



Task1 – WP1

*GI legal and institutional issues*

# D1 – WP1 REPORT - ACHIEVEMENTS

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## Definition(s)

Beyond the definition given by the TRIPS agreement, there are some difficulties to reach a consensus on what a GI is precisely. The issue of the official nature of the protection is not easy to address, due to the diversity of legal tools. Moreover, any GI may benefit from a virtual protection (without registration) but may not be considered as a GI as long as such protection was not requested.

When considering the implicit acceptations linked to the GI concept, the differences amongst countries are important, and they influence the legal and institutional policies regarding GIs.

## Different levels of protection

For GIs, probably even more than for any other intellectual property right, the protection can not be dissociated from the definition of the object (what a GI is, and what the product bearing a given GI is) and from the definition of the right (exclusivity, generic denominations, imitations, misuses...). It is also generally necessary to define the legitimate users of a GI, that is to say to define the requirements for users in order to define the non legitimate use. The different levels of protection address these topics in different ways.

Another problematic aspect is constituted by the different scales related to different frames of protection: sub-national, national, bilateral, international, multilateral. Even when only considering the GIs protected through registers, a growing confusion or complexity could appear from the difficulties to establish a comprehensive and coherent frame at the world level.

## Different tools of protection

GIs may be protected as registered GIs (e. g. PDO or PGI) or administratively defined GIs, as trademarks (all kinds) or through general laws (protection of consumers, unfair competition...). One GI may be protected by different tools in different countries. In addition, these different tools of protection can be the ground for conflicts regarding the rights.

The legal tools of protection do not address the collective nature of the IP right in the same meaning and to the same extent; that may also be a problematic issue in the perspective of the definition of a universal concept of GIs.

## Effects and effectiveness of legal protection

The effectiveness of the legal protection clearly depends on the nature of the conflicts: non legitimate use of a GI, imitations based on appearance and connotations, products coming

from the designated area but not complying with the expected quality standard, etc. At this stage and according to the literature, it can not be clearly assessed if the effectiveness of protection can be linked with the type of legal tool and institutional frame.

The effects of the most specific means of protection (tools similar to PDO) appear to be not exclusively connected with the prevention of non legitimate use, but also and perhaps mainly with organisational and marketing issues: collective definition and management of quality, common frame of competition for small-scale firms, collective efficiency due to the reduction of the transaction costs, collective marketing allowing small firms to accede to the markets with lower investments, etc.

## To evaluate and typologize

After having considered the diversity in contexts and systems above mentioned, it is not surprising that the establishment of a GIs typology for legal and institutional issues is a quite complicated job.

A first step can be the characterization of the national frame for GIs; the rare available literature references aiming at establishing a typology on these topics are focusing on such classification. The WP1 Report also recalls some chronological features which may influence the typology (Table 5 and 6). The result is a table where 4 types are identified, according to a set of criteria (Table 7).

Another mean of evaluation is to assess the real situation of each GI, without paying too much attention to the influence of the general national frame. Building on the grid of analysis which came from the DOLPHINS Project, and of the method of notation which were used in other projects and publications, we made a tentative classification grid based on 5 legal and institutional topics (Table 8).

## Needs for further researches

The legal concepts relating to the protection of GIs, as well as the questions of effectiveness of that protection (numerous case law) are well represented in the literature. But some questions related to the legal and institutional issues for GIs are quite absent; amongst them:

- concrete implementation of new legal tools of protection
- administrative management issues
- relations between the protection and the management of the supply-chain
- comparison of the effects of different legal tools of protection