the choice of verification, monitoring and enforcement tools • Resources for monitoring and enforcement must be fully borne by producers	• Less control regarding the definition of product characteristics and the choice of verification due to supervision by public authority • High flexibility regarding the choice of verification, monitoring and enforcement tools • Resources for monitoring and enforcement must be fully borne by producers	• Less control regarding the definition of product characteristics and the choice of verification due to supervision by public authority • High flexibility regarding the choice of verification, monitoring and enforcement tools • Public resources available to support monitoring and enforcement
	Total annual costs (EUR)	1,160,000	1,280,000	1,280,000
Public authorities (national)	**Main advantages and disadvantages**	• No influence on the definition of product characteristics • No specific costs	• Public interest represented in the definition of product characteristics and verification processes due to the supervision by authority • Specific resources needed	• Public interest represented in the definition of product characteristics and verification processes due to the supervision by authority • Specific resources needed
	Total annual costs (EUR)	0	800,000	860,000
Public authorities (EU)	**Main advantages and disadvantages**	• No influence on the definition of product characteristics • Comparably low costs, as assessment of application is limited to a legal assessment	• Public interest from an EU-wide point of view represented in the definition of product characteristics • Coherent approach across Member States • Specific resources needed	• Public interest from an EU-wide point of view represented in the definition of product characteristics • Coherent approach across Member States • Specific resources needed
	Total annual costs (EUR)	20,000	330,000	480,000

Stakeholder group		Model I	Model II	Model III
Consumers	**Main advantages and disadvantages**	• High trust in producers required, since there are no public controls that the product characteristics comply with consumers' expectations • Provision of clear and reliable information to consumers less controlled than in other models	• Public control that the product characteristics reflect the expected specificities, history and regional skills that consumer expect from a geographically rooted product	• Public control that the product characteristics reflect the expected specificities, history and regional skills that consumer expect from a geographically rooted product

These cost estimates are to some extent arbitrary, as they are based on various assumptions and partly anecdotal evidence. Their main purpose is to provide a common basis **for the comparison of the three models** and to show the scale of costs for each model compared to the other models. **The cost estimates can however not be understood as showing the actual costs** of each model if they were to be implemented. The overview also does not show economic benefits of the different models that were not assessed and monetised under this study but could in principle offset costs.

A horizontal factor that must be built into all the models is flexibility, as there would potentially be a wide variety of products and producers under an EU-wide protection system. The system would require flexible monitoring and enforcement options, balancing the need for financial return of enforcement efforts (costs vs benefits) with the need to protect potentially important social and cultural elements of the territory. Overall, **in the majority of cases, producers were not struggling with a large number of very harmful infringements**. It is therefore crucial to consider the different needs to ensure that enforcement and monitoring requirements are not too burdensome for those products that do not necessarily require it.

The research has shown that in principle, all three models are suitable and can be effectively used to combat infringing products on the market. However, the models follow different purposes. Model I focusses on the protection of intellectual property and the economic interests of producers. Model II and Model III, on the other hand, recognise a value of geographically rooted products that goes beyond economic aspects and appreciates these products as part of the regional heritage and territorial development that forms a public good worth preserving. **Ultimately, the choice between the models cannot only be based on economic factors but must take into account the overall policy objectives at EU level vis-à-vis geographically rooted products.**

1. Introduction

Geographical indications (GIs) serve to identify a product whose characteristics, quality, reputation or other relevant properties relate to its geographical origin. At international level, the TRIPS agreement of the World Trade Organisation defines that 'Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'[4].

The EU has a longstanding system in place for the protection via geographical indications of foodstuffs, wines, spirit drinks and aromatised wines. However, as of 2021 no such system exists for the protection via GIs of non-agricultural products. Instead, such products may only benefit from *sui generis* national protection in certain Member States that have adopted such legislation.

Non-agricultural products can make up an important part of a region or territory's local and cultural identity. There exist hundreds of geographically rooted products across all EU Member States; while some of these products are well known outside their home region and are sold internationally, many others are known and marketed only in their home region. They are often valuable for the area concerned in that they are a source of jobs and attract tourism, thereby being of **economic importance**. The visibility and authenticity that geographical indications give to a product help its producers to remain competitive in the market.

For these reasons, **over the last 10 years the European Union has begun to consider the introduction of an EU-wide system for the protection of GIs for non-agricultural products**. This began in 2011 with the European Commission Communication 'A single market for Intellectual Property Rights'.[5] There, the Commission considered that the fragmentation of the legal framework for the protection of the names of non-agricultural products in the EU may have negatively affected the functioning of the internal market and of the trade negotiations with third countries.

A few years after, in 2013, a study was carried out to investigate the issue further. The 'Study on geographical indications protection for non-agricultural products in the internal market'[6] conducted, among other things, an empirical survey of this sector and a comprehensive review of the national laws in force in that period in order to outline a possible structure for a *sui generis* legal frame for the protection of non-agricultural products.

Later, on 6 October 2015 the EU Parliament approved a Resolution 'on the possible extension of geographical indication protection of the European Union to non-agricultural products'.[7] In this document, the Parliament discussed, among other things, the ways in which the protection of geographical names for non-agricultural products in Europe should be structured and proposed some guidelines. More specifically, it argued that the proposed

[4] Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, established between the members of the World Trade Organisation.

[5] European Commission, 2011, A Single Market for Intellectual Property Rights: boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe, COM(2011) 287 final (24 May 2011).

[6] Insight Consulting, OriGIn & REDD, 2013, Study on Geographical Indications Protection for Non-Agricultural Products in the Internal Market.

[7] European Parliament, 2015, European Parliament resolution of 6 October 2015 on the possible extension of geographical indication protection of the European Union to non-agricultural products, 2015/2053(INI).

GI regime for non-agricultural products should have been based (a) on the best practices and (b) on the experience gained in the agricultural and food sector.

In October 2018 DG GROW launched a 'Study on the economic aspects of sui generis GI protection for non-agricultural products in Europe' that was completed by VVA and partners in February 2020.[8] This research analyses the topic from three different perspectives: the consumers' angle; the producers' angle and the impact on regional cluster cooperation. It concludes that the protected use of GIs for non-agricultural products can be beneficial in all these scenarios. In particular, it can provide consumers with better information to help them make informed purchase decisions, incentivise cooperation among producers, and have overall positive effects on the regional economy (also by boosting tourism). **The study also pointed out open questions linked to the enforcement of GI protection.** For some products, the producer group is very small and enforcing the protection of their products can be a significant burden for the producers. For other products where large-scale producers exist, the enforcement of their product protection poses different challenges.

In parallel, the European Parliament also completed a study on the same issue that was published in November 2019.[9] As with the VVA study, it concluded that the introduction of EU *sui generis* GI protection for non-agricultural products would bring an overall positive effect on trade, employment and rural development. Moreover, it argued that this reform would contribute to limit the current fragmentation of the European legal system, thus benefiting intra-EU trade.

Despite the research results pointing to the extension of the EU *sui generis* GI regime to non-agricultural products, the issue remains highly sensitive in some EU capitals. For instance, in March 2020 the Confederation of Swedish Enterprise published a memorandum opposing the idea of extending GIs.[10] Among other elements, it is argued that the protection tools already available, such as trade marks and unfair competition law, are sufficient to provide protection to these products. Monitoring and enforcement mechanisms would be costly and ineffective according to the authors.

In light of the ongoing policy debate in the EU, both the European Commission[11] and the Council of the EU[12] have expressed in November 2020 their readiness to consider, based on a thorough impact assessment, the creation of an efficient and transparent EU GI protection system for non-agricultural products. **The purpose of this study is therefore to provide the European Commission with further evidence, analysis and advice, specifically on the control and enforcement aspects of national, European and international trade mark and GI protection systems.** In its focus on enforcement, this study is complementary to those which were conducted in 2013 and 2019.

Enforcement is a crucial part of an effective GI protection system. **The EU actively supports better protection of geographical indications internationally due to the increasing number of violations throughout the world.**[13] Indeed, the majority of respondents (producers of geographically rooted products) to the survey conducted for the purpose of this study were of the opinion that **non-authentic products are at least somewhat problematic**: 25% of respondents to the survey considered such products to

[8] VVA, Ecorys & ConPolicy, 2020, Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU, available at: https://op.europa.eu/en/publication-detail/-/publication/c210fcc6-5463-11ea-aece-01aa75ed71a1/language-en/format-PDF/source-120480323.

[9] European Parliament, 2019, Geographical Indications for Non-Agricultural Products: Cost of Non-Europe Report, PE 631.764.

[10] Confederation of Swedish Enterprise (Svenskt Näringsliv), 2020, Memorandum: Non-Agri GI and Intellectual Property.

[11] European Commission, 2020, Making the most of the EU's innovative potential An intellectual property action plan to support the EU's recovery and resilience, COM/2020/760 final.

[12] Council of the European Union, 2020, Intellectual property policy and the revision of the industrial designs system in the Union – Council conclusions (10 November 2020), 12750/20 PI 73.

[13] European Commission, 'Geographical indications', available at: https://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/

be 'moderately problematic', with a similar proportion deeming them to be 'very problematic' (24%) and 'extremely problematic' (27%).

In this context, this study pursued **three main objectives**:

1. **To collect and synthesise data** on control and enforcement mechanisms under existing EU and national protection systems;
2. **To assess the effectiveness, cost-effectiveness and relevance** of the existing control and enforcement mechanisms;
3. **To develop recommendations for control and enforcement** under a potential EU system for the protection of geographically rooted non-agricultural products.

In its research into existing protection systems, this study followed a very practical approach in that it examines the **real-life control and enforcement mechanisms behind a research sample of 30 products**, selected from 17 countries. These 30 products all fall under one of six protection systems that are currently or could potentially be used to protect geographically rooted products. They are:

- EU collective marks,
- EU certification marks,
- National certification marks,
- National sui generis GI protection of non-agricultural products,
- EU sui generis GI protection of agricultural, food and drink products,
- GI and trade mark protection systems in non-EU countries.

The output of the research into these 30 products was **six case studies (one for each of the existing protection systems covered by the research sample).** These case studies provided the evidence base for the subsequent analysis under the study.

The report is structured as follows:

- **Chapter 1** (this chapter): Gives a brief background to the system of GI protection and describes the key objectives of this study.
- **Chapter 2:** Provides an overview of the scope of the research and analysis, as well as the methodology used in this study.
- **Chapter 3:** Analyses the overall effectiveness, cost-effectiveness and relevance for each protection system. The analysis is based on the data that was collected through the desk research, interviews and electronic survey and summarised in the case studies.
- **Chapter 4:** Considers recommendations, in the form of three different models, for EU protection of non-agricultural geographically rooted products, based on the motivations and needs of stakeholders.
- **Chapter 5:** Summarises the study's conclusions.

The supporting annexes provide further evidence of this study's activities, notably the case studies for each of the protection systems, as well as a list of consulted stakeholders.

2. Scope and methodology of the study

This study has a distinct scope, which is notably defined by **a set of existing protection systems** that were examined and assessed in the analysis (Section 2.1). Within this scope, **a set of research activities and methodological steps** were followed which are presented in Section 2.2.

2.1. Scope of the research and analysis

Two main elements set the scope within which the research and analysis for this study were conducted: **the protection systems covered** by the study (Section 2.1.1), and **the specific aspects of the control and enforcement process** that were analysed (Section 2.1.2).

2.1.1. Existing protection systems within the scope of this study

This study examined **six different protection systems** currently used to protect geographically rooted products, or that could potentially be used to protect geographically rooted products. Some of these protection systems are EU marks that are registered with the European Union Intellectual Property Office (EUIPO), while others are national mark-based or GI protection schemes. To serve as a point of comparison, the study also explored the functioning of the EU sui generis GI protection system for agricultural, food and drink products. Finally, it looked at the trade mark and GI protection systems that are in place in selected non-EU countries (Switzerland, India and Mexico).

The six types of protection system within the scope of this study are:

- EU collective marks,
- EU certification marks,
- National certification marks,
- National sui generis GI protection of non-agricultural products,
- EU sui generis GI protection of agricultural, food and drink products,
- GI and trade mark protection systems in non-EU countries.

2.1.1.1. EU collective marks

Article 74 EU Trade Mark Regulation (EUTMR)[14] defines the EU collective mark as a mark that 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'. Therefore, while an individual trade mark indicates that the product that bears it originates from a specific undertaking, **the collective mark indicates the commercial origin of certain goods and services by informing the consumer that the producer of the goods or the provider of the service belongs to a certain association** and that it has the right to use the mark. As of July 2021, there were 1238 registered EU collective marks, the earliest of which appeared on the register in 1997/1998.

[14] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

A special feature of EU collective marks, relevant for this study, is that, unlike standard trade marks, **they can designate the geographical origin** of the goods or services that bear it. In this case, Article 75(2) of the EUTMR stipulates that the regulations governing use must explicitly authorise anyone whose goods and services originate in the geographical area in question to become a member of the association that owns the mark.

2.1.1.2. EU certification marks

The EU certification marks are signs which seek to certify certain characteristics of the goods and services, e.g. specific qualities of the products or special features of their production process. More specifically, Article 83(1) EUTMR defines them as marks that are 'capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified'. Certification marks are a tool available to applicants since 1 October 2017. As of January 2021, 122 EU Certification Marks appear on the register.

One specificity that sets certification marks apart is the **duty of neutrality**. This means that the owner of the mark can certify the characteristics of the products and services but it cannot be directly involved in making/providing them. Moreover, it is important to observe that the abovementioned definition of **the EUTMR explicitly excludes that an EU certification mark can be used to certify geographical origin**. EU certification marks were nevertheless included in this study with the objective to develop an understanding of how control and enforcement works under these marks, and whether the system would in principle be suitable to protect geographically rooted products.

2.1.1.3. National certification marks

The EU Trade Marks Directive (EUTMD)[15] harmonised the national trade mark legislation of the Member States. However, while Article 29 EUTMD states that the latter 'shall provide for the registration of collective marks', Article 28(1) merely stipulates that **they 'may' provide for the registration of certification marks**, thus leaving a choice to the Member States. Most of the Member States, especially after the introduction of the EU certification mark and the expiration of the deadline to transpose the EUTMD into their domestic legislation (14 January 2019), have introduced this kind of mark in their domestic legislation. Just to make some examples, in 2019, Germany introduced the 'Gewährleistungsmarke'; France the 'Marque de Garantie' and Italy the 'Marchio di Certificazione'.

The EUTMD in Article 28(4) stipulates that each Member State can freely decide whether, in their jurisdiction, **national certification marks can validly certify geographical origin, thus setting forth a specific derogation to the general principles of EU trade mark law**. This is why the national rules on this kind of mark differ in a way that is most significant for the protection of geographically rooted products. As of January 2021, nine Member States have established national certification marks that can serve to designate geographical origin: Denmark, Ireland, Italy, Lithuania, Malta, Poland, Romania, Sweden and Spain. Therefore, it depends on the country of origin whether or not producers of geographically rooted products can use national certification marks to protect their products.

2.1.1.4. National sui generis GI protection of non-agricultural products

Collective trade marks and certification marks are general protection systems that are in principle not designed to protect geographical indications, but primarily serve the purpose

[15] Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks.

of indicating the collective commercial origin of a product (collective marks) or of guaranteeing certain features of a product (certification mark). However, **some EU Member States also provide sui generis GI protection systems for non-agricultural products which specifically protect the use of a registered geographical indication**. National sui generis protection systems can take different forms: a fully-fledged national system covering all kinds of products (e.g. the French GI protection system), legislation protecting a specific GI (e.g. the Solingen Act in Germany), or legislation protecting a set of products at national level (e.g. the legislation on traditional Ceramics in Italy).

Sui generis protection systems have certain notable differences compared to collective marks or certification marks. While marks are owned by a rightsholder, geographical indications are considered a common good. National authorities therefore typically have a stronger involvement when it comes to defining the product's link to the geographic area and its specific characteristics. Also, trade marks need to be renewed and actively used and enforced to prevent them from becoming a generic designation, which is not the case for registered GIs. Registered GIs can, in principle, not become a generic name. Sui generis protection is in principle enforced ex officio by national authorities as well as by the producer associations, thus often creating a mixed public-private system of enforcement.

2.1.1.5. EU sui generis GI protection of agricultural, food and drink products

EU policy regarding GIs for food and drinks started in the 1970s in the wine sector (Regulation (EEC) No 817/70). **This policy has been progressively modified and expanded to other sectors in the 1980s and 1990s**. Several Member States also developed national GI schemes over the 20th century prior to EU schemes.

EU legislation on food and drinks GIs covers four different sectors:

- **Agricultural products and foodstuffs:** rules are set in Regulation (EU) No 1151/2012[16] and by the Commission Implementing Regulation (EU) No 668/2014[17]. Commission Delegated Regulation (EU) No 664/2014[18] supplements Regulation (EU) No 1151/2012 with regard to the establishment of the Union symbols. There are two different schemes in the agri-food sector: Protected designations of origin (PDOs) and protected geographical indications (PGIs), with the link to the territory being stronger for PDOs than for PGIs.
- **Wines:** GIs for wines are governed by the Regulation on the Common Market Organisation (CMO Regulation)[19], the Regulation (EU) No 1306/2013[20], the Commission Delegated Regulation (EU) 2019/33[21] and the implementing

[16] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

[17] Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs.

[18] Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules.

[19] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

[20] Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008

[21] Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical

Regulation (EU) 2019/34[22]. As in the agri-food sector, there are two GI schemes in the wine sector, PDOs and PGIs.

- **Spirit drinks:** Applicable rules on geographical indications (GI) in the sector of spirit drinks are laid down in Regulation (EU) 2019/787[23] (applicable since 8 June 2019 as concerns GI-related provisions) and Commission Implementing Regulation (EU) No 716/2013[24]. Provisions regarding production and labelling of spirit drinks are ruled by Regulation (EU) 2019/787 since 25 May 2021. There is only one scheme in the spirit drinks sector, which are GIs.
- **Aromatised wine products:** GIs are ruled by Regulation (EU) No 251/2014[25], it is supplemented by Commission Delegated Regulation (EU) 2017/670[26]. There is only one scheme for aromatised wine products, which are GIs.

As of January 2021, there were 3,306 GIs registered at EU level in the food and drinks sector[27], 3,194 from EU Member States and 112 from third countries with direct application (including 76 GIs from the UK)[28]. Most of the GIs from EU Member States are in the wine sector (50%; 1,616 GIs), followed by agri-food products (42%; 1,345 GIs), spirit drinks (7%; 235 GIs) and aromatised wine products (0,2%; 5 GIs). There is at least one GI in each EU Member State and some GIs are multi-countries. A few protected names cover agricultural products not intended for human consumption, such as:

- Flowers and ornamental plants: Vlaamse Laurier PGI (BE), Szőregi rózsató PGI (HU) and Gentse azalea PGI (BE),
- Animal feed: Foin de Crau PDO (FR),
- Wool: Native Shetland Wool PDO (UK).

While these protection systems at EU level do not cover non-agricultural products, **they were nonetheless included in the scope of the study to act as a benchmark** to the existing protection of non-agricultural products.

2.1.1.6. GI and trade mark protection systems in non-EU countries

Lastly, and also in order to serve as a point of comparison with the EU system for protecting marks and the national system for both marks and GIs, **a selection of protection systems from three non-EU countries was also analysed**: Switzerland, India and Mexico. The three countries cover three world regions (Europe, America and Asia) and represent three

indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation.

[22] Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, amendments to product specifications, the register of protected names, cancellation of protection and use of symbols, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards an appropriate system of checks.

[23] Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.

[24] Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks.

[25] Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and repealing Council Regulation (EEC) No 1601/91.

[26] Commission Delegated Regulation (EU) 2017/670 of 31 January 2017 supplementing Regulation (EU) No 251/2014 of the European Parliament and of the Council as regards the authorised production processes for obtaining aromatised wine products.

[27] Based on GI View, extraction on 26 January 2021.

[28] Some other GIs are registered by bilateral agreements between the EU and third countries.

different levels of trade integration via international agreements. In all countries, there exists a relevant number of geographically rooted products.

In **Switzerland**, geographical indications are explicitly protected under Swiss intellectual property law (Articles 47 to 51 of the Trade Mark Protection Act – *Markenschutzgesetz*) which applies to both non-agricultural and agricultural products. There exist 40 agricultural and foods products (mainly cheese and meats) that are currently protected[29] and about 30 geographically rooted non-agricultural products potentially eligible for protection[30], the most famous being Swiss watches which are protected under a product-specific regulation.

A Free Trade Agreement between the EU and **Mexico** is in force since 2000 and was recently modernised with a major update. The agreement includes provisions which guarantee the mutual protection of several hundred EU and 20 Mexican agricultural products.[31] The agreement also provides for a potential enlargement of the GI protection to other products in the future, including non-agricultural products. Interestingly, the agreement lists 19 Mexican non-agricultural products to be potentially protected in the future, but no EU products. A separate bilateral agreement protects the use of geographical designations of spirits drinks of about 250 EU products and 6 Mexican products.[32]

India has a fully-fledged GI protection system, established in 1999 with the Geographical Indications of Goods (Registration and Protection) Act, which protects non-agricultural and agricultural products alike. As of 2021, there are 370 geographically rooted products that have been registered under the national protection system, of which roughly two thirds are non-agricultural products.[33]

2.1.2. Verification, monitoring and control in trade marks and sui generis GIs

The present study focuses on two main types of intellectual property rights: **trade marks and sui generis GIs**. These are substantively different tools.

With regard to their nature, sui generis GIs protect the names of products that are characterised by a substantive link with a specific place. Therefore, **they are 'origin labels'**, registered after a bureaucratic procedure with the competent authorities. At the end of the process, the product's name is added to a GI register together with its specification, that is the document that establishes the requirements that every producer must apply to lawfully make the good. Finally, **sui generis GIs are a collective and open-ended right that does not have 'owners'**. In fact, every producer based in the area designated by the specification can make the protected good, provided that they comply with the rules set forth by this document.

Trade marks, instead, are signs that indicate commercial origin, that is they indicate that a product was marketed by a specific undertaking. **There are two special kinds of marks**: collective and certification marks. **Collective marks** are signs registered by a group or association of stakeholders. They indicate the commercial origin of certain goods and

[29] Schweizer Bundesamt für Landwirtschaft, Ursprungsbezeichungen und geografische Angaben, available at: https://www.blw.admin.ch/blw/de/home/instrumente/kennzeichnung/ursprungsbezeichungen-und-geografische-angaben.html.
[30] Insight Consulting, OriGIn & REDD, 2013, Study on Geographical Indications Protection for Non-Agricultural Products in the Internal Market, Annexes.
[31] Modernisation of the trade part of the EU-Mexico Global Agreement, Intellectual property, Annexes I to III, available at: https://trade.ec.europa.eu/doclib/press/index.cfm?id=1833.
[32] Agreement in the form of an exchange of letters between the European Union and the United Mexican States concerning the replacement of Annex I and II to the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.023.01.0003.01.ENG&toc=OJ%3AL%3A2020%3A023%3ATOC.
[33] Office of the Controller General of Patents, Designs & Trade Marks, Registered GIs, available at: http://www.ipindia.nic.in/registered-gls.htm.

services by informing the consumer that the producer of the goods or the service provider belongs to the association or group itself. In the EU, they can be used to indicate geographical origin. **Certification marks**, instead, are names or signs indicating that a product complies with certain standards. Compliance with the standards is controlled by the owner of the certification mark who, however, cannot be itself a producer. Contrary to collective marks, certification marks at EU level cannot indicate geographical origin. Despite these differences, the nature of these kinds of trade marks is the same: **they are private rights owned by the undertaking or group of undertakings** that has registered them. This is a decisive difference between marks and sui generis GIs.

More differences between trade marks and GIs exist with regard to verification, monitoring and enforcement mechanisms. As to trade marks, these operations are entirely left to their owners, apart from standard customs and anti-counterfeiting controls carried out in each Member State by the competent authorities. The functioning of certification and collective marks is governed by a document named 'regulation of use'. This is drafted by the owners themselves and must include certain mandatory elements. In particular, among other things, in the case of certification marks, the owner must describe how they will ensure the quality of the products, for example what kind of tests and checks will be conducted, how and so on. Collective marks, instead, are not characterised by a certification function. Thus, the regulation of use does not have to provide information about verification procedures and similar checks as these are not listed among the essential elements of this document.[34]

The scenario is significantly different in the case of sui generis GIs. First of all, in the EU, **GIs are not just labels but 'quality schemes'**, i.e. complex public/private mechanisms for the protection of indications of origin as well as the fulfilment of other goals specifically mentioned in the regulations, such as preserving the gastronomic heritage, fostering rural development and so on. In this context, also the verification, monitoring and enforcement mechanisms are not left entirely to the producers but rest on a complex system partly managed at national level. Therefore, there can be differences between the Member States.[35]

Generally speaking, the verification procedures, that is the quality checks carried out on the product before it is put on the market, are conducted by public or private bodies on the basis of a 'control plan', a protocol devised by the competent control body. The monitoring of the market is carried out by national authorities that vary from Member State to Member State. These operations are usually aimed to identify illegal conducts such as unlawful uses of the labels or of the name of the products; marketing of counterfeit goods and so on. Finally, as to enforcement measures, **GI products enjoy ex officio protection from the public authorities**. This means that these must be protected even in the absence of a specific notification by the producers. The way in which this kind of protection is ensured differs from country to country, and it is usually more complex and articulated in countries that are specifically interested in the protection and promotion of GI goods.

[34] The EUIPO guidelines for the drafting of the Regulation of Use of Collective Marks are available here: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/trade_marks/certification_marks/RoU-EU%20collective_marks_en.pdf.

Those on the Regulation of Use of Certification Marks are available here: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/trade_marks/certification_marks/RoU_EU_certification_marks_en.pdf.

[35] A complete analysis of the monitoring and enforcement mechanisms in place in each EU member state was conducted by the EUIPO in 2017: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/about_us/observatory_work_programme_2018_en.pdf

2.1.3. Phases of the control and enforcement process

This study looks into the control and enforcement processes in place under the existing protection systems. More specifically, **for the purpose of this study control and enforcement covers four phases**:

- The link between the product, its characteristics and the geographic area,
- The verification of the product characteristics and manufacturing process,
- The monitoring of products on the market,
- The enforcement and sanctioning of infringements.

These four phases provide the basic structure throughout the entire study, from the research to the analysis and the recommendations.

The link between the product, its characteristics and the geographic area

The first phase covers the legal requirements, guidance and methods used in practice for demonstrating, where appropriate, the **link between a product's characteristics (quality, reputation, traditional know-how) and the geographical area.** This is relevant for producers and producer associations to understand what evidence they should submit when they apply for relevant protection. Between the existing protection systems, there are also differences regarding the responsibility for defining the product characteristics, notably whether or not national authorities and/or the wider public are involved in this process.

The verification of the product characteristics and manufacturing process

The second phase covers the legal requirements and methods used to verify, once the GI or trade mark application has been granted, **that a product complies with the corresponding product specifications**. The purpose of the verification is to ensure that products put on the market and using the protected geographical name are manufactured and prepared in a way that ensures the expected product characteristics.

The monitoring of products on the market

The third phase covers the frameworks and practices put in place to monitor **the use of the protected geographical name once products are placed on the market**. Monitoring covers both offline and online markets. This concerns the question how monitoring of the different markets is performed, and by whom.

The enforcement and sanctioning of infringements

Lastly, the fourth phase covers the legal framework and practices to enforce the intellectual property rights guaranteed by the respective protection system, and to enact sanctions on producers or retailers that infringe the protected geographical name. The purpose of this phase is **to prevent or stop any unlawful use of the protected name** on the market and to eliminate any infringing products.

2.2. Methodological approach to the research

Within the defined scope, research into existing forms of protection of geographical names was conducted to develop an evidence base for the analysis and recommendations. As a first step, **a sample of registered GIs and marks** from EU Member States and non-EU countries was developed (Section 2.2.1). The sample was used to carry out **a set of research activities** that comprised desk research, interviews, and a survey (Section 0). The findings from these research activities were than **analysed and summarised into case studies** (Section 2.2.3).

2.2.1. Research sample

In total **30 GIs or marks that are currently protected by the existing protection systems were chosen for in-depth research**. These 30 products represent the six protection systems under the scope of this study equally, i.e. for each protection system there are five GI products/marks.

The selection of GIs and marks for the research sample was based on an examination of marks and GIs registered at EU and national level. To this end, **the various trade mark and GI databases of the EUIPO and the national intellectual property offices were screened** for relevant registrations.

As much as possible (within the constraints of the sometimes limited number of existing products/marks to choose from), the following criteria were followed while selecting the research sample. The purpose of these criteria was to ensure that the research produced data that was sufficient to conduct the analysis and develop the recommendations.

- The mark/GI is effectively registered (i.e. registration not pending or appealed) under one of the protection systems;
- The mark/GI was registered at least one year before the start of this study;
- There is a minimum number of producers, at least three small producers or one large producer (based on an online search to identify producers);
- The product behind the mark/GI is available on the market (based on an online search whether the product is offered in online and/or offline shops);
- The registered mark or GI is being used by the producers in marketing their product (based on an online search how the products are marketed).

The selection aimed to cover a representative sample of Member States, **including in particular Member States where the number of protected geographically rooted products is low or very low**. More specifically for each protection system, the following steps were undertaken to identify suitable marks/GIs for the product sample.

EU collective marks

In order to identify EU collective marks, the EUIPO database was screened for relevant entries. As of January 2021, there were 2,345 collective mark entries in the database, of which 1,235 with the status 'Registered'. **Only 12 of these marks are for non-agricultural geographically rooted products**, originating from 5 different Member States (BE, DE, ES, FR, IT), which composed the shortlist for the research sample.

EU certification marks

Like for EU collective marks, the EUIPO database was also screened for EU certification marks. EU certification marks are however more recent (introduced only in 2017) and **there are thus significantly fewer entries in the database: 325 entries in total, of which 122 with the status 'Registered'**. None of these marks are registered for geographically rooted products, in line with the rules for EU certification marks which exclude geographical indications.

There are mainly three types of registered EU certification marks:

- **EU certification marks for services:** these marks are not deemed suitable for the purpose of this study which looks into protection of geographically rooted goods.
- **EU certification marks used by national certifying bodies:** The national certifying bodies (e.g. TÜV in Germany) certify, among other certification services, compliance with national, European (EN) and international (ISO) standards. Generally, the

purpose of these standards is to guarantee product safety, whereas the purpose of geographical indications is primarily to indicate product quality.[36] Due to this different purpose, certification marks of certifying bodies were given low priority in the sample selection. An exception were voluntary standards developed by industry actors, which often serve a similar purpose of certifying an elevated quality level.

- **EU certification marks for agricultural products, including wine:** In principle, the research looked into marks protecting non-agricultural products. On the other hand, agricultural products can be more similar to the typical non-agricultural geographically rooted product (which are, in the vast majority, handicraft products) than many of the industrially produced products that can be certified by EU certification marks. Therefore, agricultural certification marks were also considered for the selection.

Many of the registered marks are multinational: the rightsholder (the organisation that has registered the mark) is based in one Member State (with a clear dominance by Germany among the 122 registered marks), but the certified producers come from various Member States. For this study, this meant that the research for one specific certification mark could cover several Member States.

National certification marks

National certification marks have been harmonised by the EU Trade Marks Directive in 2015, the majority of the provisions of the Directive needing to be transposed into Member States' legal frameworks by January 2019. Not all Member States did have certification marks in their national legal system before this harmonisation. **The number of national certification marks registered to date since the amending legislation is therefore limited.**

To identify national certification marks for this research sample, the databases of the national intellectual property offices were screened. However, unlike the EUIPO database, the majority of the national databases do not allow to filter specifically for certification marks. The screening of the databases was therefore complemented by **targeted key word search, additional desk research and direct requests to the national IP offices** to receive a list of registered marks.

As for EU certification marks, the majority of Member States do not allow use of this kind of mark to certify geographical origin, and the majority of registered certification marks are for services, national certifying bodies and related product standards, or agricultural products. Following the same reasoning as for EU certification marks, the shortlisted marks excluded marks for services and of certifying bodies but included marks for agricultural products.

National sui generis GI protection of non-agricultural products

Well-developed national sui generis protection systems for non-agricultural GI products only exist in a limited number of Member States. The most comprehensive national system is the French one, while other Member States have regional or even product specific protection systems.[37] Like for national certification marks, the databases of the national IP offices, complemented by additional research and direct requests, were screened for suitable GIs. **In those Member States which do have national sui generis protection systems, in most cases they cover both agricultural and non-agricultural products. Where this is the case, the number of protected agricultural products is much higher**

[36] See the definition given in Article 22 of the TRIPS agreement: "Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given **quality, reputation or other characteristic** of the good is essentially attributable to its geographical origin".

[37] A mapping of the national GI protection systems of the EU Member States was conducted in 2013 in: Insight Consulting, OriGIn & REDD, 2013, Study on Geographical Indications Protection for Non-Agricultural Products in the Internal Market.

than the number of non-agricultural ones. These agricultural products were excluded from the shortlist in favour of focussing the research on non-agricultural products.

EU sui generis GI protection of agricultural, food and drink products

There exist four types of EU sui generis protection for agricultural products (agricultural products and foodstuffs, wines, spirit drinks, aromatised wines). Aromatised wines are of low relevance, with only 5 products registered across the EU. Wines are covered by a very specific protection system with limited comparability to non-agricultural GI products. Therefore, **the screening and shortlisting of protected products focussed on foodstuffs and spirit drinks.** In addition, the selection aimed to cover a variety of Member States, although the number of registered products is very low in some countries (in particular the Nordic and Baltic States). The registered GIs were identified through the database of the EUIPO.[38]

GI and trade mark protection systems in non-EU countries

Like for national certification marks and GIs, suitable marks and GIs from non-EU countries were identified through a screening of the respective national IP databases and other information provided by the national IP authorities. This group being a benchmark group used for comparison with the national system in EU Member States, **the objective was to have a representation of different types of protection systems** (sui generis GI systems and certification marks) within the limits of what actually exists in the non-EU countries.

[38] GIview, available at: https://www.tmdn.org/giview/.

Based on the screening activities outlined above, 30 marks and GIs were selected for the research sample. The table below shows the final sample. **The sample covers the following 17 countries:** Austria, Belgium, Bulgaria, Germany, Finland, France, Hungary, Ireland, Italy, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, Mexico, India. This list shows only the countries where the marks/GIs are registered. In some cases though (for example Bündnerfleisch from Switzerland) it is possible for registered producers to be based in another country, other than that of registration (a small number of French retailers are certified retailers of Grisons meat, under the Swiss law on protected geographical indications).

Table 1: Research sample

Nr.	GI/mark	GI/mark (English)	Type of product	Country
1	Belgian Linen	Belgian Linen	Textile	BE
2	Plauener Spitze	Plauen Lace	Lace	DE
3	Ceramica de Manises	Ceramics from Manises	Ceramics	ES
4	Marmo Botticino Classico	Botticino Classico Marble	Natural stone	IT
5	Bois des Alpes	Wood from the Alpes	Wood	FR
6	RAL Quality Mark Candles	RAL Quality Mark Candles	Candles	DE
7	QUL (Qualitätsverband Umweltverträgliche Latexmatratzen)	QUL (Quality association for environmentally friendly latex mattresses)	Mattresses	DE
8	ÜGPU Geprüft PU (Polyurethan-Hartschaum)	ÜGPU Certified PU (Rigid Polyurethane Foam)	Construction foam	DE
9	Re Panettone	Re Panettone	Food/drinks	IT
10	Certified Asthma & Allergy Friendly	Certified Asthma & Allergy Friendly	Various	IE
11	Made in Toruń	Made in Toruń	Various	PL
12	Artesanato dos Açores - Produto de Origem - Qualidade certificadat	Handicraft from the Azores - Product of Origin	Various	PT
13	Sámi Duodji	Sámi Handicraft	Various	SE
14	Cuchillería de Albacete	Albacete Cutlery	Cutlery	ES
15	Geprüfte Qualität Bayern	Certified Quality Bavaria	Food/drinks	DE
16	Pierre de Bourgogne	Burgundy Stone	Natural stone	FR
17	Ceramica Artistica e Tradizionale di Faenza	Artistic and Traditional Ceramics from Faenza	Ceramics	IT
18	Halasi Csipke	Halas Lace	Lace	HU
19	врачански варовик (Vrachanski varovik)	Vratsa Limestone	Natural stone	BG
20	Idrijska Čipka	Idrija Lace	Lace	SI
21	Steirisches Kürbiskernöl	Styrian Pumpkin Seed Oil	Food/drinks	AT
22	Pont-L'Evêque	Cheese from Pont-L'Evêque	Food/drinks	FR
23	Turrón de Alicante	Turrón from Alicante	Food/drinks	ES
24	Puruveden Muikku	Vendace from Puruvesi Lake	Food/drinks	FI
25	Polish Vodka	Polish Vodka	Food/drinks	PL
26	Schweizer Uhren	Swiss Watches	Watches	CH
27	Bündnerfleisch	Dry-cured meat from the Grisons	Food/drinks	CH
28	Baluchari Sari	Baluchari Sari	Textile	IN
29	Thewa	Thewa Art Work	Jewellery	IN
30	Marca GTO Guanajuato	GTO Guanajuato Mark	Various	MX

2.2.2. Research activities

In-depth national research was conducted into the 30 marks and GIs from the research sample, consisting of desk research, stakeholder interviews, and an electronic survey.

2.2.2.1. Desk research and interviews

The data collection phase for the 30 products from the research sample was launched at the start of March 2021 and ran for around three months. **A team of national researchers conducted desk research into the respective products from the sample.** This included consulting national legislation, relevant databases providing information on GIs and trade marks, practical information available on the websites of national or regional bodies responsible for the registration of GIs and trade marks, and any other reports or data relevant to the product in question.

In addition to the online-based desk research, the researchers contacted key stakeholders from three main categories to conduct semi-structured interviews:

- National and public authorities responsible for granting trade marks and GIs,
- Business and producer associations or regional local authorities owning or managing the marks/GIs and monitoring products on the market,
- Individual producers of the protected products.

In total, **130 stakeholders were contacted with an interview request, and 78 interviews were conducted.** The list of consulted stakeholders is presented in Annex 2.

2.2.2.2. Survey

A stakeholder survey was launched on 15 March 2021; it was open for one month until 15 April 2021. The survey targeted producers of non-agricultural GI products in all 27 EU Member States and certain non-EU countries. **The survey was shared directly with 220 stakeholders.** Relevant stakeholders were identified based on the mapping of non-agricultural geographically rooted products that was carried out for the 2020 study on economic aspects of GI protection[39]. Producers of the 30 products from the research sample were not included in this group, as they were interviewed instead.

About two thirds of the targeted stakeholders were individual producers, while the remaining third were producer associations and similar organisations who were asked to share the survey among their members, **therefore acting as multipliers**.

The survey questions were routed depending on the replies given to show only the relevant questions to the respondents. In total, 145 stakeholders accessed the survey, of which 57 submitted complete responses. These responses were received from thirteen different countries:

Table 2: Survey responses by country

Austria	Belgium	Croatia	France	Germany	Hungary	Ireland	Italy	Portugal	Romania	Slovakia	Spain	Switzerland	Total
5	3	1	9	2	1	1	22	3	1	1	7	1	**57**

[39] VVA, Ecorys & ConPolicy, 2020, Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU, available at: https://op.europa.eu/en/publication-detail/-/publication/c210fcc6-5463-11ea-aece-01aa75ed71a1/language-en/format-PDF/source-120480323.

Just under half of the respondents (23) represent **a geographically rooted product that is not currently protected by a geographical indication, trade mark, or any other protection system**. Feedback from those respondents has been incorporated into the analysis in this report to explore why producers are currently not using the existing protection systems, and what their needs would be from a potential protection system.

The other 34 respondents represent products already benefiting from various existing protection systems, as shown below:

Table 3: Protection systems represented in the survey responses

EU collective mark	EU certification mark	National collective mark	National certification mark	National GI protection	EU GI protection for agri-food	Other	Total
6	3	4	5	8	1	7	**34**

Information from these responses was used to complement the desk research and interviews conducted for the products from the research sample that cover the same protection systems.

2.2.3. Case studies

Based on the findings from the desk research, the interviews and the survey, **six comprehensive case studies were elaborated: one for each of the six protection systems covered by this study.** The case studies are structured by the four phases of the control and enforcement process:

- Link between the product characteristics and the territory,
- Verification of the products and production process,
- Monitoring of the market,
- Enforcement and sanctions,

The case studies present **how each phase is implemented in practice for each protection system,** also looking into the effectiveness, the costs and the relevance for stakeholders associated with each phase.

Table 4 provides an overview of the six protection systems, and the corresponding GI products or marks upon which each case study is based.

