SVENSKT NÄRINGSLIV
SWEDISH ENTERPRISE

Stockholm 9 March 2020

# Memorandum

## Non-agri GI and Intellectual Property

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# Introduction

Geographical Indications (GIs) are under debate, not the least in Europe. They are often noted as a part of the negotiations to reach trade agreements. From some perspectives, The Confederation of Swedish Enterprise has done work on these issues for example from a trade perspective.[1] [2]

GIs are divided into two categories, agricultural (agri) and non-agricultural (non-agri GI). Most of us are familiar with the agricultural GIs, such as Champagne and Kalix Löjrom. There is, internationally, an ongoing debate regarding the non-agri GIs (such as Swiss watches).

This memorandum is intended to investigate the legal and strategic situation and position which Sweden and EU may put in following the implementation and harmonization of non-agricultural Geographical Indications (non-agri GI). The arguments in the present report have also, among other sources, been based on the study conducted by the EPRS in 2013 and the Green Paper from July 2014.[3]

In 2015, the Geneva Act of the Lisbon Agreement (Geneva Act) was adopted at a diplomatic conference. The Geneva Act revised the Lisbon Agreement by allowing the international registration of GIs and permitting the accession to the Lisbon Agreement of certain intergovernmental organisations. Today, seven Member States are parties to the Lisbon Agreement (Bulgaria, Czechia, France, Italy, Hungary, Portugal and Slovakia), while three other countries have signed but not ratified it (Greece, Spain and Romania).

At EU level, unitary GI protection is currently provided for wines, spirits, aromatised wines as well as agricultural products and food. As of 26 November 2019, EU has also signed the Geneva Act of the Lisbon Agreement. With the EU's accession to the Geneva Act of the Lisbon Agreement it has entered into force for all its contracting parties on 26 February 2020.

The absence of harmonised GI protection for non-agricultural products has by lobbyists been argued to result in fragmentation that comes at a cost to consumers, producers and Member States, affecting the EU economy and especially trade, employment and rural development. For example, there are reports indicating this with statistics, statistics which are at a risk of being used impartially and argumentation using facts and aspects that are not applicable for non-agri GIs.[4] The indication that such an arrangement would have an overall positive effect on intra-EU trade is clearly debated as well.

In the Geneva Act there are no differences made concerning agri and non-agri GIs. Our concern is that the accession may be used as an argument and a tool to put forward ideas

[1] https://www.svensktnaringsliv.se/kommentaren/eus-protektionism-visar-sitt-fula-tryne_721204.html
[2] https://www.svensktnaringsliv.se/material/remissvar/eu-kommissionens-forslag-om-eus-anslutning-till-lissabonsystemet_718381.html
[3] See http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631764/EPRS_STU(2019)631764_EN.pdf; https://ec.europa.eu/commission/presscorner/detail/en/IP_14_832
[4] See http://ec.europa.eu/internal_market/indprop/docs/geo-indications/130322_geo-indications-non-agri-study_en.pdf

on harmonized rules on GIs within EU, leading to that all Member States must implement rules on non-agri GIs.

Another concern of ours is that GIs even more may be used as a tool for negotiation regarding trade agreements, sometimes even at the expense of intellectual property rights such as patents and copyrights. There are examples of that in several trade agreements negotiations, and our concern is that this development will continue.

GI protection does not exist in a vacuum. There are other sets of rules that are existing in the vicinity of this protection, such as rules on trademarks and rules on unfair competition. In the many different investigations, reports and debates on GIs there are seldom comparisons made to these other rules.

One purpose of this memorandum is also to highlight the relationship between GI protection and other rules. Only what that comparison is done, it is possible to really discuss a potential need of a non-agri GI protection. If the potential problems are solved elsewhere, there is no need for another protection.

# 1. General background

GIs have historically been protected by national law. With expanding commerce in the late 19th century, provisions on the protection of GIs were included in several international treaties concerning the protection of Intellectual Property Rights (IPR).

