



Institute for Democracy and Mediation
“Branding: Paving the Path for Promoting and Protecting Local Products in the Cross-Border Region”
Financed by the European Union,
Cross-Border Cooperation Programme Albania-FYROM 2007-2013, Instrument for Pre-Accession (IPA), Component II

ANALYSES REPORT

“OVERVIEW OF EU AND ALBANIAN REGULATIONS AND POLICIES ON TRADEMARKS AND GEOGRAPHICAL INDICATION”

**September
2012**

I. INTRODUCTION

II. EU POLICIES AND REGULATIONS

II.1. EU LEGISLATION ON TRADEMARKS AND GI

II.2. WHAT ARE THE PRODUCTS ELIGIBLE FOR GI PROTECTION IN THE EU ?

II.3. HOW ARE GI PRODUCTS PROTECTED IN THE EU ?

II.4. WHAT ARE THE EU DEFINITIONS OF GEOGRAPHICAL INDICATIONS ?

II.5. WHAT ARE THE MAIN DIFFERENCES BETWEEN A GI AND A TRADEMARK?

III. ALBANIAN POLICIES AND REGULATIONS

III.1. ALBANIAN POLICIES ON TRADEMARK AND GEOGRAPHICAL INDICATION

III.2. ALBANIAN LEGISLATION

I. INTRODUCTION

EU agricultural product quality policy (adopted May 2009) and recommendations to the member and associate countries' producers - *“Quality is an issue for every farmer and buyer, whether dealing with commodities produced to basic standards or with the high-end quality products in which Europe excels”*.

EU farmers and producers that placed their production of the European market must build on high quality reputation to sustain competitiveness and profitability. So, EU law lays down stringent requirements guaranteeing the standards of all European products.

In addition, EU quality schemes identify products and foodstuffs farmed and produced to exacting specifications for protecting, registering and labeling products as designations of origin, geographical indications and traditional specialties guaranteed.

Macedonian and Albanian governmental institutions are obliged to approximate and harmonize policy and legislation regarding agriculture and rural development.

II. EU POLICIES AND REGULATIONS







II.1. EU LEGISLATION ON TRADEMARKS AND GI.

EU legislation on agricultural product quality:





Protected designation of origin / Protected geographical indication

- [Regulation \(510/2006\) on geographical indications and designations of origin.](#)
- [Implementing regulation \(1898/2006\).](#)
- [Annexes to the implementing regulation: Forms.](#)
- [Amending regulation \(417/2008\) adding cotton and salt to the list of eligible products](#)
- [Amending regulation \(628/2008\).](#)
- [Inspection bodies in EU countries.](#)

Templates and abbreviations

- [Instructions for translating Single Documents and Amendment Applications](#)  [29 KB]
- [List of abbreviations used in documents](#)  [52 KB]
- [Template "Single Document"](#)  [50 KB] 
- [Template "Amendment Application"](#)  [50 KB] 

Traditional speciality guaranteed

- [Regulation \(509/2006\) on traditional specialities](#) 
- [Implementing regulation \(1216/2007\)](#) 
- [Inspection bodies in EU countries](#)  

Intellectual property rights (IPR)

Intellectual property (IP) refers to the rights associated with creations of the mind like inventions, literary and artistic works, symbols, and designs. IP is usually divided into two categories: copyright and industrial property. Industrial property rights include patents for inventions, trademarks, industrial designs, plant variety rights, and, of course, geographical indications. The holder of Intellectual property rights (IPR) has a legally recognized capacity to authorize and/or prevent others from acting in certain ways with respect to his/her intellectual property.

What is the EU policy on IPR in general?

On 16 July 2008, the European Commission adopted a Communication on an industrial property rights strategy to ensure Europe has a high quality industrial property rights system in the years to come. The EU needs IPR to protect its quality policy and innovations in order to remain competitive in the global economy and to fight against counterfeiting and piracy.

What types of IPR are most important for the agriculture sector?

The most important types of IPR in agriculture are geographical indications and Community plant varieties (CPV) rights. Protection granted by geographical indications focuses on preventing misuse of names which could mislead consumers as to the origin of agriculture products and their quality or characteristics.

