



Study on geographical indications protection for non-agricultural products in the internal market

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Consortium:

Insight Consulting is a Belgian based consultancy which has an in-depth knowledge of the EU policy on GIs and the protection of GIs at the International level. It has a solid experience in undertaking studies on GIs and a recognised expertise in managing networks of experts throughout the world. Insight Consulting has a large network of contacts on intellectual property rights at producers and institutions levels both in the EU and on the International scene. More information available at: www.insight-consulting.eu

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Executive summary

The overall objective of the study was (1) to provide the European Commission with precise information on protected and potentially protected non-agricultural GI products in the 27 Member States of the EU¹, Iceland, Liechtenstein, Norway and Switzerland and (2) to determine whether or not a unitary system of protection for non agricultural GI products at the EU level should be established. To this end, the Consortium carried out a legal and an economic analysis and a stakeholders' survey.

The 23 field experts who took part in the study conducted a first screening exercise. As a result, they identified 834 non agricultural GI products over the 31 countries. The study was aimed at collecting as much information as possible on the legal protection and economic value of non-agricultural GI products. Bearing in mind the resources available to conduct the study, it was impossible to look for detailed information on the 834 products identified through the first screening. Therefore, a list of products was selected based on several criteria choosing a highly varied sample of products from as many countries as possible. We chose products from different sectors, unprocessed and processed products and products protected through different legal instruments. We also sought to focus on the products with an important economic significance and that have an association of producers or equivalent body.

The experts faced important challenges when looking for specific information. First, several products identified as protected GIs are not produced (much) any longer. This is the case for instance for many products found in Germany. Second, in some countries, it was impossible to identify products which were protected as a GI or could qualify as a GI. It should be noted that the ability to analyse the products in detail lied heavily on the willingness of producers and/or their association to cooperate with the experts, notably with regard to the economic and social data. In several countries, there was no interest shown by stakeholders and it was just impossible to gather information. In many cases, organisations or producers did not answer to our experts' requests even after reminders were sent and phone calls placed.

Considering the above, a consolidated list of 129 non-agricultural products that are protected or could be protected as a geographical indication was put together. Experts then undertook to collect as much information as possible on these products using legal and economic questionnaires to gather the relevant data. Based on their findings, **a detailed legal analysis** was carried out. It focused on the protection available at the national and international levels.

In the 31 countries, there is no harmonised approach when it comes to the legal instruments available for the protection of non agricultural GI products. The legal frameworks differ quite significantly in terms of scope, effect and cost of protection. Protection can be granted through consumer deception and unfair competition laws, trade mark laws, specific laws which protect individual non agricultural GI products and/ or *sui generis* GI systems.

Unfair competition and consumer deception laws are available to seek redress in all the countries, but they are barely used by producers. The protection granted under these laws focus mainly on the protection of consumers and requires producers or other stakeholders interested in the protection of the intellectual property (IP) rights to bring evidence, a process

¹ With a specific emphasis, as specified in the tender, on the following countries: Bulgaria, Czech Republic, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

which can be both costly and uncertain. Passing-off actions are also possible but no recent case was found.

Trade mark laws are largely similar throughout the EU and beyond. They are used by producers interested in protecting their IP right on a geographical name. The trade mark regime offers a user friendly legal instrument as requirements and procedures are largely similar throughout the EU and beyond. Moreover, the protection gives a positive right which allows its holder to seek registration in other countries. The existence of the Community Trade Mark regime and the Madrid System for the International Registration of Marks facilitates the protection of these names outside of their country of origin. However, not many producers have registered Community trade marks with OHIM. Trade marks offer the right holder with a positive and exclusive right on the use of the name. However, on the one hand, there is a limitation of rights conferred by a mark, notably the impossibility to prevent a third party to use the name in accordance with honest practices. On the other hand, it is extremely difficult to secure word trade mark registration and the need to rely on figurative trade marks to protect the name of non agricultural products bearing a geographical indication. As a result, protection secured through a figurative or semi-figurative mark does not allow for a reservation of the geographical name to the trade mark holder(s). Overall, a large number of producers find the system expensive notably when it comes to the enforcement of the intellectual property rights.

14 countries out of the 31 countries have *sui generis* legal instruments available for the protection of non agricultural GI products. Each of them has its own specificities. These instruments can be divided in three categories: regional or national regulations relating to a specific craft, specific laws relating to a product and regional or national laws available for the protection of all non agricultural GI products.

A detailed analysis of these legal instruments shows that regional or national regulations on specific craft cannot be regarded as providing GI protection. They merely deal with collective strategies to promote or protect local craft industry or specific sectors and go not much further than consumer deception laws.

Specific laws on products (with the exception of the Swiss watch ordinance) can also not be considered as a legal instrument which provides for IP protection. The other specific laws relating to Bordado da Madeira in Portugal, Harris Tweed from United Kingdom and Solingen knives from Germany are in fact product specifications; the protection of their name can only be secured through other IP legal means.

Existing regional or national laws available for the protection of non agricultural GI products in some countries differ on many aspects: definitions (appellations of origin versus geographical indication, genericity), procedures (application, opposition and registration), competent authorities and fees. These schemes provide a far reaching IP protection but their requirements are so different from one country to the other that it is not easy for producers to use them, notably for those interested in securing protection outside of their country of origin.

With regard to the legal instruments available at the international level, none of the International treaties that provide for the protection of geographical indications exclude from their scope non-agricultural products. The Paris Convention, the Lisbon and Madrid Agreements, as well as the TRIPS Agreement, clearly apply to all kind of products. These treaties include different definitions of the appellations of origin (AO) and geographical indication (GI) concepts. They also establish provisions with regard to the legal instruments that can be used for the protection of AOs and/or GIs, which are very diverse. Similarly, the scope of the protection granted to geographical indications differs significantly from one treaty to the other. The WTO TRIPs agreement provides the overall legal framework for the

protection of GIs around the world; it includes derogations and limitations to GI protection, notably with regard to generic names and prior trade mark rights.

International treaties relating to trade mark protection as well as the Community trade mark system offer legal frameworks that can facilitate the protection of non agricultural GI products. However, producers interested in using them can face challenges with regard to application requirements, use and ability to enforce the right at costs that can be significant.

Bilateral agreements have been used by several Member States of the EU to protect their non- agricultural GI products in other EU Member States in the 1960s and 1970s. Since then, only Switzerland has recently negotiated an agreement with the Russian federation that provides for such protection. Interestingly, the EU seems open to non agricultural GI products protection through bilateral agreements as it recently offered to do so in a bilateral agreement signed with Colombia and Peru in June 2012.

In parallel, we undertook **an economic analysis** of the economic data gathered with a view to measure the economic impact of non-agricultural geographical indications which are already protected in the EU Member States. We also looked into the economic and social value of potential GIs.

Due to the fact that the study covers a wide number of Member States and sectors which are often very fragmented and poorly documented in terms of economic data specific to the products themselves, it was not possible to carry out a comprehensive data collection. Moreover, the quantity and quality of the collected data vary considerably from country to country and depend largely on each cultural background and knowledge of the geographical indication concept. This means that in some countries data are well known and easily shared by the enterprises while others enterprise owners or managers were not willing to give any economic data. This socio-cultural context largely explains the reason why the number of products varies so much from a Member state to another.

For some specific questions, we have not obtained sufficient data allowing us to draw conclusions. The selection of products has been the results of two criteria: relevance of the products in terms of reputation and socio-economic impact, as well as availability of producers' groups to provide data. As a result, for each question, we indicate the size of the sample that has answered to the questions and for which data are therefore available. Overall, economic data were gathered by the experts in 23 countries. They cover a total number of 127 products. Although the sample cannot be considered as representative, trends can be observed and analysed and must be considered as a basis to get a complete picture of the economic reality of these products.

The study found that the number of enterprises that produce the final GI products amounts to an average of 85 per studied product (in total 10'737 enterprises were identified, for the total sample of 127 products for which data are available). The total number of enterprises upstream in the supply chain which produce the raw material (not including the enterprises producing the final non-agricultural product) amounts in average to 79 enterprises per product (in total 7'323 for a sample of n=92 products; data were not available for 35 products).

In average, out of the 118 products, 51.6% are produced by micro enterprises, 28.5% by small enterprises, 8.5% by medium enterprises and 11.3% by large enterprises. Therefore, most of the products are produced by enterprises, which are micro- and small-size enterprises (80.1%).

Another element which has to be taken into consideration when looking at the potential interest for the introduction of a new regime for the protection of non agricultural GI products

is the fact that 25% of our sample relates to products that are produced by individuals (“one-business” form). Considering the fact that a GI approach would, by definition, allow other producers in the same area to benefit from the protection should they respect the GI specifications, companies that enjoy a *de facto* monopoly on the geographical name today, might not be interested in making use of an EU GI protection system. For these products, the protection through trade mark registration already fulfils well and, in some cases, even better, their needs in terms of legal protection and branding strategies.

Based on the sample with available data (n=99), the total of full-time jobs is 160'579 and the average number of full-time equivalent jobs is 1'622 job/product. The data collected on the covered study thus show that the total amount of jobs provided by the non-agricultural products is significant. For the rest of the products (44.4%), on the contrary, the contribution of the product to the local employment is more than 5% (n=99). These figures are not representative of all non-agricultural geographical indications' products in all the countries covered by the study but give an overall picture of the situation. They show the importance of some non-agricultural products at local level. Indeed, in some cases, the contribution to local employment is very high.

The consolidated turnover for 72 products with solid data is estimated at 4.174 billions Euros in 2010. For 66 products, the relevant market segment representing 50% and more of the sales is the domestic market. Only 9 products achieve sales of 50% and more on the European markets, and 16 other products are present on international markets. For 25 studied products, exports in Europe and on international markets appears to be their core markets. However, 80% have access to the European or even the international markets. 77.8% of the products face strong competition.

We also discovered that infringements are considered as a major problem for 57,4% of the 94 products that reported abuses or imitation issues. The majority (60%) reports a small loss of revenues due to infringements, that is to say no loss at all or a loss which is inferior to 5% of the turnover. For 21% of the sample losses represent between 5 and 30%, while for 12% of the sample losses represent between 30 and 50%. These products are in the Ceramics/Pottery, Jewellery, Knives, and Tapestry products categories. Losses represent more than 50% of the turnover for 4 products (7% of the sample). These products are in the Ceramics/Pottery, Glass, Stone/Marble, and Traditional Clay Nativity categories. In most cases, the loss of market shares has direct effect on volumes of sales and employment.

47% of the studied products for which we have data on this issue (n=49) spend no money to promote their product. A large number of enterprises (54.1%) use their own label linked to the brands names and/or trade marks registered rather than the geographical name. Only few collective brands are used by enterprises to develop common branding strategies. This could be due to the low number of existing collective producer organisations.

Based on these economic findings, the interest of producers, consumers and policy-makers for a new EU framework that would improve the protection of non-agricultural GI products is likely to vary. In the countries where producers currently face competition and pressures from imitations or counterfeited products, they will probably be supportive. For other countries, where the problem is less acute, there could be more reluctance, as the establishment of such a system will generate costs (especially for public authorities if there is an obligation to implement the European regulation, but also to producers and possibly to consumers as costs could be included in the final price of the product). Some might argue that these costs could exceed the potential benefit of a new EU GI system.

The Consortium also carried out a **stakeholders' survey** to assess the needs and expectations of stakeholders in the 31 countries covered by this study in relation to a potential future instrument of legal protection of non agricultural GI products at European

Union level. In total, 206 answers were received of which 97 came from EU producers, 54 from EU public bodies, 41 from EU private bodies, 3 from Swiss producers, 5 from non EU public bodies and 6 from non EU private bodies. A majority of respondents expressed dissatisfaction with the existing means of protection for non agricultural GI products at the national, European and international levels. They took position in favour of a broader choice of legal instruments to protected non agricultural GI products. A large majority of producers said that they wished for a uniform GI protection for non agricultural products at the EU level, as well as a majority of non producers in the EU. However, some public bodies from the Czech Republic, Denmark, Ireland, Spain and Sweden opposed such a proposal. The survey also provided interesting feedback on the content of a possible new EU legal framework for the protection of GIs.

Based on the above mentioned analysis and findings, the authors of the study considered that there is a case for harmonisation and for the creation of a new unitary title of protection for non agricultural geographical indications' products across the EU. In accordance with the study's terms of reference, they drafted different legal options looking at the positive and negative elements of each legal proposal.

In defining a new EU legal instruments for the protection of non-agricultural GIs, the EU decision-makers will have to make difficult choices which will have an impact on the attractiveness, credibility and efficiency of the system, but also on the burden which will be put on the authorities which will be in charge of the system and on producers who will have to use it. More precise rules would entail more burdens on the different stakeholders but bring more credibility to the system. More flexibility can facilitate a rapid development of a system the value of which could be questionable if the provisions are too vague.

The Consortium considers that there are good arguments to establish a system that would provides for:

- A single definition for a geographical designation,
- A protection available to geographical indications but also to traditional denominations,
- A necessary registration to secure protection,
- A one step procedure at the European level,
- A key role given to groups of producers when it comes to making the application,
- A well defined specification file,
- A compulsory independent public or private control system,
- Clear and transparent registration, modification and cancellation procedures at the EU level providing legal guarantees to stakeholders and open to third country's stakeholders,
- A one-off small registration fee,
- An EU register of non-agricultural GI names,
- An extensive protection of registered GI names in the EU,
- Clear provisions on the relationship between trade marks and GIs and between homonymous GIs,
- The management of the system to be given to an office (the OHIM would be a good candidate in that regard).

Furthermore, should such a legal instrument be established, there will be a strong need for awareness building towards all types of stakeholders as there is a general lack of understanding of the importance of IP protection and of the GI concepts. Promotion campaigns of the new system, if any, should be implemented in order to promote it towards all the relevant stakeholders. Specific training will be required for the officials who will be in charge of the day-to-day management of the system and promotion campaigns of the new schemes will be crucial in making it a success.

Introduction

This introduction aims at providing a background on the definition and protection of Geographical Indications at the international and European levels in order to put the study into context.

According to the Trade Related Agreement on Intellectual Property rights (TRIPs) of the World Trade Organisation: “*geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin*” (article 22 TRIPs)².

GIs are a type of intellectual property rights. They are protected under a wide range of legal tools, including *sui generis* laws specifically dedicated to the protection of GIs or Appellations or of Origin (AOs), trade mark laws in the form of individual or collective marks or certification marks, laws against unfair competition, consumer protection laws, or specific laws or decrees that recognise individual GIs.

1- A long history of legal protection of GIs at the International level

Originally, GIs were protected in accordance with national laws developed locally. It became quickly apparent, once commerce expanded in the 19th century, that national protection was not sufficient as products were often imitated outside of the country of origin. As a result, several International treaties relating to the protection of intellectual property included provisions on the protection of GIs.

The Paris Convention on the Protection of Industrial Property adopted in 1883 was the first International treaty to provide for the protection of “appellation of origin”³. It was followed by the 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods which was the first multilateral agreement to provide specific rules for the repression of false and deceptive indications of source⁴. More than fifty years ago, on 31 October 1958, the Lisbon system⁵ was established under the Lisbon Agreement for the Protection of Appellations of Origin and their International registration. The system aimed at facilitating the International protection of Appellations of origin offering the means to obtain protection in the contracting parties to the Lisbon Agreement through a single registration. International agreements that have been established to facilitate the International registration of marks (collective marks, certification marks, trade marks or guarantee marks) also serve as a means to improve the protection of GIs at the International level for countries where GIs could only be protected as trademarks. Here, we should mention the Madrid Agreement Concerning the International Registration of Marks, which dates from 1891 and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks of 1989⁶.

² http://www.wto.org/english/tratop_e/trips_e/t_agm3b_e.htm#3

³ http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html#P71_4054

Article 1 (2) ‘The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition’.

⁴ http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo015.html

⁵ http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.htm

⁶ http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo016.html

In 1995, the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) was adopted by all the Members of the WTO⁷. The TRIPs Agreement introduced intellectual property rules into the multilateral trading system for the first time and gave another impetus to the protection of geographical indications. The TRIPs Agreement contains a section dedicated to GIs, which includes a globally approved definition of GIs⁸. It also provides for the protection of all GI products in order to avoid misleading the public and to prevent unfair competition. The Agreement provides a higher level of protection for GIs for wines and spirits: subject to a number of exceptions, they have to be protected even if misuse would not cause the public to be misled. The TRIPs also indicates the cases when GIs do not have to be protected (exceptions). Finally, it instructs WTO Members to enter into negotiations for the establishment of a multilateral register of notification and registration of wines and spirits.

