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on a possible extension of European Union geographical indication protection to non-agricultural products

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Definition/Background

The quality, reputation or other characteristics of a product can be determined by its origin. Geographical indications (GIs) are place names (or also, in some countries, words associated with a place) that are used to identify products that come from, and have characteristics associated with, those places.

The EU has a wealth of such products, which are rooted in traditional know-how and production methods. These include Laguiole knives, Bohemian glass, Scottish tartan, Carrara marble and Aubusson tapestry. These products form an integral part of the cultural, social and economic heritage of a given place, and serve as a testament to the breadth of European know-how and cultural heritage. They are embodiments of history, expertise and talent. And it is precisely because these products are the result of this know-how, because their quality means there is a demand for them, and because they are emblematic of places and cultures that their names can be open to misuse. The harm caused by such misuse is twofold. First, consumers think they are buying quality products that are synonymous with local know-how, but end up with products that are not made anywhere near the place they are supposed to be from, often with no respect for the traditions that made them famous in the first place. And second, businesses have to deal with competition from products which usurp their reputations and are sold at lower prices. In some cases there is also a side-effect in that harm is also done to the image and reputation of the authentic products themselves.

The situation as it stands

The WTO agreement on trade-related aspects of intellectual property rights (TRIPs) lays down a standard level of protection for all products. Under TRIPs, GIs must be protected to ensure that the public is not misled and to prevent unfair competition.

At EU level, there are currently four regulations that deal with the registration and protection of GIs:

- Regulation (EU) No 1151/2012 for agricultural products and foodstuffs, the ‘Quality Regulation’;
- Regulation (EU) No 1308/2013 for wine or vine products, the ‘Single OCM Regulation’;
- Regulation (EU) No 110/2008 for spirit drinks;
- Regulation (EU) No 251/2014 for aromatised wine products.

However, there are currently no EU rules to protect the use of the names of industrial and artisanal products. Non-agricultural products are protected under national legislation, which means there are different levels of protection. Producers wishing to protect a non-agricultural GI in the EU have to make separate applications to each Member State in which such protection is available (only 15 have adopted legislation to this end). This is inefficient in terms of the functioning of the European single market.

That is the reason why the Commission, in the light of research and a public hearing, has decided to launch a consultation process in the shape of a Green Paper on the possibility of extending GIs to non-agricultural products.

Gist of the Green Paper

The Green Paper takes stock of the existing protection arrangements at national and EU level, and looks at the economic, social and cultural impact that better protection of GIs in the EU could have. Various options – relating to, for example, the link between the product and the

territory concerned, and ways of stepping up protection – are set out and discussed. The Commission also considers the scope that a European legislative initiative might have. GI protection must make it possible to prevent unfair competition and stop consumers being misled. Furthermore, some indications, such as generic terms or homonymous GIs, must be exempt from GI protection.

The Green Paper also looks at the various procedural aspects involved. The Commission recommends a registration process to provide a greater degree of certainty, especially when it comes to the enforcement of rights in the event of a dispute. Registration would be entrusted to the national authorities in order to ensure that common EU-level criteria are met and specific local circumstances are taken into account. Delegating this responsibility to the national authorities would not prevent the setting-up of an EU-level GI register.

Recommendations

The rapporteur welcomes the publication of the Green Paper and supports the introduction at EU level of a protection scheme specifically for non-agricultural products which would promote industrial and artisanal production processes and boost consumer confidence. The rapporteur is therefore in favour of:

- a single EU-level protection scheme for non-agricultural GIs that includes a registration scheme recognised at EU level;
- a scheme that keeps costs and red tape to a minimum for businesses whilst offering sufficient guarantees for consumers;
- a mechanism that makes it possible to recognise the link between the product and the geographical area covered by the GI, with that link being strong or more flexible;
- a mechanism that leaves the decision of whether to establish a GI up to the businesses concerned by means of a set of specifications that can be adapted in line with developments in production processes and innovation;
- a mechanism ensuring that GIs and previously existing rights can coexist.

More specifically, the rapporteur would like to highlight the following:

- Definition: A GI is most frequently the name of a geographical area; sometimes it is associated with the name of the product. However, a broader approach could be taken using a non-geographical name which clearly refers to an area. This would make for broader coverage. This is the system that has been adopted by agricultural GIs such as feta and Cava. Even wider coverage would be provided if GI protection were to be afforded to non-text signs or symbols that once again are unequivocally associated with a specific region.
- Exemptions: It is clear that exemptions should apply for generic terms (see Article 24(6) of the TRIPs Agreement) or homonymous indications. A typical example of this would be cologne, which now refers to a type of perfume rather than the place of manufacture. The exemptions that apply under Article 6(1), (3) and (4) of Regulation (EU) No 1151/2012 on agricultural GIs could be used as examples.
- The link between product and territory: The link with the territory concerned is absolutely vital when it comes to identifying specific know-how and the quality of the product, as well as the origin of the raw materials. This link can take various forms: for agricultural products there are PGIs (where part of the production process has to take place in the area concerned, but the raw materials do not have to come from there) and PDOs (where the products must be produced in the area and the raw

materials must be from there too). The distinction is clear for a product such as stone, where the raw material has to come from the territory in question.

- Registration: Registration is not mandatory under the existing legislation, but it does provide a higher degree of certainty in the event of a dispute. It does, however, involve certain costs. With this in mind a balance needs to be struck here so as not to place too heavy a burden on the traditional and artisanal businesses that the scheme is seeking to protect first and foremost.
- The relationship between GIs and trademarks: The relationship between trademarks and GIs will need to be clearly defined so as to avoid any conflict.