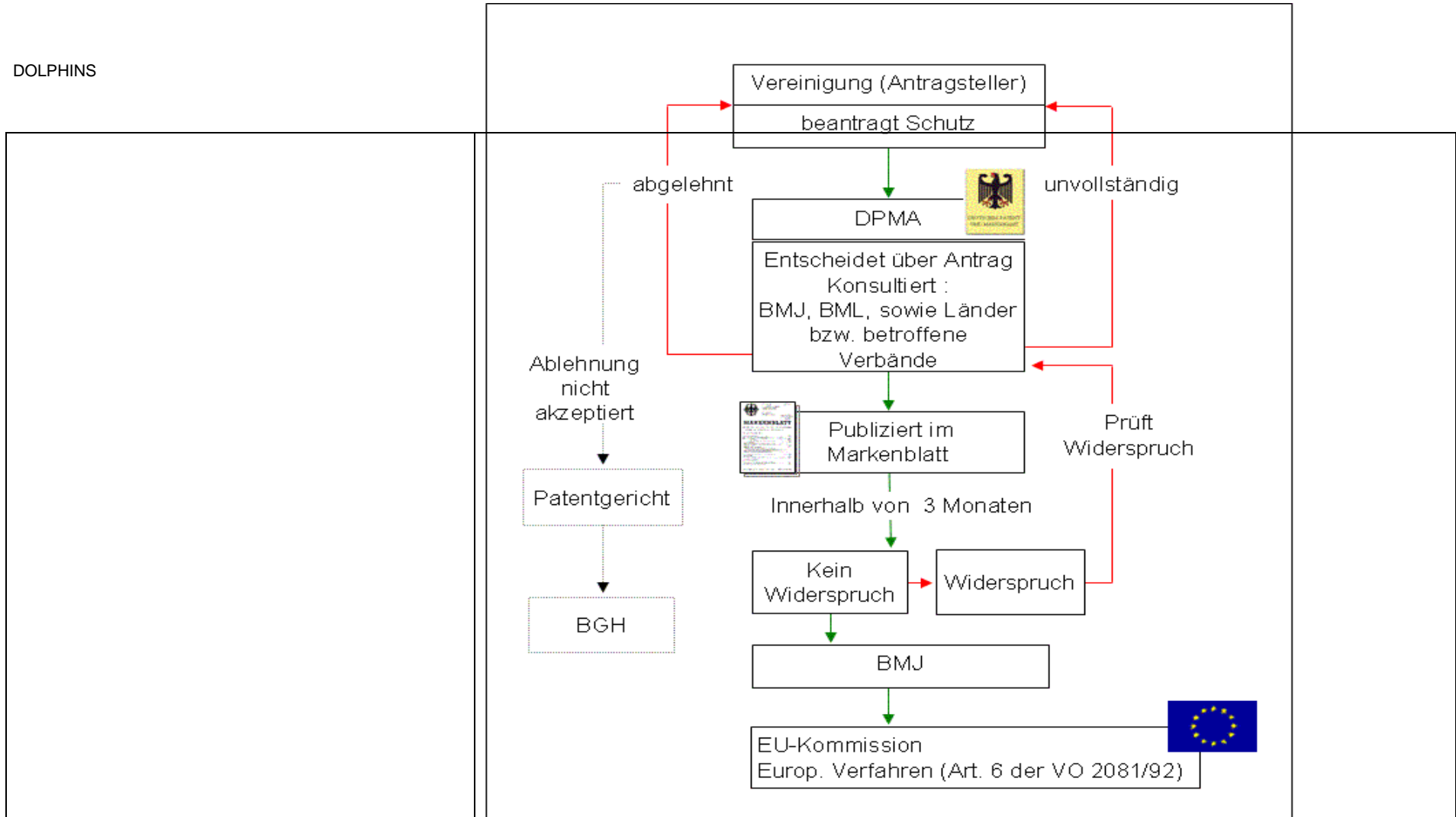


DOLPHINS WP 6 CHECKLIST GERMANY

Authors: German DOLPHINS team

A. Legal protection for OLPs	
1. Legal frame for the protection of OLPs	
A.1.1. What are the legal provisions in order to implement the EC Regulation 2081/92 in your country?	Section 2 of the 6th part of the brand law (§§ 130-136) contains rules to the conversion of the regulation No 2081/92.
A.1.2. What are the other legal regulations and provisions to provide protection for OLPs in your country, out of the EC Regulation 2081/92?	<p>§§ 129 of the brand law contain the material marking right of the protection of geographic indications of origin. The regulations to the part 6 about the protection of geographical indications are divided in three sections. Section 1 (§§ 126-129) contains the general rules to the protection of geographical indications of origin.</p> <p>Section 3 part 6 of the brand law (§§ 137-139) contains different authorizations to the decree of legal regulations to the protection of geographic indications as well as procedure rules and regulations.</p> <p>Other legal regulations are: § 1 and 3 of the law against unfair contest (UWG) § 99 brand law (geographical indication as collective brand)</p>
A.1.3. What is your national jurisprudence about non geographical names which would have been requested to be registered as protected OLPs?	
A.1.4. What are the procedures for the definition of the product characteristics regulation and the area of production for protected OLPs in your country? Mention the consultation and decisions bodies which are involved in the procedures.	The demarcation of the geographic area defines <i>the local connection</i> of the geographical indication. In Germany this is expected from the applying producer or cooperatives. The same applies to the product characteristics. Also this must be defined by the applicants.
A.1.5. In your country, how would it be decided that a geographical name is a generic one? Mention the jurisprudence, the procedure and the decision bodies.	The basic question, if an indication is either a geographical indication or a generic one is decided in Germany by the consumer. The consumers' perception is found out by surveys. The surveys are orientated towards the belief of an eligible consumer. The following German jurisprudence was made before the decision of the European court in the case Gut Springenheide, 6-Korneier. This jurisprudence does not consider the change of perspective of an ineligible consumer to an average informed and aware consumer. Following the German jurisprudence 10-15 % of the interviewed consumers have to comply with the fact