The term “indication of source” is used in Articles 1(2) and 10 of the Paris Convention for the Protection of Industrial Property of 1883 (“Paris Convention”). It is also used throughout the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891 (“Madrid Agreement on Indications of Source”).[5] There is no definition of “indication of source” in those two treaties, but Article 1(1) of the Madrid Agreement on Indications of Source contains language defining the wording.

The relevant Article reads as follows:
“*All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries*”[6]

The World Trade Organization’s (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement), was the first treaty having explicit rules on GIs. This agreement is a part of the international set of rules regarding trade, meaning that the focus is different than the convention and agreement mentioned above.

The term “geographical indication” is defined under Article 22.1 TRIPS, however it does not define the scope of “goods” that can be protected as GIs. That means that there is an opening for both agri and non-agri GIs.[7]

The TRIPS Agreement prescribes a minimum standard of protection for GIs with an additional protection for alcoholic beverages (wines and spirits). The Agreement requires the members of the WTO to provide means to combat any misleading actions against the public regarding the geographical origin of the goods or constitutes an act of unfair competition, Article 22.2.

A GI is a sign used to indicate that a product has a specific geographical origin and that it possesses a certain status or quality due to the place of origin Article 2 Geneva Act. A GI includes the name of the place of origin. This name can be used by all organisations from the area which manufacture a given product in a prescribed way. Champagne and Kalix Löjrom are well-known examples of agricultural (agri) GIs.

There are some non-agri GIs recognized around the world. One example are watches from Switzerland.[8]

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[5] See reasoning in “International symposium on geographical indications”, jointly organized by the World Intellectual Property Organization (WIPO) and the State Administration for Industry and Commerce (SAIC)
of the People’s Republic of China, Beijing, June 26 to 28, 2007

[6] See Article 1, Madrid Agreement for the Repression of False orDeceptive Indications of Source on Goods
of April 14, 1891 https://www.wipo.int/treaties/en/text.jsp?file_id=286779

[7] https://www.inta.org/TMR/Pages/vol102_no3_a5.aspx#

[8] http://www.watch.swiss/eng/swissmade.html

GIs can be misused by producers with no link to the designated place of origin. These producers will try to profit from the reputation of the original goods. Protecting a GI is argued to ensure fair competition for producers and provides consumers with reliable information on the place of production or specific characteristics of a product.

This has been significant for products that are consumed – food and beverages. The means to address these legal issues can however also be obtained through legal frameworks other than special GI protection. The protection which agri GIs are granted has been claimed to help preserve traditional, high-quality products, know-how and work opportunities related to them. Small and Medium sized Enterprises (SMEs) has been the focus group for lobbying the need for protection of GIs.[9] This has been one of the main argumentations relating to the preservation and reasoning behind GI protection for agricultural products, where soil, weather and biotopes have a vast impact on the product itself and where SMEs often are the entities producing such products.

A study on the protection of non-agri products within the EU internal market, commissioned by the EU and conducted by Insight Consulting, REDD and OriGIn, was published on 18 February 2013.[10]

The aim of the Study was to present suggestions and outlooks relating to non-agri GI products in the at the time, and now yet again, 27 EU Member States, as well as Iceland, Liechtenstein, Norway and Switzerland and to offer indications as to the advisability of establishing a system of protection for GIs at a harmonized level within the EU community.

The study concluded, in brief, that there is a need for a harmonized EU legislation. It also stated that the best way to refrain from further national developments through sui generis protection was by harmonizing the legislation and thus that Member States ought not to have national frameworks. The study and following reports have informally been criticized for their objectivity relating to the prospects of harmonization; and discussions have been raised to the objectiveness of the study which will be elaborated throughout this report.

[9] https://ec.europa.eu/growth/industry/intellectual-property/geographical-indications/non-agricultural-products_en
[10] Study on geographical indications protection for non-agricultural products in the internal market. Document date: 18/02/2013

## 2. National regulations for non-agri GI

With the above exceptions, GIs for non-agri products have so far been mainly protected at national level. Most EU Member States grant GI protection to some non-agri products, through consumer protection laws, trademarks, case-law, or a sui generis GI system (see below in section 3).

