



EU regulations on GIs, with special focus on control, inspection and certification procedures and experiences learned in GIs certification

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Legal framework to grant GIs protection is very fragmented...

Even GIs are protected by different legislations:

- INTERNATIONAL LAWS
- EU LAWS
- OTHER NATIONAL LAWS

concerning different sectors (trademark laws in the form of collective marks/certification marks; unfair competition legislation; consumer protection laws; specific laws that recognize individual GIs).

CONSIDERATIONS: EU legislation on GIs represents, one of the most developed and complete Regulation frame to protect and promote Geographical Indications:

-Very precise rules for controls and verification of compliance with specification!!!!!!!!!!!!!!

Genesis of GIs recognition and protection in the world: first steps

- **The begin in France:**
 - 1905:** first law on GIs (appellations of origin)
 - 1935:** creation of the current system of French GI (AOC)
- **And after, in EU ..**
 - 1970s:** European regulations on **wines**
 - 1992:** European regulation (EC) 2081/1992 introducing GI **for a wide range of agricultural products** (replaced by the EC Regulation 510/2006 as from 31 March 2006).
- **In the world..**
 - A number a multilateral treaties (since the XIXth century).
 - 1994:** definition of GI in the TRIPS (Trade - Related Aspects of Intellectual Property Rights) agreements, in the WTO.

EU legislation on GIs (1)

➤ FOR FOOSTUFFS AND AGRICULTURAL PRODUCTS

- **Reg. (EC) n. 510/2006** of 20.03.2006 on the protection of Geographical Indication and Designation of Origin for agricultural products and foodstuffs, amending Reg. (EC) n. 2081/1992.
- **Reg. (EC) n. 1898/2006** of 14.12.2006 laying down detailed rules of implementation of Reg. (EC) n. 510/2006.
- **Reg. (EC) n. 628/2008** of 2.06.2008 laying down detailed rules of implementation of Reg. EC n. 510/2006 (it modify the symbols of PDO).

EU legislation on GIs (2)

➤ FOR WINES

- **Reg. (EC) n. 479/2008** of 29.04.2008 on the common organisation of the market in wine. It has entered into force on 1 August 2008.

➤ FOR DRINKS AND SPIRITS

- **Reg. (EC) n. 110/2008** of 15.01.2008 on the definition/description/presentation/labelling/protection of geographical indications of spirit drinks.

1. The genesis of the new EU legislation for GIs protection

Council Regulation (EC) No 510/06 amended Council Regulation 2081/92 following a WTO Panel brought by the US & Australia against it. Panel report was adopted on 20 April 2005 and substantially it established the necessity to modify GIs regulation system of UE.

Main claim of US and Australia against Regulation 2081/92 concerning the fact that GIs EU's regulatory system:

1. was heavily biased in favour of GIs originating from EU at the expense of GIs originating from extra-EU countries (for receiving GI protection in EU, extra EU countries were constrained to adopt the EU's regulatory scheme);
2. established that «Coexistence» between GIs and certain pre-existing trademarks, similar or identical to GIs.

2. The genesis of the new EU legislation for GIs protection

Results of the WTO Panel largely satisfactory for the EU:

- Confirmation that «coexistence» is consistent with WTO rules;
- Confirmation that requirement of inspection structures is consistent with WTO rules;
- GIs EU provisions, relating to the registration of GIs originating from extra-EU, impeded equal access to protection and so violated TRIPS agreement and so...

EU was obliged to amend the Regulation (EC) n. 2081/92 by a new regulation that afforded all GIs equal protection regardless of their national provenance.

According to EC Reg. 510/2006 GIs includes:

- × **Protected Designation of Origin (PDO)**: the name of a region, a specific place or , in exceptional case , a country, used to describe an agriculture product or a food staff
 - + Originating in that region, specific place or country
 - + *The quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors*
 - + *The production, processing and preparation of which take place in the defined geographical area.*

- × **Protected Geographical Indications (PGI)**: the name of a region, a specific place or , in exceptional case , a country, used to describe an agriculture product or a food staff
 - × Originating in that region, specific place or country
 - × *Which possesses a specific quality, reputation or other characteristics attributable to that geographical origin*
 - × *The production and/or processing and/or preparation of which take place in the defined geographical area.*

Why EU has adopted GIs strategy?