Table 4: The six protection systems and corresponding products

Protection system	GI products/marks included
EU collective marks	1. BE - Belgian Linen
	2. DE - Plauen Lace
	3. ES - Ceramics from Manises
	4. IT - Botticino Classico Marble
	5. FR - Wood from the Alpes
EU certification marks	6. DE - RAL Quality Mark Candles
	7. DE - QUL (Quality association for environmentally friendly latex mattresses)

Protection system	GI products/marks included
	8. DE - ÜGPU Certified PU (Rigid Polyurethane Foam)
	9. IT - Re Panettone
	10. IE - Certified Asthma & Allergy Friendly
National certification marks	11. PL - Made in Toruń
	12. PT - Handicraft from the Azores Product of Origin
	13. SE - Sámi Handicraft
	14. ES - Albacete Cutlery
	15. DE - Certified Quality Bavaria
National sui generis GI protection of non-agricultural products	16. FR - Burgundy Stone
	17. IT - Artistic and Traditional Ceramics from Faenza
	18. HU - Halas Lace
	19. BG - Vratsa Limestone
	20. SI - Idrija Lace
EU sui generis GI protection of agri-food products	21. AT - Styrian Pumpkin Seed Oil
	22. FR - Cheese from Pont L Evêque
	23. ES - Turrón from Alicante
	24. FI - Vendace from Puruvesi Lake
	25. PL - Polish Vodka
GI and trade mark protection of products in non-EU countries	26. CH - Swiss Watches
	27. CH - Dry cured Meat from the Grisons
	28. IN - Baluchari Sari
	29. IN - Thewa Art Work
	30. MX - GTO Guanajuato Mark

For the sixth case study (GI and trade mark protection of products in non-EU countries) the common feature of the group is that each product is a non-EU one. Given that the five products in this group are a mixture of GIs and trade marks, and in light of the fact that there are many differences between national systems, **this final case study serves more as a compilation of findings**. The five other case studies present findings which have more of a common ground between the products falling under the respective system, given that they have as a point of commonality the legal protection system.

The six case studies are included in Annex 1.

3. Effectiveness, cost-effectiveness and relevance of existing protection systems

This chapter provides an analysis of the effectiveness, cost-effectiveness and relevance for each protection system covered by this study. The analysis is based on the data that was collected through the desk research, interviews and electronic survey and summarised in the case studies.

The **effectiveness** analysis assesses the extent to which the protection systems ensure a high and uniform quality of the final product and to what extent enforcement is effective for each protection system (Section 3.1).

Cost-effectiveness analysis is based on a mapping of costs and the results from the effectiveness analysis. It provides an assessment of the efficiency of each protection system (Section 3.2).

Section 3.3 provides an analysis of the **relevance** of each protection system. It explores the relationship between the objectives of the intervention (in this case the different legal protection systems) and current needs of stakeholders.

The analysis of all three evaluation criteria follows the structure of the four phases of the control and enforcement process:

- Link between the product characteristics and the territory,
- Verification of the products and production process,
- Monitoring of the market,
- Enforcement and sanctions.

3.1. Effectiveness

3.1.1. Background and methodological approach

Effectiveness looks at **how successful an intervention** (in this case the different legal protection systems) **is in achieving, or at least progressing towards, its objectives**. In the case where objectives have not been achieved, it is necessary to consider the extent to which progress has fallen short, and why this is the case.

In order to determine the effectiveness of the protection systems, two key sub-questions were explored:

- To what extent do the protection systems ensure a high and uniform quality of the final product?
- To what extent are the protection systems effective in eliminating illegal offers and infringing products (enforcement), including for online sales?

The first sub-question primarily focuses on the effectiveness of registering a mark/GI and the process of verifying manufacturing methods of the product concerned, while the second explores the effectiveness of the monitoring and enforcement systems.

The evaluation matrix for effectiveness is developed in the following table:

Table 5: Matrix for the analysis of effectiveness

Sub-question	Judgement criterion	Indicator
To what extent do the mechanisms ensure a high and uniform quality of the final product?	The procedures and criteria for assessing the application of new GIs/marks are well defined	- Description of the procedures for assessing the applications and criteria for setting the product requirements
	The verification at production stage is effective	- Description of the organisation and frequency of the verification at production stage - Number and type of cases of non-compliance / year - Opinion of stakeholders on the effectiveness of the verification
To what extent are the mechanisms effective in eliminating illegal offers and infringing products (enforcement), including for online sales?	The monitoring of the use of registered GIs/marks on the market is effective	- Description of the monitoring system and frequency - Number and type of infringements identified / year - Opinion of stakeholders on the effectiveness of the monitoring
	The sanctions regime in case of misuse of GIs/marks or fraud is effective	- Description of the sanction regime in case of infringement or non-conformity on the market - Opinion of stakeholders on the effectiveness of the enforcement and sanctioning

3.1.2. Analysis of the effectiveness

Key findings

In order to interpret the findings in terms of the effectiveness of the different protection systems, it is important to **differentiate between the verification, monitoring and enforcement/sanctioning processes**. Whereas verification refers to certified producers of the GI/mark being checked during the manufacturing stages to ensure that they are complying with the necessary product criteria, monitoring of the market is primarily done not to check the goods of certified producers, but rather to ensure that there are no infringing products on the market (i.e. from producers claiming that their product has a certain GI/mark, but who are not entitled to do so).

Across the six different protection systems, **effectiveness of the verification systems is very high**. Authorised users of a GI/mark are rarely found to deviate from the product requirements, and cases of error are usually based on minor, innocent mistakes that can be easily corrected.

Where monitoring is done, **online monitoring tools are generally preferred** due to their low costs, and convenience. These tools include internet search, specific web crawler software, social media and other online marketing practices. Some products have **specific online monitoring teams** which enables more consistent online monitoring. Specific tools and software for online monitoring, as well as external service providers in this area, already exist and are in principle accessible to all producers. However, the research showed that few of the examined producer groups use any specific tools, despite the fact that such tools can be a cost-efficient monitoring solution. This contradicts the fact that many producer groups do little monitoring purportedly due to a lack of resources, and indicates that **there could be lack of awareness about and technical skills for online monitoring** (not linked to any specific protection system).

Unsurprisingly the most resource-intensive but effective monitoring is a combination of **constant online scanning of markets, physical inspections, mystery shopping and testing of products.** When combined with pro-active producers, who also monitor

markets *ad hoc* through their daily work, monitoring is complimented with intelligence from the field both online and offline. Periodic physical monitoring is generally effective for monitoring whether existing producers are maintaining the standards prescribed by the mark, rather than providing any kind of market-wide view.

Concerning monitoring, effectiveness was also deemed to be fairly high across the protection systems. However, in certain cases very few infringing products were found on the market due to either a total lack of, or an under-developed, monitoring system. The lack of reported cases of infringing products cannot necessarily be a sign of an effective system, therefore.

Moreover, **products that do not necessarily infringe on a GI/mark** (i.e. they do not claim to hold that GI/mark) **but that imitate the style or look of a GI/mark (or product) were a recurring theme.** These goods are highly problematic for many authorised users of GIs/marks, as the design of a product is not necessarily protected by the system, and so can be imitated by others without constituting an infringement *per se* of the GI/mark.

These imitating products were found to be particularly problematic when the producers were based in third countries. This is due to the fact that, although legal enforcement and sanctioning mechanisms do exist in every protection system, **enforcement at an international level is not really effective** given that there is no global harmonisation of protection schemes for GIs.

Enforcement at the national level was deemed to be more effective. In many cases, the formal enforcement mechanisms (e.g. legal action before a court) and **sanctioning measures can be avoided by recourse to less formal means** (i.e. by way of a letter asking the producer concerned to stop using the GI/mark). The options for enforcement and its effectiveness are also strongly linked to the role of producer groups. A coherent producer group brings with it an element of social control and collective responsibility through a shared economic/cultural interest. On a practical level, producer groups offer a forum to work together to identify infringements and achieve higher perceived legitimacy when taking action against them, although this would need to be confirmed with further research.

A specific difference between trade marks and GIs with regard to enforcement concerns the use of protected names in internet domains. Unlike trade marks, GIs are not recognised as intellectual property rights by the international organisation managing internet domains. Thus, **a GI cannot be enforced against registration of the geographical name as internet domain** by a party who is normally not authorised to use the protected name.

The choice of verification, monitoring and enforcement tools, and consequently their effectiveness, are generally not linked to any specific protection system. While the legal basis for verification differs between the systems, in practice most producer groups follow similar approaches. Regarding the tools available for monitoring and enforcement, there are no significant differences between the protection systems. Therefore, employment of the various tools highly depends on the individual strategies, preferences and resources of each producer group. By itself, every protection system can be used effectively. Specific differences between the protection systems are more noticeable when considering each system's overall purpose; these are further analysed below when assessing the relevance of the different systems (see Section 3.3).

3.1.2.1. Sub question 1 – To what extent do the mechanisms ensure a high and uniform quality of the final product?

Table 6 below provides a summary of the findings for the evaluation sub-question regarding the extent to which the different protection systems ensure a high and uniform quality of the final product. In order to answer this question, the clarity of the procedures and criteria for assessing the application of new GIs/marks, as well as the effectiveness of the verification procedures during the production stage, are both considered. **The overview table is followed by a detailed evaluation** of each indicator for each protection system according to the structure presented below:

Table 6: Summary of effectiveness – Sub-question 1

Protection system	The procedures and criteria for assessing the application of new GIs/marks are well defined	The verification at production stage is effective		
	Description of the procedures for assessing the applications and criteria for setting the product requirements	Description of the organisation and frequency of the verification at production stage	Number and type of cases of non-compliance / year	Opinion of stakeholders on the effectiveness of the verification of the production
EU collective marks	• Criteria laid down in regulations of use that are part of the mark application • Members of the association owning the mark are authorised to use it • If the mark designates a geographical origin, any producer whose products originate in that area has the right to become member of the association	• Verification of the origin of the material, the localisation of the manufacturers, or the quality of the products; generally done by the association owning the mark but the involvement of external certification bodies is also possible • Frequency varies; from only once upon application to once every three years to yearly • In the case of small producer communities, social control is an important factor that may partly replace formal verification	• Very few cases of non-compliance	• Very to extremely effective
EU certification marks	• Criteria laid down in regulations of use that are part of the mark application • Certification of geographical origin not an admissible criterion • Membership is not required to apply for and obtain the certification	• Tests of certified products and materials used, done by external organisations for all of the examined marks • At least once a year for most marks; once every two to six years for one of the marks	• Close to zero cases of non-compliance • Non-compliance is usually non-intentional	• Very to extremely effective
National certification marks	• Criteria laid down in regulations of use that are part of the mark application	• Varies between on-site controls (of the manufacturing process), product checks (sometimes based on photographs), checks	• Very few cases of non-compliance	• Very to extremely effective

Protection system	The procedures and criteria for assessing the application of new GIs/marks are well defined	The verification at production stage is effective		
	Description of the procedures for assessing the applications and criteria for setting the product requirements	Description of the organisation and frequency of the verification at production stage	Number and type of cases of non-compliance / year	Opinion of stakeholders on the effectiveness of the verification of the production
	• Geographical origin is a certifiable criterion in only nine Member States • Membership is not required to apply for and obtain the certification	of the origin of the materials used, self-assessment and even no verification • Frequency varies; from only once upon application to yearly • In the case of small producer communities, social control is an important factor that may partly replace formal verification		
National sui generis GI protection of non-agricultural products	• Geographic and quality criteria laid down in the specifications provided upon application for a new GI • Link to the territory defined by the area where the material is extracted and/or which is linked to the history of the product and of its production • Eligible producers must be based in the defined area and sometimes also appear in specific business registers	• Varies between on-site inspections, product checks (sometimes by external certification bodies), checks of the origin of the materials used, and even no verification • Frequency varies; from only once upon application to yearly • In the case of small producer communities, social control is an important factor that may partly replace formal verification	• Close to zero cases of non-compliance	• Very to extremely effective
EU sui generis GI protection of agricultural, food and drink products	• The application must be firstly submitted by an applicant group at national level, for a preliminary procedure that includes scrutiny, publication and opposition. • If the decision at national level is favourable (the decision-	• Each MS shall designate a competent authority or authorities responsible for controls • A specific verification procedure is defined for each GI, including the control requirements, the	• Very low levels of non-compliance	• Effective to very effective

Protection system	The procedures and criteria for assessing the application of new GIs/marks are well defined	The verification at production stage is effective		
	Description of the procedures for assessing the applications and criteria for setting the product requirements	Description of the organisation and frequency of the verification at production stage	Number and type of cases of non-compliance / year	Opinion of stakeholders on the effectiveness of the verification of the production
	making processes vary between Member States), the application dossier is sent to the European Commission • Scrutiny by the Commission has a legislative deadline of six months for the first set of observation (the procedure lasts for a longer period). • The scrutiny phase is followed by an opposition procedure, the opposition period lasts three to five months; this phase may be longer in case of opposition	method of control and the frequency of control		
GI and trade mark protection systems in non-EU countries[40]	• The protection rationale for both of the Swiss GIs is that the products have a long history behind them, as a result of which GI protection is seen as beneficial for safeguarding cultural heritage • There are strict manufacturing and product requirements to be met in order for a product to be eligible for using each of the Swiss GIs	• The verification process varies between products – some are announced in-person visits conducted once every two years by a trained auditor, while others are more ad-hoc, based on tip-offs that the industry association receives about suspicious practices from its members	• Very few cases of non-compliance • If there are cases they are usually based on small mistakes that can be easily corrected	• Very to extremely effective

[40] Given that the 'non-EU GIs' group is highly diverse and the Swiss, Indian and Mexican systems examined are very different, this summary table presents only the findings of the two Swiss products. The paragraphs below refer to all five non-EU products examined.

Protection system	The procedures and criteria for assessing the application of new GIs/marks are well defined	The verification at production stage is effective		
	Description of the procedures for assessing the applications and criteria for setting the product requirements	Description of the organisation and frequency of the verification at production stage	Number and type of cases of non-compliance / year	Opinion of stakeholders on the effectiveness of the verification of the production
	• Registration must be the result of a collective approach, meaning that a person or private company cannot be recognised as an applicant			

A. Judgement criterion – The procedures and criteria for assessing the application of new GIs/marks are well defined

A.-1. Indicator – Description of the procedures for assessing the applications and criteria for setting the product requirements

EU collective marks

An EU collective mark is, according to Article 74 of Regulation 2017/1001 on the European Union trade mark (EUTMR), "**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 EU collective marks."

Accordingly, an application for an EU collective mark must contain a list of the goods or services in respect of which the registration is requested (Article 31(1)(c) EUTMR). There are no limitations regarding the goods or services that can be included. EU collective marks may serve to designate the geographical origin of a product. In such a case, the **regulations governing the use of an EU collective mark authorise any person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark** (Article 75(2) EUTMR). This means that provided a producer can satisfy the geographical requirement, they are eligible to become a member of the producer association and use the mark. Additional requirements (like specific product characteristics) are not part of the EU collective mark application. However, the association may include additional requirements, independent from the mark itself, as part of their internal statutes, to which every member must adhere. The internal organisation of the association is not covered by the EUTMR and is thus subject to national law on associations.

Certain associations do authorise non-members to use the collective mark as soon as they are located in the defined geographical area. Non-member operators' applications must be approved by the association, and are generally subject to higher fees for use of the mark.

EU certification marks

The purpose of the EU certification mark is **to certify that a product or service has certain characteristics to distinguish them from similar products** without these characteristics. Any type of good or service can be registered. The characteristics of the products or service that are certifiable are the 'material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics' (Article 83(1) of the EUTMR). **Geographical origin is explicitly excluded** from the list of certifiable characteristics. The regulations governing use of an EU certification mark must specify the characteristics to be certified by the mark and how the certifying body is to test those characteristics.

An EU certification mark can be applied for and owned by any natural or legal person, including public authorities (Article 83(2) of the EUTMR). The owner has a **duty of neutrality** towards the goods and services they certify; they therefore cannot be themselves a manufacturer or provider of the certified goods or services. For this same reason, the owner of a certification mark is precluded from using the mark for the certified goods or services covered. Examples of the examined marks certifying products in certain

industry sectors show that, to comply with this duty of neutrality, **marks are often registered and managed by an association that was created specifically for this purpose** and that coexists with a business association representing the general interests of the sector.

Unlike EU collective marks, where the association owning the mark regulates who may use the mark through their membership requirements, EU certification marks follow a more open rationale: **anyone who meets the standards set in the regulations governing the use of the mark can apply for the certification**, even if they are not a member of the association owning the mark. Once it has been shown, through a verification process, that the applicant complies with the product standards, they obtain the right to use the mark.

National certification marks

The national legislation that allows for the creation of national certification marks is **harmonised by the EU Trade Marks Directive (EUTMD)**, which stipulates that eligibility criteria must form part of the registration process. This set of eligibility criteria is registered with the national intellectual property office and provided on the basis of non-discrimination, meaning that if a producer complies with the criteria, they cannot be denied the certification. **In the majority of the Member States, geographical origin cannot be a criterion certifiable by a certification mark**; this is only possible in nine Member States[41]. In case of the examples on which this analysis is based, criteria either relate to the geography or to the product requirements.

In the case of the Sami Duodji mark, only products manufactured by a Sami person can bear the Sami Duodji mark and the criteria for the product itself are cultural criteria, since Duodji itself is linked to specific techniques and materials. Similarly, in Portugal for the Handicraft from the Azores mark, the owner has established a list of controls over the products which specify the material, method of manufacture, quality, precision or other characteristics. In the Polish case, the made in Toruń mark is used by small, medium and large manufacturers and service providers from various industries whose goods and services are considered 'high-quality', although the criteria are less specific. The case of Albacete cutlery is the strictest in terms of manufacturing eligibility. Only companies that can prove the whole process of production of the knife, from the tempering phase to the end, is done exclusively with original materials and in the city and province of Albacete, are eligible to use the mark.

National sui generis GI protection of non-agricultural products

The national sui generis GI systems generally **set the quality criteria directly in the specifications or the codes of practice**. They vary according to the nature of the protected product. For instance, in the case of stones, such as Vratsa Limestone and Burgundy Stone, the specification identifies the areas where the true product can be extracted and the characteristics that it must possess. In other cases, such as Idrjia Lace and Ceramics of Faenza, instead, the specification identifies specific characteristics such as the typical features of the product, the traditional methods of production that must be followed and the area of manufacturing. **The link between the product and the place, when not obvious like in the case of stones, is often established by making reference to the history of the product and the traditional features of its production techniques**, like in the case of Ceramics of Faenza. For this latter product, the craftwork must employ one of the techniques of production recognised as 'traditional' and specifically listed in the product requirements.

The nature and work of the producers that apply for the use of the GI are monitored in different ways. Particularly, **they must be based in the area of production and**, often,

[41] These Member States are: Denmark, Ireland, Italy, Lithuania, Malta, Poland, Romania, Spain, Sweden.

they must appear in specific registered maintained by the local Chamber of Commerce, producers' association or IP Office. In the French system, the producers' association must apply for recognition as *Organisme de Défense et de Gestion*[42] (ODG), thus following the specific rules required for this process.

EU sui generis GI protection of agricultural, food and drink products

The registration of new applications is implemented at both the Member State and EU level. The **application must be firstly submitted by an applicant group at national level** (EU regulation does not precise the legal form of the applicant group), for a preliminary procedure that includes scrutiny, publication and opposition.

Based on the evaluation of GIs and traditional specialities guaranteed (TSGs),[43] **procedures implemented at national level differ from one Member State to another**. For instance, in France, the scrutiny for application is conducted by the national institute for origin and quality (INAO). A commission of inquiry made up of members of INAO national committee is responsible for studying the request. In Italy and Spain, the application is first examined by the competent region. Then, the Ministry proceeds with the assessment of the application request. In the Netherlands, there are no guidelines in place to assess the GI applications through a uniform method.

If the decision at national level is favourable, the application dossier is sent to the European Commission, there are no details or requirements on the duration of the procedure at national level. This application dossier comprises:

- information on the applicant group, the authorities and the bodies verifying compliance,
- the publication reference of the product specification of the GI,
- a 'single document' setting the following points:
  - the main points of the product specification,
  - the description of the link between the product and the geographical environment or geographical origin, including, where appropriate, the specific elements of the product description or production method justifying the link,
- a declaration by the Member State that it considers that the application lodged by the applicant group and qualifying for the favourable decision meets the conditions.

The EU scrutiny involves several European Commission services, notably the relevant technical unit (i.e. agri-food, wine, seafood, spirit drinks), the GI unit and the legal unit from DG AGRI. The first reaction from the European Commission has a legislative deadline of six months. Some additional information may be requested to the Member State if relevant. The scrutiny phase is followed by an opposition procedure, the opposition period lasts three to five months.

GI and trade mark protection systems in non-EU countries

For the **Grisons meat, Swiss watches, Baluchari saree and Thewa Art Work GIs, the products all have a long history behind them**, as a result of which GI protection was seen as beneficial for **safeguarding cultural heritage**. The GTO Guanajuato trade mark meanwhile does not refer to one specific product, and so the rationale behind its creation was to **promote small and medium sized companies in the Guanajuato region**. Beyond the criterion of operating in the Guanajuato region, the use of the trade mark is available to

[42] Defence and Management Organisation.

[43] Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU, AND-I for DG AGRI, 2021, available at: https://op.europa.eu/en/publication-detail/-/publication/c1d86ba1-7b09-11eb-9ac9-01aa75ed71a1/language-en

any business operator or entrepreneur possessing at least three months of activity, and who produces in an economic sector defined by the National Entrepreneur Institute (commerce, services, crafts, mines/construction and other developing sectors). Four public authorities are involved in the legal framework of the GTO Guanajuato trade mark.

At the opposite end of the spectrum to governmental management of the GTO Guanajuato trade mark, **Thewa Art Work** is registered in the name of, and managed by, Rajasthan Thewa Kala Sansthan of Pratapgarh. The 28 members of the Rajsoni family are all registered under The Geographical Indication of Goods Act 1999 in respect of Thewa Art Work.[44] **The authorised user of the geographical indication has the exclusive rights to the use of the GI in relation to goods in respect of which it is registered.**[45] This means that only the Rajsoni family can use the GI, as only their craftwork follows the criteria and standards specified for the product.

The eligibility requirements applicable to the use of the words 'Swiss watch' or 'Swiss movement', laid down in an ordinance adopted by the Federal Council, are very precise. Pursuant to the Ordinance regulating the use of the word "Swiss" for watches, the movement may be considered a Swiss movement if it has been assembled in Switzerland, it has been inspected by the manufacturer in Switzerland and if at least 60% of the manufacturing costs are generated in Switzerland and at least 50% of the value of all the constituent parts (excluding the cost of assembly) is of Swiss manufacture.

The use of the **GI for Grisons meat (Bündnerfleisch)** is also relatively restrictive. First, the **registration of a GI such as this must be the result of a collective approach**, meaning that a person or private company cannot be recognised as an applicant. In order to be able to submit an application, a group must be formed (regardless of the legal form) which includes all producers involved in the production, processing and refinement of the intended produce. Secondly, Grisons meat is made according to a strict process, which must be adhered to in order to benefit from the GI.

B. Judgement criterion – The verification at production stage is effective

B.-1. Indicator – Description of the organisation and frequency of the verification at production stage

EU collective marks

For most of the EU collective marks analysed for the purposes of this study, a system of further controls is in place, after the initial registration of a producer. This verification is not part of the EU collective mark application, but is based on the internal rules of each association. For the Bois des Alpes EU collective mark, an annual control plan is carried out by an independent body. After a first cycle of three years, 100% of producers are verified annually to ensure that they are using authorised wood species which are traceable and of high quality, that the wood is being appropriately stored, and that both the wood and manufacturer are located in the geographic area concerned.

Other than in the case of Bois des Alpes, verification tends to be carried out by the **producer association**, for example for Plauener Spitze and Marmo Botticino Classico. For the former product, verification is conducted annually but unofficially by way of visits and reports submitted to the producer association, as well as through meetings grouping together all members to help address manufacturing issues. For Marmo Botticino Classico, each producer is verified every two to three years. The most common elements verified are

[44] See: http://rajsonithewaart.com/achivements.php

[45] Government of India, Ministry of Commerce and Industry, GI FAQs, available at: https://www.ipindia.gov.in/faq-gi.htm

the origin of the material, the localisation of the manufacturers, the use of the logo and the quality of the products.

For Ceramica de Manises and Belgian Linen, only an initial verification procedure is conducted at the time of application to become a member of the producer association.

Producers who are not members of a producer association usually support higher costs for using the mark. In addition, membership can provide other benefits; for instance the consortium members are also automatically verified to use another mark 'BC Botticino Classico' in addition to Marmo Botticino Classico trade mark. Furthermore, according to the case studies the producer associations frequently endorse verification actions that go beyond the EUTMR (which does not require any product standards to be set as part of an EU collective mark), suggesting that the presence of the group encourages a 'race to the top' in terms of standards.

EU certification marks

For all the EU certification marks analysed for this study, the associations or individuals owning the marks **rely on independent external certification and testing bodies** to carry out regular verification of the authorised users' products and production processes. These bodies are commissioned by the mark owners and/or the producers seeking certification though private contracts.

Verification focusses mainly on testing the characteristics of products. To this end, **samples of the certified products are collected and then tested** by an independent testing body. There are different ways of obtaining the product samples: direct provision by the producers, anonymous random purchases done by the owner of the mark or anonymous random purchases done by the testing body.

Products from certified producers are verified at least once a year for most of the investigated certification marks, sometimes more. For example, under the Re Panettone mark that certifies producers of panettone cakes, checks of each certified producer are usually done twice a year before the main sales periods for panettone cakes (which are the Easter and Christmas holidays). For one mark, the frequency is lower; certified products are verified every two to six years (depending on the type of product).

In addition to the regular product checks, the mark owners also have the possibility to do on-site inspections of factories or warehouses and to review documentation. This is typically done when issues occur during the verification of a product.

First-time verification of new users does not differ significantly from subsequent regular verifications. Occasionally, additional documentation is required from a user wishing to obtain the certification for the first time. Regarding the presence of producer associations, due to the 'duty of neutrality' of the owner of an EU certification mark, additional so-called quality associations were created specifically for the purpose of managing the certification mark. In addition, these quality associations rely on independent testing bodies (for examples DEKRA or university institutes) to carry out the testing of products. What this indicates is that when producer associations do not exist, some form of verification body is generally needed.

National certification marks

The verification procedure for national certification marks varies depending on the variety of products covered by the mark and the relative practicalities of the geographical location. For the Sami Duodji mark, some differences exist between the country license offices with how they consider the applications. **Some licensing offices will ask them to send products for assessment, but this is either a photograph or for some offices they send products via mail for physical assessment**. The geographic inspection area is very wide so practically fixed inspections are not feasible without considerable extra resources.

Each producer is only checked once before the mark is allowed to be used, however the producers are known in the community and in that sense, there is continuous verification.

In Spain, the City Council of Albacete performs an annual visit to each producer using the label of the mark. **The verification and manufacturing controls are performed on-site**. The control focuses on the verification of the label, the whole process of production from the tempering phase to the manufacture of the knifes and on the geographical origin of the raw materials used. The invoices and the cost of the raw materials used are also checked. **This procedure has been criticised on the grounds that it results in commercially sensitive data being shared with the control committee** concerning suppliers of raw materials and prices.

This is in contrast to the Certified Bavaria Quality mark, where only the initial check upon application is performed by the regional Ministry owning the mark. **The annual checks are performed as a self-assessment by the producer**, with spot checks from the regional Ministry owning the mark. The checks cover compliance with existing rules (food safety regulations), compliance with the mark's food quality rules, identification and traceability of raw materials used, products at different stages (storage, processing and final product), and internal compliance procedures. For the Made in Toruń mark, there is no verification or control of the production process, as the mark is used by businesses providing products and services of various scale and profile. As such, the Business Support Centre does not have access to production facilities or internal company documentation. **The role of producer associations** in the verification of national certification mark producers **is limited**, where they sometimes serve as information repositories, for example in the case of Cutlery of Albacete. Most of the examined national certification marks were in fact owned and managed by local or regional authorities.

National sui generis GI protection of non-agricultural products

In some cases, such as Vratsa Limestone and Halas Lace, there are offices and/or internal procedures that verify that the quality of the product meets the required standards. In France, compliance with the rules and quality standards is monitored by external certification bodies.

As to the frequency of the controls, the research shows that only in the case of France the monitoring takes place on a regular yearly basis. In other cases, such as Idrija Lace and Ceramics of Faenza, **the verification of the compliance with the production and quality standards takes place only when the producer asks for the first time to be recognised** as a legitimate beneficiary of the GI. Finally, in many cases, a special check can be asked by the producers in case they suspect that their competitors are not respecting the rules. However, on the basis of the findings, it can be stated that this rarely occurs.

This approach to verification is justified by the fact that these productions are considered extremely niche with a limited number of established producers. Therefore, constant monitoring is deemed unnecessary and often producers monitor each other. The research has shown that the producers generally believe that this system is adequate. The role of **producer groups or associations** is important as a platform for facilitating this verification, as well as (shown by some anecdotal evidence, for example from Burgundy Stone) for pushing for additional social and environmental commitments from the producers via the membership structure.

EU sui generis GI protection of agricultural, food and drink products

Specific rules on control are defined in each GI regulation for each sector: agri-food products, wines, spirit drinks and aromatised wine products. The main points from the sector specific regulations are that **each Member State (MS) shall designate a competent authority or authorities responsible for controls**. Controls must cover the

verification of compliance with the product specification before placing the product on the market, and the use of the protected names on the market. In addition, controls of GIs are covered by the official control regulation (OCR)[46].

In more detail, **a specific verification procedure is defined for each GI**. This includes the control requirements, the method of control and the frequency of control. Controls aim at verifying the compliance with the GI requirements: the origin of raw material and products, the process of production and traceability.

Table 7 provides details for each sector as to organisation and frequency of controls at the different stages of the value chain.

Table 7: Annual frequency of control by sector and stage of the value chain

	Agri-food GI	Wines GI	Spirits GI	Aromatised wines products GI
Farm stage	From 0.6% to 100%, higher than 60% in most of the MS and 100% in 6 MS (N=12)	From 5% to 100%, including 5 MS with 100% control (N=7)	65% to 100% (N=4)	No information
Processing stage	From 27% to 100%, including 8 MS at 100% (N=15)	From 30% to 100%, including 5 MS at 100% (N=7)	From 65% to 100%, including 8 MS at 100% (N=11)	From 0% to 100%, including 3 MS at 100% (N=4)

N: number of Member States that provided quantitative data
Source: National authority survey in Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU – AND-I, Ecorys, COGEA for DG AGRI – 2020

Table 8 provides details for each product on the organisation and frequency of controls, based on the five agricultural products within the scope of this study.

Table 8: Details on controls for each of the five EU agricultural GIs

Name of the product/mark	Details
Steirisches Kürbiskernöl (PGI)	- Self-control: this is based on “seal” used to close each batch of bottles. - External controls: there are planned and un-planned controls. - Final products are checked by the Regional Food Inspectorate: chemical and biological purity. - Frequency of control: the frequency of control depends on the type of activity and its size. It ranges from every year to every 5 years. In terms of control each year: • Approx. 20% of farms are controlled every year, • Approx. 50% of large producers/bottling plants are controlled every year, • 100% of oil mills are controlled every year.
Pont-L’Evêque (PDO)	There are internal (by the producer group) and external (by certifying organism) controls. The frequency of controls is as follows: • Farmers: every 3 years (85% by external control body and 15% by producer group) • Processors: 4 times a year, including one unplanned control (100% by external control body) • Taste of final product: 6 times a year

[46] Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products

Name of the product/mark	Details
Turrón de Alicante (PGI)	The frequency of control is 1 to 3 times a year for each processor.
Puruveden Muikku (PGI)	No detailed information on controlled collected.
Polish Vodka (GI)	Controls are conducted by Agricultural and Food Quality Inspection. Controls are usually undertaken at least every 3 years.

With regards to the role of the producer groups in verification, which are mandatory under this system, the general organisation and implementation of controls can be considered effective, with a better effectiveness at producing and processing stages than in the downstream sector.

GI and trade mark protection systems in non-EU countries

The responsible body for verifying the manufacturing process of the five non-EU products is a factor that varies considerably, from national authorities/institutes to independent authorities, to self-regulation. The process itself also differs considerably between the products.

For **Grisons meat, all verification visits are announced in-person visits conducted by a trained auditor** (offline), covering the entirety of production, storage and dispatch facilities. Audits are conducted once every 2 years for all stakeholders in the value chain (butchers, meat drying facilities and certified packaging companies).

This periodic auditing process of Grisons meat is in contrast to the **more ad-hoc approach used for verifying the manufacturing process of Swiss watches, which is based on detection of suspicious or irregular products or behaviour by a manufacturer**. Usually, either products are suspiciously cheap and fall below a baseline price of products that is economically feasible under Swiss production costs, or the Federation of the Swiss watch industry receives a tip-off about suspicious practices from its members, who themselves 'scan the market'. Fewer than 5% of producers of Swiss watches undergo a verification procedure each year. The role of producer associations here is worth noting in terms of verification. For Swiss watches, the effectiveness of the verification system was deemed to be 'very effective' by both the producer association (the Federation) and an individual producer. According to the producer association, due to the small and intimate market in Switzerland, in which manufacturers know one another and the market relies on informal mechanisms of mutual control, the current ad-hoc verification system is very effective. This 'social control' also features in other marks, for example national certification marks, with much smaller markets. This suggests that it is **a small number of producers in a group**, rather than a small market, which is a **determining factor for the effectiveness of social control within producer groups.**

In Mexico, **verification of the manufacturing process for products holding the GTO Guanajuato Mark is conducted by a group of accredited auditors from the Mexican Institute of Normalisation and Certification**. When a product is first registered with this mark, permission to use it is granted for two years. After these two years, a verification procedure is carried out to renew the registration and deliver it as permanent.

B.-2. Indicator – Number and type of cases of non-compliance / year

EU collective marks

For EU collective marks, **very few cases of non-compliance with the internal rules of the association have been detected at the production stage**, in comparison with a

greater number of infringements detected once the products are placed on the market (see Section 3.1.2.2 below).

Indeed, **no infringements have been detected among producers of Ceramica de Manises, Belgian Linen and Marmo Botticino Classico over the past years** and very few cases have been detected by Plauener Spitze operators (approximately one case every two to three years). In 2019, 10 to 20% of the audits performed among Bois des Alpes operators led to the detection of non-compliance cases. However, it is the only mark among the five studied which provides individual annual checks by an independent control body.

EU certification marks

Cases where authorised users of a certification mark do not comply with the standards required by the regulations of use are exceptional for the EU certification marks that were investigated for this study. For these marks, **compliance with the certification standards is very high and reaches levels between 95% and 100%**.

The few cases of non-compliance that occur are usually non-intentional (for example because of a defective product or incorrect use of the mark) and can be rectified by the producers without the need to take any formal sanctions.

National certification marks

For national certification marks, periodic verifications only exist for the Made in Toruń, Bavaria quality and Albacete Cutlery marks. Furthermore, the Made in Toruń mark does not verify production but focuses on market monitoring to detect producers using the mark without permission. Therefore, this indicator only applies to Bavaria quality and Albacete Cutlery. For these marks, producers and the producer organisations consider that the controls performed result in an **extremely low number of cases of non-compliance during production** for producers that are normally eligible to use the mark.

National sui generis GI protection of non-agricultural products

According to the results of the research, **almost no case of non-compliance with the specification is normally found**. The interviews have shown that on many occasions the producers are confident that the low-quality producers will not damage the top ones because their clients as well as the market on which they sell are different. For instance, the producers of traditional Ceramics of Faenza generally manufacture their product on demand for selected buyers. Hence, they are not concerned by the presence of low-quality pieces on the market.

EU sui generis GI protection of agricultural, food and drink products

Based on the case study, **the level of non-compliance is low**.

It is assessed to be 2-3% in Pont-L'Evêque. It is also low for Steirisches Kürbiskernöl, where an important reduction of infringing products has been observed, after producers understood the economic impacts and image deterioration after lawsuits.

GI and trade mark protection systems in non-EU countries

For the non-EU products, very few infringements were reported during the production phase. The **control system of the manufacturing process for the GTO Guanajuato Mark is generally perceived as effective, as there are very few cases of non-compliance identified**. Moreover, the benefits of the protection system (giving registered companies business opportunities, promotion, and visibility on the market) outweigh any costs involved.

For Grisons meat, there have been no serious cases of non-compliance in the manufacturing process in the past 10 years. Minor cases of procedural negligence are

detected every year (on average 7 per year), but these solely relate to small mistakes in tracing products across the value chain, which can be corrected in short time frames by the producer. When a producer becomes a certified Grisons meat producer, ProCert (the independent certification authority) sensitises the new client to the financial and reputational risks associated with non-compliant practices. Accordingly, this awareness raising, combined with the biannual controls, is sufficient for ensuring a high and uniform quality of final products.

B.-3. Indicator – Opinion of stakeholders on the effectiveness of the verification of the production

EU certification marks

According to the stakeholders interviewed across the five EU collective marks within the scope of this study, **the verification systems are deemed to be 'very effective'** and, **in the case of Plauener Spitze, 'extremely effective'**.

The regular (once per year) but 'unofficial' and informal verification procedure adopted by the **Plauener Spitze association relies on a kind of social control between members**, with issues being raised at meetings grouping together all members to help address manufacturing issues. Given the limited number of producers of Plauener Spitze (8) and their longstanding shared history (the mark having been established in 1920), there is a high level of cooperation which enables the verification procedure to function effectively.

EU certification marks

The verification of certification standards under the EU certification marks investigated **are considered extremely effective** both by owners and authorised users of the marks. None of the interviewees saw alternative solutions to the current procedures that would be suitable to achieve the same benefits (the competitive advantage of having the mark). It was also pointed out though that the verification procedures need to be adapted to the number of certified users. For example, anonymous product purchases done by the owner of the mark (who is a private individual for one of the investigated marks) works as long as the size of the mark remains small (less than 20 certified producers) but might need to be changed if this size increases.

National certification marks

For national certification marks, periodic verification only exists for the Made in Toruń, Bavaria Quality and Albacete Cutlery marks. Furthermore, the Made in Toruń mark does not verify production but focuses on market monitoring to detect producers using the mark without permission. Therefore, this indicator only applies to Bavaria quality and Albacete Cutlery. For these marks, producers and the producer organisations consider that **the controls performed result in an extremely low number of infringements during production** for producers that are normally eligible to use the mark.

National sui generis GI protection of non-agricultural products

The interviewees have all confirmed that they deem the effectiveness of the verification systems in place as **high or very high.** They generally state this because of their experience that the cases of producers who do not respect the rules are very rare, not because they consider the verification system in place always extremely strict and efficient. **They have however not flagged any specific concerns**.

EU sui generis GI protection of agricultural, food and drink products

Based on the evaluation of GIs and TSGs conducted in 2020[47], **the general organisation and implementation of controls can be considered as effective**, with a better effectiveness at producing and processing stages than in the downstream sector. This is confirmed by a producer group survey conducted in this evaluation study: at farm and processing stages, controls are considered as effective (both for 85% of the producer groups).

From the interviews conducted in the context of the present study, the controls are assessed to be 'very effective' in Steirisches Kürbiskernöl, Pont-l'Evêque, and Turrón de Alicante, and 'moderately effective' concerning Polish Vodka. No detailed information was available on Puruveden Muikku due to the low level of organisation of the producer group. The details are provided in the following table.

Table 9: Assessment of the effectiveness of controls

Name of the product/mark	Details
Steirisches Kürbiskernöl (PGI)	Based on interviews, the controls are assessed to be very effective to extremely effective. An important reduction of infringing products has been observed, after producers understood the economic impacts and image deterioration after lawsuits. Effectiveness of controls could be improved by increasing the frequency of audits, but it would be complicated considering the large number of small producers.
Pont-L'Evêque (PDO)	Based on interviews, the controls are assessed to be very effective, as the rate of non-conformity is low (2-3%), the verification system is considered very effective.
Turrón de Alicante (PGI)	The verification system is considered to be "very effective" as, in case of non-conformity, it is solved after one warning to the producer who has to set up a corrective action.
Puruveden Muikku (PGI)	No detailed information available.
Polish Vodka (GI)	The verification system is considered moderately effective, as the control system mainly relies on the capacity of producers to monitor the quality of their own production.

GI and trade mark protection systems in non-EU countries

General effectiveness of the verification systems for the manufacturing processes of non-EU products was deemed to be high. The verification system of the **Mexican GTO Guanajuato Mark is considered as effective thanks to the role of the Secretary of Sustainable Economic Development** of the public authority. It takes charge of the verification costs, as well as the implementation, monitoring and promotion of the trade mark. Companies are simply required to implement a continuous improvement process, meaning that very little of the verification burden falls to them.

For Swiss watches, the effectiveness of the verification system was deemed to be 'very effective' by both the producer association (the Federation) and an individual producer. According to the producer association, due to the small and intimate market in Switzerland, in which manufacturers know one another and the market relies on informal mechanisms of mutual control, the current ad-hoc verification system is very effective. From the producer's perspective, although a control system relying largely on self-control may be seen as weak, the "Swiss conscience" and the need to safeguard the company's reputation make that system very effective in practice.