2- A wide definition of GIs at the international level

None of these international treaties limit the scope of the protection of geographical indications to agricultural products. The Paris Convention, the Lisbon and Madrid Agreements as well as the TRIPS Agreement clearly apply to all kind of products: agricultural and non agricultural ones.

Looking at the protection of traditional typical locally made products across the world, it is evident that GIs are not limited to a category of products but that the protection is available to all products (and arguably to services). GI protection has been granted to agricultural products such as “Champagne”, “Tequila”, “Roquefort”, “Parma Ham”, etc. but also non-agricultural such as “Montecristi hats” (Ecuador), “Swiss watches”⁹, “Pochampally Ikat tie-and-dye sari” (India) and “Longquan Porcelain” (China).

3- Geographical Indications in the European framework: a fragmented approach

Despite the fact that GIs have been protected for a very long time in some Member States of the EU through *sui generis* legal systems (e.g. the delimitation and regulation of the “Port” wine started in 1756), the protection of GIs at EU level is relatively recent. Furthermore, it has been limited to certain agricultural products and foodstuffs.

a. A European Protection System limited to some agricultural products and foodstuffs

In the context of the 1970 Common Market Organisation for wines, the European Communities (EC) offered a protection of GIs recognised at national level¹⁰. A similar approach was followed to offer a *sui generis* protection to GI spirits in 1989¹¹. In 1992, that the EC adopted Regulation 2081/1992 which established a framework for the protection of agricultural products and foodstuffs. These three Regulations have now been replaced by the following Regulations:

⁷ http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

⁸ Article 22 (1): ‘Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin’.

⁹ See: <http://www.fhs.ch/doc/osme.pdf>

Council Regulation 817/70 of 28 April 1970 laying down special provisions relating to quality wines produced in specified regions, OJ L 99, 5/05/1970

¹¹ Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks, OJ L 160, 12.6.1989, p. 1–17

- Agricultural products and foodstuffs (Council Regulation (EC) No 510/2006 of 20 March 2006)¹² and more recently by Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs¹³.
- Wines (Council Regulation (EC) No 479/2008 of 29 April 2008) integrated in the Single Common Market Organisation for agricultural products¹⁴.
- Spirits (Regulation (EC) No 110/2008 of 15 January 2008)¹⁵.

As of the end of September 2012, there were over 337 registered names of spirits, about 1560 registered names of wines, and more than 1000 registered names for agricultural products and foodstuffs. Famous European GIs include Champagne, Prosciutto di Parma, Rioja, Blue Stilton cheese and Tiroler Speck.

b. No unitary European protection system available to non-agricultural products

For the products not covered by these Regulations, there is no European *sui generis* GI system available at the present time. As a result, all non agricultural products have to rely on a protection at the national level when such protection is available and/or on the use of an alternative legal protection system, such as the trademark system.

There are a number of EU non agricultural products which enjoy protection at the national level through a wide variety of legal schemes (specific laws, trademarks, case-law, *sui generis* GI system, etc.). As examples, we can mention: the embroidery of Madeira, the Solingen knives, Waterford Crystal, etc.

Furthermore, several EU Member States are signatories to the Lisbon Agreement: Bulgaria, Czech Republic, France, Hungary, Italy, Portugal and Slovakia. Agricultural and non agricultural products can be protected under this treaty. As a result, several appellations of origin which are traditionally made in specific regions of these Member States have been protected, such as “Emaux de Limoges” from France, “Kaolinovski Kaolin” from Bulgaria and “Český Porcelán” from Czech Republic.

c. An increased interest for the origin of products in the EU

In the globalisation context, producers are eager to convey the specificity of their product and consumers are often sensitive to the origin of the products they buy. This evolution combined with the relative success of the existing EU GI systems, which is helped by the development of EU logos and promotional campaigns has triggered an increased interest for GIs. As a result, more and more GIs are registered in the EU and more and more producers would like their products to be registered as a GI. As a testimony of these expectations, the scope of Regulation 510/2006 has been extended to salt and cotton in 2008.

With regard to the protection of non agricultural GIs more specifically, there are initiatives that are being taken at the national level in the EU. For example, the French Parliament worked in 2012 on a draft law “reinforcing the rights, the protection and the information of consumers” which included, in its Article 7 a provision aimed at protecting the origin of non agricultural products. The new French government decided to withdraw this draft law but the opposition party tabled a new draft law in October 2012. The Ministry of Economy and Finances – Social Economy and Consumption is the competent Ministry on this issue.

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:0025:EN:PDF>

¹³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:343:0001:0029:EN:PDF>

¹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:148:0001:0061:EN:PDF>

¹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:039:0016:0054:EN:PDF>

4- The Development of GIs across the world and its consequence for the EU

The EU has taken a leading role in promoting the GI system throughout the world and in trying to secure a better protection of GIs at international level. It is actively involved in the WTO negotiations on GIs where two requests are dealt with: the extension of the higher level of protection for wines and spirits to other goods and the establishment of a multilateral register of GIs for wines and spirits. The EU is also negotiating numerous bilateral and plurilateral agreements with third countries which include provisions on the protection of GIs. Meanwhile, it has undertaken to promote the *sui generis* GI system towards third countries via technical assistance programmes. This approach has proved successful as there are now more than 80 countries that have adopted specific registration systems for GIs and the trend towards the adoption of *sui generis* GI systems seems not be stopping

The EU GI system is open to third countries' agricultural products and foodstuffs. In addition, the EU recently agreed to protect two non agricultural GI products – Guacamayas (Handicraft) from Colombia and Chulucanas (Potery from Peru) – in the context of a bilateral free trade agreement with these two countries.^[1] One can question how this protection will be implemented in practice if this is not done through the Community Trademark system.

There are more and more non agricultural GI products registered in third countries. The following products have been recently registered:

- In **Colombia**, on 6th December 2010: 'Cerámica Artesanal de Ráquira Colombia' (handmade pottery and ceramics) and 'Chulucanas' (ceramics) from Peru¹⁶. On 13 December 2011, seven handicraft product names were protected as "denominaciones de origen" in Colombia: "Mochilas Wayúú" (bags made by the Wayuu, a group of indigenous people who live in La Guajira Peninsula in northern Colombia), "Tejeduría Zenú" (weaving), "Hamacas de San Jacinto" (hammock), "Sombrero Aguadeño" (hat), "Sombrero de Sandoná" (hat), "Cerámica de Carmen de Viboral" (ceramics) and "Mopa Mopa Barniz-Pasto" (a varnish used as a decorative technique)¹⁷.
- In **Chile**, on 2nd August 2010: 'Chulucanas' (ceramics) from Peru¹⁸.
- In **Brazil**, on 12th and 26th July 2010: 'Jalapão' (a golden grass used to make, amongst others bags, bowls, and jewellery) and 'Goiabeiras' (clay pots). Several new registrations were made in 2012, including "Calçados de Franca" (shoes), "Opalas e joias artesanais de Pedro II" (precious stones), three decorative stones from the Northwest Fluminense, State of Rio de Janeiro, under the names: "Região Pedra Cinza Rio de Janeiro", "Região Pedra Madeira Rio de Janeiro" and "Região Pedra Carijó Rio de Janeiro", "Paraíba" as "Denominação de Origem" for "algodão colorido" (colourful cotton) and 'mármore de Cachoeiro'.¹⁹

Many more non agricultural GI products exist, as it was shown in a previous study undertaken by our Consortium for DG Trade²⁰, notably:

[1] See Appendix 2 of the Annex III of the Agreement – Lists of GIs:
16 http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147725.pdf
17 <http://www.sic.gov.co/index.php?idcategoria=18032&ts=3e15cc11f979ed25912dff5b0669f2cd>
18 http://www.sic.gov.co/en/c/document_library/get_file?uuid=e808a0db-2f57-48e4-8c05-1f4d5e76ca0d&groupId=10157
19 http://noticias.123.cl/noticias/20110803_41cf08aab8a899a5e50fc985d46a382c.htm
20 <http://www.inpi.gov.br/index.php/indicacao-geografica/registros>
http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147926.pdf

- In **China**: Liuyang Fireworks and Jingdezhen Porcelain
- In **India**: Kashmir Pashmina, Kashmir Sozani Craft, Kani Shawls (textile) and Mysore Sandal Soap
- In **Russia**: Gzel (ceramics) and Tula Samovar (metal container)
- In **Switzerland**: Swiss Watches and St. Galler Stickerei (embroidery).

Moreover, all International treaties providing for the protection of geographical indications cover both agricultural and non-agricultural products. Bilateral agreements have been used by several Member States of the EU to protect their non-agricultural GI products in other EU Member States in the 1960s and 1970s mainly. Since then, only Switzerland has recently negotiated an agreement with the Russian federation that provides for such protection. Interestingly, the EU seems open to non-agricultural GI products protection through bilateral agreements as it recently offered to do so in a bilateral agreement signed with Colombia and Peru in June 2012.

It is a well-known fact that the EU is engaged in trade negotiations with countries which have *sui generis* law for the protection of all GI products. These countries, such as Brazil, India and Thailand, have offensive interest when it comes to the protection of their non-agricultural GI products at the EU level beyond the community trade mark system. The lack of such legal framework could hamper the ability of the EU to secure protection of EU agricultural GI products in these countries.

In a nutshell, there are a number of non agricultural GI products that are protected at Member States level in the EU and in third countries via different legal systems. However, there is a lack of information regarding the economic importance of these products and the legal protection they enjoy. It is therefore important to gather and analyse data in order to assess the different existing legal frameworks, their strengths and weaknesses with a view to provide the European Commission with relevant options for the possible action at EU level.

Objective of the study and methodology

Objective

The overall objective of the study was to provide the European Commission with precise information on protected and potentially protected non-agricultural GIs in the 27 Member States of the EU²¹, Iceland, Liechtenstein, Norway and Switzerland. In order to do so, the Consortium:

- Assessed the protection and models of protection available at the regional, national and international levels in the covered countries for non-agricultural products with geographical indications;
- Carried out an economic analysis of the market for protected and potential non-agricultural GI products;
- Conducted a stakeholders' survey to obtain information on their needs and expectations concerning the potential protection of geographical indications of non-agricultural products at the EU level.
- Organised a workshop in Brussels on the 9th of October 2012, with the key legal experts coming from countries with different legal means for the protection of these products, to determine the best options for the possible creation of a new legal framework at the EU level.

Based on the findings and outcome of the previous steps, the Consortium drafted recommendations with regard to options for the possible creation of a unitary system for the protection of geographical indications for non-agricultural products across the EU level.

Methodology

- A team of local and European experts

To conduct this study efficiently, the Consortium worked with a team of field experts in all the key countries identified by the European Commission in the terms of reference as the “most relevant”. For two of these countries (Bulgaria and the Czech Republic) a team of local experts was chosen.

All the experts were selected based on their good understanding of intellectual property issues of the GI concept, their networks of relevant contacts within the country(ies) they covered and their previous experience in studies regarding IP issues and data gathering.

Table 1 List of countries covered by our GI and/or IP experts taking part in the study

Countries	Expert
Austria	Ms. Astrid Gerz (REDD SA)
Bulgaria	Mrs TAUSHANOVA, Mrs.VALCHANOVA-KRASTEVA, and Mrs. DOBRINKA DOBREVA
Czech Republic	Mrs. Katerina STROSSOVA and Mrs. Dana VELEBOVA
Estonia Latvia	Mr. Aleksei KELLI

²¹ With a specific emphasis, as specified in the tender, on the following countries: Bulgaria, Czech Republic, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

Lithuania	Ms. Lina STANISAUSKAITE
France	Ms. Audrey AUBARD
Germany	Mr. Alexander WIRSIG
Hungary	Mr. Imre FERTO
Italy	Mr. Massimo VITTORI (oriGIn)
Poland	Mrs. Edyta CALKA
Portugal	Ms. Marisa ALEXANDRE
Romania	Mrs. Lucia ROMANESCU
Slovakia	Mrs. Janka ORAVCOVÁ
Slovenia	Mrs. Marija KLOPCIC
Spain	Ms. Ester OLIVAS CACERES
Sweden	Mr. Axel RINDBORG
United Kingdom	Mr. Matt REED
Iceland Norway	Mr. Axel RINDBORG
Liechtenstein Switzerland	Ms. Astrid Gerz (REDD SA)
Belgium Cyprus Denmark Finland Greece Ireland Luxembourg Malta The Netherlands	Insight Consulting Team Fanny Lossy Mariata Ndiaye Daniela Ida Zandonà

The Consortium benefited from a very valuable input from Mr. Bernard O'Connor, a lawyer with an internationally recognised expertise on geographical indications. Mr. O'Connor chaired the workshop that was organised to discuss possible options for the creation of an EU legal framework for the protection of non-agricultural GI products and contributed to the finalisation of the recommended options. Mrs. Dominique Barjolle, the senior economist, was in charge of the economic analysis and Mr. David Thual, of the legal analysis and of the overall study as team leader.

- Definition of a geographical indication used

To ensure that the study would generate consistent and reliable outputs, the definition of geographical indications provided by Article 22.1 of the TRIPs (trade-related aspects of intellectual property rights) agreement was used as a basis:

“indications which identify a good as originating in the territory of a [WTO] Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

- Step-by-step approach

1- Identification of non-agricultural GI products

In order to be able to assess the current legal means and model of protection and to undertake an economic analysis of the market for non-agricultural GI products, the experts had first to identify which GI products are already protected in the 31 countries and which could be eligible to such protection.

- ✓ Protected non-agricultural GI products

The experts identified protected non-agricultural GI products in the 31 countries through desk research. They consulted intellectual property registers, in particular trade mark registers at the national, European and international level (Madrid protocol). The experts looked for relevant information on several databases, notably national databases, international agreements including the protection of GIs, the OHIM trade mark database, the WIPO website for appellations of origin (Lisbon Agreement) and for trade mark (Madrid Agreement) and the USPTO website. Our experts also looked for the support of private and public organisations which have or could have an interest in non-agricultural GI products. Numerous contacts were taken with relevant stakeholders, such as chambers of commerce, craft councils, artisan association (ex. FUEDARTE in Spain, “Entreprises du Patrimoine vivant” in France, etc.), Guilds and national heritage associations. They also looked through the jurisprudence (case law) and searched for bilateral agreements signed with third countries²².

In countries where a specific (*sui generis*) legislation is available for the protection of non-agricultural GI products, the experts based themselves on the definition of that given law.

✓ Potential non-agricultural products

The experts also looked for potential non-agricultural products which could benefit from a protection as a geographical indication. To that end, they assessed whether the distinctiveness of the product could be linked to its traditional place of manufacture. In doing so, they searched for at least one of the following criteria to be present: production of the good in a determined geographical area; specific know-how and/or method of production; reputation of the good at the regional or national level. When one or more of these elements were present, they considered the product for further analysis. In order to determine whether a product could be considered as a potential non-agricultural GI, the core element analysed was the geographical link of the product with a specific area. For instance, in the case of Denmark, the “Royal Copenhagen China” which is a well-known product with a specific method of production, was not analysed as it was discovered that a majority of its production takes place in Thailand and not in Denmark (300 employees in Thailand and 120 in Denmark)²³. Moreover, products generically labelled, as for example “Scandinavian”, without further distinction as regards the traditional place of production were not studied further either.

✓ Number of products identified

834 products were identified during this phase. It is important to underline the fact that the purpose of the study was not to provide an exhaustive list of existing or potential non-agricultural GI products in the 31 countries. There were not enough resources available to do so. Furthermore, some of the products found by the experts may also not be able to qualify for the protection as GI. However, this list gives a good overview of the potential that exists in the EEA countries and Switzerland.

2- Selection of studied non-agricultural GIs

The objective was to collect as much information as possible on the legal protection and economic value of non-agricultural GI products. Bearing in mind the resources available to

²² The DG Trade commissioned study of 2009 “on the protection of geographical indications for products other than wines, spirits, agricultural products or foodstuffs” was also used as a reference. The study is available at: http://trade.ec.europa.eu/doclib/docs/2011/may/tradoc_147926.pdf

²³ http://corporate.royalcopenhagen.com/upload/annualreport/Press%20Release_Annual%20Report%2011_UK.pdf

conduct the study, it was impossible to look for detailed information on the 834 products identified through the first screening.

A sample of products was selected based on several criteria choosing a highly varied sample of products from as many countries as possible. We chose products from different sectors, unprocessed and processed products and products protected through different legal instruments. We also sought to focus on the products with an important economic significance and the ones that have an association of producers or equivalent body.

