

Protection of GIs in EU free trade agreements

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Outline

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- Part II: GIs are an EU external priority
- Part III: Recognition of geographical indications
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Part I

Recap: what are geographical indications?



What are GIs? International terminology

Intensity of link –
+ Intensity of link –

Indications of source

- Product originates from a country
- Madrid Agreement, Art. 1(1), Paris Convention, Art. 10



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Geographical indications

- **Quality, reputation or characteristics** essentially attributable to geographic origin
- TRIPS Agreement, Art. 22(1), Geneva Act Lisbon Agreement, Art. 2(1)ii



Appellations of origin

- **Quality or characteristics** should be essentially or exclusively due to geographical environment, including natural and human factors
- Lisbon Agreement, Art. 2(1) i



EU terminology: PDOs vs. PGIs

Protected designations of origin (PDOs)

- Originating in a specific place, region or country
- Whose **quality or characteristics** are **essentially or exclusively due** to a particular **geographical environment** with inherent natural and human factors
- **All production steps** take place in defined geographical area

Protected GIs (PGIs)

- Originating in a specific place, region or country
- Whose given quality, **reputation** or other characteristics is **essentially attributable** to this geographical origin
- **At least one** of the production steps takes place in geographical area

EU: PDOs vs. PGIs – main differences

Protected designations of origin (PDOs)

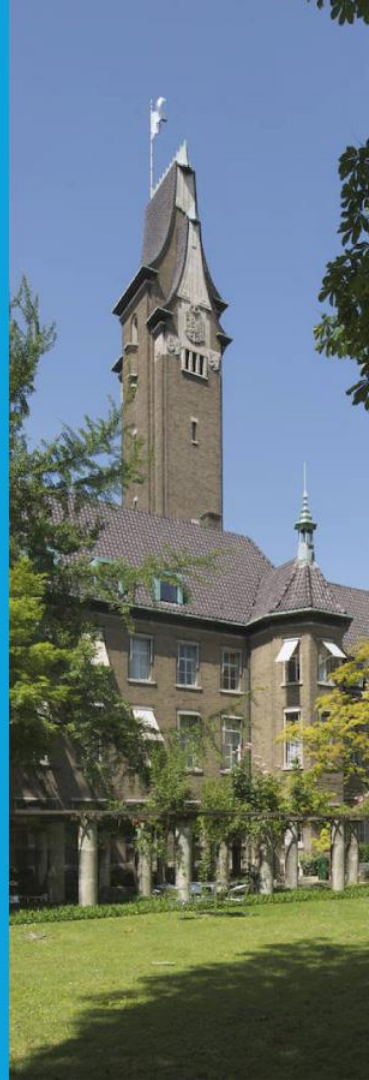
- Similar to appellations of origin (Lisbon Agreement)
- Strong **territorial link**
- Quality or characteristics must be **essentially or exclusively due** to geographical environment
- Wines: grapes come exclusively from geographical area

Protected GIs (PGIs)

- Similar to geographical indications (TRIPS and Lisbon Agreement)
- Sole **reputation** is sufficient
- Link with geographical origin must be **essentially attributable**
- Wines: at least 85% of grapes come exclusively from this area