[47] Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU - AND-I, Ecorys, COGEA for DG AGRI – 2020 - https://op.europa.eu/en/publication-detail/-/publication/c1d86ba1-7b09-11eb-9ac9-01aa75ed71a1/language-en

Concerning **Grisons meat, the verification was deemed to be 'extremely effective' by the certification authority, and 'very effective' by one producer.**

3.1.2.2. Sub question 2 – To what extent are the mechanisms effective in eliminating illegal offers and infringing products (enforcement)

Table 10 below provides a summary of the findings for the evaluation sub-question regarding the extent to which the different protection systems are effective in eliminating infringing products from the market. In order to answer this question, the effectiveness of the monitoring systems put in place and the sanctions available are both considered. **The overview table is followed by a detailed evaluation** of each indicator for each protection system according to the structure presented below:

Table 10: Summary of effectiveness – Sub-question 2

Protection system	The monitoring of the use of registered GIs/marks on the market is effective			The sanctions regime in case of misuse of GIs/marks or fraud is effective	
	Description of the monitoring system and frequency	Number and type of infringements identified / year	Opinion of stakeholders on the effectiveness of the monitoring	Description of the sanction regime in case of infringement or non-conformity on the market	Opinion of stakeholders on the effectiveness of the enforcement and sanctioning
EU collective marks	• Sole responsibility of the mark owner • Offline monitoring includes checking compliance with the logo rules, the use of the geographical indication and use of expressions like "in the style of" • Online monitoring with the use of technological tools or methods (e.g. web scraping) done for two of the five examined marks	• Most infringements related either to the unlicensed use of the mark or to expression like 'in the style of' • 1-5 infringements per year for most marks investigated; 50-100 infringements for one of the marks (mostly abroad)	• Slightly effective for most of the examined marks • Main challenges: lack of resources for monitoring; monitoring of non-domestic markets • For one mark, monitoring deemed extremely effective • Online markets and use of digital monitoring tools seen as opportunity to facilitate monitoring	• Private enforcement; the owner of the mark may bring an action for infringement of the mark (most commonly an injunction and damages) • In practice, mark owners try to solve issues informally to avoid costly and lengthy legal proceedings • Prison sentences are in theory possible in the case of fraudulent activities on a large commercial scale	• Varies between slightly effective and very effective • Effectiveness can be reduced if the number of infringements is high and there are not sufficient resources for enforcement
EU certification marks	• Sole responsibility of the mark owner • Not systematically done in most cases; focus is on verification of authorised mark users • Mark owners react to complaints • For one mark, systematic monitoring of online markets is done using a dedicated software	• Almost no cases of infringement (also due to lack of systematic monitoring)	• Very effective for the mark where systematic monitoring is done • Online markets and use of digital monitoring tools seen as opportunity to facilitate monitoring • No systematic monitoring done for most of the marks • Main challenge is the lack of resources for monitoring	• Private enforcement; the owner of the mark may bring an action for infringement of the mark (most commonly an injunction and damages) • In practice, mark owners try to solve issues informally to avoid costly and lengthy legal proceedings • Legal proceedings can take 3 years (domestic cases) to 5 years (non-domestic cases)	• Almost no experience with enforcement and sanctions • Taking legal action is in principle considered very effective

Protection system	The monitoring of the use of registered GIs/marks on the market is effective			The sanctions regime in case of misuse of GIs/marks or fraud is effective	
	Description of the monitoring system and frequency	Number and type of infringements identified / year	Opinion of stakeholders on the effectiveness of the monitoring	Description of the sanction regime in case of infringement or non-conformity on the market	Opinion of stakeholders on the effectiveness of the enforcement and sanctioning
				• Prison sentences are in theory possible in the case of fraudulent activities on a large commercial scale	
National certification marks	• Sole responsibility of the mark owner • Regular checks in physical performed for some marks, sometimes combined with checks of online shops and producer websites (but no use of technological tools) • For other marks, there is no periodic monitoring • Mark owners react to complaints • For several of the marks, physical labels are handed out to authorised users which limits the use of the labels in physical stores (provided the labels are not counterfeited)	• Almost no cases of infringement (also due to lack of systematic monitoring)	• Between very effective and extremely effective for the marks where systematic monitoring is performed • For the other marks, the main challenge is the lack of resources for monitoring	• Private enforcement; the owner of the mark may bring an action for infringement of the mark (most commonly an injunction and damages) • In practice, mark owners try to solve issues informally to avoid costly and lengthy legal proceedings • Legal proceedings can take 3 years or more • Prison sentences are in theory possible in the case of fraudulent activities on a large commercial scale	• Very effective, almost all cases can be solved informally • Effectiveness can be reduced if the number of infringements is high and there are not sufficient resources for enforcement
National sui generis GI protection of non-agricultural products	• No periodic monitoring by authorities; monitoring is left to the producers or producer groups behind a GI so	• Almost no cases of infringement (also due to lack of systematic monitoring) for most of the investigated GIs	• Between effective and very effective for the marks where systematic monitoring is performed	• Producer groups can issue warnings or bring legal action for infringement of the GI	• Regular enforcement is done by only one GI; the system in place is considered very effective

Protection system	The monitoring of the use of registered GIs/marks on the market is effective			The sanctions regime in case of misuse of GIs/marks or fraud is effective	
	Description of the monitoring system and frequency	Number and type of infringements identified / year	Opinion of stakeholders on the effectiveness of the monitoring	Description of the sanction regime in case of infringement or non-conformity on the market	Opinion of stakeholders on the effectiveness of the enforcement and sanctioning
	depends on the producers' activity • In some cases, authorities (trade inspection authority, tax police etc.) perform occasional random checks	• Around 100 infringements in the last three years for one of the GIs; these were mostly products using the GI but not coming from the region	• For the other marks, the main challenge is the lack of resources for monitoring	• Authorities can in principle seize ad destroy non-authentic products • In the case of the GI that faces regular infringements, 99% of these can be solved by sending formal letters • Prison sentences are in theory possible in the case of fraudulent activities on a large commercial scale	• For the other GIs, there are almost no infringements identified so no need for enforcement
EU sui generis GI protection of agricultural, food and drink products	• EU regulations indicate that Member States shall designate a competent authority for monitoring; monitoring may be performed by both public authorities and/or producer groups • If producer groups are responsible, authorities may provide support • Most common monitoring tool is internet research	• Almost no cases of infringement, between zero and about a dozen minor cases per year • Most common types of infringement are packaging/labelling issues and misuses of the geographical name	• Varies between moderately effective and extremely effective • Main challenges are online monitoring and monitoring on export markets	• Enforcement done by authority or producer group, depending on who is responsible • Possible sanctions include enforcement notices, a marketing ban, destruction of the infringing products at the expense of the holder, and fines • Almost all cases of infringements are solved informally or by simple enforcement notices • Prison sentences are in theory possible in the case of fraudulent	• Very effective for most of the GIs • For one GI, there is no structured producer group so no one is taking care of enforcement; the system is thus considered ineffective

Protection system	The monitoring of the use of registered GIs/marks on the market is effective			The sanctions regime in case of misuse of GIs/marks or fraud is effective	
	Description of the monitoring system and frequency	Number and type of infringements identified / year	Opinion of stakeholders on the effectiveness of the monitoring	Description of the sanction regime in case of infringement or non-conformity on the market	Opinion of stakeholders on the effectiveness of the enforcement and sanctioning
				activities on a large commercial scale	
GI and trade mark protection systems in non-EU countries	• Responsibility for verifying compliant use of the mark/GI for non-EU products that are placed on the market varies considerably; monitoring regulated by national authorities/ institutes or independent authorities, as well as self-regulation by either the producers or producer associations, all take place	• The Federation of the Swiss watch industry is aware of around 50 cases annually involving the misuse of the Swiss watch GI; it is important to distinguish between national infringements (which tend to be honest mistakes by manufacturers occasionally exhibiting minor deviations from the criteria laid out in the ordinance) and international ones, where there is no basis at all to the claim of being 'Swiss' • No infringements for Grisons meat detected until now	• Seen as 'effective' for the Guanajuato GTO mark • 'Very effective' or 'extremely effective' for Swiss watches and Grisons meat • Swiss Watch Federation noted that although they are very efficient in identifying cases of non-compliance, there are challenges when it comes to prosecution, particularly at the international level	• A range of formal sanctions are available, encompassing both civil and criminal procedures • In almost all cases, infringements of the GTO Guanajuato Mark can be solved without needing to resort to formal action • The Federation of the Swiss watch industry reported that 60% of cases can be solved without having to resort to court procedure.	• Deemed to be 'effective for the Guanajuato GTO mark, and 'very' or 'extremely effective' for Grisons meat • Overall efficiency of the sanctioning system for Swiss watches needs to be considered nationally and internationally; within Switzerland, the system is seen to work very effectively, whereas enforcement at an international level is not really effective given that there is no global harmonisation of protection schemes for GIs

A. Judgement criterion – The monitoring of the use of registered names on the market is effective

A.-1. Indicator – Description of the monitoring system and frequency

EU collective marks

Among the five EU collective marks examined within the scope of this study, monitoring of the market is performed by producer associations, with the help of producers themselves. No coordination with national or international authorities was mentioned by stakeholders. Public authorities are not involved in the monitoring procedures but are contacted when legal action is brought.

Regarding **online monitoring**, **two associations (Plauener Spitze and Belgian Linen) have implemented formal procedures with dedicated semi-automated tools**. The association responsible for Plauener Spitze writes a monthly report, shared with producers, to assess the potentially non-compliant goods detected. If there is any doubt, a request is sent on to the trader that offers the goods. In the case of Belgian Linen, monitoring activities are implemented once a week. Web scraping and tools such as “media toolkit” are used by Fedustria and LIBECO to monitor the market.

Other associations do no operate online monitoring, however when conducting offline monitoring, the most common elements to be monitored are:

- Compliance with the logo rules,
- Use of the geographical indication,
- Use of expressions like “in the style of…”.

EU certification marks

Responsibility for monitoring the use of the mark on the market lies with the owner of the mark; public authorities are not involved in the process. **For most of the investigated EU certification marks, the mark owners do not conduct systematic monitoring of the market**. Effective market monitoring is generally considered too expensive. Monitoring procedures are therefore not properly established. The mark owners mostly rely on complaints from producers, retailers or consumers to be able to react to misuse of the mark on the market.

To some extent, the lack of monitoring of the market can potentially be compensated by the emphasis on the verification of authorised mark users. The producer groups that joined forces under the investigated marks appear to be fairly integrated, which would **facilitate keeping an overview of who has the right to use the mark**. This applies in particular in cases where the mark has a high market coverage; one of the examined marks covers for example 95% of the national market for the certified product.

The only exception is the Certified Asthma & Allergy-friendly mark, for which monitoring is handled by a dedicated department of the company owning the mark. **Monitoring is done only online and not offline**. The mark owner uses an IT tool to screen the use of the mark name online. When a reference is spotted, the monitoring team verifies that the product using the mark name is actually certified. This monitoring is operated on a constant basis.

National certification marks

Periodic monitoring is basically non-existent for both the Sami Duodji mark and the Azores handicraft mark. Although **physical labels** bearing the Sámi Duodji certification mark for attachment to products or similar are distributed with the unique licensee number

to prevent abuse, the system is not digitised and so the value of this system is diminished as the unique license numbers are kept in offline or physical files in the individual license offices. Therefore, any **monitoring regarding whether the producer is using the right label is difficult** without contacting the individual licensing offices on a case-by-case basis to check their records. The licensing offices are staffed by volunteers in some cases, on a part-time or casual basis which would make such checks very time-consuming. Monitoring is therefore limited to **offline monitoring and inspection at random**. In the case of the Bavarian mark, the public authority, who is also the manager of the mark, encourages participating producers to have interest and to flag non-compliant use of the mark. **Checks are carried out upon received complaint**, other than that there is no periodic monitoring of the market other than the annual self-assessment by producers.

The other three marks in this case study have stronger monitoring procedures. The Polish 'Made on Toruń' mark has the owner of the mark (the local Business Centre) continuously involved in **online monitoring the market**. A team of 12 people within the Centre constantly check whether companies are using the mark properly (e.g. logo on products and websites), whether or not their business has changed (e.g. in terms of profile), and whether they maintain the right standards and correspondingly high rankings. The team mainly refer to reviews and feedback available on social media and other **online services.** They also regularly monitor companies' websites and online shops. If the **online monitoring** does not prove to be effective in a specific situation or some issues have been noticed then **field monitoring takes place as well** (viewing shops, services) to ensure all requirements of the mark are met. For the cutlery of Albacete, the Consumer Directorate of the region of Castilla-La-Mancha carries out random inspections in the shops, reviewing the suppliers and the types of knives that are sold and imposing sanctions.

National sui generis GI protection of non-agricultural products

In almost all the considered cases the collected information reveals that there are **no formal monitoring activities in place**. These are left to the individual producers or producer groups who conduct them 'informally' by monitoring the internet, checking who is selling what etc…

The only exception that emerged from the analysis is Idrija Lace. In this case, the market is monitored by the Geographical Indication Committee of Idrijska Čipka. The use of the GI can also be controlled by the national trade inspection unit – independently or upon the demand of the Geographical Indication Committee and/or of a physical person who filed a report. In Italy, instead, random checks are carried out by the Tax Police ('Guardia di Finanza').

The general lack of regular monitoring makes it impossible to determine the frequency of those in place.

EU sui generis GI protection of agricultural, food and drink products

EU regulations indicate that Member States shall designate a competent authority for the surveillance of the use of names on the market. According to findings from product research, **public authorities and/or producer groups may be in charge of the monitoring of the GI names on the markets**.

National authorities are involved in the controls on the market for Pont-l'Evêque (INAO, DGCRF[48], producer group), Polish Vodka (AFQI), Vendace Puruvesi (Finnish Competition and Consumer Authority). Concerning Steirisches Kürbiskernöl and Turrón de Alicante, producer groups conduct the monitoring of the GI on the market. In this situation, public

[48] Direction générale de la Concurrence, de la Consommation et de la Répression des fraudes - French directorate general for competition

authorities can provide support during controls, as in the context of Steirisches Kürbiskernöl.

The most common monitoring tool is internet research. In practice, the monitoring is also conducted by producers themselves in the daily business: all stakeholders involved in a GI are careful on the use of the protected name on the market. Some service providers may monitor the use of some terms on the internet. This is not used by the GIs covered by this case study. The elements monitored are the use of the protected name, as well as evocation of the name, such as 'in the style of'.

GI and trade mark protection systems in non-EU countries

Responsibility for verifying compliant use of the mark/GI for non-EU products that are placed on the market varies considerably. Monitoring regulated by **national authorities/institutes or independent authorities, as well as self-regulation by either the producers or producer associations**, all take place. Concerning Thewa Art Work, it is the Rajsoni family themselves (the registered users of the GI) who **search for 'Thewa art work' online** and find that there are people trying to copy the genuine products. They have also identified artificial Thewa art in the **offline market.** For Swiss watches, no single designated entity is legally responsible for market monitoring. In practice though, the Federation of the Swiss watch industry has a designated unit in charge of market monitoring globally. At the other end of the spectrum, for the Mexican GTO Guanajuato Mark, it is the Mexican Institute of Normalisation and Certification who is in charge of the monitoring process. **Online tools are available** to assist them in this process.[49] Although not a national institute, ProCert Safety AG, an independent certification authority, has been appointed as the body responsible for verifying the manufacturing process of Grisons meat. All checks carried out by ProCert are done **in person, with no (semi)automated tools** being used during the monitoring process.

The monitoring mechanism for both of the Swiss products within the scope of this study is well defined. **Monitoring of the Grisons meat market is carried out by ProCert**, the independent certification authority. ProCert visits shops of certified producers and retailers of Grisons meat in Switzerland and France (since a small number of French retailers signed up to the 'Bündnerfleisch GGA' GI under Swiss law). The audit rhythm is every 2 years, with visits being announced. ProCert does not check if unrelated third parties (e.g. supermarkets) sell Bündnerfleisch without authorisation. Retailers that are not certified under the Bündnerfleisch GGA/PGI (and hence are not clients of ProCert) are controlled by the canton-level food inspectors in the process of unannounced, ad-hoc inspections, in line with general controls of retailers under the Hazard Analysis and Critical Control Point (HACCP) guidelines. **Monitoring of the Swiss watch market is carried out both online and offline through continuous, multi-stakeholder actions.** The Federation of the Swiss watch industry monitors markets globally through a decentralised network of public and private actors. Offline markets (shopping malls, the black-market) are occasionally scanned by members of the Federation network (overseas members, consular staff) and suspicious products are bought and shipped to the Federation laboratory in Switzerland to assess the authenticity of the product.

A.-2. Indicator – Number and type of infringements identified / year

EU collective marks

Most of the infringements detected on the market are related either to the unlicensed use of the mark (name and/or label) or to terms which refer to the mark (e.g. 'in the style of'). The stakeholders interviewed shared the same challenges: the **impossibility to protect**

[49] See: https://marcaguanajuato.mx/distintivo/acceso

the use of the geographical area from where the products are manufactured, the difficulties attached to the monitoring of production in non-domestic markets, and the lack of resources to monitor and endorse actions when necessary.

For **Ceramica de Manises and Bois des Alpes, only one violation is detected on average per year** in terms of products on the market that use the mark without being eligible. **This number rises to approximately three violations per year for Plauener Spitze, and five for Marmo Botticino Classico**. The most common kind of infringement concerning this latter mark is for the word "Botticino" to be used for other types of marble. Stakeholders interviewed for the purposes of this study remarked that there are also difficulties in registering the mark in certain non-EU countries. This occurs in China, for example, due to the similarity between the word "Botticino" and the already registered name "Btcino".

Belgian Linen sees a much higher number of infringements, in the region of 50 to 100 violations per year (most of which are found abroad). These mainly concern misleading labels and sentences, for example "Belgian flax" and "Belgian linen" when the flax is produced and woven elsewhere. Companies are reportedly much less responsive to subsequent enforcement actions when they are abroad, especially in the United States, not least due to the geographical limitation of the mark protection. Moreover, there is also a lack of follow-up monitoring once an infringing producer has promised to take their products off the market.

EU certification marks

Cases of misuse of the EU certification marks investigated for this study **are rarely detected, also because there are almost no systematic monitoring** activities by the owners of the marks. The only mark for which the owner reports regular (although rare) instances of major infringement is the QUL mark, where three issues that required taking legal action occurred in the last 3-5 years.

National certification marks

Overall, the monitoring that takes place is deemed to be quite effective for the marks and there is considered to be a **low number of infringements**. The Business Support Centre in Toruń reports that the monitoring system is made more effective due to their extensive knowledge about the local market as well as direct contacts with the local businesses. The general involvement of the Centre in promoting local business plays a great role as well (close liaison with entrepreneurs, knowledge, awareness). In the case of the Sami Duodji mark, stakeholders viewed the monitoring system as not really in existence; however, they also did not see a problem with products using the mark illegally. On the one hand this makes sense since they would only know illegal use if they were monitoring it, but on the other hand it is not really an effective gauge of the market.

National sui generis GI protection of non-agricultural products

The research has shown that the **cases of infringement are extremely rare**, close to zero. If we consider the example of the French GI Pierre de Bourgogne (Burgundy stone), about 100 procedures have been conducted since the registration under GI in 2018. These misuse of the term "Pierre de Bourgogne" were pre-existing the GI. Most of these misuses could be stopped with one or two registered letter. As the concept of GI is new in the stone sector, information on the concept of GI and on the possible sanctions is generally sufficient. To date, only one case may end up in court.

EU sui generis GI protection of agricultural, food and drink products

The following table provides details on the non-compliance. **The level of non-compliance is limited, a maximum of a dozen cases per year for each GI**. The most common

infringements are packaging and labelling issues and misuse of evocation of the protected name.

Table 11: Number of non-compliance and most common infringements

	Number of non-compliance each year	Most common infringement
Steirisches Kürbiskernöl (PGI)	No important case has ever been recorded in the history of the GI. Small procedural mistakes are detected rarely, with approximately 12 cases per year	Packaging and labelling issues
Pont-L'Evêque (PDO)	One case every year mainly in third countries: in Asia and South America	Misuse of the term "Pont-L'Evêque" or evocation of the PDO
Turrón de Alicante (PGI)	There are an average of 10 to 12 infringing cases per year that are identified on the online market and 3 to 4 on the traditional market.	Misuses of the name and/or the seal of approval
Puruveden Muikku (PGI)	No details	Misuse of the protected name
Polish Vodka (GI)	Non-compliance with this GI's requirements have not been identified within the last few years.	No details

GI and trade mark protection systems in non-EU countries

The two Swiss products within the scope of this study have a low rate of infringing products. **Over the last couple of years, the Federation of the Swiss watch industry is aware of around 50 cases annually involving the misuse of the Swiss watch GI**. The Federation made clear the need to differentiate infringements of the GI in Switzerland from infringements of the GI committed by non-Swiss manufacturers. Reportedly, some Swiss manufacturers may sometimes exhibit minor deviations from the criteria laid out in the ordinance, but in most cases these are honest mistakes committed due to lack of knowledge of the technicalities of the legal text. On the other hand, non-Swiss manufacturers reportedly are well aware that they are breaking the law by marketing a product as a Swiss watch when it has no possible claim to be such. **For Grisons meat, there have been no relevant infringements concerning the use of 'Bündnerfleisch GGA' detected until now.**

A.-3. Indicator – Opinion of stakeholders on the effectiveness of the monitoring

EU collective marks

Aside from Plauener Spitze, stakeholders considered that for the four other EU collective marks analysed in this study, monitoring procedures are only 'slightly effective'. They all face a lack of resources to properly conduct monitoring, particularly when external markets have to be monitored.

For Marmo Botticino Classico, it was reported that the main challenge associated with monitoring the market is the difficulty to systematise the monitoring process. This concerns technical difficulties (including human and economic resources, both for online research and obtaining information offline), the geographical distances involved, and the small size of the consortium. Stakeholders underlined that if the brand were really known, promoted and used by everyone, it would be easier to monitor the market. They reported the difficulties in systematically monitoring ex-ante the market, with costs outweighing the benefits of such an exercise. They also mentioned that it is very difficult to educate potential customers on the importance of the mark, which is a tool to protect both buyers and sellers.

Conversely, the monitoring system for Plauener Spitze was deemed to be 'extremely effective'. It was reported that **increased digitalisation and online sales represent an opportunity to better monitor products bearing the mark**, both at national and

international levels. However, stakeholders acknowledged the difficulties in monitoring offline sales, which still require monitoring controls to be performed on site.

EU certification marks

Most of the owners of the examined EU certification marks do not undertake systematic monitoring activities; it is therefore not possible to assess the effectiveness of the measures.

For the mark where systematic monitoring takes place, **the system is considered very effective**, as it enables them to detect misuse of the mark name. However, they also consider that the potential existence of infringing products is very negligible considering the size of the market of certified products.

National certification marks

Naturally, resources play a large role in how effectively the owners of the mark can monitor its use. **The case of Bavaria and Toruń therefore are the most effective since they have dedicated staff and regional administrative capacities**. One challenge associated with the monitoring system for the handicraft marks (Azores and Sami) is that, since little monitoring takes place, it is very difficult to get an accurate view on topics such as infringement or misuse of the mark, so these values are perhaps the least reliable.

National sui generis GI protection of non-agricultural products

In the majority of cases **the interviewees deem the monitoring system effective or very effective, with only few cases of non-compliance**. This is the case of Burgundy Stone and Vratsa Limestone. With regard to Ceramics from Faenza and Halas Lace, instead, the interviewed stakeholders were not able to provide a specific answer due to the lack of true regular monitoring activities. Finally, in the case of Idrija Lace, the Geographical Indication Committee considers that the monitoring system is only 'slightly effective', as the number of staff performing controls is very limited.

EU sui generis GI protection of agricultural, food and drink products

The monitoring systems are assessed to be effective in most cases. In the case of Polish Vodka, the interviewees reported that the organisation could be improved, the main challenges being online monitoring and monitoring on export markets.

Table 12: Assessment of effectiveness of monitoring and related challenges

	Effectiveness of the monitoring system
Steirisches Kürbiskernöl (PGI)	The system is considered very to extremely effective. Most people get caught, and there is a "word of mouth effect" that deters producers from using infringing or misleading labelling.
Pont-L'Evêque (PDO)	It is relatively effective for Pont-L'Evêque as there are limited misuses
Turrón de Alicante (PGI)	No data available
Puruveden Muikku (PGI)	No data available
Polish Vodka (GI)	Moderately effective The current system of monitoring the market usually proves to be effective especially within the country. This is mainly due to close cooperation between national institutions and the Polish Vodka Association. Producers (represented by the Association) are engaged in supporting national authorities in protecting the GI, which is bringing very positive results in terms of protection. It has been reported however that the system should be better organised in a more official and consistent way. Clear rules and responsibilities of parties involved are required.

Based on the 2021 evaluation of GIs and TSGs[50], the effectiveness of controls was assessed to be less effective on the market than at production stage.

GI and trade mark protection systems in non-EU countries

The monitoring system for the **GTO Guanajuato Mark** is generally perceived as effective, as there are very few cases of non-compliance identified. Moreover, **the benefits of the protection system** (giving registered companies business opportunities, promotion, and visibility on the market) **outweigh monitoring any costs involved**.

Concerning **Swiss watches**, there was unanimous opinion among interviewees that the monitoring system is 'very effective'. However, the Federation of the Swiss watch industry noted that although they are **very efficient in identifying cases, there are challenges when it comes to prosecution, particularly at the international level.**

For **Grisons meat**, the monitoring process was again deemed to be 'extremely effective'. The responsible monitoring body underlined that this is partly due to a general culture of compliance in Switzerland. When becoming a certified producer, ProCert sensitises the new client to the financial and reputational risks associated with non-compliant practices. Accordingly, this awareness raising, combined with the biannual controls, is sufficient for ensuring a high uniform of quality of final products, and for eliminating illegal offers and infringing products.

B. Judgement criterion – The sanctions regime in case of misuse of GIs/marks or fraud is effective

B.-1. Indicator – Description of the sanction regime in case of infringement or non-conformity on the market

EU collective marks

According to Article 80 and Article 25 (3)(4) of the EUTMR, the owner of the collective mark is entitled to engage legal actions for a compensation when a damage is observed through an unauthorised use of the collective mark. When an infringement is detected, the producer association owning the mark has several options available that can be progressively enforced:

- Informal request to the infringing producer or retailer to stop using the mark.
- Formal enforcement notice or 'cease and desist letter', informing the operator about the conflict. This option is used by all the producers' associations and solves most of the cases detected.
- Negotiation demand: if the fraudulent operator does not answer to the notice or letter, the association can ask for a negotiation.
- Civil law measures: If the attempts to warn or negotiate with the alleged infringer fails, other legal measures can be enforced, such as preliminary injunctions and precautionary seizures to prevent illegal use of the trade mark. Damages may also be claimed. In all cases, enforcement actions under civil law must be brought at national level in the relevant EU jurisdictions.
- Criminal law measures: enforcement actions under criminal law apply when counterfeiting and piracy activities are involved. This may lead to a prison sentence

[50] Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU - AND-I, Ecorys, COGEA for DG AGRI – 2020 - https://op.europa.eu/en/publication-detail/-/publication/c1d86ba1-7b09-11eb-9ac9-01aa75ed71a1/language-en

in case of illegal activity on a large commercial scale; in practice though, no such cases ever occurred for the examined marks.

EU certification marks

Like EU collective marks, **the EU certification mark** (as a trade mark-based protection system) must be privately enforced. The owner of the mark is therefore in the position to take legal action against any infringing producer or retailer, most commonly an injunction and/or damages. In practice, they would usually try first to solve the issue informally to avoid legal costs.

National certification marks

Although legal remedies exist for infringement or non-conformity, **owners of the mark take a less litigious, more informal and administrative, approach to enforcement**. For example, the Business Support Centre in Toruń is entitled to issue a formal enforcement notice once an unlawful use is confirmed. It would be normally preceded with a direct contact with the person or company responsible and negotiations. If the issue of unlawful use proves to be difficult to solve using these methods, the Centre could take the business owner to court. This however would be a last resort which in practice is not used. Sanctions depend on the gravity of the non-compliance and activities range from simple warning to the withdrawal of the right to use GI and withdrawal of all the products concerned from the market.

In the case of Albacete cutlery, infringements are mostly solved by asking the retailers to stop using the mark. Different kind of actions can be enforced according to the infringement gravity:

- Enforcement notice by official mail sent by the association with the review of their lawyer
- Notification to the Consumer direction of the region of Castilla-La-Mancha
- Legal action endorsed by the lawyer of the producer association

In terms of resolution most cases for the national marks are solved informally or via administrative 'cease and desist' style communications. The Bavaria case study noted that **cases are usually resolved in a few months, however if the non-compliant party continues to infringe enforcement through legal system can take upwards of 3 years**.

National sui generis GI protection of non-agricultural products

With regard to the enforcement and sanctioning options available in case of infringement/non-compliance, **the scenario is diverse**:

In the case of Ceramics from Faenza, the use of the marks 'Artistic and Traditional Ceramics' and 'Quality Ceramics' by a registered producer without the fulfilment of the law requirements concerning production standards is punished with a fine between 1000 and 25.000€ and, in case of reiterated infractions, with the cancellation from the register of producers. Furthermore, **the production of fakes is punished under the general provisions of law on counterfeiting**. In particular, the competent authorities can seize and destroy the fake goods, grant injunctions and impose fines. However, the cases of infringement are exceptionally low, almost non-existent. Finally, cases of ordinary trade mark infringement are litigated before the tribunal.

In the case of Burgundy Stone, infringing producers are immediately required to stop the non-compliance or misuse of the name. Depending on the infringement and the reaction of the producer to correct it, the sanction ranges from a warning to the exclusion from the use of the GI. As to the procedure, in case of identified misuse there is:

- A first letter from the producer group, providing information on the existence of a GI, what a GI is, what the sanctions are (up to EUR 300,000 fine) and providing evidence of the misuse (capture of website for instance). Finally, the letter urges the producer to comply within 30 days.
- After 30 days, a second letter is sent, stating that after this warning the case is going to be discussed in court.
- If the infringement persists, a formal notice from a lawyer is filed.
- Finally, if nothing has worked, proceedings are served in court.

Among 100 infringements identified, **in 90% of cases the issue was solved through the submission of registered letters by the producers' group**; about 10 situations were solved through the formal notice from a lawyer and only one infringement has led to a court case.

In the case of Vratsa Limestone, the following legal remedies are available: sending of a cease-and-desist letter; exercising of administrative penal liability by notifying the Patent Office of the Republic of Bulgaria with information about the infringement; Civil law defense by filing a claim at the Sofia City Court; Criminal law defense by notifying the prosecutor's office; Filing a claim under the Law on Protection of Competition to the Commission on Protection of Competition.

With regard to Halas Lace, the standard rules on IP infringement apply. In particular, in the case of imitation or copy, marketing and/or distribution of the product, the penalty is imprisonment for up to 2 years, 1 to 5 years if it is done on a commercial scale and, depending on the scale of the financial loss, up to 10 years. Moreover, fines can also be imposed on the basis of the value of the counterfeit products.

Finally, no significant information was retrievable about Idrija Lace as the cases of infringement are close to zero and almost all the controversial situations are settled informally and amicably.

GIs in general are at a disadvantage, compared to trade marks, regarding the use of protected names as internet domains. The Internet Corporation for Assigned Names and Numbers (ICANN) that manages internet domain names **does not recognise GIs as a valid intellectual property right**, unlike trade marks.[51] Therefore, it would in principle be possible to register a website like "pierredebourgogne.com" in the US or other jurisdictions. The issue is illustrated by the WIPO case *Champagne vs Steven Vickers*[52]. There is however no evidence regarding the magnitude of the problem for non-agricultural GIs.

EU sui generis GI protection of agricultural, food and drink products

In case of non-compliance with product requirements, several options are available depending on the product considered, from a non-formal notification to the removal of the authorisation to produce the GI. After a verification detects an infringement, **producers are allowed to correct the identified problem by providing corrective actions**, to be implemented within a set period.

Legal action against infringements on the market may be taken by producer groups or National Authorities in charge of managing the GI schemes. Any other entity or people that can demonstrate a legal interest can also take legal action to prevent the infringement observed. **Infringements are often resolved without taking formal actions**. In the situation of infringement on the production of Polish Vodka, usually all situations are solved

[51] AND-I, Ecorys, COGEA , 2021, Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU.

[52] OriGIn, 2016, Challenges for Geographical Indications in the context of the ICANN new generic Top-Level Domains, available at: https://www.dpf-law.com/wp-content/uploads/2014/03/GI_gTLDs_JAN2016_WEB_VERSION.pdf.

without taking formal action. Very few situations involved inspector's recommendations and appropriate corrective actions undertaken by the producer. The same situation is observed for Steirisches Kürbiskernöl, as in recent years, all cases could be addressed through amicable (extra-judicial) agreements. Concerning Turron de Alicante, most infringements can be sold with a warning and an injunction to remove the infringing products. For Pont-L'Evêque, any infringement correction procedure starts with an official registered letter send to the producer.

Most of the time, formal sanctions against unlawful use of the GI lead to **an enforcement notice, a marketing ban, destruction of the infringing products at the expense of the holder, and fines**.

The issue with internet domain names presented above for national GI systems also applies to GIs under the EU protection system.

GI and trade mark protection systems in non-EU countries

For the non-EU products, a range of formal sanctions are available, encompassing both civil and criminal procedures. **Falsification of an Indian geographical indication shall be punishable with imprisonment for a term of not less than six months, and not more than three years, with a fine of between 50,000 and 200,000 rupees (around EUR 580 to EUR 2330).** The same sanctions are applicable to sellers of goods to which false GIs are applied, unless the seller can prove that they had no reason to suspect the genuineness of the geographical indication, or that on the prosecutor's demand they gave all the information in their power with respect to the person from whom they obtained such goods, or that they had otherwise acted innocently. It is for the registered proprietor or authorised users of a registered geographical indication to initiate an infringement action before a court.

For unauthorised uses of the GTO Guanajuato Mark, the offending company is first invited to remove the logo/information about the mark from its products, services, documents, communication material, uniforms, etc. **Where necessary, a formal and legal demand is sent by the Government of Guanajuato to a producer in order to enforce this**. As a last resort, the Government, as owner of the trade mark, reserves the right to enforce a judicial procedure. It was reported that in almost all cases, infringements of the GTO Guanajuato Mark can be solved without needing to resort to formal action.

In terms of sanctions available for **infringements of the Swiss watches GI, Swiss courts provide a wide range of formal sanctions, ranging from provisional measures and injunctions** (civil procedures) to **confiscation and destruction of infringing products** (criminal procedures). In very few and severe cases, perpetrators can receive prison sentences. However, the Federation of the Swiss watch industry reported that 60% of cases can be solved without having to resort to court procedures.

B.-2. Indicator – Opinion of stakeholders on the effectiveness of the enforcement and sanctioning

EU collective marks

The perceived effectiveness of enforcement and sanctioning varies significantly between the five EU collective marks within this study's scope. While enforcement actions for Plauener Spitze are considered to be 'very effective', they are seen as 'moderately effective' for Ceramica de Manises and Marmo Botticino Classicom, and only 'slightly effective' for Belgian Linen. This is due to the relatively high number of infringing products found on the market, particularly the international market, and the difficulty in ensuring that enforcement actions are complied with.

EU certification marks

Overall, enforcement of the mark and sanctioning does not play a large role in the case of the marks that were investigated for this study. **Taking legal action against infringements of using the mark on the market are in principle considered effective to remove the infringing product from the market**; however, in practice the mark owners prefer informal solutions to avoid legal costs and lengthy legal procedures.

National certification marks

Overall, **the fact that almost all cases of infringement are solved informally or without legal action shows that the enforcement and sanctioning is effective**. Where stakeholders did not see enforcement and sanctioning as effective is around imitating marks. These marks seek to replicate the sense of quality and trust created by the official marks, but actually do not indicate any protection system. This was considered by stakeholder to be the most common activity which threatens the Albacete cutlery and Sami Duodji marks, although it is not technically an infringement

The analysis of the effectiveness of the enforcement mechanisms has shown a diverse scenario:

- In the case of Burgundy Stone, the system is considered very efficient.
- In the case of Idrija Lace, the system is considered only slightly effective because the controls are few and there is not enough trained personnel to perform the controls.

In the cases of Ceramics of Faenza and Vratsa Limestone, **the number of infringements is extremely low** and this does not make it possible to provide a true assessment of the effectiveness and cost efficiency of the system.

National sui generis GI protection of non-agricultural products

The only GI which is regularly enforced is Burgundy Stone. **The enforcement system in place is considered very effective** with 90% of positive results in case of misuse identified.

For Faenza Ceramics, **enforcement is generally considered not necessary**, as there are no infringements, and those that exists are not considered a threat to the authentic products. For the other GIs, there is no real enforcement so it is not possible to evaluate the effectiveness of the enforcement system.

EU sui generis GI protection of agricultural, food and drink products

The sanctioning and enforcement system is assessed to be very effective for Steirisches Kürbiskernöl, Pont-l'Evêque and Polish Vodka. There are limited infringements and the legal framework in place allows quick actions when infringements are identified. For Steirisches Kürbiskernöl, there were some non-authentic products on the market in 2011 (in the value of about EUR 200 000), but as of 2020 this has become very limited. For Pont-L'Evêque, some cases are identified in France or on the export market (about one case per year).

For Puruveden Muikku, there are several misuses of names identified and no actions implemented. **Thus, the system is not considered effective** by the producer interviewed. There is no structured producer group for this GI.

GI and trade mark protection systems in non-EU countries

In Mexico, the sanctioning and enforcement system is perceived as efficient and effective by the Government of Guanajuato, as there are few cases of non-compliance. Where infringements of the GTO Guanajuato mark are identified, almost all of them are

solved without the need for a judicial procedure (a simple injunction to remove the unauthorised logo is enough).

For Grisons meat, all stakeholders considered the sanctioning and enforcement system to be either 'very' or 'extremely effective'. Given that the market for Grisons meat is small and relatively bespoke, illegal offers and infringing products would easily be detected by consumers and the wider producers' network. Moreover, for the vast majority of producers, enforcement means small adjustments of the manufacturing process following notification of the ProCert auditor. In almost all cases, these notifications are issued by the auditor directly after the biannual verification visits. The process is reportedly transparent, fair and pragmatic.

Overall efficiency of the sanctioning system for Swiss watches needs to be considered nationally and internationally. Within Switzerland, the system is seen to work very effectively, and courts (especially those in larger cities) are familiar with intellectual property cases. There is also a high deterrence effect, as manufacturers and retailers are aware of the effectiveness and severity of the sanctioning and enforcement system. However, **enforcement at an international level is not really effective** given that there is no global harmonisation of protection schemes for GIs. The Swiss Federal Institute of Intellectual Property has over 500 ongoing court cases in India related to the GI "Swissness", with none of them having been successfully finalised so far.

3.2. Cost-effectiveness

3.2.1. Background and methodological approach

The evaluation of efficiency considers the relationship between the resources used for an intervention and the changes generated[53]. The methodological approach to analyse the cost-effectiveness of the different systems is based on two tasks:

- Mapping of costs,
- Cost-effectiveness analysis.

Mapping of costs

This task aims to identify direct and indirect and enforcement costs borne by stakeholders for each protection system. The analysis of costs mainly relies on the compilation of data collected during the case studies and the electronic survey. The analysis aims to provide a global picture of direct, indirect and enforcement costs incurred by the different protection systems.

- Direct costs:
  - **regulatory charges:** include fees, levies, taxes, etc., either paid by producers or owner of the mark to public authorities and professional bodies. This includes the costs related for producers to obtain the right to use the GI or mark.
  - **substantive compliance costs:** it encompasses control and verification costs at production/manufacturing stage as well as investments and expenses that are faced by operators in order to comply with the scheme obligations.
- **Enforcement costs:** these are the costs associated with activities linked to the implementation of an initiative such as the monitoring of the products on the market, enforcement and sanction activities. Regarding the variability of the organisation of the scheme, these costs are often difficult to establish, or to segregate from other activities performed by the operators interviewed.

Indirect costs are complicated to determine from the information gathered in the case studies. These costs are integrated in the other costs, as well as administrative burden expenses. Specific analysis is provided on **cost incurred by public authorities** for the different protection systems.

Cost-effectiveness analysis

The cost-effectiveness analysis aims to compare the costs incurred by producers, associations and authorities imposed by the protection systems with the benefits provided by these systems. Its aims to quantify the benefits provided by the different systems of protection with the costs identified previously. The identification of benefits relies on the analysis of effectiveness performed in Section 3.1.

[53] Better Regulation Toolbox - https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-47_en_0.pdf

The analysis matrix for cost-effectiveness is developed in the following table:

Table 13: Matrix for the analysis of cost-effectiveness

Sub question	Judgement criteria	Indicators
To what extent are the costs incurred by operators justified by the benefits provided by the different schemes?	The costs of verification, monitoring and enforcement supported by operators are justified regarding the benefits provided by the schemes.	- Mapping of costs
		- Identification and qualitative assessment of the benefits of the different schemes for applicants
		- Qualitative assessment of the cost-benefit balance

3.2.2. Analysis of the cost-effectiveness

Main findings

From a general perspective, **costs are considered low to medium for each protection system**. They are not assessed to be disproportionate for any of the systems. The level of costs for producers highly depends on the procedures implemented for verification. While there is no verification for some schemes (with no related costs) it may reach EUR 20,000 for large-scale companies involved in certification marks with complex verifications (annual costs). For GIs, it may range from a few hundred to a few thousand euro per year depending on the size of the company.

For public bodies, the level of costs depends on the type of scrutiny of the application. For national trade marks, the costs for a legal analysis are worth a few hundred euros per application. This reaches EUR 4,300 to EUR 10,700 for the national non-agricultural GI scheme in France or EUR 33,500 for agri-food and drinks GIs for the European Commission (costs for each application). For stakeholders (producers and producer groups), there may be important costs to draft the GI application (details on the link to the geographical area, definition of the specification etc.).

Costs tend to be higher for certification marks (with verification procedures) and GIs (verification procedures and detailed scrutiny of the application) compared to the other schemes.

In terms of effectiveness, a technical assessment of the application may be conducted for GIs only. For trade marks, the application assessment only covers legal aspects. In terms of verification, the most effective systems are the one with specific procedures detailed (in particular EU certification marks, EU GIs and some national GI schemes). Monitoring activities are considered effective even if limited means may be allocated to these actions by stakeholders. Sanctioning regimes are assessed to be effective, however, their geographical scope is variable (national, EU, third countries).