	<p>that there is a strong and tight connection between the product and the region of origin. Relevant consumers that have to be regarded in the survey are all those people that are users or consumers of the product (for the exact definition of the relevant consumer see Noelle-Naumann/Schramm 1962: Umfrageforschung in der Rechtspraxis. Chemie-Verlag, Weinheim). One example: in the case of Lübecker Marzipan 13,5 % of the asked people said Lübecker is produced in Lübeck. Thus, the protection as geographical indication was possible.</p> <p>In Germany, if a geographical indication has become in the course of the time a generic name, it is difficult to convert this again to an geographical indication of origin, because in this case not a 10% - but a 50% - hurdle is considered. Specifically, this means that in Germany the predominant part of the involved consumers must see an geographical indication of origin in the generic name, so that a return transformation can be carried out. Connect, e.g., more than 50% of the interviewed consumers with the designation Steinhäger a production in Westphalia, Steinhäger would become a geographical indication of origin again.</p>
<p>2. Institutional frame</p>	
<p>A.2.1. Which are in your country the public and private institutions involved in the application of EC Regulation 2081/92?</p>	<ul style="list-style-type: none"> • German Patent Office • Federal Ministry of Justice (BMJ) • Patent court • Highest federal court (BGH) • Affected groups <p>(see graphic on the next page)</p> <p>The conversion of the brand law by the state administration organs is regulated in the brand regulations. The brand department of the German patent office is entrusted with the conversion of the regulations (§ 133 brand law). In § 54 of the brands regulations it is described how the request form must be formed. § 55 fixes the test of the application through the patent office. Moreover, the patent office must catch up statements of the affected state ministries and federal ministries as well as of the most important commerce associations and carry out a formal and textual test of the specification. A manual for the textual test is not given in the brand regulation. Before the application is passed to the federal ministry of justice it is made public in the German "Markenblatt". Within three months every person with legitimate economical interest can make a comment to the patent office concerning to the application. If no objection takes place, the documents are passed on afterwards to the ministry of justice, which has, however, no more test authorization and that only passes the documents on to the commission.</p>



A.2.2 Which are in your country the public and private institutions involved in the application of legal systems of protection for OLPs other than EC Regulation 2081/92?