Part II

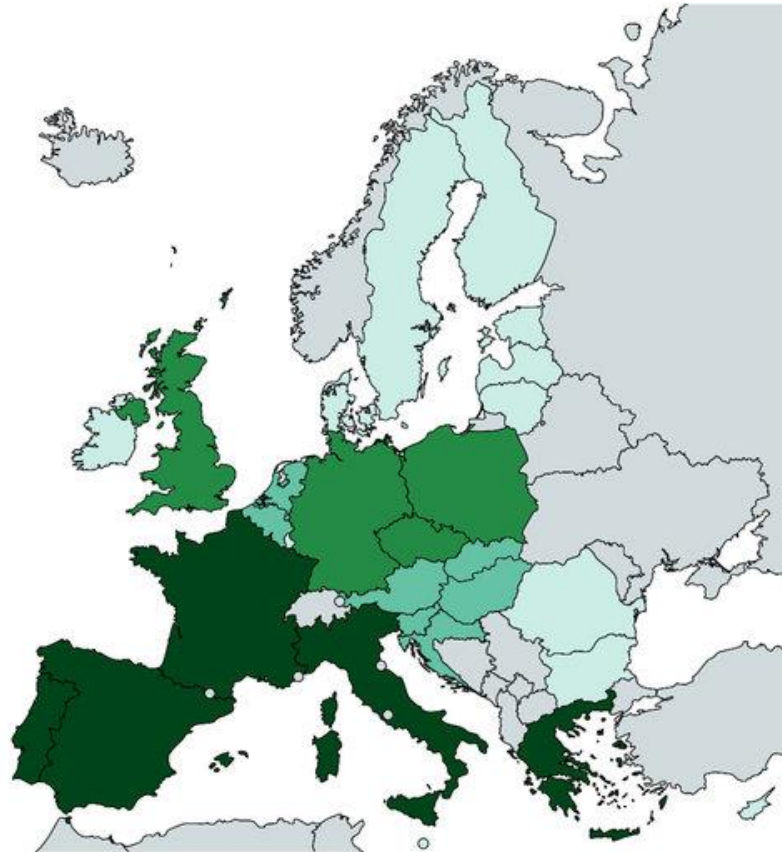
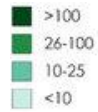
GIs are an EU external policy priority



Background

- Significant shift in EU's policy since the launch of Strategy “**Global Europe**” in 2006
- Area of **geographical indications** a priority
 - Previously: agreements on trade in wine and spirits
 - Now: extensive IP chapters in recent EU trade agreements
- Goal: to obtain **external recognition and increase exports** for differentiated agricultural products that have built up a reputation
 - *Southern Five*: France, Greece, Italy, Portugal and Spain have over 70% of all EU food GIs and 80% of wine GIs in the EU

EU-28: food GIs by September 2020 (Huysmans)



EU bilateral trade agreements: concluded

Year of agreement	Agreement	Number of pages	N of articles
Before 2008	Bilateral Agreements	1 page, Annex long	4-5 articles
December 2008	CARIFORUM-EC EPA	12 pages	34 articles
July 2011	EU-South Korea FTA	26 pages, 19 pages Annex	68 articles
June 2012	EU-Central America AA	40 pages, 14 pages Annex	48 articles
July 2012	EU-Peru-Columbia TA	61 pages, 9 pages Annex	56 articles
September 2014	EU-Canada CETA	22 pages, 10 pages Annex	25 articles
October 2014	EU-Singapore FTA	26 pages, 18 pages Annex	52 articles
December 2015	EU-Vietnam FTA	26 pages, 14 pages Annex	63 articles
July 2016	EU-Georgia AA	25 pages, 142 pages GI Annexes	51 articles
December 2017	EU-Japan EPA	71 pages, at least 23 Annexes	55 articles
April 2018	EU-Mexico Global Agreement	55 pages, 340 EU GIs protected	66 articles
June 2019	EU-Mercosur AA	34 pages, 26 pages GI Annex	59 articles

EU bilateral trade agreements (negotiations)

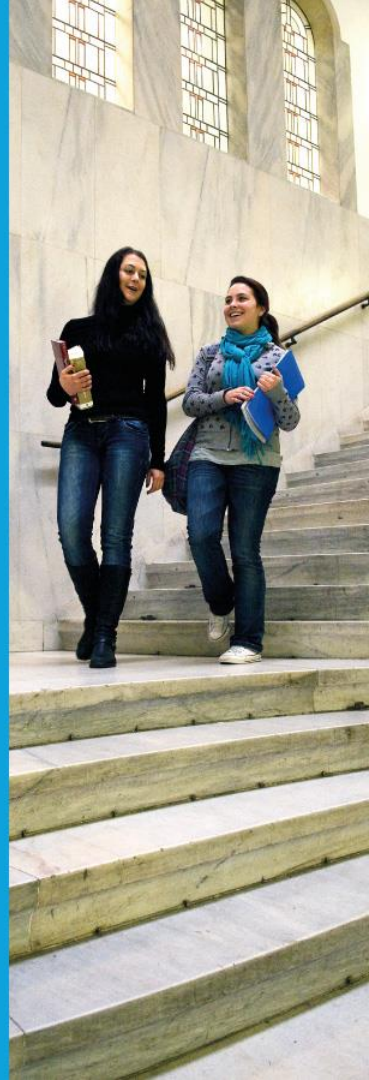
Start negotiations	Agreement	Number of pages	Number of articles
February 2013	Draft EU-Thailand		61 articles (EU)
2013	Draft EU-India BTIA		50 articles (EU)
October 2015	Draft EU-Tunisia DCFTA		68 articles (EU)
December 2015	Draft EU-Philippines FTA		69 articles (EU)
July 2016	Draft EU-Indonesia FTA		69 articles (EU)
June 2018	Draft EU-New Zealand FTA		65 articles (EU)
June 2018	Draft EU-Australia comprehensive TA		65 articles (EU)