3.2.2.1. Sub-question – Assessment of costs and benefits: to what extent are the costs incurred by operators justified by the benefits provided by the different schemes?

This section includes a detailed evaluation of each indicator for each protection system according to the structure presented below:

A. Judgement criterion – The costs supported by applicants are justified regarding the benefits provided by the schemes

A.-1. Indicator – Mapping of costs

The analysis provides qualitative information on the structure of costs for each type of protection system. Due to the high variability of situations observed and the size of the sample, no systematic structure of costs could be drawn from case studies.

In more detail, this covers:

- Direct costs:
  - Registration costs
  - Costs related to the right to use the mark
  - Substantive compliance costs (including verification costs)
- Enforcement costs: expenses related to monitoring of the product on the market, enforcement and sanctioning actions.

The main findings are summarised below:

- Direct costs:
  - **Registration costs (for producer associations):** they are free for a few schemes (agri-food and drinks GIs at EU level, and some non-agricultural GIs at national level), cost a few dozens or hundreds of euros in other cases (national certification marks, some non-EU GIs), a maximum a few hundred euros in several cases (national certification marks, agri-food and drinks GIs in some Member States).The highest costs stand for EU collective and certification marks: EUR 1,500 to EUR 1,800. Registration costs are paid once. The preparation of the application asks for some resources to stakeholders, but these are very difficult to assess and are very variable: it depends on the number of producers, their background in terms of cooperation, the complexity of the application and the length of the procedure. For agricultural, food and drinks GIs, procedures generally last a few years, for non-agricultural GIs, based on the French example, it may last from a minimum of 6 months up to a few years.
  - **Costs related to the right to use the mark (for producers)**: there is a high variability, from free up to EUR 20,000 (depending on the organisation, it may be paid once or annually). The fees may be calculated on the volume sold under

the protection system or on the turnover of the company. In addition to registration costs, some marks also have fees for **physical labels or stickers.** Under the national certification mark model, the Sami Handicraft mark owner, the Saami Council, bears all the costs of the physical labels and provides them to authorised providers free of charge. When the mark was established in the 1980s, the costs were around 16 cents per label. By contrast, for Re Panettone, the cost of 1 stamp is 0.49 cents + VAT up to 3,000 stamps per year, then 0.39 + VAT 3001-5,000 per year then 0.29 + VAT from stamp no. 5,000 upwards per year. In terms of the burden of this system on producers, testimony gathered on the Mexico GTO Guanajuato Mark indicates that the costs of stamps or marks are only slightly burdensome for the producers. No incidences of QR codes or other electronic stamps were encountered during this study.

- **Substantive compliance costs (including verification costs) (for producers)**: they range from a few hundred euros (for farmers in GIs) to up to a few thousands in most cases. For certification marks, these costs may reach EUR 20,000 / year for a single company when verification systems are complex for large-scale companies. For GIs in the agri-food and drinks sector, substantive compliance costs may cover extensive production methods (lower agricultural yield for instance) or required investment to comply with the specifications, this may lead to higher costs of production. These higher production costs may be counterbalanced by higher sales prices and higher revenue. The economic impact of these extensive production methods and higher prices are complex to analyse and very different results may be found for each value chain. In addition, background information would be needed to analyse the results correctly (structure of the value chain, markets, competition, consumer demand, territorial aspects, etc). Thus, these substantive compliance costs cannot be properly assessed in the context of this study.
  Administrative costs (included in substantive compliance costs) are variable and difficult to assess. These costs depend on the organisation of the stakeholders (for instance: the extent to which IT tools are used or pre-existing traceability systems are in place) and on the procedures implemented (type of controls, implementation of reporting, frequency of reporting). The establishment of traceability systems asks for some resources, this is very variable if the value chain is composed of a couple of small-scale producers (a simple traceability system may be elaborated in order to track the origin of the products and the volume of raw material and production) or if this covers a large number of companies with different sizes. Larger companies may already have a traceability system, which needs to be adapted to the GI requirements (costs are limited if there is only a need to adapt an existing system). Verification on production sites generally last from a couple of hours up to half-day (this duration may be longer in case of complex verifications or large-scale production sites). Controls may be prepared, meaning that all relevant information must be available, this may not ask specific time if an effective traceability system is in place. Results from verification may be centralised at producer group level (if there is a producer group) and, in some cases, a synthesis of the results may be reported to the national authorities. This centralisation and reporting may ask a few hours or working days per year (the duration depends on the number of producers, the frequency of controls and the content of the reporting).

- **Enforcement costs**: Limited information is available on the costs related to enforcement (monitoring, enforcement and sanctioning). This highly depends on the objectives pursued by the value chain (to what extent infringement of intellectual property rights is an issue and budgets are allocated to this aspect). Indeed, in some cases, the protection system may be used as a promotion tool more than an IP tool.

Thus, when there is no action related to the protection of IP rights, enforcement costs are zero. When actions are limited to the drafting of registered letters, with a possible support from a lawyer, the costs are about a few thousand euros / year. In case of court cases, the cost may reach EUR 2,500 to EUR 3,000 or up to EUR 30,000 in case of very long and complex procedures.

- **Public authorities**: partial data have been provided on the costs by public authorities. For trade marks, the registration costs by public authorities are limited: EUR 128 for Spanish authorities. For GIs, the registration costs are estimated at EUR 33,500 by the European Commission (agri-food and drinks) and EUR 4,300 to EUR 10,700 for non-agricultural GIs in France. The higher costs for GIs compared to trade mark are related to the time needed to assess the link to the territory, the content of the specification and the implementation of legal procedures (for instance public consultation).

The next four tables provide details on costs for each protection system:

- General overview,
- Direct costs – regulatory charges,
- Direct costs – substantive compliance costs,
- Enforcement costs.

Table 14: General overview of the mapping of costs

			EU collective mark	EU certification mark	National certification mark	National non-agricultural GI	EU GI protection for agricultural, food and drink products	Non-EU GIs
Direct costs	Regulatory charges	Registration costs (one-off)	From EUR 1,500 to 1,800 for a registration and from EUR 850 to 1,000 for a renewal		From EUR 97 to EUR 300	From EUR 0 to a few hundred euros	No costs at EU level (there may be some cost at MS level: EUR 605 in Austria for instance)	From free up to EUR 58 (India)
		Costs related to the right to use the mark (generally annual)	From EUR 100 to EUR 4,000	From about EUR 1,000 to EUR 10,000	From free up to EUR 1,100	From free or about EUR 100, up to EUR 6,000 for larger companies in one GI	From free to few thousand EUR	From free to few thousand EUR
	Substantive compliance costs (annual)		Generally a few hundred euros / year, up to a few thousands	Generally from EUR 10,000 up to EUR 20,000 for each company	From 0 EUR (no verification) up to EUR 20,000	From EUR 0 up to EUR 700 / year	From a few hundred euros for farmers to a few thousand euros for processors	EUR 905 for one product, no data or negligible costs for others
Enforcement costs	Monitoring of the market		Very limited	Very limited	No information	Very limited	No information	No detailed information, limited costs; included in verification procedure for one GI
	Enforcement and sanctioning		Limited	Rarely occurs, several thousand of euros for legal action	No specific costs	For one GI: a few euros for notification letter, a few hundred euros for a letter written by a lawyer, up to EUR 2,500 to EUR 5,000 for a court trial (even higher for long and complex court trial)	From EUR 3,000 up to EUR 3,600 (no court costs, based on two PDOs)	No general assessment; from EUR 7,000 to 18,000 for court cases for one product
	Public authorities		Few hours per application	Few hours per application	Spanish case: estimated at EUR 128 for a new registration French case: data to be provided	French case: 1.5 FTE to manage the scheme in national authority (EUR 93,000) 21-52 working days needed for a new GI (EUR 4,300 to EUR 10,700)	The costs of public authorities (EC and MS) are estimated at EUR 93 million, accounting for 0.12% of total sales value under GI/TSG The costs for a new application for EC are at EUR 33,500	No data available

Table 15: Matrix of direct costs – regulatory charges from case studies

		EU collective mark	EU certification mark	National certification mark	National non-agricultural GI	EU GI protection for agricultural, food and drink products	Non-EU GIs
Registration costs (to public authorities) Paid once (renewal every 10 years for EU collective and certification marks)	Types of costs	Registration fee Renewal fee	Registration fee Renewal fee	Registration fees	Registration fee	Registration costs to National Authority	Registration of the GI
	Who support the costs	Producer association	Producer association	Producers	Producer association	Producers or producer groups	Producers
	Who receives the payments	EUIPO	EUIPO	National Authority	National Organisation in charge of intellectual property	National authority in charge of GIs	When relevant, National Authority in charge of patents, and trade marks
	Range of costs	EUR 1,500 or 1,800 for registration EUR 850 or 1,000 for renewal		Depend on country: From EUR 97 (PL) up to EUR 300 (ES)	Limited: from 0 EUR up to hundreds of euros	No costs at EU level (there may be some cost at MS level: EUR 605 in Austria for instance)	From free up to EUR 58 (India)
Costs related to the right to use the mark (to professional or public bodies) Generally paid every year	Types of costs	Fixed fee for members Fixed fee + variable fee based on turnover for non-members	Certification costs (including testing costs)	Free, or variable fee depending on the mark	Free or membership fees	Membership fees to producer group	Often non-compulsory membership fees
	Who support the costs	Producers	Producers	Producers	Producers, when applicable	Producers	Producers
	Who receives the payments	Producer association/ owner of the mark	Producer association/ owner of the mark	Owner of the mark	Producer association, when applicable	Producer groups	Producer association
	Range of cost	From 100 EUR to 4,000 EUR	From about EUR 1,000 to EUR 10,000	Depending on the country, from free up to EUR 1,100	From free or about EUR 100, up to EUR 6,000 for largest companies in one GI	From free to few thousands EUR	From free to few thousands EUR

Table 16: Matrix of direct costs – substantive compliance costs from case studies

		EU collective mark	EU certification mark	National certification mark	National non-agricultural GI	EU GI protection for agricultural, food and drink products	Non-EU GIs
Verification process of the production / manufacturing process	Who support the costs	Producers	Producers	Owner of the mark, delegated control body or producer	Producers, when relevant	Producer groups, producers, or NA (validating control plans)	Producer association (through membership fees), or producers
	Who receives the payments	Producers' associations	Owner of the mark	not relevant	Verifying body, when relevant	Producer groups or external control bodies	External verifying bodies, or producer association
	Range of cost	A few hundred euros / year, up to a few thousands	From EUR 10,000 up to EUR 20,000 for each company	From 0 EUR (no verification) up to EUR 20,000	From EUR 0 up to EUR 700/year	From a few hundred euros for farmers / year to a few thousand euros for processors	EUR 905 for one product, no data or negligible costs for others

Table 17: Matrix of enforcement costs from case studies

		EU collective mark	EU certification mark	National certification mark	National non-agricultural GI	EU GI protection for agricultural, food and drink products	Non-EU GIs
Monitoring of the market	Who support the costs	Producers and producer association	Rarely, owner of the mark	Owner of the mark, delegated public departments, or producer	No information	Public authorities, and/or producer's groups	Varies depending on the products/country
	Who receive the payments	No information	Not relevant	No information	No information	Not relevant	Variable
	Range of cost	No detailed information, limited costs	No detailed information, limited costs	No detailed information, limited costs	No detailed information, limited costs	No detailed information, limited costs	No detailed information, limited costs Included in verification procedure for one GI
Enforcement and sanctioning	Range of cost	No detailed information, limited costs	Rarely occurs, several thousand euros of legal action	No specific costs	For one GI: a few euros for notification letter, a few hundred euros for a letter written by a lawyer, up to EUR 2,500 to EUR 5,000 for a court trial (even higher for long and complex court trial)	From EUR 3,000 up to EUR 3,600 (no court costs, based on two PDOs)	No general assessment From EUR 7,230 to 18,070 for court cases for one product

Source: Case studies and country research

EU collective marks

The case study covers the following collective marks:

- Belgian Linen (BE)
- Plauen Lace (DE)
- Ceramics from Manises (ES)
- Marmo Botticino Classico (IT)
- Wood from the Alps (FR)

Direct costs – registration costs

The EU collective mark scheme imposes costs of registration and renewal set at EU level, ranging from EUR 1,500 to 1,800 for a registration and from EUR 850 to 1,000 for a renewal. Registration must be renewed every 10 years. Some time is needed to fill in the application form, however, no data are available on this aspect.

Direct costs – Costs related to the right to use the mark

The calculation differs for each collective mark, there may be a fixed fee and an additional fee based on the volume certified or the turnover of the company. Based on the case study, the minimum fee observed is for Plauen Lace (EUR 100 for small companies) and the maximum is EUR 4,000 for largest companies involved in Belgian Linen.

Costs related to the authorisation to use the mark vary:

- Marmo Botticino Classico (IT): fixed fee up to EUR 200 EUR / year + 0,025 EUR / quintal of marble;
- Plauen Lace (DE): from EUR 100 to EUR 2,000 / year;
- Ceramics from Manises (ES): EUR 300 or EUR 642 depending on the size of the company;
- Wood from the Alps (FR): EUR 300 / year + 0.0053% of total turnover for small and medium companies; EUR 1,300 / year + 0,002% of total turnover.
- Belgian Linen (BE): maximum EUR 4,000 / year (depending on the turnover).

Direct costs – Substantive compliance costs (including verification)

Verification aims to ensure that the products benefiting from the collective mark comply with the standards set by the owner of the mark.

Overall, costs related to the verification costs (controls at production stage) are in the same range as for the right to use the mark (from a few hundred to a few thousand euros). The information was available for three marks:

- Wood from the Alps: 2 working days / year (a few hundred euros),
- Plauen Lace: about EUR 300 / year,
- Marmo Botticino Classico: EUR 2,000 / year.

There are some administrative costs, in particular in relation to verifications: establishment of a traceability system, preparation of the verification and reporting of the results to the producer group and, in some cases, to the public authorities. The related costs are variable and depends on the organisation of each stakeholder and the procedures established.

Enforcement and sanctioning costs

There is no quantitative assessment on the costs for monitoring the market, as there is often limited or inexistent monitoring of the market.

Enforcement and sanctioning costs are also considered very low.

Costs for public authorities

EUIPO provided some data on the resources allocated for the registration and management of EU certification and collective marks for the period 2018-2020. The average number of full-time equivalent (FTE) is 0,37 FTE / year (0,2 FTE for certification marks and 0,17 FTE for collective marks). Based on the annual number of hours this makes a total of 728 hours.

There is an average of 193 trade mark applications and 94 trade marks registered each year. Thus, the average time would be 3,8 hours / application and 7,7 hours / registration. The costs of each FTE were EUR 122,897 in 2020.

EU certification marks

The case study covers the following certification marks:

- RAL Quality Mark Candles (DE): The candle market in the EU is about 400-500 million euro per year (in factory prices; sales are from producers to retailers). Of this, an estimated 50%-60% are RAL quality candles.
- QUL (Quality Association for Environmentally Compatible Latex Mattresses): there is no detailed data on the sales value under the mark. The members of the association are mattress manufacturers and suppliers of materials (17 companies from Germany, Austria, Belgium and the Netherlands.
- Quality Association for Rigid Polyurethane Foam (ÜGPU): the market size is estimated at 500 million euro per year (in Germany), of which at least 95% are certified with the quality mark.
- Re Panettone certification (IT): the sales under the certification mark were about EUR 217 million in 2019, 13 producers are certified to use the mark.

Direct costs – registration costs

Registration costs for certification marks are similar for EU collective marks: from EUR 1,500 to 1,800 for a registration and from EUR 850 to 1,000 for a renewal.

Direct costs – Costs related to the right to use the mark

Fees paid to the owner of the mark depend on each certification mark, and some specific rules may be defined (based on the sales under the mark or the turnover of the company):

- RAL Quality Mark Candles: from EUR 1,000 to EUR 10,000 / year
- ÜGPU Certified PU mark: EUR 2,400 / year for another
- QUL mark: EUR 10,000 for the first year + EUR 1,650 / year
- Re Panettone mark: EUR 990 for the first year + EUR 400 / year + 0.29-0.49 for each stamp.

Direct costs – Substantive compliance costs (including verification)

According to operators interviewed in the context of case studies, certification costs are significant but limited in comparison with the potential access to the market covered by the certification mark. The annual costs range from EUR 10,000 to EUR 20,000 for each

company (information on QUL and Re Panettone). These high costs are related to complex and technical verification for large-scale companies (chemical verification for instance). It covers all the verification tests on the products before receiving the authorisation to use the certification mark. The most important expenses are linked to the testing by independent testing bodies.

There are some administrative costs, in particular in relation to verifications: establishment of a traceability system, preparation of the verification and reporting of the results to the producer group and, in some cases, to the public authorities. The related costs are variable and depend on the organisation of each stakeholder and the procedures established.

Enforcement and sanctioning costs

As for EU collective marks, **activities to monitor the market** are quite limited, inducing limited costs for such activity. **Enforcement and sanctioning costs** tend to follow the same trend.

Costs for public authorities

See details provided by EUIPO for EU collective marks.

National certification marks

The case studies covered the following national certification marks:

- Made in Toruń (PL): about 150 manufacturers and service providers are involved, no detail on the sales value is available.
- Artesanato dos Açores (Handicraft from the Azores, PT): it covers 16 types of products and is used by about 100 producers, no detail on the sales value is available.
- Sámi Duodji (Sami Handicraft, FI): it covers traditional handicraft, no detail on the sales value is available.
- Albacete Cutlery (ES): this is the main area of production for knives in Spain, there are no details on the sales value under the mark.
- Certified Quality Bavaria (DE): it covers agricultural products and foodstuffs, produced by farms or processing companies. There are no details on the sales value under the mark.

Direct costs – registration costs

Registration costs for national certification marks are borne by producers once to the National Authority in charge of the management of the scheme. Registration costs are limited: from EUR 97 to EUR 300 in the Member State covered by the case study. No detailed information is available on administrative costs.

Direct costs – Costs related to the right to use the mark

The right to use the mark is paid to the organisation owning the mark. The fees are low: from free up to EUR 1,100 / year.

Direct costs – Substantive compliance costs (including verification)

Verification costs vary significantly depending on the products considered. As for some products, no verification of the process is carried out (Made in Torun), there are no expenses. Some verifications are implemented for other marks but the costs could not be estimated (limited costs). However, for the Bavarian Quality mark, a maximum expense for such task is estimated at EUR 20,000.

There are some administrative costs, in particular in relation to verifications: establishment of a traceability system, preparation of the verification and reporting of the results to the producer group and, in some cases, to the public authorities. The related costs are variable and depend on the organisation of each stakeholder and the procedures established.

Enforcement and sanctioning costs

There is no information available to assess the costs of monitoring the market, for which responsibility lies on different operators depending on the country considered. For instance, concerning the mark 'Made in Torun', 12 members of the Business Support Center of the city of Torun may carry out such tasks of monitoring. In Sweden, the Swedish Patent Office can provide a consultancy monitoring service to mark owners. Prices for such service are variable and borne by owners of certification marks.

In addition, case study findings underline that enforcement and sanctioning costs remain very limited, and even null for some products that have not been involved in any formal enforcement, so no formal costs were paid.

Costs for public authorities

Cost for public authorities have been provided in two MS:

- Spain: based on OEPM data, it is assessed that the costs of registration of each mark is EUR 128. There have been 18 marks registered in 2019 (EUR 2,304), 23 in 2020 (EUR 2,944) and 13 until early June 2021 (EUR 1,664).
- France: based on INPI data, the costs of registration of each national certification mark ("marque de garantie" or "marque collective") is estimated to reach EUR 230 (6 working hours)[54]. This covers the legal expertise of the application.

National sui generis GI protection of non-agricultural products

This case study covers:

- Pierre de Bourgogne (Burgundy stone, FR): total sales value is around EUR 50 million for 52,000 m^3.
- Ceramics from Faenza (IT): There are approximately 40 workshops, usually family-driven. Most of them have 3-5 employees, the largest around 10.
- Vratsa Limestone (BG): 2 producers are involved in the GI (out of 10-20 producers in the area).
- Idrija Lace (SI): There is no exact data on the market size of the GI. However, it is considered very limited in comparison with non-GI lace production sold in the country.
- Halas Lace (HU): this covers a handmade product, there are 11 producers. No detailed data on the sales value.

Direct costs – registration costs

Concerning regulatory charges, national GI protection of non-agricultural products implies limited registration costs (from EUR 0 for Halas Lace or Vratsa Limestone, up to EUR 350 for Pierre de Bourgogne (paid by the producer group). These costs are addressed to the national authority in charge of intellectual property in the country considered.

[54] INPI assessed that 6 hours are needed for each registration, the costs are estimated based on EUROSTAT data on French wages and on the annual working time in France: 1,607 hours.

For stakeholders, there may be important costs to draft the GI application (details on the link to the geographical area, definition of the specification etc.). **There is a high variability of costs to draft the GI application**. This variability is related to:

- **The number of stakeholders involved:** the time needed for coordination may be low if the number of producers is low (for instance less than 5 producers) and may be very high if several hundred producers are involved. In case of a large number of producers, some external support may be needed for coordination (consultancy) or the recruitment of dedicated staff.
- **The existence of other GIs** which may have paved the way and share their experience to decrease length of other applications.
- **The level of detail asked for the application**: to what extent some technical expertise (possibly external technical expertise) is needed to assess the link to the geographical areas.
- **The historical background of the producers involved**: do they already use a common quality standard that they may use as a basis for the GI specification (this may allow to decrease the delay to draft the specification and thus the costs) or are there disputes between stakeholders on the specifications (for instance on the definition of the geographical area). Any dispute may increase the delays, the time needed for coordination and thus the costs.

In addition, we shall consider that these costs are very difficult to assess from a methodological point of view (record of time for all people involved during several years in the producer groups and in the companies, travel fees for meetings etc.), and it may be difficult to have this information for GIs registered several years ago if people do not work anymore in the GI.

At a minimum, we consider that a few tens of working days are needed (coordination of stakeholders, drafting the specification, answer to public authority after scrutiny etc.).

Direct costs – Costs related to the right to use the GI

Costs for producers to be authorised to use the protection system vary considerably depending on the product concerned. Fees are either punctual or annual. For instance, it is free for Idrija Lace, EUR 100 for Ceramics from Faenza (paid once), EUR 138 for Vratsa Limestone and up to EUR 6,000 per year for Pierre de Bourgogne (this is the maximum, for largest companies).

Direct costs – Substantive compliance costs (including verification)

Among the products covered by the case study, regular verifications are implemented in France only:

- For Burgundy stone (France), it is estimated at EUR 500 / control (costs for the control implemented every year or every 3 years depending on the activity), in addition to EUR 400 every 2 years for mechanical tests. This range of costs is confirmed by the results from the electronic survey implemented in the context of this study with verification costs between EUR 500 and EUR 720 per year.
- For Ceramics from Faenza, there is no detailed frequency of control defined, the costs of control are not known but assessed to be limited.
- For Halas Lace, there is an internal procedure of control with checks every month by members of the committee, there is no assessment of costs available.
- For Idrija Lace, verification is only conducted when the producer enters the scheme, thus, costs are very limited.

- For Vratsa Limestone, verification is conducted only when an infringement has been identified by the Patent Office, there is no assessment of costs.

There are some administrative costs, in particular in relation to verifications: establishment of a traceability system, preparation of the verification and reporting of the results to the producer group and, in some cases, to the public authorities. The related costs are variable and depend on the organisation of each stakeholder and the procedures established.

Enforcement and sanctioning costs

There is no quantitative assessment on the costs related to monitoring the products on the market and to enforcement and sanctioning actions.

As a general statement, costs for the implementation and control of national GI protection of non-agricultural products are considered low.

Costs for public authorities

The French authority in charge of non-agri GIs (*Institut National de la Propriété Intellectuelle*, INPI) provided information. INPI estimates that a maximum of 1.5 full-time equivalent is in charge of the management of GIs at INPI: 1 full-time equivalent (FTE) is for one person full-time in charge of GIs and 0.5 FTE stands for other people involved: the patent department in case specific techniques are used for the GI, local staff from INPI for communication actions and contact point with stakeholders, litigation procedures when some application are accepted or rejected. No detailed data on the costs per FTE has been provided by INPI. Based on EUROSTAT[55], the cost for one FTE in France is EUR 61,833, thus the cost for 1.5 FTE is estimate at EUR 92,749.

INPI provided an estimate of the time needed for each new registration. This does not include all the time spent prior to the formal application, to inform the applicant and answer questions.

The minimum time to manage an application for INPI is 21 days. It may be more than two times higher (estimated at 52 days) if there are a lot of comments when the application is published, if the specification is re-drafted during the application process and if a second public inquiry must be conducted. Based on a hypothesis of 302 working days in France each year, the daily cost is EUR 205, thus the costs to manage each new GI application is estimated to range from EUR 4,300 to EUR 10,700. There have been 17 applications for non-agricultural GIs in France: 12 GIs are registered, public survey ended for 4 applications and one application has been rejected[56].

Table 18: Number of days for INPI to manage a GI application

	Number of days
Review of specifications, including checks with INPI patent engineer	3.0
Notification of the completed file to official bulletin	0.5
Public enquiry	3.0
Publication of the GI application	0.5

[55] EUROSTAT: costs for Technicians and associate professionals, Hourly Earnings adjusted to 2014 + Non-wage Labour Costs + 25% Overhead.

[56] INPI database (July 2021); https://base-indications-geographiques.inpi.fr/fr/toutes-les-ig.

Drafting of the synthesis (highly depends on the number of comments received on the GI application)	5-30
Review of a possible updated specifications (including checks with INPI patent engineer)	2.0
Possible 2nd public inquiry	(3.0)
Approval or rejection (including legal notifications)	2 days in case of approval 5 days in case of rejection
Litigation issues	5.0
Total	21-52

Source: Based on INPI information

EU sui generis GI protection of agricultural, food and drink products

The case study covers the following GIs

- PDO Steirisches Kürbiskernöl (AT),
- PDO Pont-L'Evêque (FR),
- PGI Turrón de Alicante (ES),
- PGI Puruveden Muikku (FI),
- GI Polish Vodka (PL).

The total sales value under GI (for all GIs registered at EU level in agricultural, food and drink products) was estimated at EUR 75 billion in 2017. There is a high difference in terms of economic size among the GIs. Considering the 3,207 GIs registered at EU 28 in 2017: 9 GIs are over EUR 1 billion and about 1,600 GIs (50% of the total number of GIs) are below EUR 1 million[57].

Cost of producer groups

A structured producer group is established for many GIs. These producer groups play a pivotal role in the implementation of GIs in the agri-food and drink sector. They may handle several roles: management of the specification, verification, enforcement, communication, technical advice, economic monitoring etc. Producers generally pay a fee to these producer groups which covers these different tasks.

The recent evaluation of GIs and TSGs provided some insight on their costs (based on 267 answers from an electronic survey). It is estimated to reach 0.5% of the sales value under GI/TSG, this percentage is higher for smallest GIs/TSGs (5% for GIs/TSGs below EUR 1 million sales value).

Based on a sample of 9 producer groups, administrative management (not only application), represent on average 14.3 % of the producer group's budget, and control and enforcement expenses represent 34.2%. However, depending on the GI concerned, there is an significant variability.

57 Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialities guaranteed (TSGs), AND-I for DG AGRI, 2019 - https://op.europa.eu/fr/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1/language-en

Table 19: Breakdown of costs at producer group level

Breakdown of costs	% of the PG budget	Min- Max
Costs related to the GI/TSG framework	**48.9%**	**24% - 100%**
- incl. enforcement costs	34.2%	22% - 60%
- incl. administrative costs	14.3%	7% -100%
- incl. regulatory charges	0.4%	3% -10%
Costs non-related to the GI/TSG framework	**51.1%**	**0% - 76%**
TOTAL costs	**100.0%**	*/*

Source: evaluation study on GI and TSG protected in the EU

Direct costs – registration costs and cost related to the right to use the GI

The registration costs and right to use the GI for EU agricultural, food and drink products is free of charge at EU level. However, there may be some fees (for registration or for the right to use the GI) at national level (at the registration stage such as in Austria with EUR 605 or each year based on the volume in France). The evaluation of GIs and TSGs (published in 2021) indicates that 28% of the Member States collect fees to producers or producer groups.

Beyond the fees collected by public authorities, the application process is time consuming for applicants as the application file is technically complex (the application process may last a few years). The is no general assessment on the related costs and these may highly differ from one GI to another. These costs will depend on the number of farmers and processors involved, the complexity of the application, the implementation of technical expertise to prove the link between the quality of the product and the geographical area, possible disagreement on the definition of the specifications and the geographical area etc. Some anecdotal data are reported in the evaluation of GIs and TSGs (published in 2021 by DG AGRI)[58]: two producer groups provided rough estimates regarding the total costs of the registration procedure: EUR 50,000 for a five year procedure for one GI and EUR 250,000 for eleven years of procedure for another one. Another producer group mentioned that travel fees to attend meetings for a five year procedure reached EUR 12,000.

Direct costs – Substantive compliance costs (including verification)

Compliance costs for producer groups vary significantly according to the product considered. They depend on the product specifications which may include specific rules to limit yields or implement extensive production methods. For instance, the specification in PDO Pont-L'Evêque requires a minimum surface of grazing per animal land and 50% of the livestock with "Normande" which is less productive than Prim'Holstein breed. In the wine sector, maximum yields shall be defined for each GI.

Costs related to the verification of the production and processing steps are either borne by the producer group or by external control bodies. National authorities in charge of GIs are also involved to validate control plans set by the producer group. Generally, costs for producers range from a few hundred euros for farmers to a few thousand euros for processors.

The costs of control may be included in the fee paid to the producer group in some cases or may be paid directly to the control body.

- PDO Steirisches Kürbiskernöl (AT):

[58] https://op.europa.eu/en/publication-detail/-/publication/c1d86ba1-7b09-11eb-9ac9-01aa75ed71a1

  - Farms: the costs for control are based on the surface and ranges between EUR 40 and EUR 1,000 for each farm.
  - Mills: the costs for controls depend on the volume and range from EUR 1,000 to EUR 8,350 for each company.

- PDO Pont-L'Evêque (FR): the fee to the producer group is EUR 2 / 1000 l for farmers and EUR 25 / tonne for processor, this includes the control costs (this accounts for less than 1% of the sales value of both milk and cheese), this includes the right to use the GI.
- PGI Turrón de Alicante (ES): the fee to the producer group is based on the number of turron sold (EUR 0,25 / unit, each unit is 250 grammes), this covers the control among other roles of the producer group.
- PGI Puruveden Muikku (FI): no data on costs of control were available.
- GI Polish Vodka (PL): the cost for each control ranges from EUR 130 to EUR 215, each producer is generally controlled every three years.

There are some administrative costs, in particular in relation to verifications: establishment of a traceability system, preparation of the verification and reporting of the results to the producer group and, in some cases, to the public authorities. The related costs are variable and depend on the organisation of each stakeholder and the procedures established.

Enforcement and sanctioning costs

Concerning the monitoring on the market, public authorities are in charge of performing such tasks. Producer groups, and producers themselves, may also have a monitoring activity. The costs are limited and could not be clearly assessed for each product. For instance, for PDO Steirisches Kürbiskernöl (AT), a few people check weekly the use of the protected name on internet.

Regarding enforcement and sanctioning activities, the costs reported are related to lawyers and court costs. This is up to EUR 3,600 for a case in for PDO Steirisches Kürbiskernöl; and it is estimated at EUR 3,000 / year for Pont-L'Evêque (this covers the costs of four cheeses under PDO located in the same French region).

Costs for public authorities

EU and MS levels

The evaluation study on GI and TSG protected in the EU estimated the costs for public authorities related to the management of GIs and TSG (including costs to register new GIs). It was estimated that it involves 2,034 FTEs (at EU and MS levels) for a total cost of EUR 93 million annually, accounting for 0.12% of the EU sales value under GI and TSG.

EU level

Regarding the costs at European Commission level, it is estimated that the costs for the registration of a new GI or a major amendment are EUR 33,500. The costs are lower for standard or minor amendment: EUR 26,600 and EUR 19,500.

MS level

Detailed data on the role of the FTEs dedicated to the management and controls of GIs and TSGs are available for three Member States, which account for 60% of the GIs/TSGs registered at EU level: France, Italy and Spain. It shows that:

- 80.3% of the FTEs are allocated to controls (control itself or organisation / supervision of controls),

- 15.5% to the management of the schemes including registration, amendment and cancellation procedures,
- 4.2% to other tasks.

GI and trade mark protection of products in non-EU countries

This case study covers:

- GI Swiss watches (CH),
- GI Bündnerfleisch (CH, Grison meat),
- Baluchari Saree (IN),
- Thewa Art Work (IN),
- GTO Guanajuato Mark (MX).

There is limited information on the sales value of each of these GIs. The sales of Swiss watches reach EUR 20 billion[59], the Guanajuato Mark involves 3,000 companies and 30,000 products.

Direct costs – registration costs

Registration of GI and trade mark protection of products in non-EU countries is free of charge in several cases; there is a fee in other cases, such as in India where it is EUR 58. The application is set to the National Authority in charge of the scheme (generally Department or Ministry in charge of patents, designs and trade marks).

For stakeholders, there may be important costs to draft the GI application (details on the link to the geographical area, definition of the specification etc.).

Direct costs – Costs related to the right to use the mark

The right to use the GI or the trade mark for a producer is free. However, this authorisation often relies on the obligation to pay a membership fee to the owner of the mark. The membership fee varies from free up to thousands of euros. The amount is generally set by the producer's turnover or volume of production.

Direct costs – Substantive compliance costs (including verification)

Concerning cost related to the verification of the manufacturing process, the amount varies significantly among products covered in the case studies. Generally, these costs are integrated in the membership fees paid by producers to the owners/managers of the GI or the trade mark.

For Grison meat (CH), the control costs are included in the fee to the producer association and is currently set at 0.15 CHF (EUR 0.135) per kg of meat. For a medium-sized producer, the annual fee usually is in the order of CHF 1,000 (EUR 905).

For Swiss watches, some verifications are conducted when entering the scheme. When a company is involved in the scheme, a verification is conducted only in case of suspicious behaviour. No specific costs are assessed.

In India, no data could be collected on Baluchari Saree. For Thewa Art Work, the verification is self-regulated by the community (Rajsoni family) involved in the production, no assessment of cost is available.

[59] Federation of the Swiss Watch Industry FH, 2020, Swiss watch exports in 2019 – Value increases while volume declines, available at: https://www.fhs.swiss/pdf/communique_190112_a.pdf.

Enforcement and sanctioning costs

Strategies implemented vary significantly from one product to another. No specific information could be collected on the enforcement for some GIs. Some GIs (for instance Grison meat in Switzerland) conduct verification up to retail stage, this may allow to detect possible infringements. These costs are included in the verification costs mentioned before.

For Swiss watches, the estimated costs for a court case in case of infringements range from EUR 7,230 to EUR 18,070 (example of costs for a court case lasting 1-2 years for Swiss watches). Enforcement and sanctioning on international markets may be very costly, with the need to engage legal procedures which need to be adjusted to national legislation.

Costs for public authorities

No detailed information was available.

A.-2. Indicator – Identification and qualitative assessment of the benefits of the different schemes for applicants

The identification of the benefits relies on the findings from the analysis on effectiveness. The benefits considered in the analysis covers:

- The effectiveness of assessing the application of new GIs/marks,
- The effectiveness of the verification at production stage;
- The effectiveness of monitoring of the use of the registered GI/marks on the market;
- The effectiveness of the sanction regime.

Effectiveness of assessing the application of new GIs/marks

Among the different schemes analysed, the procedures for assessing the applications and criteria for setting the product requirements are generally deemed clear and effective.

The EUTMR regulation clearly defines criteria to comply with (type of goods concerned, the category of mark owner, the use of the mark etc.). Applicants for trade marks should lay down criteria in the regulations of use attached to the application file. Besides, EUIPO provides a clear and detailed application guideline.

National certification marks rely on national legislation which have been harmonised by the EU trade mark directive. The directive requires that eligibility criteria must form part of the application process.

Regarding national sui generis GI protection of non-agricultural products, quality criteria are generally directly set in the specifications.

EU GI protection of agricultural, food and drink products criteria and procedures are historically well defined and implemented. The registration relies on a two-step procedure: applications must be firstly submitted at national level, for a preliminary procedure before being transmitted to the European Commission. However national scrutiny procedures vary from one Member State to another.

The product criteria defined among GI and trade mark protection of products in non-EU countries are highly variable. According to the schemes, the use of the trade mark/GI can be either loose or very restrictive.

Effectiveness of the verification at production stage

Among the six different protection systems, the verification procedure at production stage is considered very effective to extremely effective. Most of the schemes have implemented verification procedures at the production level. However, the control procedures highly

differ according to each protection scheme but also among the different marks/GIs under the same system. The level of the verification procedures depends on the regulations or directive framing the schemes but also on the objectives pursued by the GI/mark owners and users. Indeed, verification procedures are well defined for EU certification trade mark (in respect of a trade mark use) and EU sui generis agri-food and beverages GIs with dedicated control plans and testing and external control bodies. This is also the case for the GIs and trade marks of non-EU countries analysed. Regarding the other schemes (EU collective trade marks, national certification mark and national sui generis GI protection of non-agricultural products) control at production stage is not systematically required by the EU or national regulations attached but most of the GI/mark owners and users studied have implemented control procedures (this is the case for French non-agricultural GIs for instance). For these schemes the procedures vary in terms of nature of controls (on site or offsite), frequency (once for the registration or regularly), involvement of a certification body, and their nature (formal or unformal). Social control is widely implemented among small producer communities. Despite the diverse nature of the verification procedures, non-conformities at production stage are rare and are usually minor, consisting of innocent mistakes that can be easily corrected.

Effectiveness of monitoring of the use of the registered GI/marks on the market

Based on the case studies analysed, monitoring procedures are diversely implemented according to the schemes and among the schemes. Their implementation depends on the objectives of the organisation in charge (authority and or GI/mark owner) and on the means dedicated to these actions.

The monitoring of the market is clearly the sole responsibility of the mark owners for EU collective marks, EU certification marks and national certification marks. It is not the case for the other schemes. The monitoring may be shared with public authorities for EU sui generis GI protection of agricultural, food and drink products and also for GI and trade mark protection of products in non-EU countries. Regarding national sui generis GI protection of non-agricultural products, the case study shows that no regular monitoring is performed by authorities which is left to the producers or producer groups. In addition, the implementation of monitoring procedures depends on the means dedicated by the GI/mark owners and users. For the largest ones, monitoring procedures can be quite sophisticated combining on site checks and on-line monitoring tools (through web crawlers or dedicated software). For many producer associations, the detection of potential infringements is not systematic and performed by GI/mark users in case of suspicious products on a random basis.

As a result, the detection of infringements varies among the systems. For most of the systems analysed, there is little to zero cases of infringements. This can also be related to either a lack of or an under-developed monitoring system. For some GI/marks, the number of infringement cases can reach 50 to 100 cases per year (for instance: Belgian Linen or Swiss Watches).

Effectiveness of the sanction regime

The sanctions regime in case of misuse of GIs/marks or fraud is considered effective at national level by most of the GIs/marks which conducted legal actions. In most of the situations the formal enforcement of legal actions and sanctioning measures are avoided to the benefit to less formal means such as official letters / enforcement notices (this applies to all protection system covered by the study). However, when the producers are based in third countries, the enforcement is often not really effective given that there is no global harmonisation of protection schemes for GIs and marks.

A.-3. Indicator – Qualitative assessment of the cost-benefit balance

The objective is to compare costs detailed in the previous indicator and the benefits identified in the effectiveness analysis.

From a general perspective, based on data collected from the case studies, **costs are considered low to medium for each protection system**. They are not considered as disproportionate for any of them.

Differences in terms of costs are linked to:

- the implementation (or not) of verification procedures,
- the complexity of the application files (higher complexity for GIs compared to trade marks, where a link to the territory shall be detailed).

Other costs highly depend on the strategy of each value chain: implementation of specific monitoring on the market, geographical coverage of this monitoring (local, national, international) and the actions implemented in case of infringement observed (drafting of registered letter or court case).

With regard to the implementation of verifications, costs for producers are higher for EU certification marks and GI schemes (EU GIs and other national GI schemes with verification procedures) compared to EU collective marks, national certification marks (rules of implementation may differ from one Member State to another) and GI schemes with no specific verification procedure required.

In terms of effectiveness:

- **Assessment of the application** covers legal aspects for trade marks while it is deepened to technical aspects for the GIs with the assessment of the link to the territory.
- **Verification procedures** are assessed to be effective for EU certification marks, EU GI schemes and national schemes with specific rules (such as under the non-agricultural GI scheme in France).
- The effectiveness of **monitoring activities** highly depends on the means allocated by stakeholders to these actions, public authorities may also be involved.
- **Sanctioning** is assessed to be effective for each protection scheme, even if the geographical scope highly differs among the scheme: national, EU or third countries in case of specific agreements on intellectual property rights. Monitoring and sanctioning are more effective when a producer group is involved.

The following table provides an overview of the costs and effectiveness of each protection system.