- For collective brands with origin relation:
- German Patent and Trade Mark Office
- For quality marks with origin relation and geographic origin-guarantee marks:
- RAL, Deutsches Institut für Gütesicherung und Kennzeichnung e.V.
- For community collective brands:
- Office for harmonisation; HAMB (Alicante)
- For other origin indications: civil courts

<p>A.2.3. Which are the different regional levels for the application of legal systems of protection for OLPs, and which are the institutions linking these different levels?</p>	
<p>A.2.4 What is the expected evolution for the institutional frame in your country?</p>	
<p>3. Relations between OLPs and trademarks</p>	
<p>A.3.1. What are the legal provisions concerning the indication of origin and the trademark with geographical indication in your country?</p>	<p>Exclusion of the entry of a geographical indication of origin as an individual brand § 8 paragraph 2 No 2 brand law, § 13 paragraph 2 No 5 brand law. See particularly the decision of the European Court in the legal case “windsurfing Lake Chiemsee” in 2081/92.</p>
<p>A.3.2. Could you give some cases of jurisprudence in your country concerning the conflicts between geographical indications (protected and non protected ones) and trademarks?</p>	<p>Biererzeugnisse (insbesondere Warsteiner-Urteil I, II + III)</p> <p>In Germany registered beer brands often contain cities name (Munich beer, Dortmunder beer, etc) or refer to a certain region (Bavarian king Ludwig Dunkel).</p> <p>Beer designations with the name of a city as a word component are judged heterogeneous concerning the brand and contest law. Whether "Krombacher", "Radeberger", "Warsteiner", etc. are a geographical indication of origin, depends on how consumer understands this information.</p> <p>Normally, beer with a geographical indication leads to a certain quality expectation in the opinion of the consumer, because the water used for brewing and different local tastes of the consumer are playing an important role. Logically the higher court of Zweibrücken found out that designations like Munich beer, Dortmunder beer or Kulmbacher beer can be understood as geographical indications, because these beers are coming from cities which have a high reputation, because of the typical taste directions of the beers. „Original Oettinger beer " may accordingly not be produced in Thuringia, but must be brewed in the Bavarian town Oettingen.</p> <p>Legal decisions:</p> <p>OLG Naumburg, Urt. v. 28.2.1995, WRP 1995, 749, 751 - Original Oettinger Bier</p> <p>BGH: Urt. v. 02.07.1998, I ZR 55/96 - Warsteiner II GRUR 1999, 252.</p> <p>BGH, Urt. v. 2.7.1998, Aktz. I ZR 54/96 (Beschluss) - Warsteiner I, GRUR 1999, 251.</p> <p>BGH,; 19.09.2001, IZR 54/96 – Warsteiner III, GRUR 2002, 160.</p> <p>Die Warsteiner-Entscheidungen des BGH</p> <p>The protection association against dreadful state of affairs in the economy considered the following fact as</p>

