

6 Jan 2020

## Current EU non-agricultural protections not equipped for many products, argues new academic paper

- Research argues current AO regime is flawed for protection of non-agricultural GIs
- Contends that an EU Protected Geographical Indications regime would be beneficial
- Expert tells *WTR* that the French system is the most scalable for the EU's purposes

The recent accession of the EU to the Geneva Act of the Lisbon Agreement means it is on track, from next month, to allow applicants to designate the union when seeking to protect geographical indications (GIs) and appellations of origin (AOs). However, one expert commentator has argued that the existing AO system of protection is too restrictive to effectively act as a *sui generis* GI regime for many non-agricultural products – and called for the scaling up of a Union-wide Protected Geographical Indications (PGIs) scheme.

The Geneva Act allows for the international registration of GIs and AOs through the Lisbon System. Historically, there has been no EU-wide GI protection for non-agricultural goods – its existing *sui generis* system protects GIs for wine, spirits, agricultural products and foodstuffs. However, currently, the Lisbon Agreement features 129 non-food product AOs on its register – paving the way for the EU to do so too. The question is how this will occur – and academics Andrea Zappalaglio, Flavia Guerrieri and Suellen Carls argue that merely extending the existing status quo may be a flawed approach.

In a recent academic paper, “*Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?*”, the authors argue that a *sui generis* system could be adopted that would effectively protect non-agricultural products under an extension of the PGIs scheme, rather than through an appellations of origin approach.

While the Geneva Act stipulates for AOs, many products that the paper argues should be protected by a *sui generis* GI provision in the EU but would not be able to obtain one. Thus, the authors argue, when examining the existing Protected Designations of Origin (PDOs) – similar in legal discipline to AOs – and PGIs schemes, the latter's looser restrictions on origin make it a more favourable scheme.

The requirements for a PDO is a name which identifies a product:

1. Originates in a specific place, region, or country
2. Whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors
3. The production steps of which all take place in the defined geographical area

The requirements for PGIs, on the other hand, are far less defined by the entirety of the production taking place in the place of origin the name designates. The second stipulation is changed so that the quality or characteristics are merely attributable to its geographical origin, while the third stipulation is that “at least one of the production steps” takes place in the defined geographical area.

If the EU wants to protect non-agricultural goods with an origin label, proving the link without such stringencies on origin will be crucial, Zappalaglio, a senior research fellow at the Max Planck Institute for Innovation and Competition, contends. He told *WTR*: “The problem is obvious: (1) handicrafts do not grow from the soil, therefore it is hard to intuitively associate them to a place; and (2) it is fairly common to have prestigious handicrafts made from raw materials that are not sourced locally.”

The paper interrogates the pros and cons of three different countries' *sui generis* systems – France, Portugal and Italy – which allow for looser protections along the line of PGIs. In France, the system for protecting GIs for industrial and artisanal products is unique in the EU. As the conditions require a product has characteristics that are merely ‘attributable’ to its geographical origin, there is much more room for protecting handicrafts that rely on “traditional know-how” and are therefore connected to a place by human rather than natural factors.

Expanding on the French system, Zappalaglio states that “we do not consider it the best under every aspect,” but he explains that it is beneficial that “the French system specifically mentions the ‘traditional know-how’ as a possible origin link, together with ‘quality’ and ‘reputation’” as “this element plays an essential role in linking a non-agricultural product, and non-*terroir* products in general, to a specific place.” *Terroir* is the basis for France's designation of origin system (AOC) which ascribes the importance of geographical place to the production of distinct agricultural products.

The Portuguese system contained similarities but does not provide a definition for non-agricultural GIs, while the Italian system contains an entirely separate regional system that defines handicrafts. These regional provisions consider traditional production techniques that are rooted in a place or origin as an expression of local culture and history.

In the analysis part of the paper, the suitability of scaling up regional PDO and PGI schemes to EU-level was assessed. It found that in only 14% of the protected non-agricultural products analysed for the research, there was a natural element of *terroir* in the link between the goods and their origin. Interestingly, this figure was similar to the 13.1% of cases where the assessing bodies required that the products be made from exclusively locally sourced materials. For this reason, PDO schemes were deemed to be restrictive to be useful at a full EU scale for the products already protected by pre-existing regional systems. On the other hand, PGI schemes were seen to be the “best legal tool to provide protection to non-agricultural products.”

The question that remains then is whether the EU would consider adopting such a PGI scheme as a *sui generis* GI regime. First, it has committed to the WIPO Geneva Act which makes significant regime change challenging. Additionally, such a move to loosen the conditions of protection would be the focus of opposition. For instance, Zappalaglio acknowledges that PGIs are not universally accepted across the EU: “Sweden is known to have been against the proposal for an extension of GIs to non-agricultural products in the past. Some countries do not believe that the advantages of the extension would outweigh the costs.”

Whether the EU will adopt such a system as one that resembles the French will depend on how it prioritises non-agricultural GIs. “The issue is not on the political agenda of the EU yet, nevertheless, the term of office of the newly appointed Commission has just begun. Let's see what is going to happen,” Zappalaglio admits. “Whatever decision is taken, it will be a compromise between different positions. Adoption of the French system as a whole is unlikely, although something from it may be taken.”

### Jonathan Walfisz

Author | Reporter  
jonathan.walfisz@lbresearch.com



#### TAGS

[Government/Policy](#), [Trademark law](#), [Europe](#), [European Union](#), [France](#)

#### TWITTER

13 JUL 2021

@WTR\_Alerts China - Legal Update Alert: In a case involving one of French beauty company L'Occitane's signature products, the Z... <https://t.co/Qit3KEciHA>  
[Read more](#)

08 JUL 2021

@WTR\_Alerts This week's WTR Long Read - Tips from the best: how an industry leader recruits, develops and motivates trademark t... <https://t.co/atVzZk0an2>  
[Read more](#)

07 JUL 2021

@WTR\_Alerts RT @PRAlliance: Trading in trademarks: how businesses should respond to global IP agreements <https://t.co/hb0rCp7F50> #Trademarks #IP #Trade  
[Read more](#)

07 JUL 2021

@WTR\_Alerts RT @redpoints: This is how one of the world's most famous luxury brands has spent the past decade improving education and awareness in the...  
[Read more](#)



#### FIND AN EXPERT

Masanori Hiroe

Director  
Gifu, Japan

[Hiroe & Associates](#)

[VIEW FULL BIOGRAPHY](#)