Behind the increasing globalisation and liberalisation of the world market the EU, that is not competitive on the commodities' markets, has realised a progressive review of Common Agricultural Policy, in the awareness that its agricultural systems can't internationally compete on "quantity" but rather on the "quality".

Furthermore Considering...

- a. the richness in EU of traditional gastronomy linked to specific local environments (especially in the rural areas);
- b. the consumers highly appreciate GIs and are ready to pay a premium price for origin-guaranteed products (as it's demonstrated by a EU's survey in 1999);
- c. in EU the rural areas represented about the 92% of the territory and GIs can be an useful tool for an sustain equitable rural development;
- d. the efforts to compete on the quality would be futile if the main vehicle of our quality products – GIs – are not adequately protected in international markets;

EU strongly promotes GIs adopting a specific system for their protection.

According to EC Reg. 510/2006 GIs other than wine and drink must be...

➤ **No a generic name;**

➤ **A product included between the following:**

- an agricultural product for human consumption included in Annex I of EU Treaty;
- a foodstuffs included in Annex I of Reg. EC 510/2006;
- an agricultural product no food included in Annex II of Reg. EC 510/2006.

PDO and PGI: two concepts, two logos.. the same protection!



PROTECTED
DESIGNATION
OF ORIGIN
(PDO)



PROTECTED
GEOGRAPHICAL
INDICATION
(PGI)

(Reg. EC n. 628/2008)

For the products registered according Reg. EC n. 510/2006 and commercialized with the use of the name of specific PDO or PGI, the use of the LOGO is:

COMPULSORY

for EU products

OPTIONAL

for non EU products

I. GIs Registration procedure for GIs coming from outside the EU

(Reg. EC 510/2006)

- **Who can apply for registration?** Generally only an association of producers/processors for the products that it produce/obtain (in particular cases also a single natural or legal person: ex. he is the only producer in the defined geographical area willing to submit an application).
- **To whom the Application must be sent?** Directly, or via Third Country authorities, to the European Commission.

Which are the essential contents of the Application?

1. A resolution of Assembly of Association that expresses producers decision to apply for GI registration according to EU legislation;
2. main points of the specification (name/description of the product; where appropriate, specific rules concerning packaging/labelling; description and map of geographical area);
3. description of the link between the product and the geographical environment or geographical origin, product description or production method;

Which are the essential contents of the Application?

5. **proof that name proposed for registration is protected in its country of origin;**
6. **Production Disciplinary;**
7. **technical report demonstrating the link between the product and the geographical environment or geographical origin, product description or production method;**
8. **historical report demonstrating GI production has been last at least 25 yeas (also discontinuously);**
9. **socio-economical report (n. farms, entity production, potential production; actual markets for production; potential markets production, etc.).**

II. GIs Registration procedure for GIs coming from outside EU (Reg. EC 510/2006)

AND AFTER?

Within a period of twelve months the European Commission verifies whether the application for registration is justified and meets the conditions laid down in the Regulation.

- If the Commission concludes that the name qualifies for protection, it publishes the single document and specification reference in the Official Journal of EU.
- A six months period for opposition is opened.

Thai Act on Protection of Geographical Indication B.E.2546 (2003)

A Thai GI can be:

- Natural products (no admit in EU legislation for GIs protection);
- Agricultural products;
- Industrial products;
- Handicrafts (no admit in EU legislation for GIs protection).

Who can apply for registration?

- Government agencies having area of responsibility covering the geographical origin of the goods (different from EU legislation for GIs);
- Producers or traders domiciled in the geographical origin of the goods;
- Consumers (groups or organisation) using geographical indication (different from EU legislation for GIs);

The registration is open also to applicants of foreign nationality that would register GIs protected under the national law

Main differences between EU and Thai legislation for GIs protection

1. In Thailand, different **persons eligible to apply for GIs registration** whereas, for EU legislation for GIs, generally only an ASSOCIATION OF PRODUCERS/PROCESSORS can apply for the products that it produces/obtains.
2. Thai legal framework for GIs protection doesn't include **official controls and verification of compliance with specification**, whereas they are imperative elements for EU legislation for GIs protection.

GIs recognition and promotion: the role of associations of producers/processors

In THAILAND

They have a absolutely marginal role (they don't exist or don't have a suitable organization/structure for playing an incisive role).