The fact that there is a de minimis definition of the term “indication of source” which is already internationally applicable should indicate that the EU only ought to harmonize a protection for GI if there is a clear market need and no alternative national solutions via existing frameworks and/or channels.

# 3. Member states' legal frameworks of non-agri GI

The GIs of non-agri products have been protected for a long time in some EU Member States. In France, this dates back to the early dates of 1900[11], granting protection not just for agri GIs. Protection is already granted at national or regional level through a wide variety of legal frameworks.

**Consumer protection laws**: unfair competition and consumer laws are in place in all Member States. Protection granted under these laws is focused on consumer protection as well as regulating the market vis-à-vis producers. When it comes to unfair competition several countries have a long tradition of establishing case-law on unfair competition, leading to a specific legal institution. Concurrence déloyale, ungeoorloofde mededinging and others are well known legal institutiones. This leads to an effective existing legal option to act when companies are claiming that their products have a different origin than they actually have. In several countries, there are also public authorities that may take these type of cases to court. In Sweden, Konsumentombudsmannen has that role.

**Trademarks**: trademark laws are due to harmonization essentially the same throughout EU Member States, through both a regulation and a directive.[12] They grant a protection which its holder obtain a registration for. The existence of a community trademark system and the Madrid Protocol serves the protection of these indications already today.

**case-law**: is applicable only for one country – France. This has been the far most active country for the protection of both agri and non-agri GIs througout history.[13] This is linked to especially the legal institution of "concurrence déloyale" in French Law, established through case-law.

**sui generis GI systems**: as of the survey from 2013, 13 Member States have a system for non-agri GIs. By autumn 2019, no additional Member States have introduced this legal body. The systems provide different solutions; either through protection for all non-agri products, or through specific laws which protect only a certain type of product (for example ceramics). The laws have several different executions, ranging from regional or national regulations on specific craft, to specific laws on a certain product or to regional or national laws that protect all non-agri GI products.

[11] "A French point of view on geographical indications" Anne Laumonier Ministry of Agriculture and Food -France, 2018.
[12] European Union Trade Mark Regulation (EUTMR) 2017/1001.
[13] "A French point of view on geographical indications" by Anne Laumonier Ministry of Agriculture and Food -France, 2018.

As shown in the table chart below, stating the Member Stated and their protection there is a clear indication that there already are vast and covering protections troughout the community.

| **Country** | **Trademark laws** | **Consumer Protection laws** | **Case Law** | **Sui Generis** |
|---|---|---|---|---|
| Austria | X | X | | |
| Belgium | X | X | | X |
| Bulgaria | X | X | | X |
| Croatia | X | X | | X |
| Cyprus | X | X | | |
| Czechia | X | X | | X |
| Denmark | X | X | | |
| Estonia | X | X | | X |
| Finland | X | X | | |
| France | X | X | X | X |
| Germany | X | X | | X |
| Greece | X | X | | |
| Hungary | X | X | | X |
| Ireland | X | X | | |
| Italy | X | X | | X |
| Latvia | X | X | | X |
| Lithuania | X | X | | |
| Luxembourg | X | X | | |
| Malta | X | X | | |
| Poland | X | X | | X |
| Portugal | X | X | | X |
| Romania | X | X | | X |
| Slovakia | X | X | | X |
| Slovenia | X | X | | X |
| Spain | X | X | | X |
| Sweden | X | X | | |
| The Netherlands | X | X | | |
| United Kingdom (despite Brexit) | X | X | | X |

*Source: "Study on GI protection for non-agricultural products in the internal market", the European Commission, 2013*

As a vast existing protection for non-agri GIs throughout the community already exist, (including the United Kingdom), there is room for argumentation that harmonization is superfluous. Further argumentation in relation to the sheet above will follow in section 4 and 5.