The experts faced concrete challenges when looking for specific information. First, several products identified as protected GIs are not produced (much) any longer. This is the case for instance for many products found in Germany. We know of the existence of these products because Germany signed several bilateral agreements on the protection of GIs. Our expert listed all these products as potential GIs. However, it has to be kept in mind that the agreements were signed in the 1960s and hence the products which were protected may have disappeared since, even though their name is still protected under these bilateral agreements. Second, in some countries, it was impossible to identify products which were protected as a GI or could qualify as a GI. It should be noted that the ability to analyse the products in detail lied heavily on the willingness of producers and/or their association to cooperate with the experts, notably with regard to the economic and social data. In several countries, there was no interest shown by these stakeholders and it was just impossible to gather information. In many cases, organisations or producers did not answer to our experts' requests even after reminders were sent and phone calls placed. Some organisations even reacted vigorously, threatening legal proceedings if our experts kept on contacting them.

Further to this selection process, the legal means and model of protection and an economic analysis of the market were undertaken for 129 non-agricultural GI products (see annex VI). As a result, the studied sample cannot be considered representative and must be treated as case studies.

3- Data gathering process

In order to collect as much information as possible, legal and economic questionnaires were prepared by the team leader and the senior economic expert, then validated by DG Markt (see annexes IV and V). These questionnaires were sent to the experts who translated them when necessary before sending them to the identified producers or associations of producers. They followed up with telephone calls to explain the purpose and stress the importance of the questionnaires and to clarify the objective of the study. When they did not receive answers, they sent a reminder through e-mail and followed-up with a phone call.

The experts collected the answers and translated them in English when necessary. All the answers to the legal questionnaire were sent to the team leader and the answers to the economic questionnaire to the senior economist.

The experts also gathered specific information on the national legal framework available for the protection of non-agricultural products in each of the 31 countries through desk research and, where necessary, through contact and exchange of information with the relevant authorities. This information was sent to the team leader.

4- Legal analysis of the means and model of protection available in the 31 countries

Based on the information gathered, the team leader prepared a detailed comparative analysis of the legal instruments available in the 31 countries to protect the name of non-agricultural GI products. His assessment covered the similarities and differences, the

strengths and weaknesses of the legislations at the regional, national and international level, as well as between these three levels. He more particularly looked at:

- The extent to which the diversity of protection afforded through the different legislations affected the functioning of the internal market.
- The existing definitions of geographical indications or different terminology covering different concepts of geographical indications protection for non-agricultural products, and the current problems resulting from the diversity of these concepts.
- The extent of the protection offered to geographical indications for non-agricultural products such as comparable/similar products, evocations²⁴ of the GI, protection against uses on services as well as goods, etc.
- Relationships between geographical indications and other intellectual property rights, in particular trade marks.

The team leader also conducted an analysis of the relevant international legal framework and drafted one fiche per country that presents the national laws available for the protection of non-agricultural products (see Annex I).

The legal analysis is based on the information gathered as to end of September.

5- Economic analysis

Based on the information received from the experts, the senior economist reviewed all the documents and, where necessary, asked for additional information for products. All experts agreed to spend more time on this task which proved to be the most difficult part of the data gathering process. In some cases, more detailed information was found. However, most of the experts were confronted with a lack of cooperation from producers and other stakeholders. This can be explained by a lack of time or resources to respond, a lack of interest for the study or the unwillingness to share information considered as confidential.

The senior economist' analysis focused on the following elements:

- The structures of the supply-chain and market for non-agricultural products protected by a geographical indication for the main sectors in the countries covered by the study. This assessment covered the information collected on the number, size and market share of enterprises per sector/state, the number of competitors, the market share of the 3 main competitors, as well as the number of consumers buying the products.
- The economic value of this market based on, in particular, the global revenues of the enterprises (in absolute numbers and as a share).
- Other indicators as:
 - The employment rate of these enterprises, by gender, age and education (when available), and their contribution to the employment in the relevant state or region if appropriate;
 - The geographical area of a market for the main sectors of non-agricultural products bearing geographical indications in the EU;
 - The imports from third countries, such as in-coming shipments of non-agricultural products bearing geographical indications currently used in the EU;
 - The estimation of loss of producers' revenues caused by selling counterfeit products, including the costs of actions before the courts.

²⁴

European Court of Justice - Case C-87/97: *"The concept of evocation covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected. It is possible for a protected designation to be evoked where there is no likelihood of confusion between the products concerned and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue."*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997CJ0087:EN:HTML>

The economic analysis is based on the information gathered as to end of September.

6- Preparation of case studies

The Team Leader proposed a short list of 29 products to be covered by a case study. The list met criteria set out in the study's terms of reference, i.e. a panel of different types of products, protection and geographical origin. The list was submitted to and approved by the European Commission, DG Markt.

29 case studies were prepared (see annex II) covering the following countries: Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

Each case study provides a short presentation of the products and of its economic value as well as a detailed analysis of the legal protection that it enjoys at the national and international level, if any.

The case studies are based on the information gathered as to end of September.

7- Stakeholders' survey

The Consortium launched a survey towards producers and other relevant stakeholders with a view to gather information with regard to the following issues:

- satisfaction/dissatisfaction with the existing means of protection of geographical indications for non-agricultural products in the EU Member States, in particular whether producers of non-agricultural products wish to have a broader choice of legal instruments to protect their geographical indications effectively at EU level;
- whether a uniform legal protection of geographical indications for non-agricultural products at European Union level is needed;
- what non-agricultural producers or sectors should benefit from the uniform legal protection of geographical indications ;
- extent to which consumers would benefit;
- what are the specific qualities of non-agricultural products bearing geographical indications that should be controlled by a public body (before and after registration).

In accordance with our proposed methodology, we undertook this survey after the information gathering phase and not at the same time. The first phase helped our experts to better understand the legal and economic situation, as well as to identify the most relevant stakeholders. We asked each expert to put together a list of stakeholders to be contacted based on their first screening of existing and potential non-agricultural GI products as well as on their identification of non producers' public and private organisations. In the meantime, the team leader and the senior economist prepared a draft questionnaire. It was sent to DG Markt of the European Commission for comments. A meeting was organised with the European Commission to discuss the content of the questionnaire and its wording was agreed upon with the Commission.

Once the green light was been given by the European Commission, each expert received clear instructions as to who he/she should contact and the tools that needed to be used. They were notably asked to translate the questionnaire in the local language (if deemed necessary).

In our methodology we had proposed to conduct this survey online but it was finally decided by DG Markt that due to issues relating to the protection of data, this would not be done.

Two questionnaires were prepared (see annex VIII&IX of the study):

- one for producers and their associations
- one for non producers' stakeholders

In June, the questionnaires were sent by e-mail to:

- producers of non-agricultural products identified during the first phases, whether or not they had answered to previous queries,
- private bodies (e.g. consumers association, national or regional Chambers of Commerce, Craft Chambers, Federations of handicraft products, famous professors on Law or Geography),
- public bodies (e.g. intellectual property Offices, Ministries, Regional Authorities, Municipalities).

When no answer was received, the experts sent reminders by e-mail and placed phone calls in July. Another round of e-mail reminders was sent in September and final attempts to get answers from several stakeholders were made in November.

In Estonia, the expert chose to contact directly by phone a limited number of stakeholders he knew would have a strong interest in replying to the survey. He received an answer from all these stakeholders except from the Ministry of Agriculture, which answered that it did not have any opinion relating to non-agricultural GIs since it is not within its field of competence.

At the EU and international levels, the following stakeholders were contacted, but none of them replied: OHIM officials²⁵, the Benelux Office for Intellectual Property, WIPO, WTO, BUSINESSEUROPE, EuroChambres²⁶, EuroCommerce, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), and the European Consumers' Organisation (BEUC).

Our experts sent the questionnaires to over 700 stakeholders, including producers' organisations, as well as private body (e.g. chambers of commerce) and public bodies (e.g. IP offices). Even if stakeholders were consulted in all the countries covered by the study, answers were not received from some countries. As this survey was based on voluntary answers, organisations which were consulted had the choice to answer or not. Stakeholders in some countries seem to have a higher interest in the issue, which may be due to historical or cultural reasons. This is why many answers were received from France and Spain.

219 answers were received as of end of October. The studied sample cannot be considered as representative and should be treated only as case studies.

The answers of the questionnaires were analysed and the results can be found in Part IV.

8- Identification of options for the protection of non-agricultural GI products at the EU level

Draft options for the possible creation of a unitary system for the protection of geographical indications for non-agricultural products across the EU were defined by the team leader. They were based on the legal and economic analysis, on the outcome of the stakeholders' survey. They also included the input provided the experts with regard to the protection of

²⁵ The OHIM looked through the questionnaire but considered that it exceeded the competences of the Office and thus decided that it was best not to answer despite its strong interest for this study. In any case, we would like to underline that OHIM officials collaborated in organising meetings with EUAPME and EuroChambres and provided great support to the Consortium throughout the study, notably by providing important information on registered marks with OHIM.

²⁶ EUROCHAMBRES forwarded the survey to its members. However, EUROCHAMBRES as such claimed that it did not have a position on this issue and therefore decided not take part in the survey.

agricultural GI products and took into account the EU and international context on GI protection.

In order to fine tune the regulatory options available, a workshop was organised with a number of the Consortium's experts representing a balance of the variety of the different legal traditions in the countries covered by the study. Specific attention was given to balancing the results of the economic analysis and the stakeholder survey against the legal options available under EU law. The Consortium experts covered the following countries: Bulgaria, Estonia, France, Italy, Poland, Spain, Sweden/Norway/Iceland, Switzerland/Austria, Belgium/Cyprus/Malta and Denmark/Ireland/the Netherlands. Ahead of the meeting, participants received a series of draft documents including the economic study, the results of the stakeholder survey and a regulatory discussion paper setting out the different options for a unitary measure.

Representatives of the European Commission (DG Internal Market, DG Agriculture and Rural Development, DG Trade) and of the Office for Harmonization in the Internal Market were invited. They contributed to the discussion during the workshop.

Further to the workshop, the options were fine-tuned by the team leader with the support of the senior economist and Mr. Bernard O'Connor.

PART I - Analysis of legal means of protection of geographical indications for non-agricultural products in the EEA countries and Switzerland

Protection available at the national level for non-agricultural GI products

This section is dedicated to the presentation and analysis of the legal instruments that are currently available in the 31 countries covered by this study to protect the name of a non-agricultural product bearing a geographical indication. As you will read in the following pages, the situation varies greatly from one country to another. The protection can be granted through consumer deception and unfair competition laws, specific laws which protect individual non-agricultural GI products, trade mark laws and/or *sui generis* GI systems. All these legal tools have their own merits and drawbacks. They have often been developed at the national level based on historical and economic conditions and have, therefore, some specific characteristics.

The legal analysis is based on the information gathered as to end of September.

1. Overview: diversity of protection granted through national legal instruments

You will find below an overview of the legal tools available for the protection of non-agricultural GI products in the 31 countries covered by this study. A detailed presentation of each national legal framework is available in the annex I of the study while an analysis of each type of protection follows in the second part of this section.

Table 2: Tools available for the protection of non-agricultural GI products at the national level

	National legal framework				Unfair competition law
	<i>Sui generis</i> GI law	Trade mark law	Specific law / Decree protecting a specific product	Case Law	
EU countries					
Austria		1			1
Belgium*	1	1			1
Bulgaria	1	1			1
Cyprus		1			1
Czech Republic	1	1			1
Denmark		1			1
Estonia	1	1			1
Finland		1			1
France**	1	1	1	1	1
Germany	1	1	1		1
Greece		1			1
Hungary	1	1			1
Ireland		1			1
Italy		1	1		1
Latvia	1	1			1
Lithuania		1			1
Luxembourg		1			1
Malta		1			1
Poland	1	1			1
Portugal	1	1	1		1
Romania	1	1			1
Slovakia	1	1			1
Slovenia	1	1			1
Spain***	1	1			1
Sweden		1			1
The Netherlands		1			1
United Kingdom		1	1		1
Sub total	14	27	5	1	27
Non EU countries					
Iceland		1			1
Liechtenstein		1			1
Norway		1			1
Switzerland	1	1	1		1
Sub total	1	4	1	0	4
TOTAL	15	31	6	1	31
* This is a <i>sui generis</i> GI law at the level of the Wallon Region					
**A project of a new law including GIs for non agricultural product is pending before the Senate					
***This is a <i>sui generis</i> GI law on the protection of handicraft from the region of Murcia					

Source: Insight consulting

The table above shows that all countries provide for the protection of non-agricultural products bearing a geographical name through both unfair competition or consumer deception laws and trade mark laws. Several countries have adopted specific laws to protect either a product or a type of product while only 15 have established a *sui generis* law that allows for the protection of all non-agricultural GI products.

The experts identified 834 products which are already protected as geographical indication or potential GIs. It is important to underline the fact that the purpose of the study was not to provide an exhaustive list of existing or potential non-agricultural GI products in the 31 countries. Bearing in mind the resources available to conduct the study, it was impossible to look for detailed information on the 834 products identified through the first screening.

A sample of products was selected based on several criteria choosing a highly varied sample of products from as many countries as possible. We chose products from different sectors, unprocessed and processed products and products protected through different legal instruments. We also sought to focus on the products with an important economic significance and the ones that have an association of producers or equivalent body.

The experts faced concrete challenges when looking for specific information. First, several products identified as protected GIs are not produced (much) any longer. Furthermore, some of the products found by the experts may also not be able to qualify for the protection as GI. Second, in some countries, it was impossible to identify products which were protected as a GI or could qualify as a GI. Moreover, it should be noted that the ability to analyse the products in detail lied heavily on the willingness of producers and/or their association to cooperate with the experts, notably with regard to the economic and social data. In several countries, there was no interest shown by these stakeholders and it was just impossible to gather information. In many cases, organisations or producers did not answer to our experts' requests even after reminders were sent and phone call placed. Some organisations even reacted vigorously, threatening legal proceedings if our experts kept on contacting them.

Further to this selection process, the legal means and model of protection was undertaken for 129 non-agricultural GI products (see annex VI). As a result, the studied sample cannot be considered representative and must be treated as case studies.

You will find below an overview of the protection that is enjoyed by the products that our experts have analysed in detail in the context of this study.

Table 3: Types of protection enjoyed by non-agricultural GI products at the national level

			Type of national protection outside the Unfair Competition Law					
			Sui generis GI law			Trade mark law	Specific law protecting the product	Case law
Country	Number of products studied	Number of products protected	Appellation of origin	Geographical Indication	Indication of source			
EU countries								
Austria	3	2				2		
Belgium	4	2				2		
Bulgaria	13	13	1		12	13		
Cyprus	1	0						
Czech Republic	7	7	7			5		
Denmark	0	0						
Estonia	1	0						
Finland	1	0						
France	32	18	4			12	6	3
Germany	6	5				4	1	
Greece	0	0						
Hungary	4	4	4					
Ireland	2	1				1		
Italy	10	10				7	3	
Latvia	0	0						
Lithuania	3	0						
Luxembourg	1	0						
Malta	0	0						
Poland	3	2				2		
Portugal	5	2		1		2	1	
Romania	5	1				1		
Slovakia	4	4	2	2				
Slovenia	2	2		2				
Spain	14	8				6	2	
Sweden	1	1				1		
The Netherlands	3	3				3		
United Kingdom	1	1				1	1	
Sub total	126	86	18	5	12	62	14	3
Non EU countries								
Iceland	0							
Liechtenstein	0							
Norway	0							
Switzerland	3	3			2		1	
Sub total	3	3			2		1	
TOTAL	129	89	18	5	14	62	15	3

Source: Insight consulting

Explanatory note: No products were found in 4 Member States. Some non-agricultural products bearing a GI name were first identified in Denmark but after careful analysis it appeared that they had lost their link their geographical area (most of the production took place outside of the area). Despite renewed efforts to contact several stakeholders in Greece, Latvia and Malta, it was impossible to secure information that we could have used in the context of the study. There is a strong representation of French and Spanish products. This is due to the fact that our experts in these two countries have benefitted from good support and help from relevant stakeholders. This has allowed them to analyse in details these products and to provide us with the necessary information to carry out the hereinafter analysis.