	<p>contest-adverse: The Warsteiner-Brauereihaus Kramer GmbH and Co.KG, which maintains its company headquarter and one brewing place already since 1753 in Warstein (place in Sauerland), sells beer under the brand Warsteiner, even if the beer is produced in a daughter brewery in Paderborn, that is 40 kilometers away from Warstein. In a different way than in most other legal decision concerning beer, it was indisputable between the participants, that the water quality in Warstein or other additives aren't playing a decisive role for the beer quality. Therefore, a geographical indication of origin in Warstein couldn't be supported.</p> <p>Warsteiner II</p> <p>In the procedure <i>Warsteiner II</i> decided the Highest Federal Court (BGH) that the protection of a simple geographic indication may be applied also for a beer brewed in other place, if the designation ("Warsteiner") has asserted itself for the enterprise resident at the called place as a geographical indication and if the other brewing place was pointed out clearly. Because you could find on the front label on the beer bottles near the brand name Warsteiner a clear indication of the brewing place Paderborn, the BGH decided to reject the complaint and to admit the designation "Warsteiner" for beer brewed in Paderborn.</p> <p>Warsteiner I</p> <p>In the procedure <i>Warsteiner I</i> such a clear indication on the label was lacking. In this case the highest federal court of justice affirmed the existing of an omission claim after § 128 paragraph 1 brand law, which is directed against the one, who is using a geographical indication contrary to § 127 brand law. The court saw it as proved, that substantial parts of those questioned identify Warstein as a brewing place of beer. Therefore, a deception danger was stated. Therefore, the BGH affirmed in accordance with § 127 paragraph 1 brand law an inadmissible use of the geographical indication of origin Warsteiner</p> <p>Warsteiner III</p>
<p>A.3.3. Could you give some cases in your country concerning the conflicts between previously registered trademarks and registered PDOs and PGIs?</p>	
<p>A.3.4. What are the procedures to provide protection to geographical indications of other countries which do not have a sui generis system of protection?</p>	<p>Legal argument positions of the protection of geographical indications of origin with governments outside the EU are bipartite and multilateral agreements of the Federal Republic of Germany.</p> <p>Multilateral Agreements</p> <p>Geographical indications are protected, on the one hand, in the Paris association agreement of the protection of the commercial property, the Madrid agreement about the oppression of wrong or misleading origin information and the Lisbon agreement about the protection of the origin designations. The Federal Republic of Germany belongs to the Paris association agreement and the Madrid origin agreement. Germany has until now not joined the Lisbon origin agreement.</p> <p>Construction of the contracts and arrangement of the legal protection</p>

	<p>The contracts for the protection of geographical indications between the Federal Republic of Germany and other governments are all very similar in the contract structure. The agreements contain in the enclosures A and B for each of the contract governments lists of the geographical indications to which in the territory of the contract governments the protection is granted.</p> <p>The legal protection of geographical indications of origin after the international treaties exists no matter whether the consumers in the domestic country view the geographical indication of origin as a generic name.</p>
<p>4. Monitoring and certification for OLPs</p>	
<p>A.4.1. How is the EC Regulation 2081/91 implemented in your country concerning the monitoring and certification of the PDOs and PGIs?</p>	<p>The task of the monitoring and control of the protected indications is handed over to the responsibility of the federal states which dispose the necessary specialized competence. The responsibility regulation corresponds to article 83 of the basic law. Following this article the federal states carrying out the national laws fundamentally as own affair. After § 134 paragraph 1 brand law the necessary monitoring and control are in the responsibility of institutions which are determined by the laws of the federal states.</p> <p>After § 139 brand law the ministry of justice is authorized to regulate further details of the protection of protected designations of origin and protected geographical indications in agreement with the national ministries for economy and for consumer protection by legal regulation with agreement of the Bundesrat (Upper house of parliament).</p> <p>After § 139 paragraph 2 the federal state governments are authorized to transfer the carrying out of the required controls (see article 10 of the bylaw in 2081/92) to admitted private boards of control by legal regulations or to give a share in the carrying out of these controls.</p> <p>Already with the registration a control institution must be named. In this connection, we have a control authority which can set up private boards of control. In Bavaria <i>the regional institution for nutrition</i> is the responsible control authority. However, the controlling function itself is passed on to a private board of control. The Lacon GmbH with headquarter in Offenburg is at present the single private board of control admitted in Germany.</p> <p>Boards of control in Germany:</p> <p>Sächsisches Staatsministerium für Landwirtschaft, Ernährung und Forsten Sächsisches Landesanstalt für Landwirtschaft Hessisches Landesamt für Regionalentwicklung und Landwirtschaft (Außenstelle Wetzlar) Bezirksregierung Weser-Ems Thüringer Landesverwaltungsamt (Abteilung VII Gesundheits- und Veterinärwesen) Bezirksregierung Hannover Regierungspräsidium Karlsruhe Landesamt für Ernährungswirtschaft und Jagd Nordrhein-Westfalen Ministerium für Ernährung, Landwirtschaft, Forsten und Fischerei des Landes Schleswig-Holstein Bayerische Landesanstalt für Ernährung Bayerisches Staatsministerium für Arbeit und Sozialordnung, Familie, Frauen und Gesundheit Senator für Frauen, Gesundheit, Jugend, Soziales und Umweltschutz</p>