In EU

They play a key role before and after GIs recognition...

Main functions of GIs associations of producers/processors in EU

BEFORE GI REGISTRATION

- elaboration/update of product specifications (in Thailand that is generally an activity realized by local institutions!!);
- consultancy/support to GIs operators;
- establishing compulsory rules for their members (raw materials production, transformation, distribution);
- promote food research & experimentation programs for members.

AN ASSOCIATION RECOGNIZED BY NATIONAL INSTITUTIONS CAN REALIZES:

- inspections and control on GIs producers;
- GI promotion/information to consumers;
- defining compulsory programs for members concerning GI production/distribution;
- data collecting and analysis for adapting GI characteristics to consumers requests (update of GI specifications);
- bringing actions in court against unlawful use of GI.

Financing of Associations of GIs producers/transformers in EU

❖ Fees exercise of an Association must be divided by law among the members.

❖ EU gives financial support for information and promotion measures (*advertising, public relation works, information campaigns, etc.*) for GIs, carried out on the internal market or in Third Countries by Associations of producers based in Member States (Reg. EC n. 3/2008 and 501/2008).

[ESSENTIAL SUPPORT FOR GIs
STRENGTHENING!!!]

Elaboration/update of Thai GIs products specifications

It is generally realized by local institutions that even use a theoretical approach, due to lack of a suitable knowledge of GIs production/transformation processes.

Consequences: GIs PRODUCTS SPECIFICATIONS:



NO ENOUGH DETAILED;



EVEN NO DOUBLE BY PRODUCERS (high costs or total impossibility of respect!!!).

How could GIs control be realized?

Verification of compliance with specifications of GIs products could be realized by:

1. ONLY EXTERNAL CONTROL BY A CERTIFICATION BODY AND/OR A COMPETENT AUTHORITY;
2. ONLY INTERNAL CONTROL BY PRODUCERS (**NO ADMITTED BY EU LEGISLATION FOR GIs PROTECTION**);
3. INTERNAL CONTROL BY ASSOCIATION OF PRODUCERS/PROCESSORS UNDER SUPERVISION OF A CERTIFICATION BODY OR A COMPETENT AUTHORITY .

How is GIs control actually done?

In THAILAND:

Only by producers auto control (often not documented)

In EU:

- By producers using auto control (documented auto control system)
- By Consortium (for GI protection) on GI producers, transformers and distributors using internal control systems;;
- By a certification body (accredited in accordance with EN 45011) and/or a competent authority on GI producers, transformers and distributors.

GIs internal control

❖ For doing internal control on GIs operators, an Association of producers/transformers (Consortium) must have a staff with appropriate technical competencies.

ACTUALLY IN THAILAND: **PROBLEM OF LACK OF COMPETENCIES ON GIs CONTROL, SURMONTABLE REALIZING TRAINING ACTIVITIES (INTERNATIONAL COOPERATION).**

Framework of GIs control system

OPERATORS: - Certification Body (CB)

INVOLVED - producers, processors, packers and traders
- Consortium

TOOLS: Control Plan (Technical document + Controls Scheme)

TECHNICAL DOCUMENT

It describes the procedures followed by CB for the control of GI. It is distributed to all operators of the production chain in order to guarantee the requirements of conformity. It is also distributed to CB inspectors and CB staff.

CONTROLS SCHEME

- It is Table- shaped.
- Procedures, requirements and auto- control activity, that must be respected by all the subjects of the production chain, are described.
- Type of controls, non conformities, and corrective actions, that must be applied by the Control Body, are described.
- Each part of the Table refers exactly to the Technical Document and to the Plan of the Control.
- It is distributed to all operators of the production chain. It is also distributed to BAC inspectors and BAC staff.

Phases of the GIs control system application

1. Presentation of application by producers, processors, packers and traders to CB.

2. Begin of procedure for recognition:

a. documentary evaluation of the first Application;

b. first inspection;

c. inspection and Control Points (cp) check for farmers, processors, packers and traders.