Table 20: Overview of the costs and effectiveness of each protection system

	Costs	Effectiveness
EU collective mark	**Low to medium costs** • **Registration costs** are higher for EU collective and certification marks than for other protection systems (EUR 1,500-1,800 compared to a few hundred in other protection systems). • For EU collective marks, **other costs** depend on the strategy of each mark and the size of companies involved. Thus, costs may be high for the right to use the mark and the **verification** stage. • **Monitoring and enforcement costs** are assessed to be limited. • The **costs for public authorities** are limited, a few hours are needed for each application.	**Low to medium effectiveness** • Assessment of the application covers legal aspects and does not cover technical aspects and link to the territory. • Verification procedures may be implemented, but this is not systematic. • Monitoring activities depend on the strategy implemented by stakeholders. • Sanctioning is effective at EU level.
EU certification mark	**Medium costs** • **Registration costs** are higher for EU collective and certification marks than for other protection systems (EUR 1,500-1,800 compared to a few hundred in other protection systems). • **Verification costs** are high for certification marks compared to other systems (EUR 10,000-20,000 compared to no costs or a few thousand euros for other systems), due to the requirement in terms of verification and the size of the companies. • **Monitoring and enforcement costs** are assessed to be limited. • The **costs for public authorities** are limited, a few hours are needed for each application.	**Medium to high effectiveness** • Assessment of the application covers legal aspects and does not cover technical aspects and link to the territory. • Verification procedures are implemented. • Monitoring activities depend on the strategy implemented by stakeholders. • Sanctioning is effective at EU level.
National certification mark	**Low to medium costs** • **Registration costs** are limited (a few hundred euros). • **Other costs** highly depend on the strategy of each mark and types of companies involved, for instance from no costs up to EUR 20,000 for **verifications**. • **Monitoring and enforcement costs** are assessed to be limited. • **Costs for public authority** are limited as this covers a legal check of the application with no technical expertise required (a few hundred euros per application).	**Low to medium effectiveness** • Assessment of the application covers legal aspects and does not cover technical aspects and link to the territory. • Rules for verification procedure vary among Member States. • Monitoring activities depend on the strategy implemented by stakeholders. • Sanctioning is effective at national level.
National non-agricultural GI	**Low to medium costs** • **Registration costs** are limited (from no costs to a few hundred euros). • **Other costs** depend on the rules established in each country. In France, **verifications** are required in national laws, thus, the verification costs reach a few hundred euros per year. In other countries, there may be no comparable costs if verifications are not compulsory. • **Enforcement costs** range from a few euros for a registered letter, a few hundred euros for a registered letter written by a lawyer and EUR 2,500-EUR 5,000 for a court case (up to EUR 30,000 for complex and long court cases).	**Low to high effectiveness** • Assessment of new GIs covers the link to the territory. • Rules for verification procedures vary among countries (specific rules in France, not necessarily required in other countries). • Monitoring activities depend on the strategy implemented by stakeholders, public authorities may be involved • Sanctioning is effective at national level.

	• In France, the **costs for the public authority** to manage the scheme is assessed at EUR 92,749 / year and the costs to assess a new GI application is estimated to range from EUR 4,300 to EUR 10,700. This information is not available in other countries.	
EU GI protection for agricultural, food and drink products	**Medium costs** • There are no **registration costs** at EU level but each Member State may apply some fees. • **Verification** procedures are compulsory, the costs generally range from a few hundred euros for farmers up to a few thousand euros for processors. • **Compliance costs** may be high due to extensive production methods, this may be counterbalanced by higher revenue • **Enforcement costs** range from a few euros for a registered letter, a few hundred euros for a registered letter written by a lawyer. • The **costs for public authority** were assessed to reach 0.12% of the total sales value, the costs of the EU scrutiny for a new application are estimated at EUR 33,500.	**Medium to high effectiveness** • Assessment of new GIs covers the link to the territory. • Verifications are implemented. • Monitoring activities depend on the strategy implemented by stakeholders, public authorities may be involved. • Sanctioning is effective at EU level.
Non-EU GIs	**Low to medium costs** • Costs are highly variable among the different countries. **Registration fees** are generally limited and **verification costs** depend on the national rules (from zero up to a few hundred euros depending on the product surveyed). As for other GI schemes, **enforcement costs** may reach a few thousand euros in case of court cases.	**Low to medium effectiveness** • Procedures among countries are not homogeneous. • Monitoring activities depend on the strategy implemented by stakeholders, enforcement is effective. • Verifications are not necessarily implemented. • Sanctioning is effective.

3.3. Relevance

3.3.1. Background and methodological approach

Relevance explores the relationship between the objectives of an intervention (in this case the different legal protection systems) and current needs of stakeholders. It is **crucial to determine whether existing needs are met by the intervention**, or whether there is a mismatch which results in unmet needs.

The primary needs that have been identified are the following:

- The need to assure a high level of quality of the final product.
- The need to manage infringing products on the market by way of an enforcement and sanctioning system.

Needs must be explored from the perspective of both producers and consumers. It is **consumers who are most concerned by the need for a high-quality final product**. That said, this is clearly of relevance for producers too, as quality is in their interests in terms of maintaining the reputation of their product and thus the status of the GI/mark.

From the **producers' point of view, there is more focus on ensuring that there are no competing infringing products on the market**, and that an enforcement and sanctioning system successfully deals with these infringing products. Although this need is of some relevance to certain consumers (those who particularly seek out a product because it comes from a certain territory, and so are concerned about fake products or those which are made 'in the style of' a mark/GI), it is more pertinent for producers.

The approach taken is therefore to examine these needs, by assessing the extent to which they are met through the product requirements and the verification, monitoring and enforcement procedures.

The evaluation matrix for relevance is developed in the following table:

Table 21: Matrix for the analysis of relevance

Sub-question	Judgement criteria	Indicators
How well does each legal protection system ensure protection of the desired characteristics of the final products (quality and origin)?	There are specific quality criteria and an assessment of the link to the territory to register the product as a GI/mark	- Description of how and by whom criteria are set - Description of how and by whom the link of the product with the territory is defined
	There is a verification of the products and manufacturing processes of authorised producers	- Description of the organisation and frequency of the verification at production stage
How well does each protection system deal with the need to manage infringing products on the market by way of an enforcement and sanctioning system?	The use of the mark/GI on the market is monitored	- Description of the monitoring system and frequency - Extent to which public authorities are involved in market monitoring
	Prevalence of infringing products on the market	- Number of infringing products by authorised manufacturers - Number of infringing products by other manufacturers
	The protection system is enforceable	- Description of the enforcement and sanctioning mechanisms available - Extent to which public authorities are involved in the enforcement

Sub-question	Judgement criteria	Indicators
	The available sanctions are used to enforce the product protection	- Share of infringements where there is the need to resort to formal measures - Number of formal sanctions imposed

3.3.2. Analysis of the relevance

Key findings

The analysis of the relevance indicators shows that **certain protection systems cannot be used to protect a geographical origin**. This applies to EU certification marks and national certification marks in the majority of Member States. These protection systems are therefore not relevant for producers of geographically rooted products wishing to protect the geographical name. However, in principle these certification marks could be modified to also cover geographical origin. The examples from Member States where this is already possible show that certification marks can be of interest for producers and/or regional authorities.

Regarding the link between the product and the territory, as well as additional product characteristics, **these are defined by the mark owners in the case of trade mark-based protection systems**. Trade mark-based systems also include safeguards against the exclusion, by the mark owners, of certain producers that would be eligible to use the geographical name (e.g. under EU collective marks, such producers have the right to become member of the association owning the mark). **If the link to the territory is more seen as a question of public interest** (e.g. due to linkages to the regional cultural heritage), **the GI systems can be considered more relevant** because they involve the public in the definition of the product characteristics (through a scrutiny by public authorities and, in some cases, public consultations).

When it comes to monitoring and enforcement, **public authorities are only actively involved (i.e. performing monitoring and enforcement activities on their own initiative) in the case of EU sui generis GI protection of agricultural, food and drink products**. In light of the findings of the effectiveness analysis (Section 3.1.2 above), having support from public resources is relevant for producers that do not have sufficient resources to monitor the market and enforce the protection on their own. On the other hand, many producers do not see any need for monitoring and enforcement and would thus also not need any public support. Across most of the examined marks and GI products, **the number of identified infringements is very low or even zero** (although there is often little monitoring activity that could lead to the identification of infringements). When it comes to monitoring and enforcement on online markets, the tools available under the different protection systems are similar and thus equally relevant. **How to tackle online monitoring is not so much an issue of the choice of protection system** but rather of the individual strategy of the producer group.

The enforcement tools available, under the EU and national intellectual property and commercial practices legislation, **are more or less similar for all protection systems**, ranging from informal notification and negotiations to formal civil and criminal law sanctions (such as injunctions, fines, damages, seizures, imprisonment). In the vast majority of cases, **infringements can be eliminated by informal measures** (e.g. sending a notification to the infringing party). **The low use of legal measures does however not mean that they are not relevant**. Firstly, there are still cases (even if they are rare) where informal measures are unsuccessful and recourse to legal measures becomes necessary. Informal measures are in particular less effective when the infringement takes place outside the EU. Secondly, the fact that legal sanctions could

potentially always be used against the infringing party can also be considered a deterrent that makes the informal measures (first warning) so effective.

3.3.2.1. Sub-question 1 – How well does each legal protection system ensure protection of the desired characteristics of the final products (quality and origin)?

Table 22 below provides a summary of the findings for the evaluation sub-question regarding the extent to which the different protection systems ensure protection of the desired characteristics of the final products (quality and origin). In order to answer this question, the way of defining the quality criteria and origin link, as well as how the product characteristics are verified, are both considered. **The overview table is followed by a detailed evaluation** of each indicator for each protection system according to the structure presented below:

Table 22: Summary of relevance – Sub-question 1

Protection system	There are specific quality criteria and an assessment of the link to the territory to register the product as a GI/mark		There is a verification of the products and manufacturing processes of authorised producers
	Description of how and by whom quality criteria are set	Description of how and by whom the link of the product with the territory is defined	Description of the organisation and frequency of the verification at production stage
EU collective marks	• Having quality criteria is not required • In practice, for the five marks examined for this study all mark owners (associations) have set up internal requirements	• The link is defined via the internal membership eligibility criteria set out by the producer associations who own the mark • The mark cannot prevent other producers who produce in the territory from using the geographical designation	• Verifying production is not mandatory, but in practice all owners of the examined mark do it to some extent • Process to verify compliance of the manufacturing process is performed by the producer association when a company applies to become member and use the mark • Subsequent verification is not done for all marks • The type of verification varies between informal control by mark owner, on either official control (by independent bodies) or self-assessment by producers
EU certification marks	• Criteria are set by the producer associations or authorities who own the mark	• No link with territory/designation of geographical origin is permitted	• Mark owners rely on independent testing bodies (for example DEKRA or university institutes) to carry out the testing of products • Products from certified producers are verified at least once a year for most of the investigated certification marks, sometimes more • Verification under the presented EU certification marks focusses mainly on testing the characteristics of products and materials used
National certification marks	• Criteria are set by the producer associations or authorities who own the mark	• Only in nine Member States can national certification marks be used to designate geographical origin • Where geographical links exist, these are defined by the eligibility criteria put	• Four models of organisation exist for the verification of production: • Direct control by the owner of the mark • Dedicated delegated authority via a specific body which is not the mark owner

Protection system	There are specific quality criteria and an assessment of the link to the territory to register the product as a GI/mark		There is a verification of the products and manufacturing processes of authorised producers
	Description of how and by whom quality criteria are set	Description of how and by whom the link of the product with the territory is defined	Description of the organisation and frequency of the verification at production stage
		forward when the mark owners file for the mark with national patent offices	• General delegated authority to a pre-existing patent management body • Hybrid verification through self-checking by producers
National sui generis GI protection of non-agricultural products	• Varies depending on the national GI system • Criteria are generally set by producer groups, with varying degrees of involvement of public authorities • Public consultations can be part of the process	• Varies depending on the national GI system • The link to the territory is generally set by producer groups, with varying degrees of involvement of public authorities • Public consultations can be part of the process	• Varies depending on the national GI system • Responsibility usually lies with delegated bodies • Ranges from annual verification by independent certification bodies, to verification upon first-time registration of a producer, to ad-hoc verification in case of complaints or notifications
EU sui generis GI protection of agricultural, food and drink products	• Criteria are set by the applicant producer group • Basic requirements are set down in the legislation	• Criteria are set by the applicant producer group • Basic requirements are set down in the legislation • The link to the territory is controlled by the competent European Commission units	• Every Member State must designate a national authority responsible for verification • Verification must be performed according to the Official Control Regulation and to specific requirements established for each GI
GI and trade mark protection systems in non-EU countries	• Varies depending on the national GI system • Some resemble the national GI systems in the EU • In the case of Swiss watches, the criteria are established by national legislation	• Varies depending on the national GI system • Some resemble the national GI systems in the EU • In the case of Swiss watches, the territory covers the entire territory of the country (defined by national legislation)	• Varies depending on the national GI system • Ranges from formal verification by external auditors once every year or every two years to ad-hoc verification in case of complaints or suspicious activity

A. Judgement criterion – There are specific quality criteria and an assessment of the link to the territory to register the product as a GI/mark

A.-1. Indicator – Description of how and by whom quality criteria are set

EU collective marks

The owners of EU collective marks can be **associations of manufacturers, producers, suppliers of services, or traders** as well as **legal persons** governed by public law. All the EU collective marks analysed for this study are owned and managed by producer associations. Several guidance documents are made available by the EUIPO to help applicants submit an application for an EU collective mark, such as details regarding the fees or templates (available in 23 languages) for drafting the regulations governing use of the mark.

Production standards and the verification of production are **not a legal requirement** for EU collective marks (unlike for example for EU certification marks). To use the mark, operators must **generally be members of the association** owning the mark and comply with the rules of use. In addition to the membership requirement, the associations can provide optional requirements. **All of the five marks analysed for this study have put in place additional quality and geographic requirements for using the mark**. For instance, the Bois des Alpes association has defined further requirements: the wood used must be originating from forest certified FSC or PEFC (sustainable forests). Such additional quality or geographical requirements are established by the internal regulations of the associations; **the associations thus have full control over the definition** of the requirements.

EU certification marks

An EU certification mark can be applied for and owned by **any natural or legal person, including public authorities** (Article 83(2) of the EUTMR). The owner has **a duty of neutrality** towards the goods and services they certify; they therefore cannot be themselves a manufacturer or provider of the certified goods or services. For this same reason, the owner of a certification mark is precluded from using the mark for the certified goods or services covered.

To apply for the registration of a mark, **the applicant must specify in their application the goods or services to be covered by the mark, the specific characteristics of the goods or services to be certified, and how the certified characteristics are tested**. Once approved, these requirements are part of the mark registration. Producers wishing to use the mark after obtaining certification of their products must become a member of the association in some cases (RAL Quality Mark Candles, QUL), whereas in other cases membership is not required (ÜGPU Certified PU). Supporting documentation is available on the association websites, including eligibility and membership processes.

National certification marks

For national certification mark, the process of defining the quality requirements is fairly similar to the EU certification marks. **It is the owner of the mark** (which can be a producer association or, in some Member States, a public authority) **that defines the criteria in the regulations that are part of the mark applications**, with varying levels of input from other stakeholders (for example the licensing offices in the case of the Sami Duodji mark). The main difference between national and EU certifications marks is that **in some Member**

States, certification marks can also be registered to certify the geographical origin of a product.

These eligibility criteria are provided on the basis of **non-discrimination**, meaning that if a producer complies with the criteria, they cannot be denied use of the mark. For all of the investigated marks, quality of the product forms a large part of the eligibility criteria. The case of Albacete cutlery is the strictest in terms of manufacturing requirements. Only companies that can prove the whole process of production of the knife, from the tempering phase to the end, is done exclusively with original materials and in the city and province of Albacete, are eligible to use the mark. In terms of the openness of the processes, most of the marks have eligibility criteria is posted on the mark owner websites for example Azores handicraft, Sami Duodji mark and Made in Torun, all have the regulations available online and offer support with application is offered as well. For the Albacete cutlery the procedure is less clear and open via simple internet search.

National sui generis GI protection of non-agricultural products

In case of national sui generis GI system, the quality criteria are set in different ways: particularly, in case of 'Faenza Ceramics', **the standards are set directly by the national competent authority** (Consiglio Nazionale Ceramico). In France, instead, the only EU country so far with a special *sui generis* GI regime that mirrors, to some extent, that of the EU for the protection of agricultural products and foodstuffs, **the specification is drafted by the applicant group (ODG) with the support of the national competent authority, while also including a public consultation**.

With regard to the other considered products, the basic rules of protection are provided by the national intellectual property legislation. Furthermore, the eligible producers, as well as the quality that their products must possess, **can be recognised by a specific committee**, as in the case of Idrijska Čipka, or directly by the national authority, for instance for the production of Vratsa Limestone on the basis of certifications provided by the producers.

EU sui generis GI protection of agricultural, food and drink products

The criteria for the GI are established by the applicant group, taking into consideration the relevant EU regulations. The GI application contains the specifications, a description of the geographical area and a description of the link of the product with the geographical area.

There are two levels of links with the geographical area (the link being stronger for PDO than for GI and PGI), these are defined in the relevant EU regulations on GIs:

- For protected designation of origin (PDO, agri-food and wine):
  - quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human,
  - all the production steps all take place in the defined geographical area,
- For protected geographical indications (PGIs, agri-food and wine) and geographical indications (GIs, spirit drinks and aromatised wine products):
  - a given quality, reputation or other characteristic is essentially attributable to its geographical origin;
  - at least one of the production steps of which take place in the defined geographical area.

GI and trade mark protection systems in non-EU countries

For the products in the non-EU category, **the extent to which there are specific quality criteria varies considerably between products**.

The **GTO Guanajuato trade mark** covers all products manufactured in Guanajuato, ranging from handicrafts to products in the car industry, agri-food products, textiles, or pharmaceutical goods, and so **specific product requirements are not possible** for this mark.

On the other hand, in Switzerland, the eligibility requirements applicable to the use of the words 'Swiss watch' or 'Swiss movement' are very precise and **established by national legislation**. Pursuant to the Ordinance regulating the use of the word "Swiss" for watches, the movement may be considered a Swiss movement if it has been assembled in Switzerland, it has been inspected by the manufacturer in Switzerland and if at least 60% of the manufacturing costs are generated in Switzerland and at least 50% of the value of all the constituent parts (excluding the cost of assembly) is of Swiss manufacture. The use of the GI for Grisons meat (Bündnerfleisch) is also relatively restrictive, with Grisons meat having to be made according to relatively strict criteria and procedures.

In India, the application for the GI must contain the class of goods to which the GI applies and a geographical map of the territory of the country or region or locality in the country in which the goods originate or are being manufactured. However, any quality criteria and specific product requirements do not need to form part of the application. It is worth noting that openness of membership and use of the mark varies within this system. For example, for Thera artwork membership is limited to the family which owns the mark. On the other hand, Grinsons meat has no fees for using the mark and membership fees are instead used to help cover costs of verification. The mark is therefore quite open to new members.

A.-2. Indicator – Description of how and by whom the link of the product with the territory is defined

EU collective marks

EU collective marks benefit from an important derogation of the general rules for trade marks: the collective mark can be a designation of geographical origin, which is normally not possible for EU trade marks. In principle, **the association owning the mark defines, through their internal regulations, who is eligible to become a member and use the mark**. However, an EU collective mark serving to designate a geographical origin does not prohibit other market participants from using the geographical name, provided that they are entitled to and use the name in accordance with honest practices. In addition, the regulations governing the use of the mark, which are submitted by the applicant (the association) in the application process, must allow any producer whose products originate in in the geographical area designated by the mark to become a member of the association.

In the case of the EU collective marks examined, **the producers' rationale behind using the mark is to enhance the development of operators located in a defined geographic area, and to protect the quality of the products manufactured and the traditional know-how**. The EU collective marks are also used as a tool to defend the operators from local and international fraud. The number of companies using the trade marks range from 8 (Plauener Spitze) to 85 for Bois des Alpes. The link to the territory is therefore mainly intended to protect producers in the area and, by extension, quality. The criteria are defined with this in mind.

EU certification marks

The purpose of the EU certification mark is to certify that a product or service has **certain characteristics**, to distinguish them from similar products without these characteristics. Any type of good or service can be registered. Geographical origin is however **explicitly excluded from the list of certifiable characteristics** under EU legislation. All the marks

studied therefore certify only quality characteristics of the certified products, not geographical origin.

National certification marks

It depends on each Member State whether or not a national certification mark can be used to designate geographical origin. In most Member States, this is not possible, mirroring the rules for EU certification marks. In nine Member States, however, certification marks can serve to designate geographical origin.

The rules are **defined by the mark owners** in all cases and the link with the territory is defined in **different ways by each of the marks**. On the most basic level, Bavaria quality, Albacete cutlery, Handicraft from the Azores and made in Torun marks all mention specific geographical areas in their name. The **geographical names are defined** by the mark owners and producers as **symbolic of quality and/or heritage**. The exception is the Sami Duodji mark, which can be used by producers of traditional products who are a member of the Sami people. The mark thus alludes to a geographical location spread across four countries, but its products **do not necessarily have to come from this area** (although in practice they do). In that sense this mark is more connected with the **heritage of the Sami people** as producers, rather than a specific geographical area. The whole rationale behind the Sami Duodji mark is quite specific. It is an effort to somehow **link trade mark rights, which are at their core commercial, to elements of cultural value.**

Since the Azores and Sami Duodji marks both try to protect traditional handicraft producers, an important element is ensuring that they have an **open channel of communication with them.** This includes producer surveys and market research. The Albacete cutlery mark only has ten producers and there is a **clear line of informal communication**, furthermore the owner of the mark is the Albacete town council composed of **directly elected councillors**. In Toruń, the mark was established in 2018 and the rationale was to indicate **high quality products.** This is particularly important for **marketing purposes** outside of the city, as many of the products are sold on foreign markets (e.g. Candellana, a candle-making manufacturer, sells half of its goods on Amazon US and Amazon UK). Many companies also take part in international trade fairs, so the Made in Toruń mark is often visible abroad. The link with geography for this mark comes from the ownership, the Business Support Center in Toruń, which reports to the **Town Hall and the desire to build up a reputation for general quality of goods in the area.**

National sui generis GI protection of non-agricultural products

All the analysed national GIs have some elements in common that ensure the link between the products and their places of manufacturing, thus ensuring that the consumers are actually purchasing origin goods. **The link to the territory is defined either by the national authority, or by the producer group applying for the GI with support from the national authority**. A public consultation can be part of the process (under the national GI system in France).

More specifically: in the case of Faenza Ceramics **the link is defined by the product specification drafted by the national competent authority**. This ensures the connection between the product and the place by stipulating, among the other things, that: a. the producers must be based within the territory of the town of Faenza; b. the raw materials should be sourced from the designated area, although they can also be sourced from elsewhere if their characteristics are compatible; c. the production must entirely take place in the local workshops, apart from exceptional cases; d. the work must follow one of the styles of production recognised as ‘traditional’ and specifically listed in the specification.

In the case of Idrija Lace, the rules to ensure the origin and authenticity of the product **are defined by the competent producers’ committee**. Similarly to the example of Faenza,

elements such as the locality of the producers and the adherence to traditional production standards play a central role in defining the link. Similar standards are also adopted in the case of the Hungarian Halas Lace.

Finally, in the case of Burgundy Stone, the link is provided in the specification of the product, **drafted by the producers' association and approved by the national competent authorities**. This identifies the specific kinds of true Burgundy Stones as well as the quarries from which they must originate. Similar rules characterise the Vratsa Limestone GI.

EU sui generis GI protection of agricultural, food and drink products

A GI application (including the link of the product with the territory) is **firstly conducted at national level by the National Authority and secondly at EU level by DG AGRI of the European Commission**. The EU level scrutiny involves several European Commission units, including relevant technical unit (wine and milk/cheese units from DG AGRI for instance, DG MARE for seafood products).

GI and trade mark protection systems in non-EU countries

In the case of Swiss watches and the GTO Guanajuato mark, the territory corresponds to administrative regions (at national and regional level), and the link to the territory is laid down by legislation adopted at the same administrative level. For the **Grisons meat, Swiss watches, Baluchari saree and Thewa Art Work GIs**, the products all have a **long history behind them, as a result of which GI protection was seen as beneficial for safeguarding cultural heritage**. The link to the territory is therefore in the interests of producers in that it safeguards local handicraft, but also in the wider interests of the residents of the region.

The **GTO Guanajuato trade mark** meanwhile does not refer to one specific product, and so the rationale behind its creation was to promote small and medium sized companies in Guanajuato – **a purely producer-focused, economically motivated interest**.

B. Judgement criterion – There is a verification of the products and manufacturing processes of authorised producers

B.-1. Indicator – Description of the organisation and frequency of the verification at production stage

EU collective marks

Although requirements and subsequent verification are not mandatory features of an EU collective mark, for all five examined marks have the mark owners set up internal criteria and some sort of verification. The verification varies, from informal verification performed by the mark owner themselves to methodical and formal tests carried out by a third party.

The process to verify compliance of the manufacturing process is performed by **the producer's association** when a company applies to join the association and use the mark. For Ceramica de Manises and Belgian Linen producers, **no formal further controls are performed** by the producers' associations once their applications have been approved. Regarding Plauener Spitze, **informal controls are performed every year** by the association and its members on each producer site. By contrast, the verification of the manufacturing process of Bois des Alpes and Belgian Linen relies on an **independent certification body** every one to three years.

With the exception of Ceramica de Manises and Belgian Linen, the EU collective marks analysed **operate further controls after the registration of the operator**. Small marks composed of a limited number of operators rely on an **unofficial "social control"** (i.e. Plauener Spitze) based on meetings, visits and reports made to the producer's association.

EU certification marks

In the case of EU certification marks examined for this study, the quality associations for each mark rely in practice on **independent testing bodies** (for example DEKRA or university institutes) to carry out the testing of products. Products from certified producers are verified **at least once a year** for four of the investigated certification marks, sometimes more. In the case of Asthma & Allergy-friendly, the certification is valid for 2 to 6 years, depending on the type of product.

Verification under the presented EU certification marks focusses **mainly on testing the characteristics of products**. To this end, samples of the certified products are collected and then tested by an independent testing body

National certification marks

From the five products analysed, there are four models of responsibility for the organisation and frequency of production verification. The first is **direct control by the owner of the mark,** for example the Business Support Centre in Toruń. This centre owns, oversees and conducts all controls and monitoring activities of the Made in Toruń mark. However, there is no verification of production for this mark. In Portugal there are production controls and the Regional Centre for the Support of Handicraft (Centro Regional de Apoio ao Artesanato – CRAA) is responsible for verifying compliance and is the owner of the mark.

The second model is **dedicated delegated authority**, as is seen in the case of the Sami Duodji mark. In this case, the owner of the mark is the Saami Council, which has delegated control to national licensing offices. These offices verify the producers depending on which country they are from. In Finland the office is Sami Duodji Ry and in Sweden it is Sameslöjdstifelsen. Some differences exist in terms of how the country license offices consider the producer applications, but **products are only checked once.**

The third model is **general delegated authority**, as in the case of the City Council of Albacete (Ayuntamiento of Albacete) which is the owner of the mark but controls and supervises a number of trade marks via a control committee grouping. This committee is formed of the APRECU and FUNDECU (foundation of the Albacete consumer association, and the Consumer direction of the Community of Castilla-La-Mancha). **Each producer is checked every year.**

The final model is a kind of **hybrid system** of direct control when permission is first issued, then fully delegated control at the producer level for **continued verification via self-assessment**. This is the case for the Certified Bavaria Quality mark, where the regional ministry (as the mark owner) is responsible for initial compliance verification before first use, with **annual self-assessments by the producer** in the years afterwards.

National sui generis GI protection of non-agricultural products

The only country where a systematic system of controls is in place is France, where **independent certification bodies conduct regular checks on a yearly basis**.

In the case of Faenza Ceramics, instead, no regular controls are conducted but **an inspection is carried out before an undertaking can validly be added to the register of producers**. Furthermore, subsequent controls can be performed if a producer or another interested party files a notification. A similar scenario has been found for Idrija Lace where some checks are performed prior to the producer's registration and others may follow in case of specific notifications or be performed by the national trade inspection unit. As to

Halas Lace and Vratsa Limestone, no system of controls seems to be in place, although in the former case some internal controls are conducted.

The verifications are mostly performed by delegated bodies that represent producers, on behalf of the national authorities responsible for registration of the GI.

EU sui generis GI protection of agricultural, food and drink products

As defined in the effectiveness analysis, specific rules on control are defined in each GI regulation for each sector: agri-food products, wines, spirit drinks and aromatised wine products. The main points from these sector specific regulations are that **each MS shall designate a competent authority or authorities responsible for controls**. Controls must cover the verification of compliance with the product specification before placing the product on the market, and the use of the protected names on the market. In addition, controls of GIs are covered by the Official Control Regulation (OCR)[60].

In more detail, **a specific verification procedure is defined for each GI**. This includes the control requirements, the method of control and the frequency of control. Controls aim at verifying the compliance with the GI requirements: the origin of raw material and products, the process of production and traceability. The detailed implementation of controls varies among the different MS and sectors. Producer groups (when producer groups are established) may play an important role in the organisation of controls.

GI and trade mark protection systems in non-EU countries

Across the five non-EU products, the verification procedure differs quite substantially. In some cases it is carried out by national authorities/institutes, in others independent authorities, and in some cases it is based on self-regulation. The process itself and the frequency of verification also differs considerably between the products.

For **Grisons meat, all verification visits are announced in-person visits conducted by a trained auditor** (offline), covering the entirety of production, storage and dispatch facilities. Audits are conducted once every 2 years for all stakeholders in the value chain (butchers, meat drying facilities and certified packaging companies).

This periodic auditing process of Grisons meat is in contrast to the **more ad-hoc approach used for verifying the manufacturing process of Swiss watches, which is based on detection of suspicious or irregular products or behaviour by a manufacturer**. Usually, either products are suspiciously cheap and fall below a baseline price of products that is economically feasible under Swiss production costs, or the Federation of the Swiss watch industry receives a tip-off about suspicious practices from its members, who themselves 'scan the market'. Fewer than 5% of producers of Swiss watches undergo a verification procedure each year.

In Mexico, **verification of the manufacturing process for products holding the GTO Guanajuato Mark is conducted by a group of accredited auditors from the Mexican Institute of Normalisation and Certification**. When a product is first registered with this mark, permission to use it is granted for two years. After these two years, a verification procedure is carried out to renew the registration and deliver it as permanent.

3.3.2.2. Sub-question 2 – How well does each protection system deal with the need to manage infringing products on the market by way of an enforcement and sanctioning system?

Table 23 below provides a summary of the findings for the evaluation sub-question regarding how well the different protection systems deal with the need to manage infringing

[60] Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

products on the market. In order to answer this question, the relevance of the existing monitoring mechanisms, as well as of the enforcement and sanctioning mechanisms in place, are both considered. **The overview table is followed by a detailed evaluation** of each indicator for each protection system according to the structure presented below:

Table 23: Summary of relevance – Sub-question 2

Protection system	The use of the mark/GI on the market is monitored		Prevalence of infringing products on the market		The protection system is enforceable		The available sanctions are used to enforce the product protection	
	Description of the monitoring system and frequency	Extent to which public authorities are involved in market monitoring	Number of infringing products by authorised manufacturers	Number of infringing products by other manufacturers	Description of the enforcement and sanctioning mechanisms available	Extent to which public authorities are involved in the enforcement	Share of infringements where there is the need to resort to formal measures	Number of formal sanctions imposed
EU collective marks	• Performed by producer associations and their members, with the help of producers • Offline, they rely on the reports of the producers • Online monitoring for two producers is weekly for Belgian Linen and monthly for Plauener Spitze	• No involvement of national or international authorities	• Unknown, but thought to be very low	• The majority of infringements are by other manufacturers • In terms of numbers, four out of five of the marks looked at for the case study saw between 1 and 5 infringements per year (but there are also little monitoring activities) • One reported 50-100 violations per year, mainly from abroad	• The enforcement tools available are more or less similar for all protection systems (enforcement tools under intellectual property and commercial practices legislation) • The enforcement tools available range from informal notification and negotiations to formal civil and criminal law sanctions (injunctions, fines, damages, seizures, imprisonment)	• Responsibility for enforcement lies with the mark owner (which can also be a public authority) • National law enforcement and judicial authorities become only involved when the mark owners bring a legal action or as part of regular control and policy activity (e.g. customs controls)	• The share of infringements where there is the need to resort to formal measures is overall very small, in many cases even zero	• The number of formal sanctions used is overall negligible or even zero • Formal sanctions are generally considered costly and lengthy and therefore avoided if possible • It is considered that the threat of potentially using formal sanctions increases the effectiveness of informal measures

Protection system	The use of the mark/GI on the market is monitored		Prevalence of infringing products on the market		The protection system is enforceable		The available sanctions are used to enforce the product protection	
	Description of the monitoring system and frequency	Extent to which public authorities are involved in market monitoring	Number of infringing products by authorised manufacturers	Number of infringing products by other manufacturers	Description of the enforcement and sanctioning mechanisms available	Extent to which public authorities are involved in the enforcement	Share of infringements where there is the need to resort to formal measures	Number of formal sanctions imposed
EU certification marks	• Mark owners do not conduct systematic monitoring of the market, except one • Effective market monitoring is generally considered too expensive • The mark owners rely on complaints from producers, retailers, or consumers to be able to react to misuse of the mark on the market	• No involvement of national or international authorities • Local/regional authorities may be mark owners and are as such involved in the monitoring (this does not apply to any of the examined marks though)	• There are very few cases of infringing products by authorised manufacturers • The compliance rate is between 95% and 100%. • The few cases that occur are usually non-intentional and rectified by the producers without the need to take any formal sanctions	• Very few infringements detected, but also almost no systematic monitoring activities by the owners of most the marks • Only one mark provided data for three cases that required legal action in the last 3-5 years	• Same as above	• Same as above	• Same as above	• Same as above
National certification marks	• Some national marks have a clear monitoring procedure, and others do not • Despite the low levels of monitoring for some marks,	• No involvement of national or international authorities • Local/regional authorities may be mark owners and are as such	• Generally low level of infringements • Some marks only verify once, so there are no cases; other marks do	• For all the marks, except one, infringements by other manufacturers are very rare or non-existent	• Same as above	• Same as above	• Same as above	• Same as above

Protection system	The use of the mark/GI on the market is monitored		Prevalence of infringing products on the market		The protection system is enforceable		The available sanctions are used to enforce the product protection	
	Description of the monitoring system and frequency	Extent to which public authorities are involved in market monitoring	Number of infringing products by authorised manufacturers	Number of infringing products by other manufacturers	Description of the enforcement and sanctioning mechanisms available	Extent to which public authorities are involved in the enforcement	Share of infringements where there is the need to resort to formal measures	Number of formal sanctions imposed
	there was a high degree of satisfaction and confidence • One mark has a team of 12 people monitoring • Other marks rely on reporting of misuse from the producers	involved in the monitoring	not verify production at all • Only one of the examined marks has a higher number of non-compliance, although the data is not granular enough to determine whether these are by authorised producers or not	• The level of infringement identified is dependent on the level of monitoring • A further issue for some is imitation marks or styles which do not directly contravene the rules and are technically not 'infringements' but seek to benefit from the reputation of the mark				
National sui generis GI protection of non-agricultural products	• No formal monitoring activities in place for majority of examined GIs; monitoring is thus left to the individual producers	• No real involvement of national public authorities	• Very low level of non-compliance for all examined GIs, but also non systematic verification for all products	• Overall very low level of infringements, but also often no systematic monitoring • For one of the examined GIs, the number is high (about 100 infringements in	• Same as above	• Responsibility for enforcement lies with the producers • National law enforcement and judicial authorities become only involved when the mark	• Same as above	• Same as above

Protection system	The use of the mark/GI on the market is monitored		Prevalence of infringing products on the market		The protection system is enforceable		The available sanctions are used to enforce the product protection	
	Description of the monitoring system and frequency	Extent to which public authorities are involved in market monitoring	Number of infringing products by authorised manufacturers	Number of infringing products by other manufacturers	Description of the enforcement and sanctioning mechanisms available	Extent to which public authorities are involved in the enforcement	Share of infringements where there is the need to resort to formal measures	Number of formal sanctions imposed
	• In the case of one GI, monitoring is done by the Geographical Indication Committee; use of the GI can also be controlled by the National Trade Inspection Unit (independently or upon request)			3 years), although almost all of these can be solved amicably		owners bring a legal action or as part of regular control and police activity (e.g. customs controls)		
EU sui generis GI protection of agricultural, food and drink products	• Member States must designate a competent authority for the surveillance of the use of names on the market • Public authorities and/or producer groups may be in charge of the monitoring of	• National authorities are doing monitoring, but the intensity varies by Member State	• Very low level of non-compliance for all examined GIs/marks	• No data on the number of infringements for the examined GIs	• Same as above	• Public authorities can take direct enforcement action if they identify infringements during their monitoring activities	• Same as above	• Same as above

Protection system	The use of the mark/GI on the market is monitored		Prevalence of infringing products on the market		The protection system is enforceable		The available sanctions are used to enforce the product protection	
	Description of the monitoring system and frequency	Extent to which public authorities are involved in market monitoring	Number of infringing products by authorised manufacturers	Number of infringing products by other manufacturers	Description of the enforcement and sanctioning mechanisms available	Extent to which public authorities are involved in the enforcement	Share of infringements where there is the need to resort to formal measures	Number of formal sanctions imposed
	the GI names on the markets							
GI and trade mark protection systems in non-EU countries	• Varies depending on the national GI system • Ranges from monitoring by national authorities/ institutes or independent authorities, to self-regulation by either the producers or producer associations	• Varies depending on the national GI system, but generally public authorities are not involved in the monitoring	• Very low level of non-compliance for all examined GIs/marks	• Number of infringements can be very high for certain products, in particular in third countries	• Same as above	• National law enforcement and judicial authorities become only involved when a legal action is brought by producers	• Same as above	• Same as above

A. Judgement criterion – The use of the mark/GI on the market is monitored

A.-1. Indicator – Description of the monitoring system and frequency

EU collective marks

Among the trade marks investigated, the monitoring of the market is performed by **producer associations and their members, with the help of producers**. No coordination with national or international authorities was mentioned by stakeholders and public authorities are not involved in the monitoring procedures but are contacted when legal action is enforced.

Online monitoring activities are implemented **once a week** for Belgian Linen and on a monthly basis concerning Plauener Spitze. Other associations **do no operate online monitoring**. For monitoring generally, the most common elements monitored are:

- Compliance with the logo rules.
- Use of the geographical indication.

  Use of expressions like “in the style of…”

Excluding Plauner Spitze, all trade marks analysed considered that monitoring procedures implemented are **only slightly effective.** They all face a **lack of resources** to properly conduct this task, moreover when external markets have to be monitored it becomes very difficult.

EU certification marks

For most of the investigated marks, the mark owners **do not conduct systematic monitoring of the market.** Effective market monitoring is generally considered **too expensive** and monitoring procedures are not properly established. The mark owners therefore **rely on complaints** from producers, retailers, or consumers to be able to react to misuse of the mark on the market. The only exception is the Certified Asthma & Allergy-friendly mark, where the monitoring activity is handled by **a dedicated department of the company owning the mark.** The mark owner uses an **IT tool to screen the use of the mark name online** on a constant basis.

For the other marks, sometimes monitoring of the market is done **by individual producers,** for example by buying products from competitors and testing them in their laboratories. This type of monitoring is strictly speaking not an activity under the certification mark; it is rather a **part of normal business operations** that focusses on understanding the competition instead of on misuses of the mark. It is also not systemic, periodic or controlled by the mark owner.

National certification marks

Some national marks have a clear monitoring procedure, and others do not. Generally, there is some **sharing or joint ownership over some form of formal or informal monitoring process**. However, the extent to which this results in a coherent ‘procedure’ and the reasons behind this, vary for each mark.

Monitoring is lacking for both the Sami Duodji mark and the Azores handicraft mark. For the Sami mark, the geographical area is large, and the industry is small, so there is very **little systematic monitoring deemed possible by the mark owner**.

The other three marks in this case study have stronger monitoring procedures. The Polish 'Made in Torun' mark's owner, the Business Centre, is continuously involved in monitoring the market. **A team of 12 people** within the Centre check whether companies are using the mark properly (e.g., logos on products and websites), whether or not their business has changed (e.g., in terms of profile), and whether they maintain the right standards and correspondingly high rankings. The team **mainly refer to reviews and feedback available on social media and other online services.** If the online monitoring does not prove to be effective in a specific situation or some issues have been noticed then **field monitoring takes place as well** (viewing shops, services) to ensure all requirements of the mark are met.

For the cutlery of Albacete, the Consumer directorate of the region of Castilla-La-Mancha (the mark owner) carries out **inspections in the shops,** reviewing the suppliers and the types of knives that are sold and imposing sanctions. The producer association, APRECU, does not carry out a monitoring policy but does keep track of claims and non-compliant cases detected by its members and consumers. Producers feel that **this monitoring works reasonably well but is slow and not agile in reacting to infringements.** The Certified Quality Bavaria mark does not proactively monitor the market but the public authority who is also the owner of the mark, **encourages participating producers to flag non-compliant use** of the mark. Checks are then carried out upon receipt of a complaint, or self-request for verification.

Despite the low levels of monitoring for some marks, generally speaking there was a **high degree of satisfaction and confidence across them all.** The monitoring systems are justified in different ways. For the Sami Duodji mark, despite the large geographical area and lack of monitoring, the **close connections within the Sami community** means a high degree of confidence that there are not any infringements. For the Made in Torun mark, the fact that there is **no verification of production means monitoring products already on the market to maintain the 'brand' is more important,** hence the considerable resources the Business Centre has for this.