II.1. WHAT ARE THE PRODUCTS ELIGIBLE FOR GI PROTECTION IN THE EU ?

The following categories of products can be protected in the EU as Geographical Indication products:

- Wines under EC Regulation n°1234/20071, which incorporates EC Regulation 479/20082
- Spirits under EC Regulation n° 110/20083
- Agricultural and foodstuff products under EC Regulation 510/20064.

Are all food and agricultural products eligible to protection?

No, not all food and agricultural products are within the scope of Regulation 510/2006. This Regulation covers:

- Agricultural products intended for human consumption, referred to in Annex I of the EC Treaty (basic agricultural products, i.e. meat, dairy and fish products, fruits and vegetables);
- Some foodstuffs referred in Annex I of the Regulation (beers, beverages made from plant extracts, pastas, breads and pastries, gums and resins, mustard paste and salt);
- Agricultural products, not intended for human consumption, listed in Annex II of the Regulation (hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax and cotton);
- Wine vinegar (as an exception not covered by wines and spirits).

Are non-food products eligible to GI protection?

Yes, certain agricultural non-food products are within the scope of Regulation 510/2006 (see: Annex II: hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax and cotton).

However, most non-agricultural products or industrial goods (like textiles, wood, ceramics, etc.) are outside the scope of this Regulation. Some Member States of the EU provide for the protection of these products as GIs through specific legal instruments.

Can the name of a variety/breed be registered ?

As a general rule, when there is no confusion possible for consumers between the names of the GI and the name of a plant variety or an animal breed, the registration of a GI is possible.

Examples of such GI products that have been registered:

- The French cheese name "Abondance" which is also the name of an animal breed was registered as a PDO.
- The Portuguese PDO "Carnalentejana,, for meat.

Can a live animal or parts of an animal (like liver, meat...) be registered?

Yes, Regulation 510/2006 provides for the protection of names of agricultural products intended for human consumption, including "live animals,, and "meat and edible meat offal,,. However, if a GI name is intended to be registered for a live animal it should not be confused with the name of the animal breed. Usually, GIs are registered for different types of meat, for example Scotch Beef, Welsh Lamb, Agneau du Limousin, Porc de Normandie, Carne Maronesa, etc.

Can GI cover products with different presentations? For example, can a fruit name be registered as a GI covering two "categories,, i.e. fresh and dried fruit?

Yes, but it must be clearly indicated in the product's specification provided for registration of the GI. The GI name can be reserved to the product being fresh or whole and, at the same time, can be allowed to designate the product in a further stage of production (processed, cut, sliced, grated and/or packaged, as well as any specific conditions required), which has to be clearly specified.

Example: the French PGI “Anchois de Colliure,, indicates that it can be sold only in the form of:

- salted anchovies;
- anchovy fillets in brine, or
- anchovy fillets in oil.

II.2. HOW ARE GI PRODUCTS PROTECTED IN THE EU ?

In the EU, GI protection is provided by several legal acts (Regulations) depending on the type of product involved: agricultural products and foodstuffs, or wines, or spirits, or handcraft or industrial products. In all cases, Member States are responsible for the prevention of unlawful use within the Community of protected geographical designations.

How are GI food and agricultural products protected?

These products are protected by **Council Regulation 510/2006** on the protection of geographical indications (PGIs) and designations of origin (PDOs) for agricultural products and foodstuffs. Commission Regulation 1898/2006 lays down detailed rules on the implementation of EC Regulation 510/2006.⁹ In order to be protected these GI names have to be registered at the EU level. EC Regulation 510/2006 provides registration procedure and establishes conditions for the protection of PDOs and PGIs (see Part 5). Registered PDOs and PGIs are inserted in the **EU DOOR register**.

Member States have to enforce the protection.

How are GI wines protected?

Wines are protected under **Council Regulation 1234/2007** establishing a common organization of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation – see in particular articles 118a to 118t and articles 118y and 118z). Implementing rules have been defined in Commission regulation (EC) No 607/2009 of 14 July 2009¹⁰.