# 4. Difference between agri GI and non-agri GI

When arguing for protection for non-agri GIs the same types of arguments are often used as when arguing form protection for agri GIs. One thing they do have in common is that they do protect that a product is produced within a specific geographical area, such as a specific region. The idea is that the specific geographical origin possesses a certain reputation or qualities due to that place of origin. A GI typically includes the name of the place of origin. This name can be used by all organisations from the area which manufacture a given product in a prescribed way.

This way of argument has its value when it comes to some GI, but not for all. There is especially a difference when it comes to agri and non-agri GI.

The value of place for the geographical indication relating to agricultural production – soil, weather conditions, ecosystems, wildlife, pH and calcium levels in water are just a few of the relevant factors that ought to be had in mind when assessing the significance of the agri GIs. These, just to mention a few, are important factors that, dependent on each other in different ways, has a synergy effect that elevates the product produced in those specific conditions to obtain its nimbus.

This cannot and should not be applied to the argumentation in favour of a harmonized non-agri GI protection, which has been done in several studies[14]. Granted, that the products are typically an item or a line of items which have been produced in the area for a long time. More often than not, the means for production is not solely related to that specific area any more than the graphical representation and/or manner of production is. The production of non-agri GIs are linked to craftmanship and commodities. Both these factors can be transported, whereas soil and climate cannot.

The fact that agri GI products depend on factors that often cannot be moved or reproduced elsewhere lead to a more well-founded incentive for a unified protection throughout the community. Should the same be applied in relation to non-agri GI, there are arguably difficulties which needs to be separately address and discussed.

Non-agri GIs are often products which are connected to craftsmanship. Different nations have addressed this matter differently depending on the historic background of the making of the products. By adding a unified protection, there ought to be a higher risk of preventing free movement in labour and trade which is not the core and essential need for protection when the agri GIs are concerned. Skilled labour, able to produce a specific handicraft good, can not move to another country and continue using the said skill.

Sometimes arguments are lifted that protection for GIs, both agri and non-agri, is important due to that it serves as an incentive for innovation. That is a good argument when it comes to intellectual property rights, such as patents and copyrights. However, GI protection is not granted for innovation. GI protection is rather granted for traditional means of production, doing what the ancestors did already decades ago. Arguing that GI promotes innovation is simply not true.

[14] See for reference Study on geographical indications protection for non-agricultural products in the internal market. Document date: 18/02/2013 (https://ec.europa.eu/docsroom/documents/14897)

One issue regarding GIs that also needs to be raised is the fact that almost all operations today are part of global value chains. When it comes to agri GI, production can be limited to for example one type of crop handled in a specific way. When it comes non-agri GIs there is often a problem to define the true country of origin. This has led to problems by defining when the non-agri protection is valid. One way is to look at where the most value is added. The consequence is that for some non-agri GIs up to 40 % of the value is created in other areas of the world.

The conclusion is that the core values and foundation for agri and non-agri GIs are too vast for the different types of products to be made analogously.

# 5. Arguments for a status quo regarding non-agri GI

## 5.1 Differences regarding agri GIs and non-agri GIs

Arguably and as mentioned in previous sections, there are vast differences between agri GIs and non-agri GIs. The same arguments for the former cannot be applied when arguing in the favour of harmonization of the latter. In relation to the above cited overview on how Member States in the EU currently are managing the protection and enforcement of non-agri GIs; arguments for maintaining a status quo related to said legal frameworks have been made.

There are other rules that are covering similar issues as the protection of GIs. When arguing on protection of GIs it is vital to look at these rules. Do they cover the same thing? Are there differences in how the interest of protection is balanced with the interest of freedom of competition?

## 5.2 Trademarks and GIs

### Similarities and differences

Trademarks have in various ways similar functions as GIs. Trademarks may consist of words. The function of a trademark is to distinguish the goods or services of one undertaking from those of other undertakings (Article 4 EUTMR). The function of a GI is to distinguish goods from a specific geographical area, which is described in Article 2 of the Geneva Act.