National sui generis GI protection of non-agricultural products

In almost all the considered cases the collected information reveals that **there are no formal monitoring activities in place**. These are left to the individual producers who conduct them 'informally' by monitoring the internet, checking who is selling what etc.

The only exception that emerged from the analysis is Idrija Lace. In this case, **the market is monitored by the Geographical Indication Committee of Idrijska Čipka**. The use of the GI can also be controlled by the National Trade Inspection Unit – independently or upon the demand of the Geographical Indication Committee and/or of a physical person who filed a report. Informally, traders selling GI Idrijska Čipka refer to the GI Committee when a quality issue is found.

EU sui generis GI protection of agricultural, food and drink products

EU regulations indicate that Member States shall designate a competent authority for the surveillance of the use of names on the market. According to findings from product research, **public authorities and/or producer groups may be in charge of the monitoring of the GI names on the markets**. Producers may also be involved in this monitoring in their daily business activities. The elements monitored are the use of the protected name, as well as evocation of the name, such as 'in the style of'.

National authorities are involved in the controls on the market for Pont-l'Evêque (INAO, DGCRF, producer group), Polish Vodka (AFQI), Vendace Puruvesi (Finnish Competition and Consumer Authority). Concerning Steirisches Kürbiskernöl and Turrón de Alicante, producer groups conduct the monitoring of the GI on the market. In this situation, public

authorities can provide support during controls, as in the context of Steirisches Kürbiskernöl.

The most common monitoring tool is internet research. Some service providers may monitor the use of some terms on the internet. This is not used by the GIs covered by this case study.

GI and trade mark protection systems in non-EU countries

Responsibility for verifying compliant use of the mark/GI for non-EU products that are placed on the market varies considerably. Monitoring regulated by **national authorities/institutes or independent authorities, as well as self-regulation by either the producers or producer associations**, all take place.

Concerning **Thewa Art Work, it is the Rajsoni family themselves** (the registered users of the GI) who search for 'Thewa art work' online and find fake products. They have also identified artificial Thewa art in the offline market. **More official, systematic monitoring is lacking.** The number of counterfeit Thewa art products on the market shows that there is a need for monitoring to take place, although enforcement then proves to be an issue for the producers of genuine Thewa Art.

For Swiss watches, no single designated entity is legally responsible for market monitoring. In practice though, the Federation of the Swiss Watch Industry has a designated unit in charge of market monitoring globally. **Monitoring is carried out both online and offline through continuous, multi-stakeholder actions.** Offline markets (shopping malls, the black-market) are occasionally scanned by members of the federation network (overseas members, consular staff) and suspicious products are bought and shipped to the Federation laboratory in Switzerland to assess the authenticity of the product.

Monitoring of the Grisons meat market is carried out by ProCert, the independent certification authority. ProCert visits shops of certified producers and retailers of Grisons meat in Switzerland and France (since a small number of French retailers signed up to the 'Bündnerfleisch GGA' GI under Swiss law). The audit rhythm is every 2 years, with visits being announced.

A.-2. Indicator – Extent to which public authorities are involved in market monitoring

EU collective marks

Among the trade marks investigated, the monitoring of the market is performed by **producer's associations and their members with the help of producers.** No coordination with national or international authorities was mentioned by stakeholders. **Public authorities are not involved** in the monitoring procedures but are contacted when legal action is enforced.

EU certification marks

National or EU authorities are not involved in the monitoring of the market. In principle, authorities can also be the owner of an EU certification mark and would as such be involved in the monitoring, but as owners they would not be independent from the mark. This does not apply to any of the examined marks, though.

National certification marks

The involvement of national public authorities is limited to the process of renewing of the mark every ten years, or potentially asking the national patent offices to refer a case of

infringement to the courts if it is unresolvable via administrative or informal means. Apart from that, there is **no real involvement of national authorities.**

However, **authorities can also be owner of the mark and in that role be involved in the monitoring**. For made in Torun, it would be Torun town Council. For Albacete cutlery, it is the Albacete Council. For the Azores mark, the owner is the Regional Centre for the Support of Handicraft (Centro Regional de Apoio ao Artesanato – CRAA), which was created as part of the executive services of the Regional Government of the Azores in the 1990's. For the Bavaria Certified Quality mark, the owner is the regional ministry, Bayerisches Staatsministerium für Ernährung, Landwirtschaft und Forsten (Public authority, Bavarian Ministry for Food, Agriculture and Forestry). The extent of regional public authorities in monitoring therefore is very high in all cases (except Sami Duodji).

National sui generis GI protection of non-agricultural products

The research reveals that the **public authorities play almost no role in the monitoring of the market**. Some monitoring is done but not specifically for GIs but as part of general law enforcement activity. For example, in Italy some controls can be conducted by the Tax Police (Guardia di Finanza), in France by the anti-fraud and customs authorities, or in Slovenia by the National Trade Inspection Unit in the course of their normal duties of monitoring of the market place.

EU sui generis GI protection of agricultural, food and drink products

Public authorities are involved in the market monitoring. However, **the level of involvement depends on the MS**. In France, for instance, where GIs have an important economic weight, the correct use of GI names is included in the controls conducted in the place of sales and restaurants by DGCCRF[61]. If the producer group identify a misuse of the GI name, it may inform the public authority.

In other MS covered by the case studies, were the importance of GIs is limited, the effective role of public authorities in the monitoring is less important such as reported by producers in Finland.

GI and trade mark protection systems in non-EU countries

The only non-EU product where public authorities have a role in the monitoring process is the Mexican Guanajuato mark. The **Mexican Institute of Normalisation and Certification is in charge of the monitoring process for products that are placed on the market**. As the owner of the trade mark, the Government of Guanajuato also has certain responsibilities, including covering the costs of monitoring.

B. Judgement criterion – Prevalence of infringing products on the market

B.-1. Indicator – Number of infringing products by authorised manufacturers

EU collective marks

The data gathered does not effectively differentiate between infringements by other manufacturers or by authorised producers, although **the associations state that that the majority of infringements are by other manufacturers**.

EU certification marks

There are very few cases of infringing products by authorised manufacturers for the investigated marks. Indeed, the **compliance rate is between 95% and 100%.** The few

[61] Direction générale de la Concurrence, de la Consommation et de la Répression des fraudes - French Directorate General for Competition.

cases that occur are usually non-intentional (for example because of a defective product or incorrect use of the mark) and can be **rectified by the producers without the need to take any formal sanctions.**[62]

National certification marks

For the cases of Sami Duodji and Made in Torun, there are **no periodic checks** on the manufacturing process and so no cases of infringement by authorised manufacturers in this regard. For Made in Torun, the monitoring of the market does not include the manufacturing process directly, instead focusing on **secondary quality indicators** such as rankings of the business, financial profile of the company and the use of logo on products, websites, promotional material and on premises.

Where verification takes places (In the cases of the Bavaria certificate of quality, Azores handicraft and Albacete cutlery) all producers and owners of the mark are confident of the quality of the products coming from the verification process. The Bavarian system of initial verification through experts of production process and continuous self-assessment and verification, was seen as **particularly successful**. It means **only large deviations from initial production setups need to be reviewed again to ensure continued quality.** The Azores handicraft mark has a low incidence of infringing products from authorise manufacturers, however **the process is only checked once every five years**. In the case of Albacete cutlery, the data did not indicate whether the average of one infringement per year also includes infringements by authorised manufacturers. However, given the small number of authorised manufacturers it is reasonable to assume that the **strict controls do not result in many infringements via deviations from authorised manufacturing conformity.**

The Certified Quality Bavaria had by far the largest number of infringements associated with the manufacturing process, however the data was not granular enough to differentiate between authorised and non-authorised manufacturers. Over 19 years there have been **3700 decisions** based on the manufacturing process **to withhold access to licence *or* to withdrawal licences** already granted.

National sui generis GI protection of non-agricultural products

There is no reliable data availability regarding cases of non-compliance. For most of the examined GIs, **there is also no structured and systematic verification** that would lead to the identification of non-compliance.

EU sui generis GI protection of agricultural, food and drink products

The level of non-compliance is limited, a maximum of a dozen cases per year for each GI covered by the case study (see details in the section on effectiveness). The most common infringements are packaging and labelling issues and misuse of evocation of the protected name.

GI and trade mark protection systems in non-EU countries

Both of the Swiss products within the scope of this study have a low rate of infringing products by authorised manufacturers. Occasionally, a Swiss manufacturer may exhibit minor deviations from the criteria laid out in the Ordinance regulating the use of the word “Swiss” for watches, but in most cases these are **honest mistakes** committed due to lack of knowledge of the technicalities of the legal text, that are then easily remedied.

[62] Interview carried out on 17.03.2021 with a representative of Gütegemeinschaft Kerzen e.V; interview carried out on 11.03.2021 with a representative of Re Panettone; interview carried out on 29.03.2021 with a representative of Qualitätsgemeinschaft ÜGPU; interview carried out on 31.03.2021 with a representative of Qualitätsverband umweltverträgliche Latexmatratzen e.V.

For Grisons meat, there have been no major infringements concerning the use of 'Bündnerfleisch GGA' detected until now. **Minor cases of procedural negligence are detected every year (on average 7 per year)**, but these solely relate to small mistakes in tracing products across the value chain, which can be corrected in short time frames by the producer.

Concerning **Thewa Art work**, given that the **knowledge of how to produce it is limited to the Rajsoni family, there are no infringing products** from the registered producer.

B.-2. Indicator – Number of infringing products by other manufacturers

EU collective marks

The data gathered **does not effectively differentiate between infringements by other manufacturers or by authorised producers,** although the associations state that that the majority of infringements are by other manufacturers. In terms of numbers**, four out of five** of the marks saw between **1 and 5 infringements per year**. The outlier is Belgian Linen, with 50-100 violations per year, mainly from abroad. Most of the infringements detected on the market are related to the unlicensed use of the mark itself (name and label) or terms which refer to the mark (in a style of "…"). Many of the difficulties attached to monitoring of the productions come from a **lack of resources to monitor and endorse actions,** when necessary, exacerbated by products being manufactured non-domestically.

EU certification marks

Because there are almost **no systematic monitoring** activities by the owners of most the marks, there are **very few infringements detected**. However, even in the case of Certified Asthma & Allergy-friendly, which has two people full time working on monitoring, the number of infringements is negligible. The only mark for which the owner reports regular (although rare) instances of infringement is the QUL mark, where **three issues that required taking legal action occurred in the last 3-5 years**.

National certification marks

For all the marks, except Albacete Cutlery, infringements by other manufacturers are **very rare or non-existent**. For the Sami Duodji mark, there has never been infringement since the mark was first registered in the 1980s. There was once incidence of a young artist using the mark without permission for some of her work, but this was resolved quickly and without incident.

This is in contrast to the Made in Torun mark. Since the mark has been established in 2018 there have **been less than 5 infringements, which is still significant in less than 3 years**. All these cases have been solved **without taking formal steps.**

In the case of Albacete Cutlery, there are two issues. The first is **direct infringement**, on average, **one infringement a year** is identified. These are counterfeit and unauthorised uses of the "AB Cuchilleria de Albacete" label. The second is more nuanced, larger and shares some similarities with the challenges faced by the Sami Duodji mark. The largest challenge is counterfeit products imported from China. These products are imported with a 'clean sheet', after which the commercial name of a manufacturer of Albacete is engraved. These knives are then sold by shops in Albacete, thus **benefiting from the reputation of the traditional product**.

National sui generis GI protection of non-agricultural products

The research has shown that the cases of infringement are overall very rare. The only exception is France where, since the registration of Burgundy Stone as a GI, **about 100 procedures have been initiated for the misuse of the geographical name**. Most of

these infringements resulted in registered letters being sent (30 in 2019 and 20 in 2020). These misuses were operated by producers and even large-scale retailers in the building sector or do-it-yourself sector. However, at present, only one infringement procedure, initiated in 2018, may result in court action, as the majority of cases are settled amicably.

EU sui generis GI protection of agricultural, food and drink products

There is **no detailed information on the origin of infringement**. However, based on qualitative feedback, infringements may come from:

- stakeholders from other geographical areas, other countries,
- stakeholders from the geographical areas (or close to the area) and even from producers who are (were) involved in the GI. This may cover products evoking the geographical area without complying with the GI specification.

GI and trade mark protection systems in non-EU countries

On average there are around 50 cases per year concerning non-authentic Swiss watches (i.e. those from non-certified producers, identified through monitoring of the market). The most notable market for infringements of Swiss watches is China. Concerning Thewa Art work too, it is easy to find infringing products, many of which are for sale online.

Although stakeholders reported that the monitoring system for the **GTO Guanajuato Mark** is generally perceived as effective given that there are very few cases of non-compliance identified, it is **not clear to what extent the monitoring of the mark is carried out on a regular, systematic basis**.

C. Judgement criterion – The protection system is enforceable

C.-1. Indicator – Description of the enforcement and sanctioning mechanisms available

EU collective marks

The sanctions provided for by the associations owning the examined marks in the event of non-compliance of the authorised producers **vary according to the marks analysed**; some trade marks do not provide for any action, for example Belgian Linen, Plauener Spitze and Ceramica de Manises.

By contrast, Bois des Alpes and Marmo Botticino Classico provide a **complete range of sanctions for non-compliant producers.** Regarding Bois des Alpes, if a non-compliance is detected, the certifying body notifies the company, and the problem must be addressed **within 2 months** (most of the time, companies need to provide an administrative document that was missing during the audit). If the company is not able to provide the evidence, the association can **withdraw the right to use the mark.** Marmo Botticino Classico provides specific sanctions in any case in which a conduct does not comply with the principles, these are:

- written warning;
- fine up to a maximum of 1,000 EUR
- suspension of the use of the trade mark for a period not exceeding one year;
- revocation of the Certificate of Conformity and the license to use the trade mark

The above sanctions are contractual, based on adherence and signature of an agreement with the mark owners and the authorised producers. In terms of legal

protection when an infringement is detected by a non-authorised producer, producer associations have several options available that can be progressively enforced:

- **Enforcement notice** or 'cease and desist letter', informing the operator about the conflict. This option is used by all the producers' associations and solves most of the cases detected.
- **Negotiation demand**: if the fraudulent operator does not answer to the notice or letter, the associations ask for a negotiation.
- **Civil law measures**: If the attempts to warn or negotiate with the alleged infringer fails, other legal measures, such as preliminary injunctions or precautionary seizures, can be enforced.
- **Criminal law measures** and enforcement actions under criminal law apply when counterfeiting and piracy activities are involved.

In all cases, enforcement actions under civil law must be brought at **national level in the relevant EU jurisdictions.** The producer using the collective mark is **not authorised to engage legal action without the agreement of the collective mark owner.**

EU certification marks

Sanctions in case an authorised producer fails to comply with the standards are set by the mark owner in the regulations governing the use of the mark. All the examined marks have in common that the producer **must immediately stop using the mark. Additional product tests** are then carried out to confirm the findings and the producer must then take the necessary steps to reinstate compliance and undertake the necessary tests to provide proof. If there is repeated non-compliance, all the marks foresee the **possibility of fines and the eventual exclusion from using the mark.** All these sanctions are contractual and public authorities are not involved. In practice, sanctions in case of non-compliance of authorised users **are almost never taken by the mark owners**. For the Certified Asthma & Allergy-friendly mark, the few cases of infringement that occur can always be solved by sending a notification letter, which does not create any relevant costs and is quite low in administration.

When it comes to sanctioning of misuse of the mark on the market, the EU certification mark, as a trade mark-based protection system, **must be privately enforced**. The owners of the mark are therefore in the position to take legal action against any infringing producer or retailer. The informal, civil law and criminal law enforcement tools available are the same as for EU certification marks. In practice, the mark owners would usually try first to solve the issue **informally to avoid legal costs**.

National certification marks

All the marks come under **national trade mark legislation** (but harmonised by EU trade mark legislation). Therefore, the formal (legal) options available for enforcement and sanctioning are **all very similar.** The owner of the mark can report infringement to the police, the courts, or the patent office. The patent office however can only issue an administrative cease order, and any legal order or sanctions must come from the courts. The sanctions vary depending on the seriousness of the infringement, but infringing producers would technically be vulnerable to **imprisonment, confiscation of property or a fee and compensation for the use of the trade mark and compensation for the further damage that the infringement has caused.** In some cases, for example Sweden, the courts may decide that the person who has committed the infringement should pay for appropriate measures to disseminate information about the judgment in the case. The case of the Bavarian mark is fairly similar, with fines, enforcement notices and escalating legal measures all forming part of the protection regime.

More generally however, owners of the mark take a less litigious, more informal, or administrative, approach to enforcement. The Business Support Centre in Torun is entitled to issue a **formal enforcement notice** once an unlawful use is confirmed. However, it would normally be preceded with a **direct contact with the person or company responsible and negotiations.** If the issue of unlawful use proves to be difficult to solve using these methods, the Centre could take the business owner to court. This however would be a **last resort which in practice is not used.** The sanctions depend on the gravity of the non-compliance and ranges from simple warning to the withdrawal of the right to use the mark and withdrawal of all the products concerned from the market.

In the Spanish case, infringements are **mostly solved by asking the retailers to stop using the mark.** Different kind of actions can be enforced according to the infringement gravity:

- Enforcement notice by official mail sent by the association with the review of their lawyer
- Notification to the Consumer direction of the region of Castilla-La-Mancha
- Legal action endorsed by the lawyer of the producer association APRECU

The procedure for the Made in Torun mark involves the **representatives of the Centre approaching producers / service providers by phone to inquire about the suspected misuse of the logo.** They would also visit their premises to view and document the misuse. Contact by phone and in person is normally sufficient to solve the issue (explain the problem to the business owner and request them to remove the logo). Interventions undertaken by the Centre are normally swift and not time consuming. **Enforcement can usually be implemented within a week.**

National sui generis GI protection of non-agricultural products

With regard to the enforcement and sanctioning options available in case of infringement/non-compliance, the results of the analysis are the following:

1. In the case of Ceramics from Faenza, the use of the marks ‘Artistic and Traditional Ceramics’ and ‘Quality Ceramics’ by a registered producer without the fulfilment of the law requirements concerning production standards is **punished with a fine between 1,000 and 25,000 EUR** and, in case of reiterated infractions, with the cancellation from the register of producers. Furthermore, the production of fakes is punished under the **general provisions of law on counterfeiting**. In particular, the competent authorities can seize and destroy the fake goods, grant injunctions and impose fines. However, the cases of infringement are exceptionally low, almost non-existent. Finally, cases of ordinary trade mark infringement are litigated before the tribunal.
2. In the case of Burgundy Stone, infringing producers are immediately required to stop the non-compliance or misuse of the name. Depending on the infringement and the reaction of the producer to correct it, **the sanction ranges from a warning to the exclusion from the use of the GI**. As to the procedure, in case of identified misuse there is:
    a. a first letter from the producer group, providing information on the existence of a GI, what a GI is, what the sanctions are (up to 300 000 € fine) and providing evidence of the misuse (capture of website for instance). Finally, the letter urges the producer to comply within 30 days;
    b. after 30 days, a second letter is sent, stating that after this warning the case is going to be discussed in court;

c. If the infringement persists, a formal notice from a lawyer is filed;

d. Finally, if nothing has worked, proceedings are served in court.

Among 100 infringements identified, in 90% of cases the issue was solved through the submission of registered letters by the producers' group; about 10 situations were solved through the formal notice from a lawyer and only one infringement has led to a court case.

3. In the case of Vratsa Limestone, the **registration is revoked when it is established by a legal action** that the user has used the geographical indication to denote other goods or when the goods produced by him do not have the prescribed qualities or features. The legal protection of the registration of a geographical indication shall be terminated when: the connection between the qualities and features of the product and the geographical environment ceases to exist; the legal entity is terminated; the only registered user of a geographical indication waives his right to use it. As to the legal remedies, the following are available: sending of a cease-and-desist letter; exercising of administrative penal liability by notifying the Patent Office of the Republic of Bulgaria with information about the infringement; Civil law defense by filing a claim at the Sofia City Court; Criminal law defense by notifying the prosecutor's office; Filing a claim under the Law on Protection of Competition to the Commission on Protection of Competition.
4. With regard to Halas Lace, **the standard rules on intellectual property infringement apply**. In particular, in the case of imitation or copy, marketing and/or distribution of the product, the penalty is imprisonment for up to 2 years, 1 to 5 years if it is done on a commercial scale and, depending on the scale of the financial loss, up to 10 years. Moreover, fines can also be imposed on the basis of the value of the counterfeit products.

Finally, no significant information was retrievable about Idrija Lace as the cases of infringement are close to zero and almost all the controversial situations are settled informally and amicably.

EU sui generis GI protection of agricultural, food and drink products

Producer groups may be involved in the enforcement system (such as in France and Italy where the roles of producer groups are defined in national laws). When an infringement is identified, producer groups may **take legal actions to inform the infringing producer that they use the name of a protected GI in a way that it is not legal** and ask him to implement corrective action.

Public authorities in charge of the GI enforcement may be informed of these actions and may be directly involved if this first step (information of the infringing producer) is not sufficient. **Public authorities may act directly if they observe the infringement on the market** in the context of their controls. The specific sanctions regimes are defined at MS level.

GI and trade mark protection systems in non-EU countries

For the non-EU products, a range of formal sanctions are available, encompassing both civil and criminal procedures. **Falsification of an Indian geographical indication shall be punishable with imprisonment for a term of not less than six months, and not more than three years, with a fine of between 50,000 and 200,000 rupees (around 580 to 2,330 EUR).** The same sanctions are applicable to sellers of goods to which false GIs are applied, unless the seller can prove that they had no reason to suspect the genuineness of the geographical indication, or that on the prosecutor's demand they gave all the information in their power with respect to the person from whom they obtained such goods,

or that they had otherwise acted innocently. It is for the registered proprietor or authorised users of a registered geographical indication to initiate an infringement action before a court.

For unauthorised uses of the GTO Guanajuato Mark, the offending company is first invited to remove the logo/information about the mark from its products, services, documents, communication material, uniforms, etc. **Where necessary, a formal and legal demand is sent by the Government of Guanajuato to a producer in order to enforce this**. As a last resort, the Government, as owner of the trade mark, reserves the right to enforce a judicial procedure.

In terms of sanctions available for **infringements of the Swiss watches GI, Swiss courts provide a wide range of formal sanctions, ranging from provisional measures and injunctions** (civil procedures) to **confiscation and destruction of infringing products** (criminal procedures). In very few and severe cases, perpetrators can receive prison sentences.

C.-2. Indicator – Extent to which public authorities are involved in the enforcement

EU collective marks

Enforcement under EU collective marks are private responsibility. Public authorities are **not involved in the monitoring procedures** or contractual enforcement against authorised users of the mark; **neither do they take any enforcement initiative against infringements by non-authorised users**. National law enforcement and judicial authorities become only involved when the mark owners bring a legal action.

EU certification marks

The involvement of public authorities in the enforcement process is the same as for EU collective marks.

National certification marks

The involvement of public authorities in the enforcement process is generally the same as for EU collective and certification marks, although slight differences might exist based on the differences in the national legal frameworks.

For several of the examined marks, **the owner of the mark is a regional or local authority or reports to some form of local government**. In their function as mark owner, they are all responsible for the enforcement, exactly like a private entity as mark owner would be. For made in Torun, it would be Torun town Council. For Albacete cutlery, it is the Albacete Council. For the Azores mark, the owner is the Regional Centre for the Support of Handicraft (Centro Regional de Apoio ao Artesanato – CRAA), which was created as part of the executive services of the Regional Government of the Azores in the 1990s. For the Bavaria Certified Quality mark, the owner is the regional ministry, Bayerisches Staatsministerium für Ernährung, Landwirtschaft und Forsten (Public authority, Bavarian Ministry for Food, Agriculture and Forestry).

National sui generis GI protection of non-agricultural products

According to the research, in the case of Idrija Lace, Halas Lace and Vratsa Limestone, the enforcement is largely left to the individual producers and/or the producers associations in accordance with the ordinary rules on IP infringement.

In the case of Faenza Ceramics, the applicable rules generically state that the national authority (*Consiglio Nazionale Ceramico*) 'monitors the application of the law as well as of the specifications'. However, the largest part of the involvement of the public institutions is

represented by the action of the custom and the anti-fraud authorities that include activities for the protection of a wide range of products including GI-goods.

In France, the Intellectual Property Code **allocates the responsibility of the protection of GIs, as well as of their promotion, to the designated management associations**. With regard to the involvement of the public institutions, similarly to Italy, the customs and anti-fraud authorities contribute on a regular basis to the protection of these products.

Overall, **none of the countries feature a significant degree of public intervention** that goes beyond the general procedures for the enforcement of intellectual property rights and the regular policing and custom check activities.

EU sui generis GI protection of agricultural, food and drink products

Public authorities are involved in the monitoring and can thus also be fully involved in the enforcement process, depending on the situation:

- Infringement is identified by producer / producer group: this is solved through amicable procedure, the public authority may be informed but does not directly act,
- The infringement is identified directly by the public authority on the market and may act directly.

GI and trade mark protection systems in non-EU countries

Public authorities are not involved in the enforcement procedure for the majority of the non-EU GIs/marks.

For unauthorised uses of the **GTO Guanajuato Mark, a formal and legal demand is sent by the Government of Guanajuato (as the mark owner) to a producer,** if they do not respond/take corrective action upon prior invitation to remove the logo/information about the mark from its products, services, documents, communication material, uniforms, etc.

D. Judgement criterion – The available sanctions are used to enforce the product protection

D.-1. Indicator – Share of infringements where there is the need to resort to formal measures

EU collective marks

Belgian Linen, Plauener Spitze and Ceramica de Manises do **not provide formal sanctions in case of non-compliance by authorised producers.** For Plauener Spitze, most of non-compliance cases are resolved through an informal way, **no legal actions have ever been taken** against a member by the association. The stakeholders share the same challenges: the impossibility to protect the use of the geographical area (e.g Marmo Botticino Classico) from where the products are manufactured raise difficulties, the difficulties attached to the monitoring of the productions in non-domestic markets and the lack of resources to monitor and endorse actions when necessary.

The share of infringements where there is the need to resort to formal measures is therefore **very small,** for example Marmo Botticino Classico has only started **two formal proceedings**. Overall, enforcement of legal actions is considered **too costly**, especially when infringements are connected to foreign operators.

EU certification marks

In the majority of cases, **sending an informal or formal notification letter to the infringing party is effective.** Taking legal action against infringements of using the mark

on the market are considered effective in solving the issue but not cost-efficient. The damages that can be obtained do cover the costs of the legal action itself but no other costs (like for instance lost profits or intangible costs like damaged reputation). **No precise data was provided** to outline the share of infringements resorting to formal measures; **however, it is negligible.**

National certification marks

There are **almost no cases of formal measures being invoked** and the idea of legal protection as a deterrent could be the most accurate analysis. For the Made in Torun mark, the Business Support Centre reports that the system meets all the requirements and is well adjusted to the needs of the mark protection. The group of employees involved in enforcement actions know the market (especially the local market) very well and their work is based on a close liaison with local entrepreneurs. Therefore, they **achieve good results and are generally effective without the need for formal legal procedures.**

For both the handicraft marks, Azores and Sami Duodji, **no formal legal proceedings have been initiated and no legal sanctions have been enforced**. For the case of Albacete cutlery, the mark is known to be falsified but APRECU does not have data to assess the proportion of this. On average **one infringement a year is identified** and infringements are mostly solved by simply asking the retailers to stop using the mark. The Certified Bavaria Quality mark shows a v**ery low number of cases leading to escalations after first notice the system**, so the protection is regarded as effective.

National sui generis GI protection of non-agricultural products

The research shows that the **cases of infringement that need the application of formal measures are extremely rare**, close to zero.

EU sui generis GI protection of agricultural, food and drink products

For agricultural, food and drink products, **infringements are often resolved without the need to take formal action**. For infringements of Polish Vodka, usually all situations are solved without taking formal action (i.e. through negotiations between the Polish Vodka Association and producers). The same situation is observed for Steirisches Kürbiskernöl, where in recent years, all cases could be addressed through amicable (extra-judicial) agreements. Concerning Turron de Alicante, most infringements can be solved with a warning and an injunction to remove the infringing products. For Pont-L'Evêque, any infringement correction procedure starts with an official registered letter sent to the producer, which is often enough to resolve the issue.

GI and trade mark protection systems in non-EU countries

In Switzerland, the **Federation of the Swiss watch industry reports that 60% of cases can be solved without having to resort to court procedures**. Abroad, the ratio of court cases is higher, as manufacturers know that the Swiss law protecting the use of the GI is more difficult to enforce.

Speaking more generally about infringements of "Swissness" for industrial products, the Swiss Federal Institute of Intellectual Property (IPI) reports that almost all cases can be addressed extra-judicially. One of the reasons for this is that Swiss manufacturers are aware that they may face severe penalties in case of non-compliance, and so this acts as a deterrent. However, this is only true within Switzerland; internationally, especially outside the EU, there are many more court cases to pursue infringements. Indeed, the IPI currently has 500 ongoing court cases in India related to the GI "Swissness", with none of them having been successfully finalised so far.

For the **minor cases of procedural negligence that are detected on the Grisons meat market**, these cases are **notified to the Federal Office for Agriculture** in ProCert's annual report. They are **not made public** as there is no impact on the quality of the final product, on consumer safety or consumer confidence.

In the case of the **GTO Guanajuato Mark,** it was reported that **in almost all cases, infringements can be solved without needing to resort to formal action**.

D.-2. Indicator – Number of formal sanctions imposed

EU collective marks

No precise data was provided to outline the share of infringements resorting to formal sanctions; however, the case study interviews outlined that it is a **negligible number**, attributed to difficulties of pursuing international legal action and associated resource shortages.

EU certification marks

No precise data was provided to outline the share of infringements resorting to formal sanctions; however, the case study interviews outlined that it is a **negligible number.**

National certification marks

The options of legal remedies, including fines and court proceedings, is surely an important factor in ensuring the effectiveness of administration or informal responses to infringements from the mark owners. For the Sami Duodji, Azores Handicraft and Made in Torun marks, there have been **no cases of formal legal proceedings**. For the Made in Torun mark, most cases of infringements were accidental or through ignorance. In the case of the Bavaria mark, it is unclear under which specific circumstances legal proceedings are used. In the case of Albacete cutlery there is **perhaps the highest number of formal proceedings started**, with notification to the Consumer Direction of the Community of Castilla La Mancha and instruction of a local lawyer forming part of the initial response. There is still a **very low conversion rate of formal proceedings to actual legal action through the courts.**

National sui generis GI protection of non-agricultural products

There is no or almost no use of formal sanctions for the examined GIs.

EU sui generis GI protection of agricultural, food and drink products

No detailed data on formal sanctions was available. **In most cases, amicable procedures are sufficient**.

GI and trade mark protection systems in non-EU countries

No precise data was provided to outline the number of infringements which result in the imposition of formal sanctions for the non-EU products.

3.4. Summary and conclusions

Based on the data summarised in the case studies, the control and enforcement mechanisms currently in place were assessed on the basis of the methodology from the European Commission's Better Regulation Guidelines. For each of the six protection system within the scope of this study, **it was assessed to what extent the existing mechanisms were effective, cost-effective and relevant** for ensuring the characteristics

and quality of the products and eliminating infringing products from the market. The analysis looked separately at the four phases of the enforcement process (i.e. product characteristics, verification, monitoring, and enforcement).

Effectiveness

Verification of the product characteristics and production processes was assessed to be effective for each of the production systems, as the evidence shows that **instances of users of marks / GIs deviating from the product requirements are very rare**, and they happen mostly unintentional.

Monitoring is assessed to be fairly effective for each protection system when it is carried out; however, in many cases very few infringing products were found on the market due to either **a total lack of, or an under-developed monitoring system**. The reasons behind the lack of monitoring vary: in some cases, the producers lack the necessary resources, in other cases monitoring is simply not seen as a priority because infringing products are rare and not seen as a threat. Imitation of the design is a recurrent problem for stakeholders, however, this is not necessarily an infringement if the protected name is not misused.

Enforcement at national level is assessed to be effective. In most cases, the **formal enforcement mechanisms (e.g. legal action before a court) and sanctioning measures can be avoided** by recourse to less formal means (for instance a registered letter to the misuser). Enforcement on international markets is more complex without harmonisation of the legal frameworks.

Cost-effectiveness

From a general perspective, costs are considered low to medium for each protection system.

For producers, the level of costs highly depends on the procedures implemented, in particular for verification. These verification costs may be zero in some cases (no verification conducted) and may reach a maximum of EUR 20,000 for a single company for very heavy and complex verifications. **For GIs, it generally ranges from a few hundred to a few thousand euro per year and per company**. Effectiveness to provide a product complying with the defined requirements tends to be higher when specific verification procedures are in place, such as for certification marks and most of the GI schemes (for instance EU GIs for agri-food and drink products, or French non-agricultural GIs).

For public bodies, the level of cost depends on the type of scrutiny of the application. This is a few hundred euro for national trade marks with a legal assessment of the application (but no technical expertise on the application and no assessment of the link to the territory), it ranges from EUR 4,300 to EUR 10,700 for the national non-agricultural GIs in France and even reaches EUR 33,500 for agri-food and drink product GIs for the European Commission. For stakeholders, there may be specific costs to draft the application file and provide justification on the link to the geographical area (including coordination of the stakeholders), which depend on the complexity of the application.

Monitoring and enforcement procedures are implemented through a flexible way by stakeholders. **Light monitoring and enforcement** (meaning no specific tools for monitoring and no legal action to court) **have limited costs** (few hundred or thousand euro per year) and are effective in most cases. Specific situations may entail higher costs: large monitoring and court cases in case of misuse of the name. This depends on the stakeholders' strategy using the mark/GI (to what extent the misuse of name is an issue on each market) and the means available for these tasks.

Relevance

Some of the protection systems cannot be used to protect a geographical origin; this applies to EU certification marks and national certification marks in the majority of Member States. However, these certification marks could be modified to cover geographical origin as well, as it is already the case in certain Member States.

All systems could be relevant for the definition of product specifications (including the link to the territory). **A major difference among the different systems is the involvement of public authorities**: they are involved for GIs (through the assessment of the application file), they are not involved for trade marks as requirements are managed by the mark owner. This has a high importance when considering that a GI is a collective and public right and not a private right.

Very diverse situations are observed among marks and GIs on monitoring and enforcement. The enforcement tools available under each protection system are more or less similar, ranging from informal notification and negotiations to formal civil and criminal law sanctions. Even if these tools are not necessarily used by all GIs/marks, these legal measures can be considered as relevant as they have a deterrent effect for potential misusers. **Public authorities are only actively involved in the case of EU sui generis GI protection of agricultural, food and drink products**, making the system relevant in particular for producers that have few resources to do their own monitoring and enforcement.

4. Recommendations for an EU protection of non-agricultural geographically rooted products

The analysis carried out in the previous chapter laid the ground work for elaborating recommendations: if the European Union were to adopt a system for the protection of geographically rooted non-agricultural products, how could the control and enforcement under this system look like?

In a first step, and in order to ensure that the proposed models are relevant, **the motivations and needs of stakeholders** seeking protection of their geographically rooted products were distilled from the case studies (Section 4.1). This is followed by a summary of **the key features of the six existing protection systems** examined for this study, showing each system's way of responding to the needs (Section 4.2).

Lastly, **three different models of control and enforcement under a potential EU protection system were elaborated and assessed** (Section 4.3). The models tie together the two previous steps by reassembling the key elements of the existing protection systems in a way so that each model provides a different proposition to the stakeholders' needs.

Like the previous research, case studies and analysis, this whole chapter and the proposed models also follow the structure of the four phases of the control and enforcement process:

- The link between the product and the geographic area,
- The verification of the product characteristics and manufacturing process,
- The monitoring of products on the market,
- The enforcement and sanctioning of infringements.

4.1. Motivations and needs behind the different phases of the control and enforcement process

This section outlines and synthesises the contextual information from the case studies gathered on the various motivations and needs of stakeholders that determine why and how they seek to protect their products and enforce that protection. In many ways, the often niche markets of the examined products operate in a particular way that means that specific context is very important. While this study aimed to develop an understanding of how the existing protection systems work in practice, it is clear that **the diversity of the examined products (and therefore also of the individual motivations behind the protection) is enormous**.

Generally speaking**, the rationale of the marks and products examined in the case studies falls between two ends of a scale**. The first end is characterised by the rationale of protection of important cultural and regional products for the purpose of their preservation and inherent social or historical value. Few products fall to this extreme of the scale, for example many combine this protection rationale with the need to also provide some kind of income for the local economy. Other products fall to the opposite end of the scale, and are primarily an economic enterprise seeking to find larger and more diverse markets to support expansion and product development.

At the most basic level, **there is a common interest to ensure a high and uniform quality of the final product, and by extension the need to eliminate illegal offers and infringing products**. It is only through protecting quality and quality manufacturing techniques that producers can be certain of a fair rate of return for manufacturing high quality products, which in turn also benefits the consumers.

On the question of consumer interest, **there is a motivation to ensure that adequate and correct information is provided to consumers**, and connected to this is the promotion of fair competition for producers to ensure integrity of the internal market. A baseline respect of intellectual property rights is also a key motivation for the protection systems in place.

4.1.1. The link between the product and the geographical area

The link of the product to the geographical area is normally the result of a perception that **the characteristics of the geographically rooted products distinguish them from comparable products found elsewhere on the market**, and that the quality is often also higher. Because of this, producers usually want the intellectual property rights to use the name of the region or product as a marketing tool capable of ensuring the sustenance and development of their (often niche) production. Additionally, **regional and local authorities might have an interest in boosting regional economy and preserving the cultural heritage**, but also use the geographical name for attracting tourism and investment. Some case study countries have tried to use trade marks to build up dormant historical reputations and revitalise them across a wide range of products, further enhancing the regional brand. The link with the geographical area is also the result of **the producers' traditional know-how and in-depth knowledge surrounding the history of the products**. They are the only ones that are making the products, so their knowledge is a clear choice for the setting of product characteristics and quality criteria, further cementing the link between product and region.

The link with the territory and dominance of producers carries with it the risk of dominance by a small number of large producers, **therefore the criteria, and the way how and by whom they are set, should not be used to exclude any producers who should be entitled to use the geographical name** (e.g. small producers who are not part of a dominant local producer group).

Important for consumers is that the link between geography and quality is maintained, therefore there must not be a weak connection to traditional know-how and/or local materials. **The interest of consumers looking for a geographically rooted product is therefore heavily tied to verification of product characteristics and local manufacturing**, as well as information provided to consumers about this.

4.1.2. The verification of the manufacturing process

The verification of product characteristics should ensure a high and uniform quality of the final product stemming from its authenticity as a geographically rooted product. The motivation behind this is twofold. Firstly, **producers do not want to damage the reputation of their products** and secondly, **consumers want to be sure that the origin and quality promise behind a geographical name is kept** by the producers.

Crucial to the verification process are the resources needed, both financial and human. The thoroughness of the verification process for producers was at its root, determined through practicalities and an assessment of costs. Producers do not want too high costs for the verification if it brings them no benefit in terms of market reputation, but on a practical level the diversity of products bearing a mark or name affects the extent to which its manufacturing processes can be verified.

Crucially for the producers, **the need for verification depends strongly on how organised the producer groups are.** If they know each other well there is less need for formal verification, as the producers are in almost constant communication and checking each other's products by working in the same industry. However, this can sometimes result in difficulties if a producer is no longer adhering to the terms of the mark, as quality criteria and what is deemed 'appropriate use' are in many ways simply an agreed-upon set of parameters that there may be disagreement on occasionally. Conflict within a producer group when it arises must have a distinct procedure for resolution.

4.1.3. The monitoring of products on the market

Monitoring of the products on the market is intended to identify illegal offers and infringing products, to allow for their removal from the market, protect the producers and preserve the link of the authentic product with the territory.

These threats can either come from producers who have no right to use the geographical name at all, or producers who previously had the right and have violated the terms of use. The case studies showed that a significant portion of infringements (usually more than 90%) are committed unintentionally, and so effective monitoring should include this perspective.

The role of different stakeholders in monitoring is important to take into account. Consumers can be important, and their role is multifaceted depending on the nature of the products. At the most basic level, consumers have an interest in making sure the products they buy are genuine and/or of the expected quality. Furthermore, **the expertise of the consumer is a monitoring factor if the products are highly specialised**. For many products in niche markets, consumers know very well the characteristics of authentic products, and non-authentic products are therefore not seen as a threat by the producers.

This is more difficult for products whose main market is tourists, or for products that are mainly exported out of the production area. What was shown by the case studies is that **there is a high degree of variation between the needs of the producers when it comes to monitoring**. In some cases, there are not really any infringing products because the total size of the market is small; in some cases, producers do not consider non-authentic products as competition because the quality differences are so big. By contrast if there is a significant number of non-authentic and/ or poor-quality products threatening the financial viability of producers in the territory, monitoring is needed. Regardless of the circumstances and beyond a systematic monitoring effort, monitoring by individual producers is a mutually beneficial arrangement. This could simply be a request for each producer to remain vigilant and report suspected violations to the mark manager/owner.