Example: EU Ukraine AA

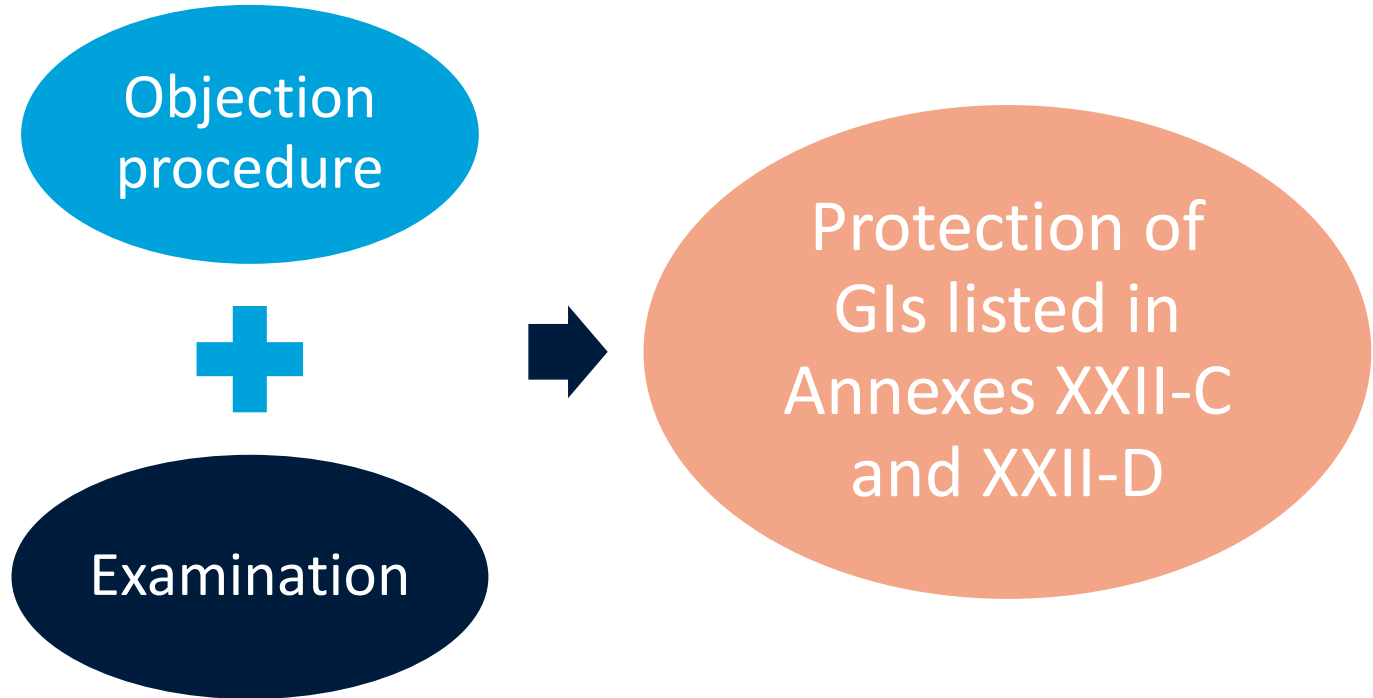
1. Recognition of GIs
2. Four levels of protection for all GIs
3. Exceptions
4. Relationship with trade marks
5. Transitional periods