	Landesamt für Ernährungswirtschaft und Jagd Nordrhein-Westfalen Ministerium für Ernährung, Landwirtschaft und Forsten des Landes Brandenburg
A.4.2. Are the monitoring and certification of OLPs legally required for systems of protection out of EC Regulation 2081/92 in your country?	For collective brands and RAL marks the rules of the applicants or the mark giver are applying.
A.4.3. Are the monitoring and certification of OLPs made by public or private institutions?	See the second question before this
A.4.4. Which is the role of the public institutions in the definition of the plans for monitoring and non conformities to the product requirements?	The controlling bodies of the federal states (Bundesländer) have a relevant influence on the design of the control. If the control task is delivered to a private institute, a close coordination between the accredited private institute and the state controlling body is required. The representatives of the responsible institutions have after § 134 paragraph 2 brand law certain rights for the carrying out of the monitoring and control. With the monitoring rights and control rights it is about an entrance right, inspection right, sampling right, realization right, test right and information right.
A.4.5. What are the means of enforcement in relation with the monitoring and certification (financial sanctions, monitoring of the certification body...)?	
A.4.6. Are there public subsidies for monitoring and certification of OLPs in your country?	
5. Action against misleading of the consumers	
A.5.1. What are the legal bases for preventing misleading geographical indications in your country?	For geographical indications that are not protected under bylaw 2081/92: Omission claim after § 128 paragraph 1 brand law Claim for compensation after § 128 paragraph 2 brand law For geographical indications that are protected under bylaw 2081/92: Omission claim after § 135 paragraph 1 brand law Claim for compensation after § 135 paragraph 2 brand law in connection with § 128 paragraphs 2 and 3
A.5.2. Are the infringements in relation to geographical indications treated ex officio or only on the request of an interested party?	Soweit, ich von der LFE weiß, wird auf mutmaßliche Verstöße erst auf Anfrage reagiert. Da die Vorgehensweise auf Länderebene geregelt wird, sind beide denkbar.
A.5.3. What are the institutions which are in charge of the repression of the misleading of the consumers ? What are their means, and what are the sanctions?	Lowest administrative authorities (Kreisverwaltungbehörde): Administrative act National ministry for consumer protection: Administrative act Federal institutions: Administrative act Consumer protection organisations, Chamber of Industry and Commerce, Chambers of trade: Omission claim

B. Policies concerning OLPs production-marketing systems

1. Competition and antitrust legislation

<p>B.1.1. In your country, what is the national regulation regarding antitrust law ? When and how was the European regulation adapted? Mention the national texts and the authorities and legal proceedings (at the regional and national level).</p>	<p>Law against unfair competition (GWB) § 1 GWB: prohibition of horizontal agreements (e.g. cartels) § 14 GWB: prohibition of vertical agreements about prices and business conditions § 16 GWB: abuse control § 28 GWB: exemptions for certain economic sectors (particular the agricultural sector)</p> <p>Responsible authorities: Bundeskartellamt (§ 48 II GWB)</p> <p>Legal proceedings: 1. Verification of the decisions -> Bundeskartellamt 2. Appeal proceedings -> Berliner OLG 3. Law appeal proceedings -> Bundesgerichtshof (BGH)</p> <p>Market structure law (MStrG) § 11 MStrG: agricultural producer groups (Erzeugergemeinschaften, Genossenschaften) are excepted from the law against unfair competition (GWB).</p>
<p>B.1.2. Are there inquiries of your antitrust law authorities that concern(ed) an OLP supply chain ?</p> <p>a) Which was the reason for inquiry : fixing of global quantities, fixing of indicative prices on intermediary markets, attribution of production quotas to enterprises, disagreement on the relevant market size ...?</p> <p>1. b) Which were the conclusions of the inquiry (please send documents such as law papers or trial decisions)?</p> <p>c) Did this recommendation or decision lead to a modification of the national law rules ?</p>	<p>No</p>
<p>B.1.3. If there was no inquiry in your country, why ? What is the philosophy of your national antitrust law authorities regarding the OLP supply</p>	<p>See above</p>