Monitoring can be an expensive endeavour, and one in which it is not worth embarking on unless it will be done to a certain standard. **Live monitoring of offline markets (for example mystery shopping) is naturally affected by practicalities** including the size of the territory, location of the venue selling the item, number of producers legitimately using the geographical name and the variety of products sold under the mark. **Online monitoring has less of these practical limitations** and can be done through simple, manual checks of websites or with the help of specific software (e.g. web crawlers). The question whether and how monitoring is carried out (online and/or offline) is however relatively independent from the type of legal protection system chosen, as the relevant monitoring tools are available to all producers. More relevant are the individual strategy of the producer group, the specificities of the market where their products are sold, how serious they perceive the actual threat of infringing products, and the resources they invest.

Monitoring requirements are also different for international markets. Often sales to international markets are advertised online by necessity, so these two activities may come

together. However, it is also important to consider that specialised products may feature in international trade fairs and other global in-person sales events.

The case studies revealed that if regional organisations or government are involved in the management of the geographical name (by owning the mark for example), **they have less of an economic interest but they want to protect the 'brand' of the region/city**. There may also be more resources and/or technical know-how available for monitoring activities.

4.1.4. The enforcement and sanctioning of infringements

Enforcement and sanctioning are important to eliminate infringing products which are detected on the market. **Producers require enforcement tools that are fast and efficient in terms of the use of resources**. The speed of resolution is naturally affected by the specific enforcement procedure that is triggered. In a purely private monitoring system, producers require a return on investment for enforcement and sanctioning, which at least covers perceived costs, so the threat by the infringing products must be severe and the options available for enforcement must be flexible. Consequently (and somewhat naturally, given that keeping costs low is a general economic interest of any producer, not only those of geographically rooted products), **producers exhibit a preference to solve problems informally, with gradually increasing the 'intensity' of the enforcement tools used** (towards legal measures through the court system) only if needed. For most products there are not many infringements detected, and where there are light measures work in 95% of cases. This figure also provides information on the nature of the niche markets that geographically rooted high-quality products occupy, as well as the motivation behind the infringements.

Still, in some extreme cases light measures do not work and stronger legal measures (i.e. bringing a legal action) are needed. **These legal steps are time and resource-intensive, and producers are therefore reluctant to use them**. Enforcement and sanctioning are particularly challenging when it comes to international markets, but it is important to consider that not all products are sold internationally. Evidence suggests that the fact that legal steps can be taken does act as a deterrent, at least nationally/EU-wide. However, threats of enforcement are not necessarily strong enough to make a difference in case of infringements in third countries.

4.2. Key elements of the existing control and enforcement mechanisms

The six protection systems examined for this study and presented in the case studies **respond in different ways to the needs** of producers, regional communities and other stakeholders presented above. Several key elements have emerged from the research that show each system's functioning and characteristics. These elements are presented in Table 24.

The table provides an overview of each system's main features at a high level and in a simplified way. Many nuances of the existing protection systems can therefore not be represented in the table but are discussed in detail in the case studies and the analysis.

The table also focusses on showing the legal and administrative framework established by each protection system, but it does not necessarily show the corresponding practices that sometimes go beyond this framework and that are depicted in the case studies. For example, while the verification of product characteristics is technically not a

defining element of EU collective marks producers in practice mostly put in place some kind of internal verification mechanism to ensure the quality of the products.

Table 24: Key elements of the existing protection systems

	Key element	EU collective marks	EU certification marks	National certification marks	National sui generis GI protection of non-agricultural products	EU sui generis GI protection of agricultural, food and drink products	GI and trade mark protection systems in non-EU countries
Link between the product and the geographical area	Can designate a geographical name	Yes	No	Mostly no; depends on country	Yes	Yes	Yes
	Specific product characteristics (in addition to the origin link) must be defined	No	Yes	Yes	Yes	Yes	Mostly yes; depends on country
	Product characteristics must be essentially attributed to the geographical origin	No	No	No	Yes	Yes	Mostly yes; depends on country
	Public authorities at national level are involved in defining origin link and characteristics	No	No	No	Yes	Yes	Mostly yes; depends on country
	Public authorities at EU level are involved in defining origin link and characteristics	No	No	No	No	Yes	No
Verification of the production process	Verification of product characteristics is mandatory	No	Yes	Yes	Yes	Yes	Mostly not
	Verification must be performed independently	No	No	Mostly no; depends on country	Mostly yes; depends on country	Yes	Mostly not
	Verification is supervised by national authorities	No	No	No	Mostly no; depends on country	Yes	No
Monitoring of the market	National authorities are actively involved in the monitoring	No	No	No	No	Yes	Mostly not
Enforcement and sanctions	National authorities are actively involved in the enforcement	No	No	No	No	Yes	No

4.3. Three different models of control and enforcement

Based on the key elements of the existing protection systems, as well as their effectiveness, cost-effectiveness and relevance assessed in this study, **three different models of control and enforcement under a potential EU system for the protection of geographically rooted non-agricultural products** have been elaborated. These models are designed to respond in different ways to the motivations and needs outlined above, with each model putting the emphasis on different aspects. The three proposed models are:

- **Model I:** All stages of the control and enforcement process (setting of criteria, verification, monitoring and enforcement) are under private responsibility.
- **Model II:** Setting of criteria and verification are under mixed public-private responsibility, whereas the monitoring and enforcement are under private responsibility.
- **Model III:** All stages of the control and enforcement process (setting of criteria, verification, monitoring and enforcement) are under mixed public-private responsibility.

The main distinction between the models is linked to the involvement of public authorities in the different stages of the control an enforcement process, but other aspects of the existing systems analysed for this study are also reflected.

A key consideration when assessing the possible models was to provide solutions that are relevant to the overall objectives: assuring high and uniform quality of the final products and eliminating illegal offers and infringing products from the market. While all proposed models are relevant, they have different impacts on stakeholder groups. **The analysis of the models should ultimately enable the reader to determine which of the proposed alternatives would be most suitable**, i.e. would be most relevant and effective to achieve the objective while having the least amount of negative impact on stakeholders. Thus, for each model the effectiveness, cost-effectiveness and relevance were also presented, based on the assessment of these criteria carried out in Chapter 3. The following sections present each model in detail.

4.3.1. Model I: Setting of criteria, verification, monitoring and enforcement under private responsibility

Model I is mainly **based on the control and enforcement mechanisms under EU collective and certification marks** (with some modifications) **and national certification marks** used for the protection of geographical names. This would require a departure from the existing interdiction of using an EU certification mark to protect geographical origin.

This model **allows the producers the most flexibility** when it comes to how they choose to protect their product. The case studies which revealed the enforcement and monitoring practices presented in this model allowed for the loosest set of eligibility criteria and subsequently a wider variety of products. Conversely, it also opens producers to certain vulnerabilities and its effectiveness **is the most dependent on private resource mobilisation** (by owners, individual producers, or producer associations).

The mark would be owned by a producer group, individual or (local or regional) authority, and ownership would have to be renewed on a regular basis. The process for setting the eligibility criteria would be determined by the mark owner, and **the openness of this process in terms of its inclusivity is therefore largely dependent on the nature of the organisation that would own the mark**. For example, if the mark owner was a regional

government organisation, there would be a more direct link to a broader range of local stakeholders. However, if the mark were owned by an individual or single company, there would be little legal protection of potentially important social, cultural or economic capital for a territory. It would not be required that the characteristics of the product are essentially attributable to its geographical origin so the model could be used to establish a regional brand for new products. **There may also be a lower level of control that the criteria adequately represent the interests of consumers**. The model requires certain derogations (already present in the existing marks framework) to guarantee that eligible producers of the geographically rooted products are not prevented from using the geographical name.

In terms of the verification of the product characteristics and production process, **this model would also allow for very strong or very weak verification depending on the needs of the producer group**. Based on the current co-existence of collective and certification marks, the model would give producers the option to follow a collective or a certification approach. The case studies showed that under this two-fold system, private responsibility allowed for almost no verification at all, other than quality checks related to consumer reviews of the products. It also allowed for very stringent checks of manufacturing, including controls over the supply chain of raw materials. In certain cases, producers in a local group know each other well so that there is not always a need for strong formal verification.

This flexibility is also built into monitoring and enforcement. The legislative framework would therefore **provide the option of monitoring and enforcement based on general intellectual property and commercial rules** and would not outline specific rules for monitoring and enforcement. It would therefore operate on the basis that having legal tools is a useful deterrent, even if there is often no need to use them. The determining factor here would be primarily the protection of sales and profitability of the producers. If producers are not able to sell enough of the product to support themselves financially due to infringing products, then monitoring and enforcement become a higher priority. However, if producers are happy with the overall size of their market share, then they are able to decrease the resources used for monitoring and enforcement, and use this for expanding their industry in other ways (e.g. through internationalisation). This characteristic is built on the outcomes of the research that **for many producers, infringing products are not a substantial threat to revenue so monitoring/enforcement is not the priority**. It also allows for different priorities, regional authorities for example may be interested in building a local/regional brand and may prefer stronger monitoring and enforcement.

In this model, there are **no real costs for the national authorities** besides for the registration of the name, as **the whole verification, control and enforcement system rests on the producers**.

The characteristics of Model I in all phases of the control and enforcement process, as well as their effectiveness, costs and relevance are summarised in Table 25.

Table 25: Characteristics of Model I

	Characteristics of the model	Effectiveness	Cost	Relevance
Link between the product and the geographic area	• Can be used to designate geographical origin • Ownership can be held by private and public actors	• Depends entirely on the responsibility of the owners who define the product characteristics	• Application costs (for the owner): From EUR 1,500 to 1,800 for a registration and from EUR 850 to 1,000 for a	• Very relevant for producers that want to have control over the product characteristics • Less relevant for consumers

	Characteristics of the model	Effectiveness	Cost	Relevance
	• Ownership must be non-exclusive • Origin link and other eligibility criteria are defined by private ownership • No independent assessment (e.g. national authority, public consultation) of the criteria	• Does not have to be agreed by a broad or representative base of stakeholders (i.e. no cultural/ social acceptance of the link needed)	renewal (every 10 years) • Costs for using the mark (for individual producers) are set by the owner • They range from 100 EUR to 4,000 EUR for the collective model and from about EUR 1,000 to EUR 10,000 for the certification model • Costs for public authorities are limited, a few hours for each application for a collective or certification mark (few hundred euros)	who have no independent guarantee that the product adequately reflects the specific characteristics linked to the origin • Very relevant for producers who are looking to build a regional or local brand from a low base
Verification of the manufacturing process	• Option between collective or certification model • In the collective model, owner can decide if and how products are verified • In the certification model, independent verification must take place	• Collective model effective for producer groups with a high social control (i.e. where controls come through informal social interactions between producers who are known to each other) • Certification model overall very effective in ensuring quality due to independent controls	• For the collective model, costs depend on the verification put in place but can be zero if no formal verification is performed • For the certification model, use of independent certifying bodies renders verification more expensive; based on data collected it could range up to EUR 20,000 per company • No administrative costs for public authorities	• Very relevant for producers that want to have flexibility and control over the intensity of product verification • Less relevant for consumers, who have no independent verification of the product characteristics but have to trust the owners; this applies notably to the collective model
Monitoring of products on the market	• Responsibility lies with the owners • Ownership can decide if and how they	• Effectiveness depends on the level of resources available for monitoring	• Costs vary significantly depending on the intensity of the monitoring • No administrative	• Infringements are often not seen as an issue; this model gives the owners the flexibility to

	Characteristics of the model	Effectiveness	Cost	Relevance
	monitor the market	• Market monitoring is most feasible at local level • Not effective for producers that want/need to monitor the market but do not have own resources to do so	costs for public authorities	become active only where they perceive infringements as a threat • Not relevant for producers that want/need to monitor the market but do not have own resources to do so
Enforcement and sanctioning of infringements	• Responsibility lies with the owners • Availability of full range of civil and criminal enforcement tools (injunction, fines, damages, seizure, prison…) • Enforcement tools are general IP and commercial enforcement tools, not specific to geographically rooted products • Owners can decide if and how they enforce the protection	• Range of tools covers all potential situations (from light to severe infringements) very effectively • Not effective for producers that want/need to enforce but do not have own resources to do so	• The costs for light enforcement are limited (few euros for a registered letter, and few hundred euro for a registered letter written by a lawyer) • The costs for strong enforcement may reach EUR 2,500-EUR 5,000 for a court case (maximum of EUR 30,000 in case of complex and long procedure) • No administrative costs for public authorities	• Range of enforcement tools responds to different needs; owners can adjust intensity of the enforcement tool to the seriousness of the infringement • Not relevant for producers that want/need to enforce using formal enforcement tools but do not have own resources to do so

As noted in the case studies, systems like this are more general protection systems that are **primarily not designed to specifically protect geographical indications**. This does however not mean that they cannot be suitable to respond to the needs of producers of geographically rooted products. From the analysis of case studies and evidence gathered, the proposed Model I is expected to be highly suitable for products where the producer group is already very integrated, but where knowledge or understanding of the product outside the region remains limited. Costs for registration of the name borne by the producers are higher than for other systems, but at the same time the ownership group defines the product characteristics without the need for approval by an authority and/or the public, which can speed up the process. Given the flexibility, it can support the building of recognition through a looser arrangement and works for products where infringements are not seen as threat. If a lot of monitoring and enforcement is needed, for example if the damage done by infringements increases, the producers will need to leverage additional resources to effectively protect the mark. This means that **the costs invested into verification, monitoring and enforcement lie in the hand of the producers, but also that a lack of resources can render the system ineffective** if infringements are or turn into a serious threat to the authentic products.

4.3.2. Model II: Setting of criteria and verification under mixed public-private responsibility, monitoring and enforcement under private responsibility

Model II is based on certain elements of national GI protection systems (notably the French system), with some important adjustments from other systems. **In terms of the geographical indication, this is seen as a 'public good'** with no explicit ownership by producers. Instead, the name is managed by a **designated management organisation with legal personality** (composed primarily of producers of the geographically rooted product), which is the custodian of the name. It is tasked with ensuring a balanced representation of viewpoints but ultimately those in the organisation take the decision with regards to setting eligibility criteria, linking the products with the territory and the characteristics. These criteria would be reviewed and assessed by the authorities during the application process with a view to ensuring that the criteria are inclusive and sufficiently represent the public interest. Two alternative ways could be envisaged: one where applications from all Member States are assessed by EU authorities (which lead to a low level of adaptation to national and regional specificities), or one where the applications are assessed by national and EU authorities (which would take national specificities into account but would still ensure a consistent approach across all Member States).

The management association would also set the verification system, however unlike Model I where there is more flexibility, **they would be required to ensure that the verification is done independently,** for instance by an external verification body. The bodies in charge of verification could be required to be accredited in accordance with the standard EN ISO/IEC 17065:2012 (Conformity assessment – Requirements for bodies certifying products, processes and services). Unlike under Model I, the registration of the geographical indication would not have to be renewed.

The baseline level of **involvement by the national authorities (most likely the national IP offices) would be supervision of the management organisation itself**. The organisation would be required to submit periodic reports on their internal processes, the selected verification bodies, monitoring and enforcement activities. The composition of this management body would have specific provisions to enable membership to include consumer associations, regional government and national authorities (although this feature would be flexible and at the discretion of the Member State and national authority). Representativeness of the management organisation would be verified by the national authority, and membership in the organisation would be open to any producer adhering to the defined product and production characteristics.

Because of this structure, there would be no costs for producers for registering the geographical indication, **but the costs for the public administration (borne by the national authority and, if involved in the assessment of the application, EU authorities) and reporting costs (borne by the management organisation) would be higher than in Model I**. The ongoing reporting structure would also provide a repository of data on the products, which could be used for enforcement if needed. The model is therefore suitable for products which expect more significant threats from infringing products. It would also establish a permanent working relationship with the national authorities through the reporting structure and could thus also provide a key source of information for other policy areas, including cultural and regional authorities.

This model seeks a balance between the interest of consumers, producers, and other stakeholders without active management by a national authority. The defined characteristics of the product would have to be essentially attributable to its geographical origin. **The model recognises the need to preserve cultural heritage aspects that go**

beyond commercial interests, although the strength of this mandate would remain at the discretion of the management association, with supervision by and advice from the national authority.

The monitoring and enforcement set up also recognises that producers have an interest in the promotion of their product, in ensuring the economic sustainability of their production, in creating a link between their product and other local activities (cultural promotion, tourism, art etc.). **The model therefore appreciates the distinctions between infringements as a commercial threat and as a cultural threat**, especially because the protection of geographical names is not just a matter of combatting infringement.

Monitoring and enforcement would be under private responsibility, that is the responsibility of the management organisation and individual producers, thus reflecting the flexibility set up under Model I. The legislative framework would not provide specific rules for monitoring and enforcement, so monitoring and enforcement would be based on existing intellectual property, competition and unfair commercial practices rules. It would therefore operate on the basis that having legal tools is a useful deterrent, even if there is often no need to use them.

The determining factor would be defined by the management association and would take into consideration the rationale set by them, for example the protection of sales or reputational damage. For instance, if producers are losing a significant market share due to low quality infringing products, then monitoring and enforcement become a higher priority. This characteristic is built on the outcomes of the research that, for many products, infringing products are not a substantial threat to revenue, so monitoring/enforcement is not the priority. The management association would also act as contact point for customs and other law enforcement authorities. When combined with the mixed public-private management organisation model for setting criteria and verification, **it also allows for stronger emphasis on different priorities, including protection of important social and cultural elements**.

In this model, there are no real costs for the national authorities for monitoring and enforcement. However, **national authorities would need to devote sufficient resources to supervising and evaluating the performance and rationale of the management organisations**, and the model could foresee penalties if the association were not balanced and/or dominated by one or two large producers, to the detriment of other affected stakeholders.

The characteristics of Model II in all phases of the control and enforcement process, as well as their effectiveness, costs and relevance are summarised in Table 26.

Table 26: Characteristics of Model II

	Characteristics of the model	Effectiveness	Cost	Relevance
Link between the product and the geographic area	• Can be used to designate geographical origin • Origin link and other product characteristics are defined by representative management organisation • Characteristics of the product must be	• Criteria have to be agreed by a broad or representative base of stakeholders (i.e. cultural/ social acceptance of the link needed) • Criteria have to be approved by national authority	• No fees for producers for the application and for using the geographical name • Costs to draft the specifications of the GI by stakeholders are variable and cover co-	• Less relevant for producers that want to have control over the product characteristics • Very relevant for consumers, who have independent guarantee that the product adequately reflects the

	Characteristics of the model	Effectiveness	Cost	Relevance
	essentially attributable to its geographical origin • There is an independent assessment (e.g. national authority, public consultation) of the criteria and the representative-ness of the management group • There is no ownership of the name	• These mechanisms ensure that the criteria represent the product characteristics associated with the geographical name	ordination of stakeholders (meetings) and possible studies • There are specific costs for the assessment of the application by public authorities (from EUR 4,300 in INPI for non-agricultural products to EUR 33,500 for DG AGRI for agri-food and drink products) • The level of costs will depend on the level of requirements to demonstrate the link to the territory	specific characteristics linked to the origin • Very relevant for regional communities who seek to safeguard the regional cultural heritage linked to the products
Verification of the manufacturing process	• Verification of registered users of the name is managed by the management organisation and performed by external certification bodies • National public authority supervises that the verification is done in compliance with the requirements	• Verification by external bodies and supervision by national authority ensures that verification is done independently	• Verification costs generally range from a few hundred to a few thousand euros per year and company (this depend on the size of the company and the type of verification conducted) • Use of independent certifying bodies renders verification more expensive; based on data collected it could range up to EUR 20,000 per company	• Not relevant for producers that want to have flexibility and control over the intensity of product verification and where informal/social control works well • Very relevant for consumers because they get independent verification of the product characteristics
Monitoring of products on the market	• Responsibility lies with the management organisation and individual producers • Management organisation can decide if and how they	• Effectiveness depends on the level of resources available for monitoring • Market monitoring is most feasible at local level	• Costs vary significantly depending on the intensity of the monitoring • No administrative costs for public authorities	• Infringements are often not seen as an issue; this model gives the producers the flexibility to become active only where they perceive

	Characteristics of the model	Effectiveness	Cost	Relevance
	monitor the market	• Not effective for producers that want/need to monitor the market but do not have own resources to do so		infringements as a threat • Not relevant for producers that want/need to monitor the market but do not have own resources to do so
Enforcement and sanctioning of infringements	• Availability of full range of civil and criminal enforcement tools (injunction, fines, damages, seizure, prison…) • Enforcement tools are general IP and commercial enforcement tools, not specific to geographically rooted products • Responsibility lies with the management organisation and individual producers • Management organisation can decide if and how they enforce the protection	• Range of tools covers all potential situations (from light to severe infringements) very effectively • Not effective for producers that want/need to enforce but do not have own resources to do so	• The costs for light enforcement are limited (few euros for a registered letter, and few hundred euro for a registered letter written by a lawyer) • The costs for strong enforcement may reach EUR 2,500-EUR 5,000 for a court case (maximum of EUR 30,000 in case of complex and long procedure) • No administrative costs for public authorities	• Range of enforcement tools responds to different needs; producers can adjust intensity of the enforcement tool to the seriousness of the infringement • Not relevant for producers that want/need to enforce but do not have own resources to do so

This model is suitable for a coherent group of products which share similar manufacturing characteristics. The external verification body would need a set of criteria to work with, which precludes a grouping of products with very different manufacturing techniques, although the nature of the finished product could still be quite varied. Products with cultural significance are more protected than with the first model, but they must already be established in order to have the coherence necessary. **It is therefore less suited for building a regional reputation from scratch but is suitable for enhancing a pre-existing one**. Because of the nature of the management organisation as custodian of the mark, strong cooperation with a wide variety of stakeholders is required.

In terms of the infringement profile, it would be well suited to products or groups of products with a smaller total number of infringements and/or where the infringements are not perceived as particularly threatening to the market, culture or society. **The effectiveness of the monitoring and enforcement, if deemed necessary by the management organisation, would depend on private resources made available by the producers**. The monitoring and enforcement would in this instance be supported by the ongoing supervision and reporting of the management organisation to increase the effectiveness of formal enforcement proceedings.

4.3.3. Model III: Setting of criteria, verification, monitoring and enforcement under mixed public-private responsibility

Model III is based on what already exists for agri-food and drink products at EU level, but also including elements of national Gi protection for non-agricultural products. **The model allows different types of implementation at national or regional level**, as it is observed for EU GIs for agri-food and drink products.

The system would be implemented through a shared responsibility of private and public bodies. **Producers involved in the GI would be grouped in a structured producer group** which would endorse several roles:

- Application of the GI,
- Management of the specifications,
- Contact point for public bodies,
- Elaboration of the verification plan,
- Implementation of the verification plan (the producer group would not conduct the verifications directly),
- Monitoring of the market,
- Delegated power to sue at court any infringing stakeholders regarding IPRs.

The producer group could also carry out other roles such as communication, economic monitoring, or advice to producers. In that regard, the model leaves room to go further than the existing EU protection of GIs for agri-food and drink products that only defines the role of the producer group for the application; no other roles are defined in the EU regulations.

The drafting of the specifications and the justification of the link to the territory would be included in the application file and drafted by the producer group. The application would be assessed by public authorities (national and/or EU public bodies). For agri-food and drink products, the assessment of the link to the territory involves agronomic expertise (strong links between plant, animals and the geographical area: soil, climate and other factors). This kind of expertise would not be needed for non-agricultural products; **this suggests potentially lower costs for scrutiny than for agri-food and drink products.** For example, the costs for the assessment of non-agricultural GIs under the national sui generis system in France is estimated between EUR 4,300 and EUR 10,700 (depending on the complexity of the application and possible comments from other stakeholders during consultation phase). This figure is much higher for agri-food and drink products at EU level (costs estimated at EUR 33,500 for the European Commission for each application).

The implementation of an effective verification system would be the responsibility of public authorities. However, this responsibility would be shared with the producer group who would define the control plan. This control plan would be validated by public authorities. The control should be done independently from the producer group, for instance by a third party: independent certification bodies or a public authority independent from producers. The bodies in charge of verification could be accredited in accordance with the standard EN ISO/IEC 17065:2012 (Conformity assessment – Requirements for bodies certifying products, processes and services).

Monitoring and enforcement would be the shared responsibility of public bodies and producer groups. Monitoring would be conducted by the public bodies in the context of routine controls at point of sales or customs, and by the producer group and producer themselves according to means they are willing to allocate to this task (light or heavy monitoring). Regarding enforcement, the full range of civil and criminal enforcement tools

(injunction, fines, damages, seizure, prison) would be available. **The producer group decides which legal tool is used, based on its strategy and resources available.** Public authorities may provide enforcement support (financial support, legal expertise) to producer groups. They may also directly initiate enforcement action if they identify an infringement during their monitoring activities.

The characteristics of Model III in all phases of the control and enforcement process, as well as their effectiveness, costs and relevance are summarised in Table 27.

Table 27: Characteristics of Model III

	Characteristics of the model	Effectiveness	Cost	Relevance
Link between the product and the geographic area	• Can be used to designate geographical origin • Origin link and other eligibility criteria are defined by applicant • There is an independent assessment (e.g. national authority, public consultation) of the criteria • There is no ownership of the name • There is an established producer group, composed of representatives of the producers	• The system is effective: link to the territory and specifications are defined by producers themselves • The application is assessed by public body	• No fees for producers for the application and for using the geographical name • Costs to draft the specifications of the GI by stakeholders are variable and cover co-ordination of stakeholders (meetings) and possible studies • There are specific costs for an external assessment of the application (from EUR 4,300 in INPI for non-agricultural products to EUR 33,500 for DG AGRI for agri-food and drink products) • The level of costs will depend on the level of requirements to demonstrate the link to the territory	• The system is relevant for the different types of stakeholders: producers define themselves the specifications and the conformity and homogeneity are provided by public body involvement • The only limit is the potential heaviness of the system in case of strong requirements to assess the link to the geographical area
Verification of the manufacturing process	• National authorities have the responsibility for the effective implementation of verifications • The verification plan (frequency, types of control) is defined by	• Third party controls are effective in ensuring the quality of the products • Effectiveness is reinforced by the supervision responsibility of public bodies	• Verification costs generally range from a few hundreds to a few thousand euros per year and company (this depends on the size of the company and the type of	• The system is relevant to ensure fair competition between GI producers and others • The system is relevant to provide authentic

	Characteristics of the model	Effectiveness	Cost	Relevance
	the producer group and validated by the public authority • These verifications shall be conducted by independent third parties (independent from producers): public bodies or certification bodies		verification conducted) • Use of independent certifying bodies renders verification more expensive; based on data collected it could range up to EUR 20,000 per company	products to consumers
Monitoring of products on the market	• Monitoring is shared responsibility of both public authorities (GIs are integrated in the verifications implemented on the market) and management body	• Monitoring is generally effective on the national market but more difficult on international market • The involvement of both producer group and public bodies is an asset to face these difficulties • The involvement of public authorities makes the model effective also for producers who have few own resources for monitoring	• Costs are generally limited for light monitoring • For national and EU authorities: 0.12% of total sales value of GI products (for the protection system as whole)	• Stakeholders adapt their monitoring strategy depending on the available budget, the number of infringements, the perceived impact of these infringements • Due to the public involvement, the model is relevant for producers who have few own resources for monitoring
Enforcement and sanctioning of infringements	• Availability of full range of civil and criminal enforcement tools (injunction, fines, damages, seizure, prison) • Producer groups decide how they enforce protection • Public authorities may provide enforcement support (lawyer for instance) or directly initiate enforcement	• Effectiveness is assessed good when both producers and public authorities are involved, with relevant legal enforcement tools	• The costs for light enforcement are limited (few euros for a registered letter, and few hundred euro for a registered letter written by a lawyer) • The costs for strong enforcement may reach EUR 2,500-EUR 5,000 for a court case (maximum of EUR 30,000 in	• The system is relevant as it is flexible for producer group: light and strong enforcement are possible • Due to possibility for support from public authorities, the model is relevant for producers that have few own resources for enforcement

	Characteristics of the model	Effectiveness	Cost	Relevance
	action if they identify an infringement during their monitoring activities		case of complex and long procedure); these costs are generally paid by the producer group. • For national and EU authorities: 0.12% of total sales value of GI products (for the protection system as whole)	

This model is suitable to **strengthen cooperation between producers** (through the producer group) who need to come to a common agreement about the product characteristics that need to be defined in the application. This, in turn, may allow an improvement of governance and quality management within the local or regional value chain.

For the consumers, the model provides for a strong and independent verification of the product characteristics and clear and reliable information to the final consumer.

The model allows a good monitoring and enforcement in most cases, **even with limited resources from producers due to the involvement of public authorities**. Strong monitoring and enforcement (court cases, international market) nevertheless require more means.

The detailed implementation of the model enables flexibility, depending on the context and the objective pursued (large-scale / small-scale GIs, importance of intellectual property protection, etc.).

4.4. Summary and conclusions

Based on the assessment of control and enforcement under the existing protection systems that was done in Chapter 3, recommendations for control and enforcement under a potential EU protection system for non-agricultural geographically rooted products were developed. **These recommendations have taken the form of three different models** which each provide a different proposition to the needs of the stakeholders.

Model I: Setting of criteria, verification, monitoring and enforcement under private responsibility

Model I allows the producers the most flexibility when it comes to how they choose to protect their product. **It can have the loosest set of eligibility criteria and subsequently a wider variety of products**. The only mandatory element would be the presence of eligibility criteria defined by the mark owner, the national authority would not be involved in the content of the criteria, for example ensuring inclusivity or representativeness of consumers. The effectiveness of this system is most dependent on private resource mobilisation (by owners, individual producers, or producer associations). **This model would also allow for very strong or very weak verification depending on needs**, and the option of monitoring and enforcement is based on general intellectual property and commercial rules. This is because, for many producers, the advantage of owning a mark is

having a marketing tool and infringing products are not a substantial threat to revenue so monitoring/enforcement is not the priority. There are no real costs for the national authorities besides for the registration of the name, as the whole verification, control and enforcement system rests on the producers.

Model II: Setting of criteria and verification under mixed public-private responsibility, monitoring and enforcement under private responsibility

Model II by contrast sees the geographical indication as more of a 'public good' with no explicit ownership by producers. It foresees the need for management organisations for the GI, which would be required to ensure that the **verification is done independently**. The main involvement by the national authorities (most likely the national IP offices) would be **supervision of the management organisation** itself. The administration costs (borne by the national authority) and reporting costs (borne by the management organisation) would therefore be higher than in Model I. Model II recognises the need to preserve cultural heritage aspects that go beyond commercial interests and **appreciates the distinctions between infringements as a commercial threat and as a cultural threat**. Monitoring and enforcement would still be under private responsibility and as such it allows for stronger emphasis on different priorities, including protection of important social and cultural elements. National authorities would be required to devote sufficient resources to supervising and evaluating the performance and rationale of the management organisations.

Model III: Setting of criteria, verification, monitoring and enforcement under mixed public-private responsibility

Model III allows different types of implementations at national or regional level and producers involved in the GI would be grouped in a structured producer group which would endorse several roles. The producer group would be coherent enough in its structure that it could feasibly carry out other roles such as communication, economic monitoring, or advice to producers. **The implementation of an effective verification system would be the responsibility of public authorities. However, this responsibility would be shared with the producer group** and there would be potentially lower costs for national authorities in terms of scrutiny than for agri-food and drink products under the current EU system. Monitoring and enforcement would be shared responsibility of public bodies and producer group and the producer group decides which legal tool is used, based on its strategy and resources available.

Comparative overview of the three models

Table 28 provides a comparative overview of the different models showing the costs and how each model responds to the needs of the different stakeholders. The cost estimates are to some extent arbitrary, as they are based on various assumptions and partly anecdotal evidence. **Their main purpose is to provide a common basis for the comparison of the three models and to show the scale of costs for each model compared to the other models. The cost estimates can however not be understood as showing the actual costs of each model if they were to be implemented.** The full methodology behind the estimation of costs for each model is provided in Annex 3. **The overview also does not show economic benefits** of the different models that were not assessed and monetised under this study but could in principle offset costs.

Table 28: Summary of the three proposed models

Stakeholder group		Model I	Model II	Model III
Producers / producer groups	**Main features from the point of view of the stakeholder group**	• Full control over definition of product characteristics • High flexibility regarding the choice of verification, monitoring and enforcement tools • Resources for monitoring and enforcement must be fully borne by producers	• Less control regarding the definition of product characteristics and the choice of verification due to supervision by public authority • High flexibility regarding the choice of verification, monitoring and enforcement tools • Resources for monitoring and enforcement must be fully borne by producers	• Less control regarding the definition of product characteristics and the choice of verification due to supervision by public authority • High flexibility regarding the choice of verification, monitoring and enforcement tools • Public resources available to support with monitoring and enforcement
	Registration costs (EUR)	120,000	250,000	250,000
	Verification costs (EUR)	980,000	980,000	980,000
	Man / mon / enf* costs (EUR)	50,000	50,000	50,000
	Total costs (EUR)	1,160,000	1,280,000	1,280,000
Public authorities (national)	**Main features from the point of view of the stakeholder group**	• No influence on the definition of product characteristics • No specific costs	• Public interest represented in the definition of product characteristics and verification processes due to the supervision by authority • Specific resources needed	• Public interest represented in the definition of product characteristics and verification processes due to the supervision by authority • Specific resources needed
	Registration costs (EUR)	0	120,000	120,000
	Verification costs (EUR)	0	100,000	100,000
	Man / mon / enf* costs (EUR)	0	640,000	640,000
	Total costs (EUR)	0	800,000	860,000

Stakeholder group		Model I	Model II	Model III
Public authorities (EU)	**Main features from the point of view of the stakeholder group**	• No influence on the definition of product characteristics • Comparably low costs, as assessment of application is limited to a legal assessment	• Public interest from an EU-wide point of view represented in the definition of product characteristics • Coherent approach across Member States • Specific resources needed	• Public interest from an EU-wide point of view represented in the definition of product characteristics • Coherent approach across Member States • Specific resources needed
	Registration costs (EUR)	20,000	330,000	330,000
	Verification costs (EUR)	0	0	0
	Man / mon / enf* costs (EUR)	0	0	150,000
	Total costs (EUR)	20,000	330,000	480,000
Consumers	**Main features from the point of view of the stakeholder group**	• High trust in producers required, since there are no public controls that the product characteristics comply with consumers' expectations • Provision of clear an reliable information to consumers less controlled than in other models	• Public control that the product characteristics reflect the expected specificities, history and regional skills that consumer expect from a geographically rooted product	• Public control that the product characteristics reflect the expected specificities, history and regional skills that consumer expect from a geographically rooted product

*Man / mon / enf: Management, monitoring enforcement

The costs indicated are estimates of yearly costs for the purpose of comparing the three models, they are not showing real costs (see Annex 3 for further details)

When it comes to the costs, the overview shows that the main difference between the models lies in the costs for public authorities. Under Model I, where public authorities are barely involved, the costs for them are negligible. In comparison, the stronger involvement of public authorities under Model II and Model III increases the costs roughly by the factor 1.3 for Model II (public involvement in the first two phases of the control and enforcement process) and by the factor 1.4 for Model III (public involvement in all phases of the control and enforcement process).

The research has shown that in principle, all models are suitable and can be effectively used to combat infringing products on the market. However, the models follow different purposes. Model I focusses on the protection of intellectual property and the economic interests of producers. Model II and Model III, on the other hand, recognise a value of geographically rooted products that goes beyond economic aspects and appreciates these products as part of the regional heritage and territorial development that forms a public good worth preserving. **Ultimately, the choice between the models cannot only be based on economic factors but must take into account the overall policy objective at EU level vis-à-vis geographically rooted products.**

Horizontal factors across all three models

In addition, there are a number of **horizontal factors** to consider when assessing the models proposed. **Flexibility must be built into all the models**, as there would potentially be a wide variety of products and producers under the mark/GI, and so eligibility criteria as decided by producers and relevant stakeholders, as well as verification, would need to allow sufficient concentration of resources without being too exclusive of producers in the region. The system would also require flexible monitoring and enforcement options, balancing the need for financial return of enforcement efforts (costs vs benefits) with the need to protect potentially important social and cultural elements of the territory. Numerous factors affect the types of activities undertaken to protect products, including level of internationalisation of the products, public support from regional authorities and the presence of producer associations. Overall, the research performed for this analysis found that, **in the majority of cases, producers were not struggling with a large number of very harmful infringements**. Its therefore crucial to consider the different needs from any protection system in terms of ensuring enforcement and monitoring requirements are not too burdensome for those products that do not necessarily require it. An additional complexity to consider is that a lack of monitoring naturally leads to a low number of infringements identified.

In this regard, all three models leave the choice of which monitoring and enforcement tools to use to the producer groups (and authorities if they are involved), depending on their individual needs and strategy. This applies in particular to online monitoring, which is not limited by the legal protection system chosen but is a matter of technical implementation, skills and resources. Common options like simple online research, use of specific tools like web crawlers or use of an external service provider are already available to all market participants. **All models are therefore equally suitable for carrying out monitoring of online markets**. A specific exception is the use of protected names as internet domains by parties other than the authorised users of the name, which is not possible for trade marks but possible for GIs due to the policy of the international organisation managing internet domains which does not recognise GIs as intellectual property right.

For all models, monitoring and enforcement are cost factors with a high variety depending on the individual needs of each product. In Model III these are shared and there is flexibility, and in all models producers should be able to adjust and control costs. ‘Public involvement’ can be understood in a broad sense. It means that some form of public resources is made available for the respective activities, since the geographical link involves protection of public goods, including social and cultural elements. **Keeping that**

aspect flexible would also give the Member States room and flexibility how they want to assign the responsibility, and specific activities have been outlined in previous sections. The minimum level for authorities should be supervision of producers and use of the mark, which is casual and advisory in Model I and more institutionalised and regulatory in Model II. Beyond that (e.g in Model III) there is room for the Member States to decide, authorities can for example do verification themselves or delegate this task to third parties.

5. Conclusions and outlook

The present study on control and enforcement rules for geographical indication protection for non-agricultural products in the EU had **three main objectives**:

1. **To collect and synthesise data** on control and enforcement mechanisms under existing EU and national protection systems,
2. **To assess the effectiveness, cost-effectiveness and relevance** of the existing control and enforcement mechanisms,
3. **To develop recommendations** for control and enforcement under a potential EU system for the protection of geographically rooted non-agricultural products.

Mapping of control and enforcement under existing protection systems

In a first step and to achieve the first objective, research into existing protection systems was conducted **to form the basis for the comparative assessment and the development of recommendations**. Six protection systems that are currently or could potentially be used to protect geographically rooted products set the scope of the research:

- EU collective marks,
- EU certification marks,
- National certification marks,
- National sui generis GI protection of non-agricultural products,
- EU sui generis GI protection of agricultural, food and drink products,
- GI and trade mark protection systems in non-EU countries.

To ensure that the research would not only produce theoretic findings but also show real-life practices of control and enforcement, **a research sample of 30 existing products from 17 countries** was selected. The products from the sample were investigated through desk-research and semi-structured interviews with relevant stakeholders. In addition, an electronic survey with producers of geographically rooted products from all EU Member States (thus going beyond the research sample) was carried out. As a result of the research, **six case studies (one for each of the existing protection systems covered) were produced** that provided the evidence base for the following steps of the study.

Assessment of the existing control and enforcement mechanisms

To respond to the second objective, the six protection systems were compared and assessed. **Each protection system was assessed with a view to how effective, cost-effective and relevant they are** for ensuring the characteristics and quality of the products and eliminating infringing products from the market. The four phases of the enforcement process (i.e. product characteristics, verification, monitoring, and enforcement) were considered separately in the analysis.

Effectiveness: Overall, all phases of the control and enforcement process have been assessed to be effective for the six different protection systems. **Verification procedures** are in place for most of the examined marks/GIs and show that instances of users of marks / GIs deviating from the product requirements are very rare and usually unintentional. **Monitoring of the market** is in practice not done for many marks/GIs for a variety of reasons: some producers lack the necessary resources, whereas others simply do not see any need for it because infringements are rare and not seen as a threat. With this caveat,

monitoring is generally assessed to be fairly effective when it is carried out. **Enforcement** at national level is assessed to be effective in eliminating infringing products from the market; however, for most GIs/marks enforcement steps are rarely taken (often linked to the fact that there is also little monitoring to identify infringements). In most cases, the **formal enforcement mechanisms (e.g. legal action before a court) and sanctioning measures can be avoided** by recourse to less formal means (for instance a registered letter to the misuser).

Cost-effectiveness: From a general perspective, costs are considered low to medium for each protection system, depending on various factors. **The costs incurred for producers highly depend on the verification procedures implemented, which are usually the highest cost factor**. These verification costs range from zero in some cases (no verification conducted) to more than EUR 20,000 for an independent verification of a single company in other cases. Effectiveness to ensure that the required product characteristics are met tends to increase if there is an independent verification. **For public bodies, the level of costs depends on the type of scrutiny of the application.** This is a few hundred euros for national trade marks with a legal assessment of the application (but no technical expertise on the application and no assessment of the link to the territory) and can reach several tens of thousands of euros under a national GI system or the EU protection for agri-food products and spirit drinks. **Regarding monitoring and enforcement procedures, the costs vary significantly depending on the intensity of these activities.** Light monitoring and enforcement action (meaning no specific tools for monitoring and no legal action to court) generally generate negligible costs and are effective in most (often more than 95%) of the cases. Costs for taking more formal measures, like legal action before a court, can be significantly higher. The actual costs depend on the strategy of each producer group (to what extent the infringements are seen as an issue that needs to be fought through monitoring and enforcement).