There are however some differences. One difference is that, as a rule, trademarks must **not** be descriptive or deceptive. In EUTMR that is stated in Article 7.1 c that it is a ground for refusal if a trademark consists exclusively of indications to designate the geographical origin of the goods. It is also a specific ground for refusal of a trademark if the trademark consists of GIs, Article 7.1 j EUTMR.

Consequently, trademarks that consist of or contain a GI cannot be protected if use of such trademarks would be misleading as to the true origin of the products on which the trademark is used. The trademark system throughout the Member States already has a well-established and well-founded protection for this. Trademark laws in the Member States also explicitly exclude registration of geographical terms that can constitute a reference to the origin of the relevant goods or services.

An exclusion from registration depends on whether a geographical term used as a trademark would be perceived as an indication and a connection between the origin of the goods/services and the trademark. One a side note; it is possible to use geographical terms as trademarks if those terms are arbitrary such as, for example, “Sahara” for Ice because that mark would not be understood to refer to the origin of the goods on which it is used. Moreover, it is also possible to use a geographical term as trademark in cases where that trademark, despite being originally descriptive, has acquired a distinctive character (or secondary meaning) through use.

The right to a given sign, either as a trademark, or as a GI, can be looked at from at least two different angles; from the point of view of trademark law, or the point of view of the law on GIs. As clearly can be stated and due to the vast harmonization of Trademark law within the Member States – there is an already functioning and present legal framework working to address these matters.

### Relationship to freedom of competition

The protection of trademarks has a long tradition of balancing different interests, such as the importance of freedom of competition in relationship to the rightsholder's interest in an exclusive right. Comparing the constructions of the two protections it is evident that the protection of GIs is not based on the same considerations.

Starting of in Article 9 EUTMR and Article 11 Geneva Act the actual protections are described in similar ways. Article 9 EUTMR states that the registration of "*an EU trade mark shall confer on the proprietor exclusive rights therein*". Article 11 Geneva Act states that each Contracting Party shall provide "*legal means to prevent … use of the appellation of origin or geographical indication*".

The main difference is the proprietor of a trademark is normally one actor on the market, whereas GIs are intended to be used by several actors within a region.

However, other rules create differences. These differences are to a large extent linked to revocation of the right. In Article 58 EUTMR it is stated that the rights of the proprietor shall be revoked in different situations. One is if the trademark has not been put to genuine use within five years (Article 18 and 58.1 a). Another is when the trademark has become the common name in the "*trade for a product or service in respect of which it is registered"* (Article 58.1 b).

The consequence of the rules in Article 58 is that there are strong limits to the right of the proprietor. In the Geneva Act, the rules point in an entirely different direction.

In Article 8 Geneva Act it is stated that international registrations "*shall be valid indefinitely*". Article 12 Geneva Act states that "*registered appellations of origin and registered geographical indications cannot be considered to have become generic in a Contracting Party*".

Once there is a GI, the protection is much stronger than for a trademark. They do limit the freedom of competition more than trademarks. The question is if that is reasonable. At all.

## 5.3 GIs and unfair competition

### Non-agri GIs and unfair business practices

It can be observed from section 4 that all European countries in EU already have existing and established protection against unfair business practices relating to non-agri GIs. The protections against unfair competition has developed differently in different countries. However, there are at least a couple of points that are common to all different approaches – it is a provision for actors in trade with an existing effective remedy against unlawful and dishonest business of their competitors. In some countries, specific statutes providing for the repression of unfair competition also fulfil the function of consumer protection.

A determination of whether a given commercial act is contrary to honest practices will have to be reviewed in relation to national laws for the protection against unfair competition. It is accepted that commercial practices which are misleading or are likely to mislead the public

especially the geographical origin of products offered by such enterprise, constitute an act of unfair competition.