chains ?	
2. Collective institutions of the supply chain	
<i>We call "interprofession" a multi-professional institution that has no commercial statute and whose mission is to co-ordinate the market operations between at least two levels of a given food product supply chain. An "interprofession" is generally an association that is composed of two bodies or more (such as producers, processors, traders, sometimes retailers...), which may negotiate and make decisions in order to improve the collective efficiency of the supply chain. (In France and Switzerland : interprofessions ; in Italy : consorzio ; in Germany : Branchenorganisationen).</i>	
B.2.1. Is this kind of institution at work in your country? Which are its national legal basis (texts) ?	Not existing
B.2.2. Do they concern a specific product (such as milk, fruits, meat...), specific geographic areas (regional, national), specific quality labels, specific OLP products ? (please if possible send a list of these multi-professional entities)	
B.2.3. Which are their possible missions : marketing studies, strategic analysis, promotion, quality control, negotiation of contract templates, fixing of indicative prices on intermediary markets within the supply chain, fixing of global quantities, attribution of production quotas to processing units...?	
B.2.4. What are the punitive sanctions, when a decision is not respected by a member ?	
B.2.5. Is the extension of agreements to non-members authorised and supported par the State? [can a decision taken by the interprofession become compulsory for non-members?].	
B.2.6. Does the State control the institutions (assessment of the effectiveness, control of an eventual competencies violation, accounting control)?	
B.2.7. What are the financial resources of the interprofessions (subsidies from the state, contribution from the members, etc)?	
B.2.8. Do you think that these multi-professional entities are going to develop or to decline in your	

country? Why (benefits and limits)?	
3. Public support to OLP supply chain management	
B.3.1. Do you have programs in your country to support the leaders training and to improve the quality of management of OLPs supply chains ? <i>Training programs for leaders: Marketing, Business, Quality control, Management, Social leadership, Negotiation</i> <i>Communication tools within the supply chain</i> <i>Strategic analysis</i> <i>Quality control operations</i> <i>Programs at local regional or national scale</i>	

C. Policies concerning the links between OLPs and rural development				
1. What public subsidies can the OLPs sectors/producers get, as public support for rural/local development ?				
<i># para-public institutions : public control institutions for PDO-PGI, public established interprofessional bodies, partly public funding NGOs, etc.</i>				
	Local institutions	Regional institutions	National institutions	Para-public institutions (all scale)#
C.1.1. Financial subsidies for : investments - Production (enterprises equipment– buildings) - Transformation / elaboration (enterprises equipment– buildings) - Trade (enterprises equipment– buildings– transportation) - Communication (internal / external)				
C.1.2. Financial subsidies : - How are they distributed? -Working of the professional structures: human resources, marketing operations				
C.1.3. Information : - Legal aspects (laws on trademarks <regional, collective, certification ones>, laws on PDO-PGI, ...) Means : easiness of access to the information (“guichet unique” ?...)				
C.1.4. Training programs for people involved in the supply chain (marketing, management, economics, ...)				

C.1.5. Administration support (application files for registration of PDO-PGI, for grants...)				
C.1.6. Technical support (public monitoring and control against misleading of the consumers, production technical research, scientific popularization, ...)				
C.1.7. Political support (support to application files for registration of PDO-PGI, for grants...)				
C.1.8. Material support (equipment, land,...)				
C.1.9. Legal incentives (regulations for the use of public goods, ...)				
2. Integration and co-ordination of public policies				
C.2.1. What are the public policies aiming at creating or strengthening the links between OLPs and other economic activities?; normative, financial, promotional, technical supports...				
C.2.2. Analysis of innovative projects based on OLPs within the frame of UE LEADER program				
C.2.3. What are the public policies aiming at facilitating the development of OLPs production in small and craft firms (information, training...)?				
C.2.4. What are the institutional tools aiming at integrating and co-ordinating different policy tools at a local scale (e.g. Contrats territoriaux d'Exploitation – CTE – in France, Agri-food Quality Districts and Rural Districts in Italy...)?				
C.2.5. Role of OLPs related interventions within the frame of the EC Regulation 1257/99 (rural development): regional plans, priorities, specific means, etc.)				