Relevance: Some of the existing protection systems (EU certification marks and the majority of national certification marks) are at present not relevant for the protection of geographical names as they cannot be used for this purpose. EU certification marks would therefore have to be modified to become a relevant protection system. **When it comes to the definition of the origin link and the product characteristics, a major difference between the existing systems is the involvement of independent public authorities.** Authorities are involved in all the GI systems but not in any of the trade mark-based systems, for which the criteria are defined by the owner of the mark. This difference plays a role especially if it is considered that geographical indications should not only be a private right but also carry an element of public interest. **The enforcement tools available under each protection system are more or less similar,** ranging from informal notifications and negotiations to formal civil and criminal law sanctions. **Public authorities are actively involved in the monitoring and enforcement only in the case of EU protection of agricultural, food and drink GIs**.

Recommendations for control and enforcement under a potential EU system

On the basis of the assessment of the effectiveness, cost-effectiveness and relevance of the existing control and enforcement mechanisms, **recommendations in the form of three models** for control and enforcement under a potential protection system at EU level were developed. The main feature that distinguishes the models is the extent of public involvement in the four phases of the control and enforcement process.

Model I – Setting of criteria, verification, monitoring and enforcement under private responsibility: Model I leaves the responsibility for the entire process to the producers. The producer group is the owner of the mark, defines the product characteristics and other eligibility criteria, monitors the market and enforces the protection if needed. The model gives producers a lot of flexibility, but it also means that **the effectiveness of control and**

enforcement is fully dependent on private resource mobilisation (by owners, individual producers, or producer associations). If producers do not want to spend or do not have the resources required for monitoring and enforcement, there will be no such activities. This takes into account the fact that for many producers, infringing products are not seen as substantial threat to revenue so monitoring/enforcement is not the priority.

Model II – Setting of criteria and verification under mixed public-private responsibility, monitoring and enforcement under private responsibility: Under Model II, public authorities are involved in the definition and verification of the origin link and product characteristics. This reflects the understanding that a geographical indication can be more of a 'public good' with no explicit ownership by private parties. The GI is managed by a management organisation representing the concerned producers that is in turn **supervised by a national public authority**. The authority reviews the origin link and product characteristics (during the application) as well as the verification plan elaborated by the management organisation. The administrative costs (borne by the national authority) and reporting costs (borne by the management organisation) would therefore be higher than in Model I. Monitoring and enforcement of the GI is done by the management organisation, who would have the delegated responsibility to enforce the GI protection.

Model III – Setting of criteria, verification, monitoring and enforcement under mixed public-private responsibility: Model III foresees an involvement of national public authorities in the setting and verification of product characteristics and a designated producer organisation that are similar to Model II. **Monitoring and enforcement would also be a shared responsibility** of public bodies and producer group, with the authorities doing monitoring on their own and being able to take enforcement action that are complementary to the activities of the producers and producer group.

All models leave a certain degree of flexibility in different ways. Firstly, there is **room for flexibility when it comes to the implementation of the system into the national systems and legislation** of the Member States. For example, the designation of the responsible public authority, and the way they are involved in the control and enforcement process (e.g. whether they do the product verification themselves, or whether they delegate this task to a third party and focus on supervision) can be defined at Member State level.

Secondly, the research has shown that the needs of producers of geographically rooted products and their motivations for protecting their product are very diverse. **Enforcing the product protection and fighting infringing products on the market is not always the main reason** for registering a geographical indication. A geographical indication can for example also be used mainly as a marketing tool for producers, to develop the regional economy including through tourism, or as a means to protect and preserve the regional cultural heritage that lives through a traditional handicraft product. **Any control and enforcement system in place needs to acknowledge this diversity** and allow for different approaches to control and enforcement.

Annex 1: Case studies

This annex includes the following six case studies (available as separate documents) of the different protection systems examined for the purpose of this study:

- EU collective marks
- EU certification marks
- National certification marks
- National sui generis GI protection of non-agricultural products
- EU sui generis protection of agri-food products
- GI and trade mark protection of products in non-EU countries

Annex 2: List of consulted stakeholders

Country	Mark/product	Name of organisation	Type of organisation
AT	Pumpkin seed oil from Austria	Community of Styrian Pumpkin Seed Oil PGI	Producer Association
AT	Pumpkin seed oil from Austria	Service association protected designations of origin for food	National Authority
AT	Pumpkin seed oil from Austria	Alwera AG	Producer
AT	Pumpkin seed oil from Austria	Kiendler oil mill	Producer
BE	Belgian Linen	Fedustria	Producer Association
BE	Belgian Linen	Flipts & Dobbels	Producer
BE	Belgian Linen	Libeco	Producer
BG	Vratsa Limestone	Bulgarian Patent Office	National Authority
BG	Vratsa Limestone	Bulned AMD	Producer
BG	Vratsa Limestone	IP Attorney	Regional/local authority
CH	Swiss Watches	Association of the Swiss Watch Industry FH	Producer Association
CH	Swiss Watches	Victorinox AG	Producer
CH	Swiss Watches	Swiss Intellectual Property Authority	National Authority
CH	Swiss dry-cured meat	ProCert	National Authority
CH	Swiss dry-cured meat	Meat drying plant Churwalden AG	Producer
CH	Swiss dry-cured meat	Federal Office for Agriculture (FOAG)	National Authority
DE	Plauen lace	Branchenverband Plauener Spitze und Stickereien e.V.	Producer Association
DE	RAL Quality Mark Candles	Gütegemeinschaft Kerzen e.V.	Producer Association
DE	RAL Quality Mark Candles	GIES Kerzen GmbH	Producer
DE	RAL Quality Mark Candles	Bolsius International	Producer
DE	QUL (Quality association for environmentally friendly latex mattresses)	Qualitätsverband umweltverträgliche Latexmatratzen e.V. (QUL)	Producer Association
DE	QUL (Quality association for environmentally friendly latex mattresses)	dormiente	Producer
DE	Certified PU (Rigid Polyurethane Foam)	Qualitätsgemeinschaft ÜGPU	Producer Association
DE	Certified Quality Bavaria	Patentamt Deutschland	National Authority

Country	Mark/product	Name of organisation	Type of organisation
DE	Certified Quality Bavaria	GQ-Bayern-Landesanstalt für Landwirtschaft	Regional/local authority
DE	Certified Quality Bavaria	Metzgerland GmbH	Producer
DE	Certified Quality Bavaria	Primavera Naturkorn GmbH	Producer
ES	Ceramics from Manises	AVEC-GREMIO	Producer Association
ES	Ceramics from Manises	María Belén Luengo García	Producer
ES	Albacete Cutlery	APRECU	Producer Association
ES	Albacete Cutlery	JIMENEZ Hermanos	Producer
ES	Albacete Cutlery	Barbero Srl	Producer
ES	Albacete Cutlery	OEPM	National Authority
ES	Alicante Turrón from Alicante area	Generalitat Valenciana - Ministry of Agriculture, Rural Development, Climate Emergency and Ecological Transition	Regional/local authority
ES	Alicante Turrón from Alicante area	Regulatory Council IGP Jijona and Turron of Alicante	Producer Association
ES	Alicante Turrón from Alicante area	Turrones Pico S.A.	Producer
FI	Vendace fish from Puruvesi lake	Snowchange coop	Producer Association
FI	Sami Handicraft	Sami Duodji Ry	Producer Association
FR	Wood from the Alps	Association Bois des Alpes	Producer Association
FR	Wood from the Alps	Scierie Blanc	Producer
FR	Burgundy Stone	INPI	National Authority
FR	Burgundy Stone	Association Pierre de Bourgogne	Producer Association
FR	Burgundy Stone	Association Pierre de Bourgogne / Atelier Pierre de Bourgogne	Producer Association
FR	Burgundy Stone	AFIGIA	Producer Association
FR	Cheese from Pont-L'Evêque area	Producer group (ODG Pont-L'Evêque)	Producer Association
FR	Cheese from Pont-L'Evêque area	INAO	National Authority
FR	Cheese from Pont-L'Evêque area	Ministry of Agriculture	National Authority
FR	Cheese from Pont-L'Evêque area	Graindorge	Producer
HU	Halas Lace	Hungarikum Association	Producer Association
HU	Halas Lace	Halas Lace	Producer
HU	Halas Lace	Hungarian Intellectual Property Office	National Authority
IE	Certified Asthma & Allergy Friendly	Allergy Standards Limited	Producer Association

Country	Mark/product	Name of organisation	Type of organisation
IN	Thewa Art Work	Rajsoni family – Thewa Art	Producer
IT	Marmo Botticino Classico	Consorzio Produttori Marmo Botticino Classico	Producer Association
IT	Marmo Botticino Classico	Cooperativa Operai Cavatori del Botticino	Producer
IT	Marmo Botticino Classico	Lombarda Marmi Srl	Producer
IT	Re Panettone	Re Panettone	Mark Owner
IT	Re Panettone	Forno Rizzo	Producer
IT	Re Panettone	Pasticceria De Vivo	Producer
IT	Re Panettone	Pasticceria Dall'Omo	Producer
IT	Artistic and Traditional Ceramics from Faenza	National Ceramic Council	National Authority
IT	Artistic and Traditional Ceramics from Faenza	Ceramica Gatti	Producer
IT	Artistic and Traditional Ceramics from Faenza	Italian Association of the City of Ceramics	Producer Association
MX	GTO Guanajuanto	Government of the Guanajuato state – Secretary of economic and sustainable development	National Authority
PL	Made in Toruń	Candellana	Producer
PL	Made in Toruń	The Business Support Centre in Toruń	Mark Owner
PL	Made in Toruń	Patent Office of the Republic of Poland (UPRP)	National Authority
PL	Polish Vodka	Ministry of Agriculture and Rural Development	National Authority
PL	Polish Vodka	Agricultural and Food Quality Inspection	National Authority
PL	Polish Vodka	The Polish Vodka Association	Producer Association
PL	Polish Vodka	Wyborowa SA	Producer
PT	Azores Handicraft	Regional Centre for the Support of Handicrafts	Regional/local authority
SE	Sami Handicraft	Swedish Intellectual Property Office	National Authority
Several	Sami Handicraft	Saami Council	Producer association
SI	Idrija Lace	Idrija Lace School	Regional/local authority
SI	Idrija Lace	The Idrija Lacemaker Association	Producer Association

Annex 3: Details for the total estimate of costs for each model

Method

Several hypotheses of implementation have been elaborated to assess the overall costs of each model (Model I, Model II and Model III from Section 4.3 of the report). These hypotheses are based on assumptions and anecdotal evidence from the case studies and desk research. Due to the great diversity of situations among the different cases observed, **the hypotheses considered here are somewhat arbitrary (each of these hypotheses could be highly discussed). The purpose of the hypotheses is not to provide actual costs but to allow for a comparison of costs of each model on a common basis**. The hypotheses cover:

- **The number of applications for non-agricultural GIs in each Member State over a 10-year period**: this is based on the number of potential GIs identified in the context of the "Study on geographical indications protection for non-agricultural products in the internal market" (Insight Consulting, OriGIn & REDD, 2013). A total of 794 potential geographically rooted products were identified in all EU Member States. It is assumed that 20% of them would apply for a total of 145 GIs (as a comparison, in France, 18% of the number of potential GIs identified applied between 2015 and 2021). Thus, the total estimate is 164 applications for non-agricultural GIs.

Table 29: Estimate of the number GI applications by MS

MS	Number of potential GIs identified in the 2013 study	Estimate of the number of applications over the next 10 years
ES	229	46
DE	188	38
FR	97	19
IT	74	15
AT	73	15
CZ	19	4
IE	16	3
PT	15	3
BG	13	3
HU	9	2
BE	8	2
SI	8	2
RO	7	1
PL	6	1
SK	6	1
MT	5	1
NL	5	1
FI	4	1

LT	3	1
LU	3	1
DK	2	1
EE	2	1
CY	1	1
SE	1	1
Total	**794**	**164**

Source: elaboration by the authors based on "Study on geographical indications protection for non-agricultural products in the internal market" (Insight Consulting, OriGIn & REDD, 2013).

- **Number of producers involved in each GI:** there is no data on the number of potential producers involved in each GI. Based on existing GIs/trade marks, this may range from 1 or 2 producers to several thousand (for instance for the largest GIs under the agri-food schemes). In the present hypothesis, an average number of 10 producers / GI are considered.
- **Scrutiny at national and/or EU level**: it is assumed that the assessment of each application would be conducted:
  - Model I: assessment of applications at EU level only,
  - Model II, two sub-models are considered:
    - Model II.a: assessment of applications at EU level only,
    - Model II.b: assessment of applications at national and EU levels,
  - Model III: assessment of applications at national and EU levels.
- **Assessment of costs for each step of the implementation**: some individual costs were assessed for each step of implementation or type of procedure. These estimates are based on the case studies and desk research. In the different models, the following costs are considered:
  - Time needed to draft an application by producer group (there are no detailed data on this aspect so this assessment is theoretical; however, it can be considered that costs are higher for Model II and III compared to Model I due to the higher complexity of the application process):
    - EUR 7,500 / application for Model I,
    - EUR 15,000 / application for Model II and III,
  - Assessment of application by national authority: EUR 7,500 / application for Models II and III (estimated based on data from French authorities, no national assessment of application for Model I),
  - Assessment of application by EU authority:
    - EUR 1,500 / application for Model I (compared to a few hundred euros for trade marks), this would be paid as a registration costs by producer / producer groups.
    - EUR 20,000 / application for Models II and III (compared to EUR 33,500 / application for DG AGRI; it is considered that the application file will be less complex for non-agricultural GIs products than for agriculture, food and drinks GIs),
  - Annual costs of verification for each producer involved: EUR 600 / year,
  - Annual monitoring and enforcement costs by GI: EUR 300 / year,

  - Annual costs for verification when public bodies are involved: the costs for public authorities are estimated at 10% of the costs for producers (most of the costs being are paid by producers, for the verification at production stage).

- **Management by national authority:** it is considered that there are specific management costs only in those Member States with at least 15 GIs applications. In other Member States (with a limited number of GIs), costs are considered only for each single application (see above). The costs for management by national authorities are estimated based on data from the INPI in France: EUR 93,000 / year for 17 applications (*prorata* based on the number of GIs in Member States with significantly higher number of GIs, namely Germany and Spain).
- **Management by EU authorities:** two full-time equivalents (FTE) at EU level are considered for Model III with costs / FTE at EUR 75,000 (total estimated at EUR 150,000 FTE).

Results

The table and figure below provide an overall assessment of costs for each model. These are annual costs based on a 10-year implementation (considering that 164 non-agricultural GIs would be registered during a 10-year period, hypothesis of an average of 16.4 registrations each year).

Main results:

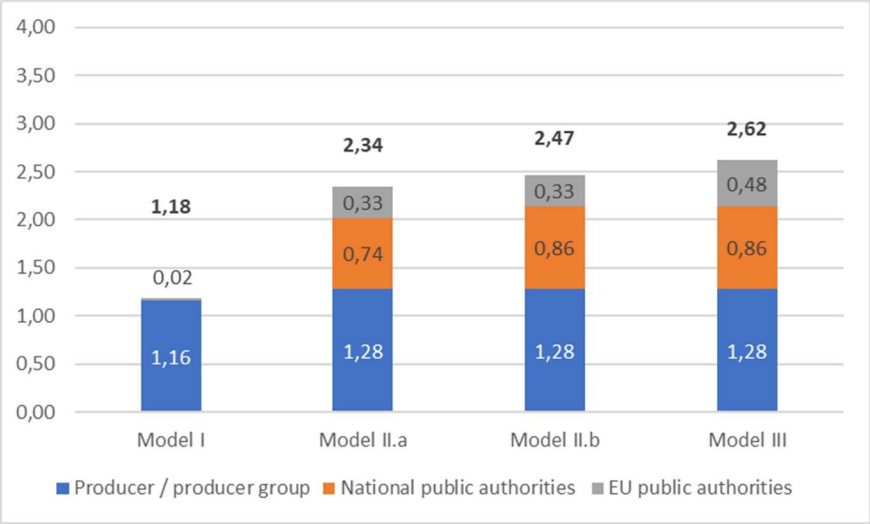
- Cost are lower for Model I (EUR 1.18 million) compared to Model II and III (from EUR 2.34 million to EUR 2.62 million) due to low involvement from public authorities in Model I (EU assessment of application only) compared to Models II and III.
- There is a gradual involvement of public authorities in the different models:
  - Model I: EU assessment of applications,
  - Model II: involvement of national authorities in verification, monitoring and enforcement:
    - Model II.a: EU assessment of applications,
    - Model II.b: national and EU assessment of applications,
  - Model III: national and EU assessment of applications and involvement of EU (for monitoring and enforcement) and national (for verification, monitoring and enforcement) authorities,
- The costs for producer and producer groups:
  - These costs are estimated to range from EUR 1.16 million to EUR 1.28 million for the different models. They are relatively comparable for each model (EUR 123,000 / year difference between the different model), as most of these costs are related to the verification implemented in each model (verification costs are assessed at EUR 0.98 million for each model).
  - The differences of costs between the different models are assessed to be slightly higher for Model II and III compared to Model I due to the estimated costs to draft the application (hypothesis of EUR 7,500 / application for Model I compared to EUR 15,000 / application for other models). This makes a EUR 123,000 difference between the different models.

Table 30: Estimate of annual costs for each model (in million EUR)

	Producers / producer groups	National public authorities	EU public authorities	Total
Model I	1.16	0.00	0.02	**1.18**
Model II.a	1.28	0.74	0.33	**2.34**
Model II.b	1.28	0.86	0.33	**2.47**
Model III	1.28	0.86	0.48	**2.62**

Source: elaboration by the authors

Figure 1: Estimate of annual costs for each model (in million EUR)



Source: elaboration by the authors

The details for each model are presented below.

Table 31: Details of the estimate of annual costs for each model (in million EUR)

Model I	Producer / producer group	Public authorities (national)	Public authorities (EU)	Total
Registration	0.12	0.00	0.02	**0.15**
Verification	0.98	0.00	0.00	**0.98**
Man / mon / enf	0.05	0.00	0.00	**0.05**
Total	1.16	0.00	0.02	**1.18**
Model II.a	**Producer / producer group**	**Public authorities (national)**	**Public authorities (EU)**	**Total**
Registration	0.25	0.00	0.33	**0.57**
Verification	0.98	0.10	0.00	**1.08**
Man / mon / enf	0.05	0.64	0.00	**0.69**
Total	1.28	0.74	0.33	**2.34**
Model II.b	**Producer / producer group**	**Public authorities (national)**	**Public authorities (EU)**	**Total**
Registration	0.25	0.12	0.33	**0.70**
Verification	0.98	0.10	0.00	**1.08**
Man / mon / enf	0.05	0.64	0.00	**0.69**
Total	1.28	0.86	0.33	**2.47**
Model III	**Producer / producer group**	**Public authorities (national)**	**Public authorities (EU)**	**Total**
Registration	0.25	0.12	0.33	**0.70**
Verification	0.98	0.10	0.00	**1.08**
Man / mon / enf	0.05	0.64	0.15	**0.84**
Total	1.28	0.86	0.48	**2.62**

Man / mon / enf: Management / monitoring / enforcement
Source: elaboration by the authors

Annex 4: Summary of the stakeholder workshop

On 13 July 2021 from 09:30 to 13:30, the European Commission held an online workshop in Brussels to present and discuss the preliminary findings of this study.

Opening of the workshop

The meeting was opened by Mr. Kamil KILJANSKI, Head of Unit of the Intangible Economy Unit in DG GROW, who explained that the aim of the meeting is to explore how the control and enforcement of the names of authentically geographically-linked industrial and handicraft products should look like in a future EU-wide system to be efficient. This involves considering the desired degree of private/public intervention, what is the scope of the legal protection of authentic geographically-linked industrial and handicraft products as defined by court practice, and how to address new challenges like geographical indication protection on the digital market.

Ms. Claudia MARTINEZ FELIX, Deputy Head of the Intangible Economy Unit in DG GROW, then gave a brief introduction to the workshop. She outlined that the study is almost finalised, and that the workshop was an opportunity to present these results.

Presentation of the study results

Mr. Frithjof MICHAELSEN (VVA) opened the presentation by going through the agenda of the presentation and introducing the project team, VVA and AND international, together with Mr. Andrea ZAPPALAGLIO from the University of Sheffield, a senior expert in the field.

Mr. MICHAELSEN outlined the three key objectives of the study:

- To map the control and enforcement mechanisms of existing protection systems for non-agricultural GIs (in the EU and non-EU countries).
- To analyse the existing mechanisms and compare them to each other and, as a benchmark, to the mechanisms that exist for agricultural products.
- To develop recommendations for the control and enforcement mechanism of a potential protection system at EU level.

These objectives translated more or less directly into three main tasks or phases of the study. The first was to collect data on existing protection systems. Based on that data, the study team carried out an assessment of the existing protection systems to understand how effective, cost-effective and relevant they are. Lastly, the study team developed three models of how control and enforcement could look under a potential EU system. The workshop itself formed an important part of the final phase of the study: the validation and finalisation phase.

Presentation of research scope and activities

Mr. Frithjof MICHAELSEN (VVA) gave an **overview of the existing systems**, at EU and national level, for the protection of geographically rooted products. The study covers six protection systems. The first three are trade mark-based protection systems: EU collective marks, that are used to indicate that a product comes from a certain group of producers;

and EU and national collective marks, that are used to certify certain characteristics of a product. The fourth and fifth protection systems are sui generis GI protection systems, meaning that their main purpose is to designate the geographical origin of products, unlike the mark-based systems. The final group is non-EU protection systems: a heterogenous group covering both sui generis GI and trade mark-based systems in non-EU countries.

There was also a vertical element to the scope of the study, namely the **different phases of the control and enforcement process**. The first is the establishment of the link between the product and the geographical territory and the related product characteristics. The second phase is the verification of the product characteristics and the underlying production process. The third is the monitoring of the market – how and by whom is the geographical name used on the market? The final phase is enforcement in the strict sense: if an infringing product is found on the market, what can be done about it and how can infringing producers be sanctioned?

Mr. MICHAELSEN went on to present the **research sample of products** that were subject to in-depth analysis. The selection of products was as geographically representative as possible, with five products being selected from each of the six protection systems. However, there were some limitations to the composition of the research sample, often due to a lack of many or even any products.

In terms of research activities, the study team carried out **three main research activities**: desk research, interviews and an online survey. The first two focussed only on the 30 products from the sample. The scope of the survey was larger; it was not limited to the products from the research sample but targeted producers of geographically rooted products across the whole EU and also beyond. All the research activities followed the vertical scope of the study, that is the four phases of the control and enforcement process. Based on the data collected the study team developed six case studies, one for each of the protection systems within the study's scope. These case studies formed the basis for the analysis.

Presentation of results of the analysis

Mr. Tanguy CHEVER (AND-I) presented the **results of the study, namely a comparison of the protection systems based on the case studies and desk research**. It is important to note several limitations on the comparison between products and protection schemes:

- Specific objectives and rules are defined for each protection system, and so not all aspects are comparable.
- There is some flexibility for implementation at country / producer level for each protection system.
- Protection of intellectual property rights is not the only objective for stakeholders: communication, increased reputation, quality management and collective organisation are all other objectives.

In terms of effectiveness, generally all six systems are seen as effective in terms of their control and enforcement mechanisms. However, there are **large differences in practices in terms of the effectiveness of verification**, ranging from no formal verification in some cases to annual verification by a third party in other cases. For agri-food products, certification marks and non-agricultural GIs in France, verification is mandatory.

Effectiveness of monitoring is not directly linked to the type of protection system but on stakeholders' strategy. Some producers did not conduct any monitoring, others followed a 'light approach' where they conducted monitoring online, and in exceptional circumstances producers may use specific service providers to monitor the market. The level of monitoring

depends on 1) the budget allocated to this task, 2) the possible involvement of public authorities and 3) the perceived risk of infringement.

Where there is less monitoring, there is often a lack of enforcement. The **effectiveness of enforcement** depends on the existing legal framework (national or EU protection), the strategy implemented by stakeholders, and the involvement of public authorities (ex officio protection). A 'gradual approach' was clearly identified in the data collection and analysis, whereby producer groups prefer to solve the problem first through a low-level solution (e.g. a letter), and then to escalate the problem where needed (e.g. a letter drafted by a lawyer). Cases of escalation (ultimately resulting in a court case) were found to be the exception rather than a frequently occurring phenomenon.

Mr. CHEVER went on to provide an analysis of the **cost-effectiveness for producers**. Key costs for this group are those associated with the application procedure, registration costs (which vary from being free to EUR 1,800) and costs to use the rights. Costs associated with verification depend on the frequency and type of verification used (from no costs to up to EUR 20,000 per year per company, the maximum costs observed for some certification marks). For agri-food and drinks GIs, costs are a few hundred euros per year for a farmer and a few thousand euros for a processor. No detailed information could be provided on the costs for producers in terms of monitoring, but they were generally limited. Costs for producers relating to enforcement ranged from a few euros for a registered letter, a few hundred euros for a registered letter by a lawyer, and around EUR 20,000-30,000 for a court case. Mrs Aubard (AFIGIA) mentioned during the workshop that the EUR 20,000-30,000 were costs for very complex and long procedures. After the workshop, she reported to the consortium that the costs generally ranged between EUR 2,500 and EUR 5,000.

In terms of **costs for public authorities**, it was possible to identify higher costs for GIs than for trade marks due to more complex scrutiny procedures based on the link to the territory. For agri-food GIs at the EU level, there is often the involvement of a technical department (e.g. DG AGRI for wine, DG MARE for seafood products) and translation into several languages needed. The average cost for a new registration of an agri-food and drink GI at the EU level is assessed as being EUR 33,500. When considering cost-effectiveness, it was generally considered that costs are proportionate for each protection system. Higher costs are related to specific objectives (e.g. an assessment of the link to the territory) and to increased effectiveness. 'Light enforcement' was seen as effective in a large share of the situations where a legal framework exists.

Mr. CHEVER concluded by presenting the findings of the study linked to **relevance**. EU certification marks and national certification marks in most MSs cannot be used to protect an origin, whereas this is possible for collective marks. In terms of GIs, the use of a geographical name is public and is managed in many cases by a producer group, with the involvement of public authorities. For the monitoring and enforcement phase of the process, relevant enforcement tools are available for each protection system.

Presentation of recommendations

Mr. Frithjof MICHAELSEN (VVA) proceeded to the **recommendations of the study**. These were developed in response to the question 'if the EU were to adopt an EU-wide system for the protection of non-agricultural GIs, how could the control and enforcement part of such a system look like?' Three different models are proposed in terms of an EU GI protection system, each with a slightly different emphasis. These models were based on stakeholders' needs and how well the existing systems respond to these needs.

The **first model is inspired by the existing trade mark-based system**. Producers are responsible for designing the product characteristic criteria, verification, monitoring and

enforcement systems. This gives them a lot of freedom, but also means that producers need to have the necessary resources to do this.

The **second model is inspired by national sui generis GI protection system**. While the setting of product criteria and verification are under mixed public-private responsibility, monitoring and enforcement remain under private responsibility. There is an increased role of public authorities, and there is no private ownership (unlike in the first model). This model is flexible in that producers can choose the intensity of monitoring and enforcement that suits them best.

The **third model is inspired by the existing agri-food GI protection system**. In this model, the product characteristic criteria, verification, monitoring and enforcement systems are all under mixed public-private responsibility. The rationale behind this is that there are products that have very small producer groups with few resources, and so this model helps to guarantee that protection is also relevant for such products.

Mr. MICHAELSEN concluded the presentation from the consortium by providing a succinct summary. He then opened the floor for questions and comments.

Questions and comments from the audience

Ms. Claudia MARTINEZ FELIX (DG GROW) thanked the consortium for the presentation and opened the floor for questions. She started this process by asking participants to the workshop to respond to a Slido question on how they would see industrial and handicraft products labelled in a future EU-wide protection system. The options were:

- I do not want any label to appear.
- With a QR label.
- With one of the logos currently used on agricultural products.
- With a logo specific to industrial and handicraft products.

In the absence of any immediate questions from participants, Ms. MARTINEZ FELIX gave a recap of the three recommended models. She asked the consortium to what extent the models have been based on the different stakeholders' needs, and how they could respond to these concrete needs. The costs should be borne in mind here.

Mr. MICHAELSEN responded that the landscape and needs are very diverse, ranging from producers' needs for protection to authorities' needs (both national IP authorities in a supervisory function and local / regional authorities, who are often interested from the perspective of the products being rooted culturally and historically in the region) to the needs of consumers. The models respond to these needs by weighting different aspects. For example, the first model allows producers to define the product characteristics. In cases where infringing products are not seen as a particular issue, public involvement in the monitoring and enforcement processes may not be seen as necessary. Equally, the stronger the value we see in protecting such products from a cultural and historical point of view, the more interest there may be in models two or three where public involvement is stronger.

Mr. Patrick TEMPLE (Donegal Tweed Weavers Association) asked how we can collectively create a simple enough legislation to reduce the costs in a potential EU-wide system for the protection of non-agricultural GIs. Ms. MARTINEZ FELIX (DG GROW) mentioned that the Commission's upcoming impact assessment will take into consideration the simplest and most cost-effective measure, considering an appropriate balance in expenses from all stakeholders. Mr. MICHAELSEN (VVA) mentioned that GI systems will always be more costly than trade mark-based systems due to a greater role being needed from public authorities, yet these need to be we weighed against the positive impacts. Mr. Brian McGEE

(Design and Crafts Council Ireland) mentioned that costs might also fall naturally over time once a strong protection is in place that will deter infringing producers, thereby reducing infringements.

Ms. Audrey AUBARD (Association Française des Indications Géographiques Industrielles et Artisanales – AFIGIA) reiterated the point that IPR is not the only aspect of GIs. They should be seen from a wider point of view with multiple motivations behind protection. In terms of the application procedure, it would be needed to set up local communities with people who are not used to working together, but who are rather competitors. In order to create such a community, time needs to be allocated. In relation to enforcement and the costs of court actions, these are less expensive in France than the average costs mentioned in the study. Ms. AUBARD reiterated that court action is really a final resort, and warning letters are often enough in order to remove infringing products from the market. Lastly, she suggested to include an assessment of the different types of controls of producers (ex. private controls, public controls) in the study.

Mr. CHEVER replied that the information on court costs could be updated with more information if it were provided from additional stakeholders. Regarding the types of control, this is expanded upon in the report.

Mr. Brian McGEE (Design and Crafts Council Ireland) mentioned in writing whether protection is not also about prioritising the EU sustainability agenda. Trade marks are not rooted to a location, can be purchased and outsourced to anywhere, as has happened so often in the EU.

Roundtable discussions on control and defence of non-agricultural GIs in practice: the views of different stakeholders

Following a short coffee break, Ms. Claudia MARTINEZ FELIX (DG GROW) introduced the roundtable discussions.

Discussion 1: Producers' views on control and enforcement

Ms. Valerie Marie D'AVIGNEAU (DG GROW) introduced the first panel, where the discussion focussed around the following questions: How should a control and enforcement system be built to be efficient? What would producers recommend as to the steps and actors (including public) to be involved in production control? Would producers have same/distinct views about checking the products' quality once products are on the market? What are the current risks in terms of counterfeit and imitation of GIs?

Ms. Valerie Marie D'AVIGNEAU introduced the three speakers: Ms. Tiphaine PAQUETTE (Association Pierre de Bourgogne), Mr. Andreas LEWERINGHAUS (Chamber of Industry and Commerce Solingen) and Mr Patrick TEMPLE (Donegal Tweed Weavers Association).

Ms. Tiphaine PAQUETTE (Association Pierre de Bourgogne) began by giving a background to the Association Pierre de Bourgogne. There are 83 varieties of stone which are used everywhere in the world, including for the British Museum and at the base of the Eiffel Tower. The GI was registered on 29 June 2018 and is based on three main criteria: specific qualities of the limestone, notoriety of Pierre de Bourgogne and know-how of professionals in the sector (as the process must be carried out by certified professionals). Verification is carried out every year for factories, and every 3 years for quarries. Objectives of the GI protection for Pierre de Bourgogne include protecting products from

counterfeiting, perpetuating the local industrial sector, and valuing local know-how. Infringement of the GI can be sanctioned by fines or imprisonment. GI raising awareness tools have been used, as well as protection tools (including warning letters and monitoring use on the internet). Today there are 14 certified companies. Going forward, there is a need to strengthen the protection strategy in France and abroad, as well as a need to protect GIs such as this at the EU level.

Mr. Andreas LEWERINGHAUS (Chamber of Industry and Commerce Solingen) detailed the control and defence of non-agricultural GIs in practice. The Chamber of Industry and Commerce enforces the protection of the Solingen designation for cutlery. In Germany Solingen is a protected GI based on Paragraph 137 of the German law on trade marks and specific legislation. To enforce GIs and trade marks, the Chamber of Industry and Commerce cooperates closely with producers. The producers of Solingen cutlery must be based in Solingen. There is a board that closely develops quality requirements, and adjusts them on a regular basis. Companies monitor their market and inform the Chamber of Industry and Commerce about counterfeits, who initiate enforcement actions (also involving other authorities). The Chamber of Industry and Commerce is able to take legal action, from letters of cease and desist to (irregular) court action. The German law also allows companies to take their own legal action based on unfair competition, which helps to share the burden of enforcement. The Chamber of Industry and Commerce is generally positive towards an EU system on non-agricultural GIs, but would prefer to keep the management and control of non-agricultural GIs local. Open questions from the Chamber of Industry and Commerce are:

- How to identify similar products with a more or less homogeneous group of producers?
- How to deal with different types of products regarding quality requirements?
- How to integrate the different legal frameworks and strategies already employed nationally in the EU?

Mr. Patrick TEMPLE (Donegal Tweed Weavers Association) introduced Donegal Tweed, which has been around for centuries. It is a woven fabric with a colourful flecked character, produced from 85% (or more) wool, fine animal hair or natural fibres. The Donegal Tweed Weavers Association started in around the 1960s, when it was predominantly hand weaving that occurred in the region. The key factor is that the tweed is produced in County Donegal. The Donegal Tweed Weavers Association is quite small, hence why the third model presented by the Consortium may be most appropriate. The design and craft sector in Ireland is estimated to have 14,000 direct employees, with an estimated value of EUR 750 million. GI protection would create greater consumer clarity, also of huge benefit to Donegal County. The Donegal Tweed Weavers Association is relatively small, but represents key skills which are crucial to maintaining heritage. GI protection would therefore help to maintain key heritage skills. GI protection of non-agricultural products could fit in with European Commission President von der Leyen's approach to the circular economy and the 'next-generation EU'. Given the small size of the Donegal Tweed Weavers Association, investment in significant legal protection and enforcement is not feasible. A cost-effective framework that puts the fundamental protection measure in place for non-agricultural GI products that equals or goes beyond the current trade mark system is therefore needed.

Ms. Valerie Marie D'AVIGNEAU concluded the presentations by highlighting the common theme that a 'stronger together' approach was clearly identified in terms of a future GI protection system.

Ms. Krisztina KOVACS (DG GROW) asked the speakers if they could specify one element that they would like to have the most and least in a potential EU-wide protection system.

Mr. LEWERINGHAUS said that for him, keeping control of the minimum quality control requirements locally was most important. Enforcement should match this, as local companies know how to identify infringements in quality standards. For Mr. TEMPLE, the third model where there is shared public-private verification, monitoring and enforcement would be most suitable for smaller producer associations with fewer resources.

Mr. Frithjof MICHAELSEN (VVA) thanked the producers for their presentations, which showcased the diversity of products and needs. Member States should be able to find a way to implement a protection system in a flexible manner, in addition to the flexibility that is needed from producers' side.

Discussion 2: Public authorities' views on state involvement in control and enforcement of GIs

Mr. Philipp RUNGE (DG GROW) introduced the second panel discussion which focused on:

- What the role should be of the state and its public authorities in a future EU wide system for non-agricultural products.
- GIs in relation to control and enforcement.
- Should the state (directly or indirectly, through an independent body) be involved?
- Should the state in particular define the content of a GI, inspect the products, bear the costs of an enforcement system, and act directly to protect specific GIs?
- What would be the grounds for such a role (e.g. guarding against unfair exclusion, protect common heritage, other?)
- Should we, and how to (best), address the balance between the state and private actors in GI control and enforcement implementation?

The first speaker was Mr. Rui SOLNADO DA CRUZ (Director of the Extinction of Rights Directorate, Portugal – Instituto Nacional da Propriedade Industrial). In Portugal, the Industrial Property Code contains general provisions that shape a *sui generis* system applicable to non-agricultural GIs. Registration is done online, with the digital form identifying the applicant, product and GI. Following the application, there is a formal examination and publication of the application with a two-month window for opposition. After this is the decision to grant or refuse, followed by a publication of the decision with another two-month window to allow for an appeal to court on the basis of invalidity. Grounds for refusal of the application include that the applicant does not have capacity, that the GI does not meet the conditions to be protected, or that GI protection may lead to unfair competition. GI protection is a way to attract tourism and increase sustainability. In response to the criticism that GIs are obstacles to innovation, the view of the Instituto Nacional da Propriedade Industrial is that GIs help to keep the past in the present, and that patents are the appropriate IP tool to guarantee innovation. The territorial link with GIs is essentially a human factor (the producer's traditional know-how and skills) and reputation. However, factors such as the climate, origins of raw materials and environmental elements can influence the end product.

The second speaker was Ms. Anna DACHOWSKA (Patent Office of Poland). In Poland there is a *sui generis* system for the protection of non-agricultural GIs, yet it is complex and often not suited to non-agricultural products (having been designed for agricultural GIs). This means that to date there are no product registrations for non-agricultural GIs. That said, there is a pending application for Koniaków Lace. There is also a draft proposal to change the law in relation to non-agricultural GIs in order to adjust national legislation to the specificity of non-agricultural products, via the simplification and streamlining of the

registration procedure. One of the new requirements will be for at least one of the production stages to take place in the given area. There is currently no measure in place in Poland for the control of EU-wide non-agricultural GI protection. A combination of public and private monitoring and enforcement would be preferred in Poland.

Mr. Philipp RUNGE (DG GROW) asked what policy conclusions can be drawn from the fact that there are no food security considerations for non-agricultural GIs. Mr. SOLNADO DA CRUZ replied that there is protection from IP rights, competition and tradition/culture that needs to be considered, so many other considerations. Ms. DACHOWSKA confirmed that the specificity of the culture and region remains an important consideration.

Discussion 3: Legal practitioners' view

Mr. Philipp RUNGE introduced the third panel discussion, which considered what legal practitioners recommend, in particular on the issue of imitation and of design protection that are of specific interest to GI owners.

Mr. Andrea ZAPPALAGLIO (School of Law of the University of Sheffield) discussed the legal challenge of protecting and defending authentic geographically-linked industrial and handicraft products. Evocation is a key point given that it does not exist in trade mark law, and so was developed by the Court of Justice of the EU in its case law. In brief, evocation strikes as a trigger in the mind of the average EU consumer a particular product. This concept gradually expanded over time. In a case from 1999, the CJEU ruled that the name Cambozola evocates Gorgonzola, even if technically the producer was not pretending to make Gorgonzola. In another case, it was ruled that the name Glen Buchenbach (a German Whisky) evocates Scottish Whisky, many of which have the word Glen in their name. In a case from 2017 the CJEU held that the use of names and imagery of Don Quijote was an evocation to Manchego cheese, as Don Quijote is associated with La Mancha. The recent CJEU Morbier case (Case C-490/19) from 2020 involved Morbier cheese, which has a black line running though it which is expressly referred to in the product description. However, not only Morbier cheese adopts this feature. After the national (French) courts of first and second instance had ruled in favour of the defendant, the CJEU ruled against the defendant. It held that it is necessary to determine whether that reproduction may mislead consumers taking into account all the relevant factors, including the way in which the product is presented to the public and marketed and the factual context. Many believe that this case is just the beginning of protection of GI products which look like (in terms of shape, colour etc.) or even taste/smell like others. The same process would also apply to non-agricultural products.

The final speaker was Ms. Pilar MONTERO (Professor at the Commercial Law Department of the University of Alicante, Director of the Magister Lvcentinvs). She focused on the online challenges of GI protection. Domain names are a big challenge, as GIs (being without an owner) cannot be protected with the same strength as protection as trade marks. There were many cases of domain names including names of registered GIs where courts decided that the domains had to be taken down. This included for example the domains champagnejavea.com or coolchampagne.com. Such domains can only be registered if there is a trade mark protection that precedes the GI registration, which was the case for example for certain domains for Gorgonzola cheese.

Closing remarks

Ms. Claudia MARTINEZ FELIX (DG GROW) thanked the participants for their input. She recalled that part of the policy of creation a GI protection for non-agricultural products goes beyond the protection system available under trade mark-based systems.

The need to work together is fundamental, from producer groups to national groups and authorities, to those on the EU level. Subsidiarity is a key consideration when trying to design a potential future system to protect non-agricultural GIs at the EU level. Flexibility is also key to ensuring that the protection system has the most impact.

Ms. MARTINEZ FELIX briefly presented the results of the Slido questionnaire asking participants how they would see industrial and handicraft products being labelled in a future EU-wide protection system. The results were:

- I do not want any label to appear: 6%
- With a QR label: 11%
- With one of the logos currently used on agricultural products: 22%
- **With a logo specific to industrial and handicraft product: 61%**

Ms. MARTINEZ FELIX closed the webinar by thanking the consortium for the study. She encouraged workshop participants to stay tuned in relation to the upcoming European Commission impact assessment.

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