2. Analysis of unfair competition and consumer law deception provisions

The unfair competition laws (UCL) find their origin in an intellectual property law, the Paris Union Convention on the Protection of Industrial Property adopted in 1883²⁷. Unfair competition is defined as: "*Any act of competition contrary to honest business practices and industrial commercial matters*". The scope of unfair competition laws has been broadened to include consumer protection.

The 31 countries covered by this study have established different laws relating to unfair commercial practices and/or consumer deception. These laws provide protection to consumers and/or someone with a legitimate interest against unfair commercial practices, notably when it comes to misleading information as to the main characteristics of a product, such as its geographical origin.

There is a certain degree of harmonisation of these laws within the EEA countries. The 27 EU Member States as well as the other 3 EEA countries (Iceland, Liechtenstein and Norway) have all implemented Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Directive 2005/29/EC defines the unfair commercial practices which are prohibited in the European Union (EU) and the other 3 EEA countries. Article 6 underlines that a commercial practice must be regarded as misleading if it contains false information which deceives or is likely to deceive the average consumer notably with regard to the main characteristics of the product, such as geographical or commercial origin. Article 11 provides specific redress as Member States and other EEA countries must ensure that adequate and effective means exist to combat such practices. These means must include provisions allowing persons or entities having a legitimate interest (consumers and competitors) to take legal action against these unfair practices and/or to bring these practices before an administrative authority.

All countries have implemented Directive 2005/29/EC in their respective national laws or regulations (UK) although large differences remain on how to benefit from this protection.

From a general point of view, non-agricultural products which comprise a geographical name and the production of which is associated to a certain origin can benefit from this protection in their country of origin. Consumer and, in certain countries except the UK where protection lies with state agencies, producers can also seek redress under these laws in the other countries. Moreover, the ability to make a complaint varies from one country to the other: only consumers can do it in Greece, Lithuania and Romania, consumer associations can table one in France and Italy for instance while only public authorities can make a complaint in Bulgaria, Cyprus, Estonia, Republic of Ireland, Latvia and the UK.

In most cases, such protection can only be granted if it is proven that local consumers are deceived or likely to be deceived by a product in question due to an unfair commercial practice. Hence, as long as a product does not confuse or mislead the public, it is a perfectly legitimate product. In some countries, such as in Germany, the requirements are not so strict: it is sufficient to prove that there was an intention to copy the original product to act.

²⁷

http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html#P71_4054

Article 1 (2) 'The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition'.

The timeframe to make a complaint against an unfair practice also varies from one country to the other. A prosecution for an offence can be brought within 2 years after the date of the alleged commission of the offence in Ireland, 10 years from the date upon which the trader became aware of the infringement in France.

As far as the enforcement of these rights is concerned, it is important to underline that the situation varies a lot from one Member State/country to the other as each of them has made use of the Directive flexibilities to implement it in different ways. In concrete terms, producers are faced with a myriad of options depending on where they want to secure protection through unfair commercial practices (UCP) laws.

Administrative enforcement with the help of administrative law is available in almost every country for all unfair practices except in Austria where only certain types of practices are covered. In Spain, the administrative enforcement of regulations protecting consumers and users is made even more complex as it is handled by the relevant Spanish administrations (national, regional and/or local). Germany, unlike other Member States, fights unfair commercial practices not through state bodies, but through competitors and associations with the help of civil law. In fact, there are voluntary boards of conciliation for violations of fair competition that are established by commercial professional associations, such as regional Chambers of Trade and Commerce. In some countries, only consumers can file an administrative complaint; competitors or other entities cannot do so.

Administrative authorities in Bulgaria, Cyprus, Estonia, Finland, Germany, Greece, Italy, Latvia, Luxembourg, Poland, Portugal, Romania and Slovenia have an obligation to investigate the complaints that they receive. A vast majority of competent authorities are free to dismiss complaints on different grounds, e.g. in Belgium for rationalisation purposes, 40 % of all complaints are dismissed and only the one with significant financial losses involved are dealt with. Some administrative authorities, such as the Czech Trade Inspection Authority CTIA, the Consumer Ombudsman in Denmark, the Italian Antitrust Authority or Swedish Consumer Agency/Consumer Ombudsman can open an investigation *ex officio*.

Legal means are available under civil law²⁸ for any person or entity to take legal action against a trader for breaches of the laws and regulations on unfair commercial practices and/or consumer deception. In the UK, there is no private right of action against traders by consumers; it is only one of the Enforcement Agencies which can take legal action against a trader.

The unfair commercial practices and/or consumer deception laws and regulations provide for remedies that include cease and desist injunctions orders. In some countries such as Denmark and Germany, offenders can see their products seized and destroyed while in others such as Cyprus and Ireland a fine can be imposed, as well as imprisonment (in Ireland: a fine not exceeding €3,000 or imprisonment for 6 months or both).

Contrary to other legal means of protection such as trade marks and specific laws or a *sui generis* GI system, the protection available in a country through UCP laws does not provide a basis to secure protection in other countries in conformity with the principle of territoriality of the law.

In the context of this study, we have identified 834 products which are all protected under unfair competition and/or consumer deception laws. This means that non-agricultural products bearing a geographical name benefit in principle from what we could call a basic protection which is automatically available to any product (or service). It is important to

²⁸ Criminal laws to fight against counterfeited products can be used in all the countries covered by this study, but we have not examined them specifically as they appear to be beyond the scope of this research.

underline that only one of our experts has identified a case in which a group of producers has tried taking action based on the law against unfair commercial practices. The case was brought up by the Fédération des Carrières de Petit Granit-Pierre Bleue de Belgique but it was dismissed by the Belgian competent administrative authority which considered that there was no proof that confusion in the mind of consumers was created by the imitation product.

The lack of uniform law combined with a number of other factors, some mentioned above, such as the ability to prove that an average consumer in the country in question is deceived, makes it extremely difficult for producers to rely on UCP laws to defend their intellectual property right. In addition, individuals and entities affected by UCP often refrain from enforcing their claims, not least because of the possibly high costs of taking legal action. This means that these IP violations continue and make it more difficult for producers over time to secure protection.

In Switzerland, the provisions of the Swiss Unfair Competition Act which has been in effect since 1 April 2007 may apply to the protection of unregistered GIs. The cantonal authorities have the possibility to act *ex officio* and to take administrative measures, according to the Federal law on food and goods. However, as all geographical indications benefit from a *sui generis* protection, without registration thanks to the federal law on the protection of trademarks and indications of source, producers in Switzerland would certainly act to preserve their rights under the latter law which provides a stronger protection (for more information on the Swiss system, see the section below on *sui generis* protection).

Conclusion: there has been a harmonisation of unfair competition and consumer deception laws in the EU through Directive 2005/29/EC of 11 May 2005. However, there is no standardisation of the legislation. Under the different legal tools available at the national level in the 31 countries covered by this study, the focus is often on the protection of consumers rather than producers. In the countries where enforcement is available through administrative bodies, we have not found any example of such action relating to the protection on non-agricultural GI products. Furthermore, it would appear that private right of action against any unfair practice, when available, is not used by producers in most cases due to the fact that costs can be significant and evidences often hard to establish. In a nutshell, the automatic protection granted under the unfair competition and consumer deception laws remains largely theoretical as it does not seem to be used in practice to defend against the misuse of non-agricultural GI products names.

3. Passing off

A misrepresentation of the origin of a product can be condemned by a court as a tort of passing off. To establish such prejudice, the plaintiff must prove a misrepresentation and that the offence misleads consumers and causes injury to the plaintiff. The action of passing off is available in the UK, in Ireland and under strict conditions in Cyprus where the plaintiff must prove in particular the right to the use of the mark. Should the action be successful, damages can be awarded and some criminal sanctions can be imposed.

Through our research, we have not identified any actions under this legal tort²⁹. One should underline that its limitations are due to the fact that it is dependent upon a court finding that a misrepresentation has been made in the course of trade.

Furthermore, as for the UCP laws, a Court decision might not be sufficient to provide sufficient legal basis to request protection of the non-agricultural GI product in a third country

²⁹ As explained in the section below relating to the *sui generis* protection, 4 non agricultural GI products have been protected in France further to a Court ruling that has recognized their appellation of origin status.

4. Analysis of trademark laws' provisions

The 31 countries covered by this study provide for the protection of trade marks at the national level. All of them, except Switzerland, have implemented Directive 2008/95/EC on the approximation of the laws relating to trade marks and Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community Trade Mark.

In the European Union, trade mark protection can be obtained at the national level under the laws of each Member State, at the regional level in the Benelux countries and, at the EU level through a community trade mark which is valid throughout the 27 Member States. Within the EU, national and Community trade mark protection co-exist. Together with the registration procedure, some Member States provide for trade mark rights to be acquired through use.

Directive 2008/95/EC does not provide for full-scale harmonisation of the trade laws of the Member States but sets out key principles implemented at the national level by the EEA countries. We highlight below those that are of specific interest in the context of this study.

First, a trade mark cannot be protected notably if it is not distinctive, if it is descriptive, if it is of such nature as to mislead the public. This key principle of trade mark protection can prevent the protection of non-agricultural GI products which often are descriptive by nature. Article 7 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark covers the 'absolute grounds for refusal' and provides that (emphasis added):

1. *The following shall not be registered:*

- (a) signs which do not conform to the requirements of Article 4;*
- (b) trade marks which are devoid of any distinctive character;*
- (c) **trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin** or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;*
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;*
- (e) signs which consist exclusively of:
 - (i) the shape which results from the nature of the goods themselves;*
 - (ii) the shape of goods which is necessary to obtain a technical result;*
 - (iii) the shape which gives substantial value to the goods;**
- (f) trade marks which are contrary to public policy or to accepted principles of morality;*
- (g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;*
- (h) trade marks which have not been authorised by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property, hereinafter referred to as the 'Paris Convention';*
- (i) trade marks which include badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention and which are of particular public interest, unless the consent of the competent authority to their registration has been given;*
- (j) trade marks for wines which contain or consist of a geographical indication identifying wines or for spirits which contain or consist of a geographical indication identifying spirits with respect to such wines or spirits not having that origin;*
- (k) trade marks which contain or consist of a designation of origin or a geographical indication registered in accordance with Council Regulation (EC) No 510/2006 of 20*

March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs when they correspond to one of the situations covered by Article 13 of the said Regulation and regarding the same type of product, on condition that the application for registration of the trade mark has been submitted after the date of filing with the Commission of the application for registration of the designation of origin or geographical indication.

2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Community.

3. Paragraph 1(b), (c) and (d) shall not apply if the trade mark has become distinctive in relation to the goods or services for which registration is requested in consequence of the use which has been made of it.

Second, the principle of first in time first in right applies: a trade mark cannot be registered due to the existence of earlier rights. Once registered, the proprietor has an exclusive right to the trade mark and may prohibit anyone from using a sign that is identical or similar to it and which may mislead consumers. However, article 6 §1 b) of the Directive sets out the following limitation: *“The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade... (b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services ... provided he uses them in accordance with honest practices in industrial or commercial matters”*.

Third, Article 15 of the Directive provides special provisions with regard to collective marks, guarantee marks and certification marks the registration of which can be authorised by Member States.

Collective marks are usually defined as signs which distinguish the geographical origin, material, mode of manufacture or other common characteristics of goods or services of different enterprises using the collective mark. The owner may be either an association of which those enterprises are members or any other entity, including a public institution or a cooperative. The owner of the collective mark is responsible for ensuring the compliance with certain standards (usually fixed in the regulations concerning the use of the collective mark) by its members. A guarantee mark is usually a trade mark used to designate goods and services of different persons in order to guarantee a common quality, common geographic origin or method of production or another common feature of such goods and services. Certification marks are usually given for compliance with defined standards, but are not confined to any membership. As a basic rule, the owner of a certification mark does not have the right to use the mark. They may be used by anyone who can certify that the products involved meet certain established standards.

Collective marks, guarantee marks and certification marks allow for the protection of *“signs or indications which may serve, in trade, to designate the geographical origin of the goods or services”*. Member States are entitled to set out additional grounds for refusal for these marks. One should also note that *“Such a mark does not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name”*.

The Community Trade Mark regime provides for a similar protection (for more information on this, please see the section XX below which focuses on the analysis of the legal instruments available to the protection of non-agricultural GI products outside of their country of origin).

The table below provides an overview of the special types of marks which can be registered in the countries covered by this study.

Table 4: Table of types of marks which can be registered by country

Country	Collective mark	Certification mark	Guarantee mark
Austria	YES		
Belgium	YES		
Bulgaria	YES	YES	
Cyprus	YES		
Czech Republic	YES		
Denmark	YES	YES	
Estonia	YES		
Finland	YES	YES	
France	YES	YES	
Germany	YES	YES	YES
Greece	YES		
Hungary	YES	YES	
Ireland	YES	YES	
Italy	YES		
Latvia	YES		
Lithuania	YES		
Luxembourg	YES		
Malta	YES	YES	
Poland	YES		YES Collective guarantee mark
Portugal	YES	YES	
Romania	YES	YES	
Slovakia	YES	YES	
Slovenia	YES		
Spain	YES		YES
Sweden	YES	YES	
The Netherlands	YES		
United Kingdom	YES	YES	
<i>EU</i>	YES		
Iceland	YES		
Liechtenstein	YES		YES
Norway	YES	YES	
Switzerland	YES		YES

Source: Insight consulting

A large number of the non-agricultural GI products identified in the context of this study protected through trade mark laws are protected as collective, certification or guarantee marks.

It is interesting to refer to a recent study³⁰ commissioned by DG Markt and presented by the Max Planck Institute for Intellectual Property and Competition Law on the functioning of the European trade mark system, which underlines the problems that may arise due to the lack of harmonisation of the trade mark systems across the EU Member States. The same reasoning would apply for the 31 countries covered by this study. With regard to article 15 of the trade mark Directive, the Max Planck Institute notes that it has not been implemented by all Member States and special requirements have been established by some. More specifically: “Article 15 (1)³¹ TMD³² has been implemented by 24 Member States (not Malta)

³¹ http://ec.europa.eu/internal_market/indprop/docs/tm/20110308_allensbach-study_en.pdf
 “Member States whose laws authorize the registration of collective marks or of guarantee or certification marks may provide that such marks shall not be registered, or shall be revoked or declared invalid, on grounds additional to those specified in Articles 3 and 12 where the function of those marks so requires”.

and Article 15 (2)³³ TMD has been implemented by 13 Member States. Examples of additional grounds (Article 15 (1) TMD) that are stipulated in the different trade mark acts are:

- a collective certification mark may be registered only by a legal person who is neither the manufacturer nor the importer nor the seller of the goods or services (France);
- the Patent Office shall revoke the collective trade mark if the members or the shareholders of the legal person or the members of the association seriously breach the agreement of use and they do not agree on the change of the agreement on use (Czech Republic);
- the registration of a collective mark may be revoked if the proprietor has not communicated amendments of the conditions laid down for the use of the mark (Denmark)."

The authors of the study conclude that considering the usefulness of collective marks "for promoting goods or services with specific common properties, or satisfying particular quality standards, it is important that a uniform legal basis is provided for such schemes throughout the EU, on the Community as well as on the national level. Member States should therefore be obliged to provide, and establish common rules, for the registration of collective marks. The relevant provisions should be aligned with those of the Community trade mark regulation. The introduction of guarantee and certification marks should remain optional".

The Swiss Federal law on the protection of trade marks and indication of provenance from 28 August 1992 offers similar general provisions on trade mark protection as well as specific provisions on guarantee and collective marks (chapter 2). However, marks are not recognised in Switzerland as an appropriate mean to protect GIs, as it is considered that no one should be able to secure exclusive rights on a sign, especially a geographical name, which falls within the public domain. In practice, a collective or guarantee mark cannot be registered as a GI, only a combined mark can be (that is to say, without exclusivity on the name)³⁴.

It is important to underline that under all trade mark systems, an action for infringement of any trade mark right must be brought by the owner of the right. The protection is enforced under general trademark law and can be costly if a trademark enforcement case makes it all the way to court, it could cost hundreds of thousands of euros or more. See examples identified in the context of this study:

- Schwarzwälder Kuckucksuhr: since the legal trade mark protection became active in 2005, there was one action against infringements before the court and one formal warning. Each of them costed around 10.000 €.
- The Chamber of Industry and Commerce Wuppertal-Solingen-Remscheid which has registered Solingen as a trade mark spends about 50.000 € per year for protection of the mark "Solingen" including actions against misuse and confiscation of infringing products.
- The Consorzio Produttori Marmo Botticino Classico which has registered the trade mark Marmo Botticino Classico spent over 35.000 € between 2004 and 2012 on notary fees, warning letters and over 100.000 € in registrations, translations and opposition proceedings.