In order to be protected these GI names have to be registered at the EU level. Regulation 1234/2007 provides registration procedure and establishes conditions for the protection of PDOs and PGIs. Registered PDOs and PGIs are inserted in the **EU E-BACCHUS register**.

Furthermore, GI wines from third countries have been registered through **bilateral agreements** and can be protected under the “normal procedure”.

Member States have to enforce the protection.

How are GI spirits protected?

GI spirits are protected under Annex III of **Regulation 110/2008** which provides a list of the type of spirits which can be registered. It also provides a list of European spirits drinks with a GI that are protected in the European Union. Regulation 110/2008 describes the specific registration procedure for the protection of GIs for spirits at the European level which differs significantly from the registration procedure for wines and other agricultural products .

Registered GIs are inserted in the EU **E-SPIRITS register**.

Further to **bilateral agreements** signed with the United States of America and with Mexico, the EC has also agreed to protect the following non EU spirits GIs: „Tennessee Whisky,, and “Bourbon Whisky,, (USA), „Tequila“ and „Mezcal“ (Mexico).

Member States have to enforce the protection.

How are GI handicrafts protected?

Names of a limited number of handicrafts produced from agricultural products such as hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax and cotton are within the scope Regulation 510/2006 (listed in Annex II of the Regulation). In order to be protected these GI names have to be registered at the EU level. EC Regulation 510/2006 provides registration procedure and establishes conditions for the protection of these products.

Example: Italian Essential oil - Bergamotto di Reggio Calabria PDO

GIs for industrial products are protected in certain EU Member States under specific national legislation.

Examples:

- Germany provides protection of GIs for cutlery, scissors, knives, razorblades, etc. under the “Solingen Decree” of 16 December 1994.11
- In Italy, the “Vetro Artistico Murano” for Murano glass is protected by a Regional Law of 2001, which established the collective property right for glass producers with plants in the island.
- Specific legislation on protection of artisan goods and handicrafts also exists in France and Bulgaria.

II.3. WHAT ARE THE EU DEFINITIONS OF GEOGRAPHICAL INDICATIONS ?

The European legal framework provides for different definitions with regard to geographical indications.

What are the definitions of geographical indications for agricultural products and foodstuffs?

Regulation 510/2006 provides for the two definitions: Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) for agricultural products and foodstuffs.

A **Protected Designation of Origin (PDO)** means the name of a region, a specific place or, in exceptional cases, a country, used in relation to an agricultural product or a foodstuff:

- originating in that geographical area, and
- possessing quality or characteristics of the product essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and
- the production, processing and preparation of the product of which take place in the defined geographical area.

A **Protected Geographical Indication (PGI)** means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

- originating in that geographical area, and which possess a specific quality, reputation or other characteristics attributable to that geographical origin, and
- the production and/or processing and/or preparation of which take place in the defined geographical area.

What are the definitions of geographical indications for wines?

Regulation 1234/200712 (Article 118b) also provides for the two definitions of **PDO and PGI** but takes into account the specificity of the wine sector. As a result, the PDO and PGI definitions are different from the ones included in Regulation 510/2006 for agricultural products and foodstuffs.

„**Designation of origin**“ means the name of a region, a specific place or, in exceptional cases, a country used to describe a product that complies with the following requirements:

- its quality and characteristics are essentially or exclusively due to a particular
- geographical environment with its inherent natural and human factors;
- the grapes from which it is produced come exclusively from this geographical area;
- its production takes place in this geographical area;
- it is obtained from vine varieties belonging to *Vitis vinifera*;

„Geographical indication“ means an indication referring to a region, a specific place or, in exceptional cases, a country, used to describe a product referred to in Article 33(1) which complies with the following requirements:

- it possesses a specific quality, reputation or other characteristics attributable to that
- geographical origin;
- at least 85 % of the grapes used for its production come exclusively from this
- geographical area;
- its production takes place in this geographical area;
- it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis*
- *vinifera* species and other species of the genus *Vitis*.

What is the definition of a geographical indication for spirits?

Contrary to the European Regulations on GIs for agricultural products and foodstuffs (Regulation 510/2006) and for wines (Regulation 1234/2007), Regulation 110/2008 does not differentiate between PDO and PGI.