D. Policies concerning the relations between OLPs and consumers	
1. PDO and PGI promotion	
D.1.1. In your country and language, which term is used to indicate on a package or a promotional advertising that a product is a PDO product?	geschützte Ursprungsbezeichnung (g.U.)
D.1.2. In your country and language, which term is used to indicate on a package or a promotional advertising that a product is a PGI product?	geschützte geographische Angabe (g.g.A.)
D.1.3. Is there any generic promotion of the PDO and/or PGI label in your country? <ul style="list-style-type: none"> • When yes: <ul style="list-style-type: none"> - Which kind(s) of organisation(s) is/are in charge of this generic promotion? - With which kind of financial means? - What is the basic strategy to communicate on the PDO and/or PGI label (a promotion focused on the label, a promotion on the AOC label in link with some AOC products,)? • When no: <ul style="list-style-type: none"> - Could a generic promotion on PDO and/or PGI label be financially supported by public funds? With which kind of money? - Do you think that such a generic promotion would be necessary? 	It doesn't exist any generic promotion. <i>Nevertheless, a generic promotion for OLPs could be made by the "Centrale Marketing GmbH". This organisation, which is financed by compulsory charges of the agribusiness industry, is responsible for the generic marketing of agricultural products and food in Germany.</i>
D.1.4. Do the PDO-PGI supply chains have any public financial resources to promote their denomination (as a collective product and not as private brand)? <ul style="list-style-type: none"> • When yes : <ul style="list-style-type: none"> - With which kind of public means, and under which conditions? • When no : <ul style="list-style-type: none"> - Do you think that such a support should be possible? 	?

<p>D.1.5. In general, do the supply chains promote their protected denomination with reference to the PDO label (messages linked with the PDO label such as “this product is protected by a official label, a PDO.....)?</p>	No
<p>D.1.6. In your country, do the supply chains communicate within their supply chains to make the PDO label well known among all the producers? Can the communication within a supply chain be supported by public funds?</p>	No
<p>2. Other OLPs promotion</p>	
<p>Precise to which OLP you will refer (here after called regional label or product)</p>	
<p>D.2.1. Is there any generic promotion of regional labels in your country?</p> <ul style="list-style-type: none"> • When yes: <ul style="list-style-type: none"> - Which kind(s) of organisation(s) is/are in charge of this generic promotion? - With which kind of financial means? - What is the basic strategy to communicate on this regional label (a promotion focused on the label, a promotion on the AOC label in link with some regional products,)? • When no : <ul style="list-style-type: none"> - Could a generic promotion on a regional label be financially supported by public funds? With which kind of money? - Do you think that such a generic promotion would be necessary? 	<p>In Germany generic promotion of regional labels is made by the federal states (Bundesländer) of Germany and the CMA.</p> <p>In Bavaria you can find the label “Guaranteed Quality of Bavaria” for agricultural products. This label can be used by every Bavarian producer, who is conform with the quality regulations. Additionally the Bavarian ministry of agriculture is supporting regional brand programs.</p>
<p>D.2.2. Do the regional organisation in charge of the regional label have any public financial resources to promote their denomination (as a collective product and not as private brand)?</p> <ul style="list-style-type: none"> • When yes : <ul style="list-style-type: none"> - With which kind public means, and under which conditions? 	Yes, they are either by the federal state or both the federal state and the CMA.

<ul style="list-style-type: none"> • When no : - Do you think that such a support should be possible? 				
3. Consumer survey				
Who does the survey ?	Food survey in general	PDO-PGI labels surveys	PDO-PGI products surveys	Other OLP survey
State	Bavaria		Bavaria	
Public funds	Bavarian Ministry of Agriculture		Bavarian Ministry of Agriculture	
Region				
Types of financial resources?				
Research institutes	Zentrale Markt und Preisberichtsstelle in Bonn (ZMP)	University of Kiel	Technical University of Munich	University of Hanover
Types of financial resources?			Bavarian Ministry of Agriculture	
Private organisations				
Types of financial resources?				
Supply chains				
Types of financial resources?				
Other				
Types of financial resources?				