Part III

Recognition of geographical indications



Automatic protection of GIs listed in Annexes



Lists of GIs: 3000 EU GIs vs 2 Ukrainian GIs

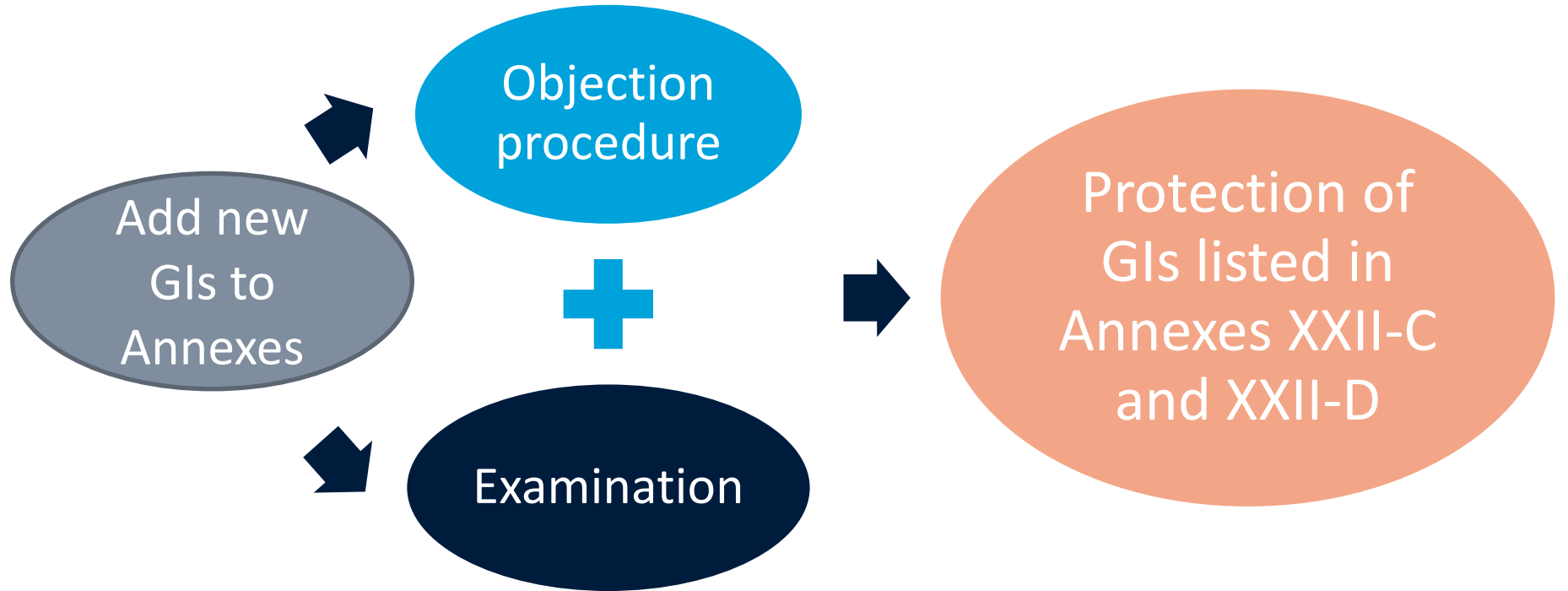
Annex XXII-C Agricultural products

- EU
 - Examples: Elia kalamatas (olives), Roquefort, Feta, Prosciutto di Parma, Camembert de Normandie, Mortadella Bologna
- Ukraine: none (yet)

Annex XXII-D Wines, Spirits and Aromatized Wines

- EU:
 - Examples: Bordeaux, Rioja, Ouzo
- Ukraine:
 - Soniachna Dolyna, Novyj Svit

Addition of new GIs to Annexes



EU databases

- E-Ambrosia:
 - https://ec.europa.eu/info/e-ambrosia-database_en
 - EU geographical indications register
 - Only direct applications
- GIView:
 - <https://www.tmdn.org/giview/>
 - GIs protected in the EU (including those protected through trade agreements)
 - GIs protected in third countries

Part IV

Scope of protection



Four levels of protection for all GIs

1. Protection against commercial use
2. Protection against evocation
3. Protection against false or misleading indications
4. Protection against misleading practice

- ➔ Beyond the TRIPS standard
- ➔ Identical to *EC Regulation 1511/2012* on GI protection for agricultural products and foodstuffs
- ➔ Mercosur, Colombia/Peru, India (as suggested by EU), CARIFORUM, SK, Central America, Vietnam, Singapore, CETA, Japan, Mexico