Article 15 only provides for the one definition of a **Geographical Indication**: “A geographical indication shall be an indication which identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin”.

What are the main differences between the definitions of PDOs and PGIs?

The geographic link is stronger for PDOs than for PGIs (or GIs for spirits):

- For PDOs, the raw materials must come from the defined geographical area. There is no such rule for PGIs (or GIs for spirits), except for wines as even for a PGI wine at least 85 % of the grapes used for its production come exclusively from this geographical area and the other 15% from the same EU Member State (100 % of the grapes is required for PDOs);
- Contrary to PDOs, for PGIs (or GIs for spirits) the link between the specific quality, reputation or other characteristics and the geographical origin is necessary but is not essential or exclusive. It must be merely “attributable to that geographical origin”;
- As far as the agricultural product or foodstuff GIs are concerned, for a PGI only one of the three stages - production, processing or preparation - must take place in the defined geographical area, whereas for a PDO all stages must take place in the defined geographical area. This rule does not apply to the wine sector as the production must take place in the geographical area for both PDOs and PGIs.

II.4. WHAT ARE THE MAIN DIFFERENCES BETWEEN A GI AND A TRADEMARK?

GIs	Trademarks
MUST certify the origin of the product	MAY certify origin of the product Trademarks should not mislead the public on the origin of the product, nor can they be descriptive. Many countries have implemented provisions at the national level making it impossible to register geographical terms as trademarks.
Production rooted in the region - it cannot be delocalized to another area / country	Production not attached to a specific place - products can be made anywhere
Collective control of the producers plus external public or private bodies to ensure that the products comply with the specifications	Individual control

What is the comparative scope of the protection?

GIs	Trademarks
<p>The EU <i>sui generis</i> GI system provides for a comprehensive protection against:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Direct or indirect commercial use of a registered name for products not covered by the registration <input type="checkbox"/> Misuse, imitation or evocation of the name on a non registered product. This extends to expressions such as „style“, „type“, „method“ etc. suggesting that the product is equivalent or associated with the original, even if the true origin of the product is indicated or if the protected name is translated. <input type="checkbox"/> False or misleading information about the origin, nature or qualities of products on packaging that might give a false impression as to their origin. 	<p>The registered trademark provides for the exclusive rights on the use of the name and/or logo in the classes where it has been registered.</p> <p>In general, there is no guarantee against the use of the trademark in translation and with expressions like “style,,, “type,,, etc</p> <p>There is no guarantee against “genericity”.</p> <p>If the trademark owner does not assert his rights, the name can become generic</p>

<p>□ “Genericity,,. Once registered, the GI name cannot become generic</p>	
<p>Protection of GIs is usually not conditioned on the use on the market.</p>	<p>For the protection to be effective, the trademark must be used on the market.</p> <p>This can sometimes pose problems, for instance when sanitary standards prevents a product from being sold in certain markets. Failure to use the trademark can lead to cancellation.</p>
<p>Enforcement of the rights on the GI name: often public authorities play a role in the defence of the GI.</p> <p>In countries with <i>sui generis</i> systems of protection – such as in the EU - GIs are protected through administrative enforcement, i.e. the state or public authorities are responsible for policing and ensuring GI protection.</p>	<p>Enforcement of trademark rights is entirely private – it is up to a trademark owner to defend its rights.</p> <p>Trademark owners must continue to assert their rights. They need to carry out a regular monitoring of the markets where the trademark is protected. They need to be ready to launch all necessary legal actions (opposition to trademark registration for instance) to protect their intellectual property right. Failure to do so would significantly undermine the right. Such protection is called <i>ex parte</i>.</p>
<p>The principle “first in time, first in right” is not automatically applied for GIs in the EU. A GI can be registered and co-exists with an existing trademark if all the GI requirements are met. On the contrary, a trademark cannot be registered if a GI name is already protected. Articles 3.4 of Regulation 510/2006, 23.3 of Regulation 110/2008 (spirits) and 118k of Regulation 1234/2007 provide that a designation of origin or geographical indication cannot be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.</p>	<p>Protection granted according to the principle “first in time, first in right”.</p>

What is the comparative duration of the protection?