### Misleading on the origin of a product

In order to prevent the unauthorized use of a GI based on an action against unfair competition, a plaintiff must show that the use of the GI in question by an unauthorized party is misleading and that damages or a likelihood of damages result from such use. Such an action can only be successful if the GI in question has acquired distinctiveness; in other words, if the relevant public associate goods sold under that GI with a distinct geographical origin and/or certain qualities or reputation.

In Article 6.1 b Unfair Commercial Practices Directive it is stated that it is considered as a misleading action when a commercial practice contains false information on not only commercial but also geographical origin.[15] This is well inline with jurisprudence in the Member States even before the directive was implemented.[16]

Furthermore, protection of GIs under unfair competition law may be supplemented by specific Member State provisions having as their object the protection of unregistered GIs, for example, German Trademarks Act of 1994. Under these provisions, lawful users of the GI have the right to use a given unregistered GI to request national courts to prevent unauthorized parties to use that GI. These sections of the German Trademark law have been developed and work as a protection against unfair competition by preventing unauthorized use of GIs. Especially if that use would be deemed misleading or would take unfair advantage of the reputation of a GI.

### Passing off and GIs

In Member States who follow the common law tradition the action of passing off is often considered as the basis of protection against dishonest business competitors. After Brexit, this is only applicable for Ireland. Other Member States, having a civil-law tradition for protection of businesses against unlawful commercial acts from competitors generally base said protection on tort law. The passing off action is a legal aid where the goods or services of one entity are represented as being those of somebody else. What is common to cases like this is that the plaintiff loses customers because the defendant has led them to believe that they were buying the plaintiff's goods.

Very broadly speaking, in order to prevent the unauthorized use of a GI through a successful action for passing off, a plaintiff must establish that goodwill or reputation is attached to the goods - GIs are often used to show this. The defendant misrepresents to the community that the goods offered by the defendant originate from the plaintiff and that he is likely to suffer damage from such a misrepresentation.

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[15] DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

[16] See for example the Swedish case MD 2003:13 (Moraknäcke).

National laws for the protection against unfair competition, passing off and unregistered GIs provide a very effective and already established course of action for traders against competitors who perform commercial acts which are contrary to honest business practices. With respect to GIs, it can be said that protection against unfair competition serves to protect traders and producers from the unauthorized use of GIs by third parties rather than creating individual property rights in them.

Another important characteristic of the protection of GIs under the law against unfair competition is that important determinations, such as the area of production, standards of production and the circle of producers who are entitled to use a given GI, are made by the courts in the course of legal proceedings. Protection accorded to GIs following a lawsuit based on passing off or unfair competition is only effective between the parties of the proceedings.

### Legal solutions already delivered

To summarize the legal aspects of unfair competition and passing off managed in the Member States – there are already well functioning and active legal solutions for addressing these issues. The differences already established within the Member States are there to accommodate the different needs on the relevant national market. A harmonized protection would thus risk to render these remedies obsolete – or more likely – that these statues and options still would be used to a lager extent and that the harmonized alternatives would not be anything more than ink on paper.

## 5.4 Non-agri GI and free movement

One of the central arguments concerning the prospects of having a harmonized protection for non-agri GI has been that the freedom of movement and work-related prospect will increase.

There have been reports on the impacts relating to free trade within the Community as well as an increase in free movement of labour.[17] This would arguably constitute an oxymoron. The research conducted in relation to the creation of this report has not found any presented evidence to support the fact that an accession to a harmonized protection for non-agri GI would lead to an improvement of these factors. On the contrary; a harmonized (and in some cases stricter protection of non-agri GI) would instead risk leading to a ‘lock-in situation’. Where labour and trade would be forced not to move places despite the knowledge for production of the protected good being with the craftsmanship and people. If there is a harmonized protection – there could be a risk that some Member States will have a stricter interpretation of non-agri GIs and thus also hinder craftsmanship, know-how and movement of business in that jurisdiction. Something that previously was allowed according to todays’ applicable law.