1) Protection against commercial use

Article 204.1 (a) EU Ukraine AA:

“any direct or indirect commercial use of a protected name:

- for **comparable products** not compliant with the product specification of the GI, or
- in so far as such use exploits the **reputation** of a geographical indication;”

Article 22.2 (a) TRIPS:

“the use of [...] a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which **misleads the public**”

2) Protection against evocation

Article 204.1 (b) EU-Ukraine

AA:

“any **misuse, imitation or evocation**, even if the true origin of the product is indicated, translated or accompanied by ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar”

Article 23.1 TRIPS:

“prevent use of a geographical indication identifying wines for wines (spirits for spirits) not originating in the place indicated by the GI, even where the true origin of the goods is indicated or the GI is used in translation or accompanied by expressions such as ‘kind’, ‘types’, ‘style’, ‘imitation’ or the like.”

Examples:

- Gorgonzola – Cambozola
- Toscano Oil – Toscoro
- Calvados – Verlados



3) and 4) Protection against misleading practice

Article 204.1 (c)(d) EU-Ukraine AA:

c) “Any other **false or misleading indication** as to the provenance, origin, nature or essential qualities of the product, [...] packaging, advertising material [...] liable to convey a false impression as to its origin”

d) “any other **practice liable to mislead** the consumer”

Article 22.2 (b) TRIPS:

“any use which constitutes an act of **unfair competition** within the meaning of Article 10*bis* of the *Paris Convention*”

Article 10*bis*.3 PC:

Confusing acts, false allegations or indications liable to **mislead the public** as to the nature, characteristics, etc. of the goods

Case study: PDO Morbier cheese



Product specifications state:

“Morbier is a cheese made from raw cow’s milk, [...] with flat sides and a slightly convex heel. *Throughout each slice the cheese has a continuous, joined, horizontal, central black mark.* [...]”



Montboissié du Haut Livradois’ cheese is situated outside the demarcation area of Morbier cheese. However, it also contains a black horizontal line.

Part V

Exceptions



Generic terms

- Generic names shall not be registered as GIs
 - = customary in common language as the common name for goods
- EU-Ukraine AA:
 - **Not** included as an exception in agreement but as an examination and opposition ground in domestic law
 - **Mercosur, Colombia/Peru, SK, India (as proposed by EU), Vietnam, CARIFORUM, Central America, Singapore, Japan, CETA, Mexico**



Plant variety and animal breed

- Names of plant varieties and animal breed shall not be registered as GIs
 - Plant breeding protected according to plant variety protection laws
 - Breeds, lines and hybrid livestock
- EU-Ukraine AA:
 - Not included as an exception in agreement but as an examination and opposition ground
 - Colombia/Peru, Central America, CARIFORUM, SK, India (as proposed by EU), Vietnam, Japan, CETA, Mercosur, Mexico



Homonymous terms

- **Protection** shall be granted to each indication that is homonymous if
 - It has been used in **good faith**
 - And with due regard for local and traditional usage and an actual **risk of confusion**
 - = Words having the same name or designation
- EU-Ukraine AA:
 - Included in agreement
 - Information required when negotiating with third parties and possibility for comment
 - **Colombia/Peru, Central America, CARIFORUM, SK, India (as proposed by EU), Vietnam, Singapore, CETA, Mercosur, Japan, Mexico**



Part VI

Relationship with trade marks



In case
of

A posterior trade mark

A reputed and well-
known trade mark

A prior trade mark

The GI

Will be **maintained** but
the trade mark will be
refused

Can be **refused** if
consumer is liable to
be misled

Co-exist with the trade
mark

Part VII

Transitional periods



Clawback clauses

- GIs can be used to present **comparable products from Ukraine**
 - For **10 years**, up until January 1, 2026
 - Champagne, Cognac, Madeira, Porto, Jerez/Xérès/Sherry, Calvados, Grappa, Anis Português, Armagnac, Marsala, Malaga, Tokaj
 - For **7 years**, up until January 1, 2023
 - Parmigiano Reggiano
 - Roquefort
 - Feta

Thank you for your attention!



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