³² First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks

³³ "By way of derogation from Article 3 (1) (c), Member States may provide that signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute collective, guarantee or certification marks. Such a mark does not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name".

³⁴ For more information, see guidelines for trademark registration, Part 4, articles 4.1, 4.2, 8.5 and 8.6. https://www.ige.ch/fileadmin/user_upload/Juristische_Infos/flma/rhma_f.pdf

Use of trade mark schemes to protect non-agricultural GI products

In the context of this study, our experts have identified products bearing a geographical name protected through trade mark in 13 countries: Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Italy, Poland, Portugal, Spain, Sweden, Netherlands, and United Kingdom.

Out of the 834 non-agricultural GI products which we have found, 63 are protected through a trade mark registration on their national market.

Table 5: List of non-agricultural GI products protected through a trade mark registration on their national market

Country	Name of product in local language	Name of product in English	Type of product
AUSTRIA	Ferlacher Waffen	Ferlacher weapons	Firearms
	"Schladminger Loden/Perlloden Schladminger"	"Schladminger Loden/Perl-Loden Schladminger Rock"	Pure Wool product/Textile
BELGIUM	Pierre Bleue de Belgique	Belgian Bluestone	Stone
	Diamant van Antwerpen	Antwerp Diamond	Diamond
GERMANY	Erzgebirgische Holzkunst / Erzgebirgische Volkskunst	Erzgebirge wood art	Wooden handicraft products, toys, decoration, music instruments
	Oberammergauer Holzschnitzkunst / handgeschnitzte Holzfiguren Oberammergau	Oberammergau wood carvings	Wooden handicraft products, carved sculptures
	Schwarzwälder Kuckucksuhr	Cuckoo Clock made in Black Forest	Clocks with mechanical clockwork
	Solinger Stahl- und Schneidwaren	Solingen" cutting equipment	Knives, scissors, blades, food utensils, manicure and pedicure equipment
BULGARIA	Kaolinovski Kaolin	Kaolin From Kaolinovo	Kaolin
	Mramor Ilindentci	Marble From Ilindentci	Marble
	Mramor Lepenitza	Marble From Lepenitza	Marble
	Muschelkalk Manastirishte	Muschelkalk From Manastirishte	Marble
	Perlite-Kardzali	Perlite From Kardzali	Perlite
	Kvarcov Pjasâk Junak	Quartz Sand From The Village Of Junak	Quartz Sand
	Kvarcov Pjasak Kaolinovo	Quartz Sand From Kaolinovo	Quartz Sand
	Kvarcov Pjasâk Senovo	Quartz Sand From Senovo	Quartz Sand
	Kvarcov Pjasâk Vjatovo	Quartz Sand From Viatovo	Quartz Sand
	Senovski Kaolin	Kaolin From Senovo	Kaolin
	Trojanska Keramika	Ceramics From Trojan	Ceramics
	Vjatovski Kaolin	Kaolin From Vjatovo	Kaolin
	Vratchanski Varovik	Limestone From The City Of Vratza	Limestone

CZECH REPUBLIC	Český granát, Český granátový šperk	Bohemian/Czech Garnet Bohemian/Czech Garnet Jewellery	Garnets (precious stones), jewellery, ornaments
	Český porcelán, Duchcovský porcelán	Czech porcelain, Duchcov porcelain	Porcelain
	Jablonecká bižuterie Jablonecké zboží Jablonecké sklo Jablonecká krystalerie	Gablonz Jewellery Gablonz Wares Gablonz Glass Gablonz Crystal Ware	jewellery, ornaments, glass and crystal products
	"Karlovarská sůl, Karlovarská vřídlní sůl, Karlovarská přírodní vřídlní sůl, Karlovarská přírodní sůl"	Carlsbad Salt Carlsbad Thermal Spring Salt Carlsbad Natural Thermal Spring Salt Carlsbad Natural Salt	Natural thermal spring salt
	Sedlecký kaolin	Sedlec Kaolin	Kaolin
FRANCE	Pierre de Bourgogne	Bourgogne Stone	Stone
	Porcelaine/Céramique de Sèvres	Sèvres Porcelain/Ceramics	Ceramics
	Savon de Marseille	Marseille Soap	Soap
	Couteaux de Thiers Coutellerie de Thiers	Thiers Knives Thiers Cutlery	Knives/Cutlery
	Tapisseries d'Aubusson	Aubusson Tapestry	Tapestry
	Imagerie d'Epinal	Epinal Picture	Picture
	Monoï de Tahiti	Tahiti Monoï	Natural Oil
	Poterie d'Alsace	Alsace Pottery	Pottery
	Couteaux de Laguiole	Laguiole Knives	Knives
	Faïence de Quimper	Quimper Earthenware	Ceramics
	Porcelaine de Limoges	Limoges china	Ceramics
	Dentelle de Calais	Calais Lace	Lace
IRELAND	Donegal Tweed	Donegal Tweed	Tweed
ITALY	Vetro artistico di Murano	Murano Glass	Glass
	Mobile d' arte in stile della pianura Veronese	Art furniture of the Pianura Veronese	Wooden products, furniture
	Mobile d'arte del Bassanese	Art Furniture from the area of Bassano	Wooden products, artistic furniture
	Marmo artistico di Carrara	Artistic work of Carrara Marble	Marble
	Marmo Botticino Classico	Botticino Classico Marble	Marble
	Cremona liuteria	Cremona Violinmaking	Musical Instruments
	Alabastro in Volterra	Alabaster in Volterra	Stone
THE NETHERLANDS	Delfts Blauw	Blue Delftware	Ceramics
	Leerdam Crystal	Leerdam Crystal	Crystal
	Makkumer	Ceramics from Makkum	Ceramics
POLAND	Ceramika bolesławiecka	Boleslawiec pottery	Pottery
	Szkło krośnieńskie	Krosno glass	Glass
PORTUGAL	Barro Preto de Olho Marinho	Black Clay of Oleo Marinho	Ceramics
	Bordados da Madeira	Embroidery of Madeira	Embroidery
ROMANIA	Ceramica de Horezu	Horezu Ceramics	Ceramics

SPAIN	Azabache de Asturias	Jet of Asturias	Jewellery
	Cerámica de Manises	Manises ceramics	Ceramics
	Talavera Cerámica	Talavera Ceramics	Ceramics
	Mármol de Macael	Marble from Macael	Marble
	Piedra Natural de Castilla y León, Pinacal	Natural Stone form Castile and Leon, Pinacal	Stone
	Piel de Ubrique	Ubrique Leather	Leather
SWEDEN	Morakniv	Mora knife	Knife
SWITZERLAND	Montre Suisse, Schweizer Uhr – NOT in Switzerland	Swiss watches	Watches, clocks and alarm clocks
UK	Harris Tweed	Harris Tweed	Tweed

Source: Insight consulting

Almost all non-agricultural products bearing a geographical name identified which are protected through a trade mark law rely on a national registration. Sometimes, there is both a registration at the national level and with the OHIM (Community trade mark): this is the case for one Belgian product (Diamant van Antwerpen), three Czech products (Český granát/Český granátový šperk, Jablonecká bižuterie/Jablonecké zboží/Jablonecké sklo/Jablonecká krystalerie and Sedlecký kaolin, 2 French ones (Porcelaine/Céramique de Sèvres and Couteaux de Thiers/Coutellerie de Thiers), 1 Italian (Marmo Botticino Classico), 2 Spanish ones (Cerámica de Manises and Piel de Ubrique), 1 Swedish product (Morakniv), 2 Dutch ones (Delfts Blauw and Leerdam Crystal) and one UK product (Harris Tweed).

Only four products name's - "Solingen" and 3 Italian products "Vetro Artistico Murano" "Alabastro in Volterra" and "Mobile d'arte in stile della pianura Veronese" - are protected only through the Community trade mark system (i.e. there is no trade mark registration at the national level) as a collective trade marks: Solingen as a collective word mark and the 3 Italian products' name as a collective figurative mark. It is quite surprising that producers do not make more use of the Community trade mark system as it offers the same level of protection but on a much wider geographical scope at a relatively cheap price: 900 € to file online (e-filing) or 1050 € if you use the paper form.

In several cases, a name is protected in combination with a localiser, that is to say with the name of a place which specify where the product comes from, for example "Pierre Bleue du Hainaut", "Pierre Bleue de Wallonie", "Pierre Bleue de Belgique" or with the name of a producer or group of producers, e.g. "Pierre Bleue Du Bocq by Carrières des Nutons".

The protection secured through a trade mark registration is the same for all trade marks: word or figurative marks, individual, collective, certification or guarantee marks. In all cases, the trade mark registration is valid only for a renewable period of 10 years and subject to the use of the trade mark.

However, it is important to note that a large majority of non-agricultural GI products which have been identified in the context of this study do not have a registered word trade mark. Most of the trade marks registered are figurative or semi-figurative ones. It appears to be very difficult to secure word trade mark registration with IP offices that raise genericity concerns when it comes to the use of a geographical name. Bearing in mind that a word trademark confers the exclusive right to the word(s) with or without figurative elements while a figurative trademark confers the exclusive right to the trademark in its concrete figurative version, the protection through a figurative or semi-figurative mark is arguably more limited

than the one obtained through a word trade mark. This would be true in particular when it comes to a geographical name.

In the context of our study, we have conducted a survey towards different stakeholders (see Part IV below). Many producers expressed concern with regard to the costs related to the use of the trade mark system. Although registration fees are not very expensive, enforcement costs have indeed proved very important for some producers who had to file oppositions and/or take legal actions against infringements of their trade mark rights. This comes in particular from the fact that a plaintiff in a trademark case has the burden of proving that the defendant's use of a mark has created a likelihood of confusion for consumers about the origin of the product, which is difficult to demonstrate especially in a foreign country. This appears to be a serious issue in particular for small and medium size enterprises which represent a large majority in the non-agricultural sectors covered by the study. Moreover, producers have to bear enforcement costs, without any support of public authorities.

These elements could explain the fact that out of the non-agricultural GI products identified which are protected as a trade mark at the national level, only 20 have a trade mark registered in third countries.

You will find below a table that provides a comparative analysis of the main features of the trade mark system and *sui generis* GI systems

Table 6: Comparative table on strengths and weaknesses of *sui generis* GI and trade mark systems

Issue	Trade mark regime	<i>Sui generis</i> GI system
Existing legal framework(s)	Existing harmonised legal framework at the EU level: the Community trade mark regime	Patchwork of national or regional laws in 14 Member States
Ability to register and secure rights on a geographical name or indication	<p>May certify the origin of the product.</p> <p>Producers have often been forced to seek a limited protection for a figurative trade mark rather than a word mark.</p> <p>The registration of a geographical name as a trade mark is prohibited except if it has become distinctive in relation to a good or a service.</p> <p>GI names are often protected via a collective or a certification mark when such legal concepts exist.</p>	<p>Must certify the origin of the product.</p> <p>By essence, a <i>sui generis</i> geographical indication protection system aims at identifying the geographical origin of the good and at protecting the GI name.</p>
Collective or individual approach	Both individual and collective marks can be registered with OHIM at the EU level although the former is much more in demand than the latter.	As a principle, application is submitted by a group. Individual applications can be accepted under certain conditions.

	A collective mark does not mean that it belongs to several persons but rather to one entity that allows its members to use the mark.	In general, there is a collective approach behind a GI as the registered name is available to any producers located in the designated area which meets the requirements set out in the GI specification
Licensing	Trade marks can be licensed to third parties	GIs cannot be licensed to third parties
Specific application requirements	An applicant for a collective mark is requested to submit regulations governing its use.	An application for a GI registration is requested to submit a GI specification that normally describes the production requirements and the link between the quality or characteristics of the product and its origin. Control systems are often required.
Link to the geographical origin	The production is not attached to a specific place although, as a principle, consumers should not be misled as to the origin of a product. As an example, Mont Blanc pen are not produced in the Mont Blanc region in France.	The production is rooted in the defined geographical area , it cannot be delocalised to another area. As an example, Scotch Whisky can only be produced in Scotland.
Scope of protection	Trade mark registration provides its proprietor with an exclusive right to use the trade mark and to prohibit anyone from using it without consent for identical or similar goods (or services) as those protected by the trade mark, i.e. in the classes where it has been registered. Nothing can prevent a third party to use the name of the trade mark in accordance with honest practices	<i>Sui generis</i> GI system often provides for a comprehensive protection against: <ul style="list-style-type: none"> ○ Direct or indirect commercial use of a registered name for products not covered by the registration ○ Misuse, imitation or evocation of the name on a non registered product. This often 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 used in translation. ○ False or misleading information about the origin, nature or qualities of products on packaging that might give a false impression as to their origin.

Genericity	There is no guarantee against 'genericity' . If the trademark owner does not assert his rights, the name can become generic	Once registered, the GI name cannot become generic.
Enforcement of the intellectual property rights	Enforcement of trade mark rights is entirely private: it is up to a trade mark owner to defend its rights. Trade mark owners must continue to assert their rights. They need to carry out a regular monitoring of the markets where the trade mark is protected. They need to be ready to launch legal actions (opposition to trade mark registration for instance) to protect their intellectual property right. Failure to do so would significantly undermine the right. Such protection is called ex parte. Enforcement costs can be significant.	Enforcement of the rights on the GI name relies mostly on private actions from the right holder. However, several sui generis GI laws also provide that public authorities can take action on their own initiative to protect a registered GI, i.e. the state or public authorities can be responsible for policing and ensuring GI protection. Such protection is called ex officio. Enforcement costs can be limited when ex officio is available.
Cancellation	A CTM must be put to genuine use in the European Union in the five years following its registration and use must not be interrupted for over five years. Failure to use the trade mark can lead to cancellation.	Under most <i>sui generis</i> GI laws, a GI registration can be cancelled if the conditions prescribed for the GI registration have ceased to exist.
Controls	Although an application for a collective mark must include regulations governing its use, it does not have to include controls.	Under most <i>sui generis</i> GI laws, controls must be in place and carried out by competent private or public authorities to verify that the product meets the GI specification.
Costs of registration	For the registration of a Community trade mark, there is a unique fee to be paid: 900 € to file online (e-filing) or 1050 € if you use the paper form.	Under <i>sui generis</i> GI laws, registration costs vary from zero (in 7 of the 14 Member States with such a law) to 400 € in Romania.
Duration of protection	Protection is granted for ten years, renewable every ten years thereafter.	With the exception of Romania where the protection is given for 10 years, renewable, all other existing <i>sui generis</i> GI laws grant protection for an indefinite period of time as long as the GI exists.

Source: Insight Consulting

Conclusion: trade mark laws are used by producers interested in protecting their IP right on a geographical name. The trade mark regime offers a user friendly legal instrument as requirements and procedures are largely similar throughout the EU and beyond. Moreover, the protection gives a right which allows its holder to seek registration in other countries, something that unfair competition and consumer deception laws do not allow. The existence of a Community Trade Mark regime and the Madrid System for the International Registration of Marks facilitates the protection of these names outside of their country of origin.

As far as the scope of the protection is concerned, it provides the holder with an exclusive right on the use of the name. However, on the one hand, there is a limitation of rights conferred by a mark, notably the impossibility to prevent a third party to use the name in accordance with honest practices. On the other hand, the protection is subject to the consumers' misleading text (which can be hard to prove in a foreign jurisdiction). Overall the system can be an expensive one in terms of enforcement. Another limitation aspect derives from the difficulty to secure word trade mark registration and the need to rely on figurative trade marks to protect the name of non-agricultural products bearing a geographical indication. As a result, protection secured through a figurative or semi-figurative mark does not allow for a reservation of the geographical name to the trade mark holder(s).

The research that we conducted shows a limited use of trade mark laws which can be explained by a number of factors including the lack of understanding from relevant stakeholders of the importance and usefulness of IP protection. Other elements, such as specific requirements and costs with regard to the registration procedure but also the enforcement of trade mark rights have a deterrent effect.

5. Analysis of existing *sui generis* GI schemes' provisions at the national level

Sui generis legal frameworks for the recognition and/or protection of non-agricultural GI products are available in several countries covered by this study. We have identified a large panel of different instruments which are used to recognise and/or to protect non-agricultural products bearing a geographical name. A detailed analysis of these schemes shows that there are important differences when it comes to key elements such as the geographical scope, the GI definition(s), the recognition/protection procedures, the extend of the protection granted and the costs associated to it. This is explained in the sections below.