GIs	Trademarks
Often protection granted as long as the GI exists Ex: in the EU, GI protection is not limited in time – no need to renew the protection	Protection must be renewed periodically Ex: in the EU, trademarks must be renewed every 10 years

What is the comparative cost of the protection?

GIs	Trademarks
Often limited registration’s costs. Ex: at the EU level, GI registration is free of costs.	Relatively high cost of registration Registration costs: +/- 1,500 to 2,000 US\$ per class and per trademark The registration must be renewed periodically
Often less expensive costs of right’s enforcement. In countries where there is a <i>sui generis</i> GI protection system, like in the EU, GIs are protected through administrative enforcement, i.e. the state or public authorities are also responsible for policing and ensuring GI protection. This public support reduces the costs of protection for GI producers.	High costs of rights’ enforcement in many countries.

What are the differences between GIs and collective trademarks

Collective trademarks designate the source of products or services not in geographical terms, but in relation to an association of producers and its members. In this case, **the main function of collective trademarks is to put emphasis on the producers of the goods and not on the place where the goods have been produced**, since this place does not have any specific bearing on the quality and reputation of the goods. **The same differences as the ones mentioned above for trademarks apply between GIs and collective trademarks.** Examples of countries where GIs can be protected via collective marks: Australia, Japan, Norway, Philippines, United States.

What are the differences between GIs and certification trademarks

In certain countries GIs are protected as certification trademarks. **Certification trademarks** are the most similar in terms of function to GIs. They **are used to show the compliance with certain defined standards**; among these standards there can be the origin of production.

Besides the general differences between GIs and trademarks (see above) that apply, the following elements can be identified:

Example of countries where GIs can be protected via certification marks: Australia, United States

GIs	Trademarks
Scope of protection: Absolute protection of the name for all legitimate producers in the area	Scope of protection: Protection of a name in combination with a logo for any producer that meets the standards

What are the EU GI logos?

The EU has established **mandatory logos** for GIs only in the context of its Regulation on the protection of geographical indications and designations of origin **for agricultural products and foodstuffs**. These logos are **optional for GI wines** (they may appear on labels of wines in accordance with article 118z, paragraph 1, point e) of Regulation 1234/2007. When they appear on the label, they must be accompanied by the corresponding protected designation of origin or geographical indication). **There are no EU GI logos for spirits GI products.**

The rules regarding the PDO and PGI logos were defined in Commission Regulation (EC) n°2037/9315 which has been replaced by Commission Regulation (EC) 1898/200616 (article 14 and annex V). This Regulation was modified by Commission Regulation (EC) N°628/2008 17 which introduced a different colour code in order to make easier for consumers to distinguish between the two concepts, Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI).

Are there different GI logos for the different types of GIs?

Yes, there are **two different EU GI logos**: one for the Protected Designation of Origin – PDO and one for the Protected Geographical Indication – PGI (see below)



Protected Designation
of Origin (PDO)



Protected Geographical
Indication (PGI)

Is the use of the European logos compulsory on GI products?

Since 1st of May 2009, the indications „protected designation of origin“ and „protected geographical indication“ or the Community symbols associated with them (logos) must appear on the labelling of agricultural products and foodstuffs protected by a PDO and PGI which fall within the scope of EC Regulation 510/2006 and originating in the Community.

This is optional for European GI wines and for all GI products coming from third countries.

The logo can be used both in the European Union and in all markets around the world. These logos may appear on labels of wines in accordance with article 118z, paragraph 1, point e) of Regulation 1234/2007. When they appear on the label, they must be accompanied by the corresponding protected designation of origin or geographical indication.

There are no EU GI logos for spirits GI products.

I. ALBANIAN POLICIES AND REGULATIONS

III.1. ALBANIAN POLICIES ON TRADEMARK AND GEOGRAPHICAL INDICATION

III.2. ALBANIAN LEGISLATION

In Albania, as aspirant country for EU membership, this issue is covered by the Albanian legal framework regarding Trademark: Law Nr.9779, dated 16.7.2007 on “Food Security”, Law Nr.9902, dated 17.4.2008 on “Consumers Protection” and Law Nr.9947, dated 7.7.2008 on “Industrial Property”.