[17] See http://www.europarl.europa.eu/RegData/etudes/STUD/2019/631764/EPRS_STU(2019)631764_EN.pdf; https://ec.europa.eu/commission/presscorner/detail/en/IP_14_832

The Green Paper claim that GIs do not restrict trade in any way, this might be the case for agri GIs – where the qualities of the product are dependent on the local conditions of the specific area. [18]

The aim with the Green Paper was to provide consumers with information on the specifications and origin of goods and prevent free-riding on their acquired reputation. GIs also have the particularity of being non-exclusive intellectual property rights; the use of the name or the sign is accessible to all producers from the given area who manufactured the product in the way prescribed, which is in general linked to longstanding traditions. Smaller scale production is perhaps facing bigger competition instead.

The Green Paper has argued that SMEs are only to benefit from this harmonization. The presented arguments relating to free movement and trade are, on the contrary, factors which be viewed as contra productive. The argument that SMEs are going to be more shielded from free-riding etc. is one aspect – when the bigger issue is the possible 'lock in situation' where labour and craftmanship cannot be moved.

## 5.5 Costs for implementing a harmonized protection

One aspect which seems to be of lesser importance in reports and agendas from EU is the cost aspect for implementation of a harmonized protection and harmonized enforcement of non-agri GI. As there has not been any statistics shown for this there are merely rough cost speculations that can be done. Enough to say; the costs will not be unsubstantial.

Legal uncertainty relating to Member States national provisions can be regarded as cost bearing trade barrier. This does not however claim that full harmonization is the way to proceed. Harmonization itself leads to substantial costs on several levels. These include not only direct costs for developing new bureaucracies or demolishing old structures, but also costs arising from a loss of the advantages of system competition, the advantages being an adaptation to the variety of preferences, efficiency advantages of regulative competition, and the minimization of "rent-seeking" costs caused by bureaucrats/politicians.[19]

These are arguments not to be taken lightly as they will be a real and consequential cost for all the Member States. This combined with the questioning of the actual need for the harmonized system due to, i.e. exiting legal frameworks constitute an additional argument which can be met from several angles.

[18] GREEN PAPER Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products Text with EEA relevance /* COM/2014/0469 final */

[19] Costs of Legal Uncertainty: Is Harmonization of Law a Good Solution? 2007 Prof. Dr. Helmut Wagner Chair of Macroeconomics Department of Economics University of Hagen

# 6. Conclusions

It can be said that the overall protection of non-agri GIs on an EU level should be a topic of much more scrutinized discussion. The mere fact that the reports from EU are critizied to be somewhat bias should give this indication. Secondly, the facts that EU decided to sign and enter the Lisbon agreement in November 2019 is not the end of the discussions relating to the overall landscape and protections for non-agri GIs.

The report has given indications that there are several factors, possible risks and costs that is seems have not been raised or factored in to the dicussions in EU when it concerns the differences between non agri GI and agri GI products and consequently the harmonization of both.The costs for EU to implement a system that already has national functioning bodies, laws and solutions when it comes to the protection of non-agri GIs are one of these factors.

It has been said that the implementaion and accession to a harmonized protection for non agri-GI would be an ‘incentive for innovation’, this is not the case. Innovation and the percevation and cementation of certain existing productions and products are not to be seen as parallel arguments. There are already existing systems for protection of non-agri GIs throughout the Community. Member States has, as shown in this report, several legal frameworks addressing the protection and enforcement of products.

The differences between agri and non-argi GIs are bigger than what has been argued for in surveys made by EU-Commission. The need and use of agri GI protection cannot and shall not be used analogously – since the very core of the instruments for protection differ from agri GIs. Employment, free movement and the equality of the Member States chanses to let companies and people to have prospoerous expansions through existing and new businesses are risking to be hampered.

Another concern is that the protection of GIs does not have the same limits as for example the trademark protection, meaning that the negative effect on the competition on the internal market may be larger than the benefits.

This would give the base to try to further argue against the harmonization and lastly ask oneself; why try to fix a system that is not broken?