A large panel of legal and regulatory frameworks used at the national level

Among the 31 countries, 14 have a general (or comprehensive) national GI law for the protection of non-agricultural products. 7 countries have a specific law which protects or recognises a specific sector or a specific product. In 2 countries, Belgium and Spain, there is a regional regulation which provides for the recognition or protection of non-agricultural products bearing a geographical name at the regional level.

Table 7: List of countries where a national *sui generis* GI legislation exists

Country	General GI law	Specific Law
Austria		
Belgium	X (regional level)	
Bulgaria	X	
Cyprus		
Czech Republic	X	
Denmark		
Estonia	X	
Finland		
France	X	X (laws on enamels, tin products and textile products)
Germany	X	X (Solingen knives)
Greece		
Hungary	X	
Iceland		
Italy		X (law on ceramics)
Latvia	X	
Liechtenstein		
Lithuania		
Luxembourg		
Malta		
The Netherlands		
Norway		
Poland	X	
Portugal	X	X (Bordado da Madeira)
Romania	X	
Slovakia	X	
Slovenia	X	
Spain		X (regional level ³⁵)
Sweden		
Switzerland	X	X (Swiss watches)
United Kingdom		X (Harris Tweed)
31 countries	14 countries	7 countries

Source: Insight consulting. The countries highlighted are contracting parties to the Lisbon Agreement.

³⁵

This is a *sui generis* GI law on the protection of handicrafts from the region of Murcia

The countries highlighted in grey are members of the Lisbon Agreement for the protection of appellation of origin and their international registration is administered by the World Intellectual Property Organisation (WIPO). Romania and Spain signed this agreement but it has never come into force. The countries, which are members of the Agreement, provide a large scope of protection for appellation of origin.

All these schemes can be broadly divided into two groups: those that provide for the recognition of some non-agricultural GI products and those which grant intellectual property protection to these products through a horizontal approach.

1. Sui generis tools dedicated to the recognition of specific non-agricultural GI products

There are two categories of legal instruments: the ones which promote or protect the origin of a type of product and the ones which define and/or protect a non-agricultural product bearing a geographical name. You will find below a presentation and an analysis of these laws.

a. Specific laws that promote or protect the origin in a given sector

In the context of the study, we have identified regional and national laws which provide for recognition of the origin of certain types of products:

- Spanish regional laws on crafts.
- Italian law on ceramics.
- French decrees on enamels, tin products and textile products.

I. Spanish regional legal frameworks on crafts

The concept "craft" has evolved diversely a long history and has adopted different definitions at international, European and national levels. Today, the definition is still heterogeneous and there is no unified approach to what kind of economic activities can be considered as artisanal activities. Article 130.1 of the Spanish Constitution of 1978 states that: *"the public authorities shall promote the modernisation and development of all economic sectors, including agriculture, livestock, fisheries and crafts in order to bring the standard of living of the Spanish population."* In addition, Royal Decree 1520/1982, from 18 June 1982, on the management and regulation of Crafts provides: *"For the purposes of this provision, craft is considered the production activity, transformation activity and repair of goods or provision of services through a process where personal involvement is a predominant factor, yielding a final result which is not based on industrial, fully mechanised or on large series production".*

In that decree craft activities are divided into three elements:

1. Artistic craftsmanship.
2. Craft production of consumer goods and complementary to industry and agriculture.
3. Craft services.

In light of this general definition and in the context of our EU Study on non-agricultural GIs, it can be said that not all craft products are non-agricultural GIs while not all non-agricultural GIs are considered craft products in Spain. The crafts legislation in Spain is a *sui generis* tool dedicated to promote and protect the origin of a type of products, some of which may be non-agricultural GI products; but they also promote and protect other non GI products (e.g. those which name is not linked to a specific region/area) while excluding non-agricultural GI products with an industrialised character (e.g. those which have important industrialised phases, such as marble, etc.).

Under the provisions of Article 148.14 of the Spanish Constitution of 1978, the Autonomous Communities may assume competences in crafts, something which has occurred in all Spanish autonomous communities and in the provincial councils of Álava, Guipúzcoa and Vizcaya (Basque Country).

The approach is largely similar from one region to the other although there are important differences when it comes to the definitions of craft, notably: the explicit exclusion of food production in some regions, such as Asturias, Madrid and the provincial council of Vizcaya (Basque Country); The explicit mention of the creation of goods and delivery of services by the majority of the regions, with the exception of Andalucía and Navarra, whose laws do not have a specific definition of the concept of crafts. The current regulation of the Álava provincial council does not mention service delivery although it does mention the creation of goods; limiting the maximum number of non-family workers permanently employed, which must not exceed ten people, with the exceptions of Balear Islands, Castilla-La Mancha, Comunidad Valenciana, Extremadura, Madrid, Murcia, La Rioja and Álava. However, in all regions and other provincial governments, except Aragón and Cantabria, alternatives are set to exceed that maximum number. This has resulted in the multiplicity of definitions that coexist within Spain.

Other aspects like the Crafts Register, the use of the regional name and logo on craft products, and the creation of Crafts centres and other promotional initiatives are similar in all autonomous communities.

In order to understand how regional legislation on crafts works in Spain, we have analysed more in detail the specific law on crafts in the region of Murcia in Spain thanks to the information provided by the public authorities of the Autonomous Community of the Murcia Region.

The specific regional law protecting the products of Murcia- Designation "Artesanía de la Región de Murcia" / "Craftworks of the region of Murcia" -derives from the Law 11/1988 of 30 November on Crafts of the Region of Murcia, developed by the Decree nº 101/2002 of 14 June, which approves the General Regulation developing the Law on Crafts of the Region of Murcia, and the Order of 25 January 2008 of the Regional Ministry of Economy, Enterprise and Innovation, regulating the designation "Crafts of the Region of Murcia" and Order of 28 April 2010 of the Regional Ministry of Universities, Enterprise and Research, amending the Order of 25 January 2008, which governs the designation "Crafts of the Region of Murcia".

To benefit from the protection, producers must be duly registered in the Crafts Register of the Murcia region and request permission to use the name and logo which has been registered as a trade mark by the Region at the national level. Registration is free of charge but producers must bear the cost of labelling their pieces with the logo. The recognition is available for 5 years, after which the registration in the Crafts Register of Murcia will be cancelled if it is not renewed upon request of the interested party and confirmation of its suitability to deserve the accreditation. There is a pre-accreditation control but no systematic controls are performed afterwards.

The authorities of the Murcia region can take measures *ex officio*, i.e. the public authorities can intervene without being asked to in order to guarantee the origin of the products, hence providing producers and consumers with a certain degree of protection against deception and unfair competition. However, in practice, the actions undertaken focus on promotion, rather than protection: sociological and ethnographical studies and surveys to protect crafts, promotion of new forms of craftsmanship and Crafts Centres, support to participation in fairs, exhibitions and contests and the organisation of annual regional awards for unique craftworks. With regard to infringements, there is no system of actions or sanctions in place for the moment, but it is a foreseen issue in the future regional law. Nevertheless, the basic

provisions of this legislation are similar to the ones provided by the general law on unfair competition and consumer deception. It acts as a guarantee seal or mark on the origin of the product without any specific requirements as to the raw materials, knowledge or *savoir-faire*. Two products identified benefit from this law: Belen de Murcia and Ceramics from Totana. The latter is the subject of a case study presented in one of the sections below.

Table 8: Table of the legislation of the different autonomous communities and provincial councils of Spain

AUTONOMOUS COMMUNITY	LEGISLATION ON CRAFTS ³⁶³⁷
Andalucía	Law 15/2005, of 22 December, on Crafts of Andalucía. Existence of a Register: Unspecified legislation.
Aragón	Law1/1989, of 24 February, on Crafts of Aragón. Order09/07/90, on the Craft General Register of Aragon.
Asturias	Decree 88/1994 of 5 December, on Craft Activities in Asturias. Existence of a Register: Unspecified legislation.
Balear Islands	Law4/1985, of 3 May, on the Management of Crafts. Order 12/03/86, on the Crafts Register.
Canary Islands	Law3/2001, of 26 June, on the Craft of Canary Islands. Decree178/2004, of 13 December, which regulates the Canary Craft Register.
Cantabria	Law 7/1998 of 5June, on Crafts of Cantabria. Existence of a Register: Unspecified legislation.
Castilla y León	Decree74/2006, of 19October, regulating Crafts in Castile and Leon. Order EYE/1665/2007, of 25 September, on the Crafts Register. ORDEREYE/294/2005of 11February, on the use of the guarantee mark "Craft Castilla y León".
Castilla-La Mancha	Law14/2002, of11 July, on Management and Development of Crafts in Castilla-La Mancha. Existence of a Register: Unspecified legislation.
Cataluña	Decree252/2000, of 24 July, on the craft in Catalonia, amended by ORDERCTC/286/2004of 12July. Existence of a Register: Unspecified legislation.
Comunidad Valenciana	Law1/1984, of 18April, on the Management of Crafts. Existence of a Register: Unspecified legislation.
Extremadura	Law 3/1994 of 26 May, on Crafts. Decree179/1994, of 27 December, on the Crafts Register.
Galicia	Law 1/1992 of 11 March, on Crafts. Decree145/93of 24June, regulating the Crafts Register of Galicia.
Madrid	Law 21/1998 of 30 November, on the Management, Protection and Promotion of the Arts in the Community of Madrid. Existence of a Register: Unspecified legislation.
Murcia	Law 11/1988 of 30 November on Crafts of the Region of Murcia. Decree nº 101/2002 of 14 June, which approves the General Regulation developing the Law on Crafts of the Region of Murcia. Order of 25 January 2008, on "Crafts of the Region of Murcia", amended by Order of 28 April 2010.
Navarra	ForalDecree188/88of 17June, on the crafts sector and development of Navarra, amended by Foral Order of 25 August 1992. Existence of a Register: Unspecified legislation.
La Rioja	Law 2/1994 of 24 May 24, on Crafts. Existence of a Register: Unspecified legislation.
Álava (Basque Country)	Regional Order448/89of 12July, which regulates the Craft in its cultural aspect. Regional Order95/2002, of 3 April, on Crafts Register.
Vizcaya (Basque	Unspecified legislation.

Country)	Regional Order894/90, of 4 May, on Crafts Register.
Guipúzcoa (Basque Country)	ForalDecree28/2005, of 10 May, regulating the Crafts of Guipúzcoa. ForalDecree79/1997, of 25 November, on General Register of traditional and folkloric crafts.

Source: Insight Consulting

II. Italian law on ceramics

In Italy, the co-ordinated Text of law no.188/1990 and amendments made with art.44 of law 6.2.1996 no.52 provide the current legal framework for the protection of artistic and traditional ceramics and quality ceramics linked to a place of origin, such as Deruta and Vietri sul mare. At the moment, 33 cities have been recognised as ‘ceramic tradition areas’ under this law for their traditional ceramic production as well as for the know-how of the local craftsmen. The law provides for a definition of artistic and traditional ceramics and quality ceramics and establishes two different registers for their respective protection. The system is governed by the “Consiglio Nazionale Ceramico” (National Ceramic Council), a special body established by the Law which defined a specific code of conduct for artistic and traditional ceramics and quality ceramics production of each area identified on the national territory.

Producers respecting these codes of conduct can use the “national marks”: “ceramica artistica e tradizionale” or “ceramica di qualità”. These marks, established by a decree of the Minister of Industry, Commerce, and Crafts of 26 June 1997 (published in the G.U. n° 153 of 3/7/1997) guarantees the quality and origin of the ceramics in accordance with the product specifications adopted by the 33 Municipalities. The national “Artistic and Traditional Ceramics” mark has to be integrated with the name of the concerned ceramic town. The registration request must be made by each single producer to the Handicraft Commission of the Province having authority on the territory. The request must contain: the legal form, the name and the place of incorporation of the company making such request as well as the geographical denomination for which the protection is requested. A Disciplinary Committee, established for each area of ceramic tradition, is in charge to verify the compliance with the product specifications. The protection is granted for an indefinite period of time, as long as the code of conduct is respected but the authorisation of use requires the payment of an annual fee to be renewed. It must be stressed that the law defines the scope of protection but does not specify the object and the extension of the protection enjoyed by the registered names. This legal shortfall makes it difficult to defend original products from abuse and misappropriations. Therefore, producers seek for additional protection registering trademarks and/or collective marks (at national and /or EU level) in case of groups, associations or collective entities. This is the case of ceramics from Deruta, Faenza and Vietri sul mare.

Indeed, the system seems to have more a promotional purpose than a protection one. The law seems to be more effective as a collective strategy tool to guarantee the origin of a product and preserve the local know-how. Moreover, it is important to note that the participation in the system is not compulsory for ceramic producers (very few are familiar and use the mark). As a result, producers can continue to use the name of their town on the products at sale if that does not mislead consumers. For example, a producer in Faenza who does not want to use the national marks “ceramica artistica e tradizionale di Faenza” or “ceramica di qualità di Faenza”, could use “ceramica di Faenza” in his sales denomination. This fact greatly limits both the interest and the scope of the protection available under the law. Several products identified in the context of this study benefit from this protection, such as Artistic and traditional ceramics from Deruta, which are the subject of one of our case study in Annex II.

For both the specific law of the Murcia region and for the Italian law on ceramics, it is important to stress that any intellectual property protection rely in practice on the (trade) mark legal framework which is not owned by producers.

III. French decrees on enamels, tin products and textile products

A series of French decrees have been adopted to define and protect certain products, mostly agricultural ones, but also non-agricultural products. These are specific product laws which enforce the law on frauds and misuses from 1905, which is considered in France as the first law on appellations of origin. Three types of products are covered: enamels (but not all), textiles and tin products. The laws were adopted to define and protect one type of product, a crucial point for enamels, and to define sales descriptions (i.e. labelling rules). Originally, they mostly benefited agricultural products and wines; very few related to non-agricultural products and most have since been repealed. Three are still in force:

- Decree n°73-357 from 14 March 1974 concerning the enforcement of the Law of August 1st, 1905 on frauds and misuses in products or services related to textiles and textile products (article 18)
http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=C43487BACA838E6D8343A2C04BE44E57.tpdjo08v_3?cidTexte=JORFTEXT000000495103&dateTexte=20120708
- Decree n°76-492 of 28 May 1976 concerning the enforcement of the Law of August 1st, 1905 on frauds and misuses in products or services related to tin and tin products (article 3)
http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19760606&numTexte=03463&pageDebut=03463&pageFin=
- Decree n° 82-223 of 25 February 1982 concerning the enforcement of the Law of August 1st, 1905 on frauds and misuses in products or services related to enamel and enamel or glazed products (Article 5)
http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19820305&numTexte=00773&pageDebut=00773&pageFin=

According to our analysis, it would appear that producers are not even aware of the existence of these laws which provide little more than a general interdiction to mislead buyers (or others according to the Decree on tin products) as to, notably, the origin of these products.

The scope of protection granted by these texts with regard to geographical names is extremely limited. It refers to the protection available under the consumer law. The provisions are similar in the three decrees: prohibition of the use in any form, any indication, any sign, any fancy name, any presentation or labelling likely to create confusion in the mind of the buyer, notably with regard to the origin of the products covered by the decrees. In practice, we found out that the protection available under these decrees is not known by producers. Producers that were contacted by our expert made no reference to them except the representatives of Emaux de Limoges who, interestingly, mentioned it as a legal protection even before referring to the appellation of origin granted to Emaux de Limoges through case law (see more on this in point 2. below). This begs the question as to the interest and scope of the protection as an appellation of origin through case law for this product.

Conclusion: regional or national regulations on specific craft cannot be regarded as providing GI protection. They merely deal with collective strategies to promote or protect local craft industry or specific sectors and go not much further than consumer deception laws. Moreover, these regulations - which are not available to non local producers - rely in practice on other laws to provide protection: a (trade) mark registration or, in the case of the French decrees, the provisions of the consumer law.

b. Specific laws which define and/or protect specific non-agricultural GI products

In the context of this study, we have identified four products which benefit from a specific law that has been adopted to protect them. These are:

- Bordado da Madeira in Portugal
- Swiss watches
- Harris Tweed from United Kingdom
- Solingen knives from Germany

The aim of these specific laws is to facilitate the promotion, the protection and the preservation of an authentic, typical product, establishing rules of production and protecting the reputation of these products. The product's origin, quality but also its history and notoriety are protected. These decrees grant recognition for an indefinite period of time to the products' name and the protection is granted free of charge.