3. The operator is included/excluded from the List of Certified operators.

1. Presentation of application

A. For Farmers

Operators who want to apply for a GI recognition must send to CB, within the day/month/ of every year, a specific application suitably completed and they must attach:

- a. Land Register certificate (copy) or official declaration.
- b. Document proving the payment of the fixed fee for certification on the basis of the contract signed with Bioagricert.
- c. Declaration of cultivation activity .
- d. Document regarding the origin of the GI.

1. Presentation of application

B. For Processors/ Packers/Traders

Operators who want to apply for a GI recognition must send to CB, within the fixed day/month/ of every year the first application-renewal-renunciation suitably completed and they must attach:

- a.Document proving the payment of the fixed certification fee on the basis of the contract signed with Bioagricert.
- b.Copy of the enrolment at the Chamber of Commerce.
- c.Copy of the Sanitary Authorization.

Once the application is submitted, the applicant...

- accepts all the contents of the Plan of the Controls for the GI;
- agrees to cooperate with the Control Body helping inspectors to carry out their activity of control;
- agrees to pay the fees provided to accede to and stay into the system.

2. In case of positive evaluation of the documentation....

CB makes a first inspection in order to:

- a. Evaluate the correspondence between what declared in the application and the real situation of the operator/s;
- b. Evaluate the available documentation;
- c. Hands out the suitable documentation for the implementation of the system and the auto control procedure;
- d. Records the inspection results on the inspection report and hands out a copy to the operator;
- e. Communicates his/her opinion about the operator's conformity;
- f. Communicates eventual lacks found during the inspection.

Inspections

- ❖ CB will inspect **the operators who apply for the first time**. After the first year, operators are inspected on the basis of the surveillance annual programme.
- ❖ During the inspection, the inspector fills a specific **Check List for Farmers** order to check each control point.
- ❖ The inspection report must be signed both by the Inspector and by the farmer.

Inspection and Control Points (cp) for Farmers

During the first year of application and during following years, CB inspector checks:

- all data indicated by the operator in the Application Form;
- area of production (planting/breeding space and production);
- production method, harvesting and packaging.;
- identification and traceability;
- verifies if farmers and handling operators check physical and chemical characteristics;
- verifies if the farm register is updated.

Inspection and Control Points (cp) for handling operation, Traders and Exporters

During the first year of application and during following years, CB inspector checks:

- all data indicated by the operator in the application;
- operation sites;
- all the supplier farmers are GI certified;
- during the transfer from farmers, the GI is accompanied by document Traceability.

- ❖ The handling of a GI Product (reception, storage, cleaning, quality selection and packaging) must be done separately from a non GI product.
- ❖ The control system must include packing, transport, products keeping and delivery method.

Registers updating

Operators must keep load/unload registers and farm registers of their suppliers always updated.

Operators enrolment in the control system

- An evaluator evaluates the first inspection report, edited and sent to CB by the inspector (at this stage the operator is registered into CB GI Control System).
- Assessment is done by checking the inspection results of each control point of the check list. Control points are classified in **Major** and **Minor**. To be conform and certified, Operators must comply with all Major control points; in case of non compliance with Minor control points, operators must conform with them in appropriate time.

List of Certified operators and non conforming operators

- If an operator complies with all control points, it is included in the List of Certified operator. In case some non compliances are found during the evaluation of the inspection report, they are communicated to the operator who must take the suitable corrective actions (indicated by the CB).
- CB carries out a further inspection to check if corrective actions have been effectively applied and if so, the operator is included in the List of Certified Operators; non conforming operators are excluded from this List .

Essential requirements of a Certification Body

- **Experience**
- **Reliability**
- **Competence**
- **Impartiality**
- **Knowledge of the company operative culture**
- **Effectiveness**
- **Accreditations**

Certification Body

Audit of

internal control

Producers Associations/Consortia:

➤ Internal Control Plan :

- Internal Inspectors selection and qualification
- Internal INSPECTION VISIT ON:
 - operators in access to the control system;
 - in surveillance phase.

Control Body Audit

DOCUMENTARY EVALUATION ON:

- of operators in access to the control system
- of operators verified in surveillance phase;

INSPECTION VISIT ON:

- of operators in access to the control system;
- of operators in surveillance phase.

❖ During the AUDIT, the CB verifies:

- the inspection report realized by the Internal Control of the Consortium/Association;
- Internal Control Plan;
- internal inspectors' qualification and requirements.

**THANK YOU
FOR YOUR ATTENTION!**

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