The laws relating to Harris Tweed and Bordado da Madeira are the most extensive ones as they include provisions on:

- Production requirements
- Definition of the geographical area
- Labelling
- Establishment of a specific organisation to manage the production sector (in charge of the management, development and promotion)
- Controls providing this organisation with responsibility over controls.

The Solingen Decree and related act define the geographical origin, the main steps of manufacturing for cutting equipment, the types of materials which are suitable for the appropriate manufacturing and processing, as well as other requirements regarding the hardness and roughness of the products. It is forbidden to create the impression towards customers that a good was made in Solingen if it was not. In such a case, it is not allowed to mark the goods with "Solvingen", neither to refer to "Solvingen" on the packaging and advertising.

However, these three laws do not contain legal provisions on the intellectual property protection of the names as such. They can be considered as product specifications. As a result, producers must rely on other legal means of protection available, i.e. unfair competition and consumer deception laws, trade mark law and/or *sui generis* GI law. Harris Tweed, Bordado da Madeira and Solingen have all secured protection through registered trade marks at the national, Community and/or international level. These trademarks are semi-figurative ones, they protect the special design or kind of "seal/logo" which may appear in all products to guarantee its origin and quality. These logos prove useful when it comes to secure protection of IP rights. Besides the trade mark, "Bordado da Madeira" also enjoys *sui generis* protection as a registered appellation of origin under the Regional law, Decreto Regulamentar Regional n° 11/86/M³⁸, published in 28/06/1986, as well as under chapter VIII of the Portuguese industrial property code.

The Federal ordinance regulating the use of the name "Swiss" for watches differs from the specific laws mentioned above on two aspects. First, it defines clearly production steps that must be done in Switzerland for a watch to benefit from the GI protection: a Swiss watch must meet three criteria: it must have a Swiss movement, and must be assembled and inspected by the manufacturer in Switzerland. Second, it contains several provisions on the

³⁸ <http://dre.pt/pdf1sdlp/1986/06/14600/15391540.pdf>;

extent of protection granted under the ordinance: protection of the denomination against usurpation and evocation, protection in translation. In case of infringements, some penalties are also foreseen. As such, it truly provides IP protection to the name “Swiss” for watches. However, it must be stressed that the legal basis for the adoption of this ordinance is the federal Law on the Protection of Trademark and Indications of Source.

Concerning the use of these denominations, “Bordado de Madeira” or “Harris Tweed” producers are controlled by special boards in charge of the management and promotion of the product. For “Swiss watches”, there is a collective organisation of producers, the Federation of the Swiss Watch Industry, which is a private, professional, and non-profit association. It plays a double role in the protection of this indication of geographical origin: advising companies on the lawful markings for watches and movements according to the Federal Council's Ordinance governing the use of the word "Swiss" for watches and acting against companies which illegally use this indication. As far as “Solingen” knives, there is no collective organisation of producers. The use of the denomination is left without specific control, although the Chamber of Commerce and Industry for the Wuppertal-Solingen-Remscheid which is the holder of trade mark registration may ask a company using the name “Solingen” for the proof of fulfilling the requirements.

Conclusion: only the Swiss watch ordinance can be considered as a legal instrument which provides for IP protection. The three other specific laws are in fact product specifications; the protection of their name can only be secured through other IP legal means.

For more detailed information on each of these 4 products, please refer to the section on case studies in Annex II which includes a thorough analysis of each of them.

2. Horizontal legal instruments protecting non-agricultural GI products

We have identified 14 countries which have a *sui generis* law to protect non-agricultural products' geographical indications. One of these laws applies only at the regional level, in Belgium (Wallonia). The others apply at the national level and are either a stand-alone act or a dedicated section of the trade mark or another IP related law.

France presents a unique case as non-agricultural products can only be recognised as appellations of origin by case law. Two options exist: civil or administrative proceedings. This procedure was used 4 times before the 1950s'. However, as it proved difficult to convince a judge to recognise an appellation of origin and due to a lack of knowledge by the stakeholders that this approach still exists, this procedure is no longer used. One can therefore wonder whether it is useful to maintain these provisions and whether they meet stakeholders' expectations.

All *sui generis* legal frameworks provide for *ex parte* protection and a large proportion of them (10 out of 14) for *ex officio* protection.

Table 9: Type of protection under the *sui generis* legal frameworks

Country	GI <i>sui generis</i> stand-alone law	Part of trade mark law or other law	<i>Ex officio</i> protection	<i>Ex parte</i> protection
Belgium	X (regional level)		X (regional)	X
Bulgaria		X	X	X
Czech Republic	X		X	X
Estonia	X		X	X
France		X (part of consumer code + AO only)	X	X
Germany		X	X	X
Hungary	X		X	X
Latvia		X		X
Poland		X		X
Portugal		X	X	X
Romania		X	X	X
Slovakia	X			X
Slovenia	X	X	X	X
Switzerland		X		X
14 countries	6 countries	9 countries	10 countries	14 countries

Source: Insight consulting

In the pages below, we will be looking at the key elements of these *sui generis* GI systems seeking to highlight the similarities and main points of differences which exist.

a. Several GI definitions

The study of *sui generis* legal frameworks shows that 3 types of GI definition are being used:

- Appellation/designation of origin
- Geographical indications
- Indication of geographical origin/Indication of source.

You will find below the different definitions present in the 31 countries covered by this study.

Table 10: Definitions included in the *sui generis* legal frameworks

Country	Appellation of origin	Geographical indication	Other
Belgium			<ul style="list-style-type: none"> Local appellation of origin Walloon appellation of origin
Bulgaria	X		Indication of source
Czech Republic	X	X	
Estonia		X	
France	X		
Germany			Indications of geographical origin
Hungary	X	X	
Latvia			Indications of geographical origin
Poland	X	X	
Portugal	X	X	
Romania		X	
Slovakia	X	X	
Slovenia		X	
Switzerland			Indication of source

In grey: countries that are members of the Lisbon Agreement

Source: Insight consulting

The countries using the appellation of origin definition are the ones which are member of the Lisbon Agreement, except Poland, even if the definition is not the same in all these countries. Most of them also have the “dualism” approach: appellation of origin and geographical indication. There are two exceptions. France recognises only appellation of origin for non-agricultural products. Bulgaria adopted a new Trademarks and Geographical Indications Law which entered into force on 15 December 1999 which forced all existing registered appellations of origin to apply for re-registration as indication of source.

In non Lisbon member countries, except in Poland, the concept used is the geographical indication or the “indication of geographical origin”.

This last concept does not have the same meaning in all countries:

- In Germany, it corresponds to an indication of source: geographical names or other indications or signs which are used in the course of trade to identify the geographical origin of the goods and services.
- In Latvia, the definition is close to the GI definition because it covers the geographical name or other indication used to indicate the geographical origin of the goods, including the characteristics and features which are attributable to this origin.

As for the geographical indications definitions, they all correspond to the one given by the TRIPs Agreement, Article 22.1: “*Geographical indications are indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.*”

However, some countries (the Czech Republic, Estonia, Hungary and Portugal) complete the definition with a specific requirement on processes which have to be carried out in the defined geographical area. Thus, these definition insist on the “production, processing or preparation” to take place in the defined geographical area. In these cases, the definition is similar to the Protected Geographical Indications (PGI) one of the EU Regulation (EC)

No510/2006 relating to the protection of geographical indications and designations of origin for agricultural products and foodstuffs (article 2).

As for the appellation of origin concept, most of the definitions are similar to the PDO definition of EU Regulation (EC) No 510/2006, i.e. *“Designation of origin’ 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 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, and the production, processing and preparation of which take place in the defined geographical area”*.

The only exception is France which provides, in its Consumer Code, a definition inspired by the Lisbon Agreement: *“An appellation of origin is constituted by the name of a country, of a region or of a locality which serves to designate a product originating therein and the quality or characteristics of which are due to the geographical location, comprising natural and man-made factors”*.

The Swiss Law on the Protection of Trademarks and Indications of Source provides a broad definition of indication of source which includes a whole range of criteria, such as properties (characteristics), quality, reputation. It states that an indication of source is any reference, direct or indirect, to the geographical source of products or services, including references to properties or quality in relation to the source. Geographical names or signs which are not considered by the circles concerned to be a reference to the source of products or services are not indications of source within the meaning of the LPM (Article 47.1, LPM).

You will find below, the main criteria identified in the AO and GI definitions:

- Appellation of Origin :
 - o geographical name or sign (but not only), designating a product,
 - o specific quality and characteristics of the product are linked to its geographical origin
 - o production, process and preparation of the product must take place in the geographical area.
 - o combination of human and environmental factors (so “terroir” concept) required.
- Geographical Indication:
 - o geographical name or sign (but not only), designating a product
 - o quality, characteristics or reputation may be attributable to its geographical origin
 - o production, process or preparation must take place in the geographical area.

Overview of the definitions used at the present time in the 14 countries which have a *sui generis* legal framework that applies for the protection of non-agricultural GI products:

- Indication of source : 2 countries
- Appellation of origin only : 1 country and one region
- Geographical Indication only : 4 countries
- Appellation of origin and geographical indications : 5 countries

It is interesting to note that traditional denominations, such as the Finnish product Kantele, are covered in all countries.

In conclusion, it must be noted that there is no harmonised definition used in the countries where a sui generis GI system is available. On the contrary, the definitions vary significantly; some being very broad, some very narrow. As a result, stakeholders have to deal with local requirements which can be very different from one to another. Furthermore, a protected GI name in a country under a sui generis law

might not be able to secure similar protection in another country due to the fact that it would not meet the GI definition, for example, a product protected as an indication of source in a country might not be protectable as an appellation of origin in another country. The lack of harmonised approach on the GI definition arguably creates additional barriers to the protection of non-agricultural products bearing a geographical name in the EEA countries and Switzerland.

b. GI protection: procedures and competent authorities

The majority of *sui generis* GI systems identified in the context of this study are managed by the Intellectual Property Offices (see table below). When the Intellectual Property Office is competent, the GI will be registered, except in Switzerland where the legal framework offers a unique protection as a GI without registration.

In the context of the Swiss Law on the Protection of Trademarks and Indications of Source (LPM), protection is afforded to all the names of products provided that there is a link between the product and the place and the recognition of that relationship by the circles concerned. Only “Swiss made” for watches is protected within the context of a special ordinance whose promulgation is provided for by the LPM (Article 50), although other products could benefit from a similar ordinance. In Switzerland, registration is not a prerequisite to secure the automatic protection of a GI name: the law does not require any recognition or registration procedure and, as a consequence, there is no procedural fee. It should be pointed out that an indication of source can also be registered as an “established mark” (whether in the form of an individual mark, a collective mark or a guarantee mark), provided that it has established itself on the market as the distinctive sign of a particular company. Such marks are registered the Institut Fédéral de la Propriété Intellectuelle (Federal Intellectual Property Institute, hereinafter: the Institute) of the Federal Department (Ministry) of Justice and Police.

When IP offices are not in charge of the GI registration or protection for non-agricultural products, for example in Belgium, France and Germany, a judge or an administrative authority (Ministry, or regional authority) are the competent authority. They take a decision with regard to the recognition or not of a GI. Concretely, this means that the procedure and the assessment of the application will not be the same as under the registration procedure conducted by IP offices.

Table 11: GI Competent authority under the *sui generis* legal frameworks

Country	IP Office	Other
Belgium		Control body + Regional wallon executive + Specific GI commission
Bulgaria	X	
Czech Republic	X	
Estonia	X	
France		Judge
Germany		Federal Ministry of Justice
Hungary	X	
Latvia	X	
Poland	X	
Portugal	X	
Romania	X	
Slovakia	X	
Slovenia	X	
Switzerland	X	

Source: Insight consulting

When IP offices are in charge of the registration under a *sui generis* GI system, GIs applications are in general dealt with in the same way as any other intellectual property tools, such as trademarks. In all countries (except in Switzerland when there is a no registration requirement), an application for GI protection must be submitted for registration and should be based on a specification which describes the product. As you will see below in point c), the content of these specifications differs from one country to the other.

Many national regulations do not foresee an opposition in the context of the registration procedure to allow interested third parties to give their opinion on the GI protection request: Belgian, Czech, Estonian, Hungarian, Slovak and Slovenian *sui generis* legal instruments.

Unfortunately, there are few GI Registers foreseen under the *sui generis* regulations identified, which makes it difficult to find clear lists or databases of non-agricultural GIs product already registered with these offices. Interestingly, it would appear that it takes less time for the registration of non-agricultural GIs under these tools than to register some agricultural GIs in some countries.

In France, appellations of origin can be recognised only by case law. Two options exist: civil or administrative proceedings. This procedure was used 4 times before the 1950s'. Because of the difficulty for a judge to recognise an appellation of origin and the lack of knowledge by the stakeholders on this kind of protection, this procedure is no longer used.

In Germany, the procedure is not very clearly defined in the law, but Section 137 of the Trade Mark Law authorises the Federal Ministry of Justice to lay down by legal ordinance detailed provisions concerning individual indications of geographical origin, including the area of origin, the quality or other properties of the goods to which the geographical indication applies, and the way the indication is used. The only legal ordinance which has been passed concerns steel from the town of Solingen.

In Belgium, the regional Walloon Law provides a protection granted by certification bodies which get an accreditation from executive administrative bodies. No provision with regard to possible opposition is foreseen in the law.

The table below provides an overview of the content of the legal provisions by country.

Table 12: Content of the legal provisions by country

Country	Recognition	Registration	Opposition Procedure	Existence of a register	Specific Law protecting a product	Case Law
Belgium	X					
Bulgaria		X	X			
Czech Republic		X		X		
Estonia		X				
France	X		X			X
Germany	X	X	X		X	
Hungary		X				
Latvia		X	X			
Poland		X	X	X		
Portugal		X	X			
Romania		X	X	X		
Slovakia		X				
Slovenia		X				
Switzerland			X		X	

Source: Insight consulting

Conclusion: the analysis of the current legal schemes shows a certain degree of coherence as far as the competent authorities and procedures are concerned. Intellectual property offices play a key role and registration of the GI name. However, procedures also are not as consistent, notably when it comes to the availability of an opposition procedure and the existence of a GI register.

c. Application requirements: no consistency

In this section, we will be looking at the nature of the application and of the requirements for GI protection established under the different *sui generis* legal frameworks.

- **Who can apply for protection?**

There are several types of applicants recognised by the national provisions:

- A single producer or a group of producers who have an activity in relation to the product for which the GI is applied
- Only an association or group of producers
- Most of the time, a single producer is allowed to apply if he gives the evidence that he is the last one producing the product.
- In Slovenia, chambers, larger local communities or State authorities can apply too

In Estonia, the definition of the applicants is quite different. They can be:

- a person who acts as the producer, processor or preparer for sales of the good designated by the indication, or as the renderer of the service in the geographical area specified in the indication; or
- an association of consumers, or
- a competent authority of the country of origin of the good or service (a list of such authorities shall be approved but the Estonian Government).

Estonia does not recognise the association of producers as legitimate applicant for GIs.

In Romania, it is possible for different groups of producers to apply for the protection of the same GI name. So a GI protection can be available for several entities.

In France, there is no definition on the nature of the applicant. We can suppose that the judge would assess the legitimacy of the person who claims for the appellation of origin recognition.

- **What are the key requirements?**

There is no consistency with regard to the requirements for a GI application in the studied countries, except for formal conditions such as the name of the applicant(s), the product covered, the payment of the fees, etc. The requirements are similar to the ones used for the registration of IP and distinctive signs.

The table below provides a comparative assessment of the different requirements.

Table 13: Information required for GI protection application in each country

Country	Specification	Link with the geographical area	Reputation	Controls	Raw materials
Belgium	X			X (certification)	
Bulgaria	X	X	?		X not compulsory
Czech Republic	X	X	X	X	
Estonia	X	X	X		X not compulsory
France		X	X		
Germany					
Hungary	X	X	X		X not compulsory
Latvia	X		X		X not compulsory
Poland	X	X		X not compulsory	
Portugal	X	X			
Romania	X	X	X	X	
Slovakia	X	X			
Slovenia	X	X	X	X	X
Switzerland		X	X	X not compulsory	X not compulsory

Source: Insight consulting

The main elements required are a product specification and a link to a defined geographical area. The reputation is only quoted in the definition and there is no specific criteria established to determine whether or not a product has acquired a specific reputation. Control and raw material conditions are not required systematically and when required, they are often not compulsory.

Germany is one exception, as there is no formal system or procedure for recognition of geographical indications in German law. In case of conflict, a court will decide on the basis of admissible evidence. The only criterion for determining whether a sign is to be protected as a geographical indication is whether the relevant sectors of the public in Germany understand it as indicating the geographical origin of the goods or services to which it applies.

Switzerland is another exception due to the fact that the protection for geographical indications is automatic and does not require any recognition or registration procedure. As a result, the "source of a product" is determined by the place of manufacture or by the source of the basic materials or components used. Additional conditions may be imposed, such as the observance of customary or locally prescribed manufacturing principles or quality requirements (Articles 48.1 and 48.2, LPM). In each specific case, the criteria must be defined in terms of their influence on the reputation of the products (Article 48.3, LPM).

In some countries, the requirements are far reaching, such as in Slovenia where the request for the registration of a geographical indication (under Article 104(2) of the Industrial Property Act) must be accompanied by a specification including, in particular: (a) indication to be registered as a geographical indication; (b) indication of the good to which that geographical indication relates; (c) a description of the good including the raw materials and principal physical, chemical, microbiological, organoleptic or other characteristics of the good; (d) indication of location or region, including borders; (e) a description of the method of obtaining the good and, if necessary, the authentic and unvarying local methods; (f) details bearing out

the link between the good and the location or region; (g) details of inspection structures; (h) labelling details.

In general, the product's specification contains production requirements and the explanation of the quality or characteristics of the product. Sometime, the provisions copy the specification content as referred on the article 4.2 of the Regulation (EC) No 510/2006 on the protection of PDO and PGI (e.g. in Romania). Except Slovenia, no country provides for specific requirements with regard to raw materials used in the production. However, the appellation of origin definition may link the registration of the appellation of origin to the presence of raw material in the geographical area of production (cf. paragraph on definitions). In France, for instance, some registration applications made through legal proceedings, as for Nevers China or Limoges China, have been rejected because the raw material to make the specific china did not come anymore from the geographical area of Nevers or Limoges. So, in France, it is possible to state that the judges will take the raw material issue into account to recognise an appellation of origin.

As far as the definition of the geographical area is concerned, there is no consistency in the approach taken by each country. Some countries require that an administrative boundary is provided, others ask for a specific definition of the geographical indication area.

When there is a possibility to apply for the registration of an appellation of origin, the definitions underline the necessary link between the production and the geographical area understood as the combination of natural and human factors. In this case, the concept of "terroir" is present. However, there is no condition laid down to assess this "terroir". Some countries will assess the existence of the geographical area due to the local, constant and loyal practices (ex: Judges in France, Portugal and Slovakia).

It is important to note that the definition of the geographical area is systematically required when a GI is applied for registration. In several Member States, such as Bulgaria, the Czech Republic and Romania, a competent authority of the country must certify the geographical the geographical area of production. IP offices ask for a statement of evidence from state administration body in the relevant territory in which the product production, processing and preparation takes place. This statement certifies that the establishment is situated on the given territory and that the applicant produces or processes the products. So there is a need for an official confirmation that the applicant produces, transforms and prepares the relevant goods in the delimited geographical area.

Portugal has also established specific conditions regarding the definition of the geographical area. If the boundaries of the locality, region or territory to which a particular appellation or indication belongs to have not been demarcated in a legal statute and if no other method has been provided for this purpose, the boundaries shall be declared by the officially recognised bodies responsible for the respective area and field of production, which shall take into consideration *bona fide* and established practices, in conjunction with the higher interests of national or regional economy. Unfortunately this officially recognised body does not exist and all the GI applications cannot be processed. GIs can thus not be registered.

Conclusion: the analysis of the existing sui generis legal framework available for the protection of non-agricultural GI products shows that there is no consistency when it comes to who can apply and with regard to the requirements that have to be met to secure protection. Some countries have not set up any specific requirements beyond meeting the general GI or AO or DO definition, others have a very detailed and extensive list of requirements.

d. Comparative analysis of the scope of protection available under the different sui generis legal instruments

In all *sui generis* legal frameworks studied, products or services are covered by the protection. In some cases, the law states that an additional protection is granted to wine in accordance with article 23 of the TRIPs Agreement. Traditional denominations are covered in all countries.

Concerning the duration of protection, most of the countries provide an unlimited protection for GIs, except in Romania where GI registration is valid only for 10 years, as it is the case for trademarks.

We have found out that the scope of protection is linked to the country's membership of the Lisbon Agreement and to the impact that the EC regulation on PDO and PGI for agricultural products and foodstuffs has had. So, in general, non-agricultural GI products benefit from a wide legal protection.

The main characteristics and rules of protection identified in the different regulations are the following ones:

- The protection confers the GI holders the exclusive right to use the GI name.
- Registered geographical indications are protected against :
 - a) any direct or indirect use of registered indication for the goods to which the registration does not relate, if such goods is comparable with the goods registered under this indication
 - b) any misuse, imitation or suggestion, even if the real origin of goods is stated or the indication; protected indication is translated or accompanied by terms like "sort", "type", "method", "style", "imitated" or by similar terms
 - c) any other false or deceptive data about geographical origin, nature or basic qualities of the goods stated on inward or outward packing, promotion materials or documents relating to respective goods, as well as against the use of transportation packing capable to evoke a false impression about its origin
 - d) all other conduct which could lead to deceptive assumptions about true origin of goods.

Most of the legal frameworks protect against evocation³⁹ but not all of them protect the GI name in translation. The countries which are members of the Lisbon Agreement do so - that is Bulgaria, the Czech Republic, France, Hungary, Portugal and Slovakia – although some of these countries have not integrated specific provision in their national regulation. This means that the protection of GI names in translation is provided within the Lisbon Agreement obligations and not in other cases. The protection in translation is also granted under the Belgian regional law, the Estonian *sui generis* laws and the Swiss *sui generis* system.

³⁹

The European Court of Justice has defined evocation in the case C-87/97 :

The concept of evocation covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected. It is possible for a protected designation to be evoked where there is no likelihood of confusion between the products concerned and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue

See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997CJ0087:EN:HTML>

All the *sui generis* legal instruments for the protection of GIs include a reference to the impossibility to register a generic name⁴⁰. However, very few contain a definition of what a generic name might be (the Czech Republic, France, Germany, Hungary and Slovakia). Article 126 (2) of the German Act on the Protection of Trade Marks and other Symbols provides that: *Names, indications or signs within the meaning of subs. 1 which are generic names shall not be eligible for protection as indications of geographical origin. Designations shall be regarded as generic names which contain an indication of the geographical origin within the meaning of subs. 1 or are derived from such an indication, but which have lost their original significance and serve as the name of goods or services or as designations or indications of the nature, quality, variety or other properties or characteristics of goods or services*. Article 2 f) of the Slovak Republic Act no. 469/2003 on designations of origin for products and geographical indications for products states that: *“generic name shall mean general name of a product which has become common name of a product despite that it refers to specific place, region or country where such product was originally produced or placed on the market”*

Most of the *sui generis* legal frameworks protect prior rights such as already registered trade marks. Owners of previous trade marks containing a geographical indication can defend their rights, provided that certain conditions are respected: the trade mark must be filed or registered in good faith before the protection of the GI. However, the Czech and Portuguese laws do not have such provisions and the French and Latvian laws do not provide clear provisions in this regard in the context of the registration procedure. As a result, the possibility for prior rights' holders to challenge the protection appears to be available only after the GI registration and through court action. We have not identified specific provisions with regard to the possible coexistence between prior trade marks and GIs, although this point is under discussion in the context of a new draft law in France (see below, section 3).

Not all *sui generis* systems provide for an *ex officio* protection. It is available only under the regional Belgian law, in Estonia, France and Romania. In Switzerland, if an offender is making a business of the usurpation of a GI, he can be prosecuted *ex officio*.

⁴⁰ A generic name can be defined as follows: “Names that have become generic, i.e. those that, although linked to the place or region where the product was initially produced or sold, denote the common name of a product in the EU (such as Dijon mustard) may not be registered.” See: http://europa.eu/legislation_summaries/internal_market/businesses/intellectual_property/l66044_en.htm

Table 14: Overview of the sui generis protection scope per country

Country	Protection against usurpation	Protection against evocation	Protection against Abuse of Notoriety	Genericity definition	Protection of the name in translation	Protection of prior rights during registration procedure	Ex officio protection available
Belgium	X	X			X		X
Bulgaria	X	X	X		X	X	
Czech Republic	X	X	X	X	X		
Estonia	X		X		X	X	X
France	X	X	X	X	X		X
Germany	X		X	X		X	
Hungary	X	X	X	X	X	X	
Latvia	X		X				
Poland	X	X	X		X	X	
Portugal	X	X	X		X		
Romania	X	X	X			X	X
Slovakia	X	X	X	X	X	X	
Slovenia						X	
Switzerland					X	X	X*

Source: Insight consulting

* under certain conditions

In Germany, Portugal and Latvia, the *sui generis* instruments available for the protection of non-agricultural products contain specific provisions with regard to the protection of notorious geographical indications.

Conclusion: the protection provided for a geographical indication under the sui generis legal laws is for an indefinite in duration (except in Romania). This is an important point of difference with the duration of trade mark protection granted for a 10 year period. Most laws include requirements as to the protection of prior rights, but none on the possible coexistence between GIs and earlier trade marks. Very few provide for a definition of genericity although the principle that a generic name cannot be protected as a GI applies in all these texts. Moreover, under these legal schemes, non-agricultural GI products benefit from a wide legal protection which goes beyond the protection granted to trade mark names. They guarantee an exclusive right on the use of the name but also allow for the protection against any direct or indirect use, any misappropriation even if the real origin of goods is stated or the indication and when the name accompanied by terms like “sort”, “type”, “method”, “style”, “imitated” A large majority also provide for the protection of the GI name in translation. Finally, another interesting feature is the availability of an ex officio protection in some sui generis laws.

e. Costs associated to the protection: overview

The cost of protection varies significantly not only from one *sui generis* legal instrument to another, but also from one country to another. In Switzerland, as protection of the GI name does not require its registration, protection is free of charge. In France, as AO status can be obtained through Court decision, legal costs have to be taken into account. In some countries, the registration cost may be accompanied by a lawyer or IP representative service. In Germany, it is unclear whether a GI status can be secured free of charge. As for the regional *sui generis* law in Spain, there is no cost of registration/recognition for users who are not the right holders of the figurative trademark (logo) registered at the national level, but

they must pay to use the logo. It seems to be similar in the UK under the Harris Tweed Act. With regard to the Italian ceramic law, it would appear that protection is cost free as the mark was adopted through a national decree but that the right to use the mark is expensive for producers (see outcome of the consumer survey in a section below). It is interesting to underline that as the responsibility for GI protection lies mainly with IP offices, a registration fee is present.

Table 15: Table of GI registration costs

Country	Registration Costs	Other
Belgium	0€	Certification body
Bulgaria	100€	
Czech Republic	160€	
Estonia	102€	
France	0€	Legal proceedings + lawyer costs
Germany	0€	
Hungary	340€	
Italy	0€	Annual fee to use the mark + control fees
Latvia	86 to 216 €	
Poland	68 to 227 €	
Portugal	101€ to 202€	
Romania	400€	
Slovakia	66€	
Slovenia	0€	
Spain	0€	Cost for the use of the logo on products
Switzerland	0€	
United Kingdom	0€	

Source: Insight consulting

Conclusion: at the present time, the protection of non-agricultural products' name as a GI often goes through a registration procedure (except in Switzerland) which requires the payment of a registration fee.

3. Ongoing discussions at the national level on the future of sui generis legal frameworks available for the protection of non-agricultural GI products

a. Project law pending in France

On 1st June 2011, the former French Government, through its Secrétaire d'État auprès de la ministre de l'économie, des finances et de l'industrie, chargé du commerce, de l'artisanat, des petites et moyennes entreprises, du tourisme, des services, des professions libérales et de la consommation decided to table a draft law to broaden the GI scope for non-agricultural products in France. Indeed, the current regulation on appellation of origin is unknown and difficult to use. First, because it requires legal proceedings (so a possible lengthy and costly procedure) and second because an important number of products cannot be recognised as an appellation of origin since the raw materials do not come from the defined geographical area.

New legal provisions have been included in the **Draft Law n°4141** modified by the Senate to reinforce rights, protection and information of consumers to allow for the recognition of geographical indications for non-agricultural products. The second reading of this law is pending at the Parliament. At the time of writing this study, we do not know whether the new Government wishes the text to be adopted.

The Article 7 of this draft legislation on the protection of non-agricultural GIs provides for the extension of the geographical indication system to non-agricultural products. The future system would cover the protection of Appellation of origin as defined above (recognised by case law) as well as geographical indications. GIs would be recognised but would not be registered. There is no information provided yet on the competent authority which would deal with the recognition request.

Application for GI recognition would have to contain a product specifications including:

- The name of the product
- The definition of the geographical area
- The quality, reputation or characteristics attributable to the geographical origin
- The production process
- The control system

An opposition procedure is foreseen (public inquiry) before any recognition could be granted. Local authorities would be informed on the use of their geographical name when a trademark or a GI is applied for (right of opposition). Moreover, the coexistence principle between a prior trademark and a GI is also foreseen.

If adopted, the procedure of recognition of GIs would be integrated in the Code of Intellectual Property and decisions taken by decree.

The legal provisions contained in the Code of Consumers providing for the protection for appellations of origin are not extended to geographical indications by this draft law. So the protection provided to AO in the Code of Consumers would not be available to GIs for non-agricultural products.

The new French government decided to withdraw this draft law. However, the opposition party decided to table a new draft law in October 2012⁴¹.

The Ministry of Economy and Finances – Social Economy and Consumption is the competent Ministry on this issue.

b. Reform of the IP Law in Estonia

According to our information, Estonia is working on a review of its Intellectual Property Law which will touch upon the GI Protection Act. Experts involved in this work have indicated that due to the lack of interest for GIs, this Act could be redrafted completely and included as a subsection in the general IP / trade mark Act.

c. Ongoing discussions in Switzerland

There are ongoing discussions in Switzerland on the “Swissness” concept. The aim is to strengthen the protection of “Made in Switzerland” designations and the Swiss cross. The project includes a more precise definition of the requirements attached to the Swiss indications of source for products and services (in particular, minimum rates of raw material and/or value originating in Switzerland), as well as the establishment of a register for GIs for non-agricultural products and the creation of a new category of trademarks which would be available for GIs already registered or recognised as such. The Legal Commission of the National Council has approved the draft revision of the law on trademarks and the bill to protect armorial bearings (Swissness project). On 15 March 2012, the plenary session of the National Council approved the Swissness project by 120 votes to 37 for the revision of the law on trademarks. The project now goes before the Council of States, in the first instance its Legal Affairs Commission.

Conclusion regarding sui generis GI systems: 14 countries have sui generis legal instruments available for the protection of non-agricultural GI products. All of them can differ significantly with regard to registration requirements and procedures, but also when it comes to the scope of protection provided. Out of all the national IP systems analysed, these sui generis GI systems appear to offer the most extensive IP protection to producers. However, the very fragmented and diverse approach makes it very difficult for producers to use them and does not provide consumers with strong guarantees against deception.

It is therefore interesting to look into the pros and cons of an approximation of the 31 countries’ legislation and, possibly, the creation of a unitary system of protection at the EU level could mitigate these problems. This could indeed help to harmonise or even standardise the national legislation which are today very different and ensure that the same legislation applies to all the stakeholders of the sector. For a more detailed analysis of the pros and cons of such an approach, please refer to part V of this study.

⁴¹ See: report on the issue: <http://www.assemblee-nationale.fr/14/rapports/r0458.asp>

Global overview of the sui generis schemes' analysis

A large panel of legal and regulatory *sui generis* frameworks used at the national level, some of them cannot be considered as providing protection of IP rights.

Only one product specific law, the Swiss watch ordinance provides for a true protection of the GI name. The others have to rely on other legal instruments mainly the trade mark regime.

There is no homogenous definition of GIs.

Most of the countries protect geographical names but also traditional names as GIs.

Most of the countries *sui generis* legal frameworks cover goods and services.

GI protection requires GI registration in most of the countries with a *sui generis* GI system
As a result, the competent authority is often the IP office of the country

Few countries have created a GI register, so it is difficult to find a list of non-agricultural GIs already registered or recognised.

GI registration is rarely free of charge.

There is no consistency when it comes to who can apply for registration.

Significant differences exist with regard to the registration requirements:

- The link with the geographical origin can be regarded as the most important condition for the GI application.
- Reputation does not appear clearly as a requirement even if it is part of the GI definition.
- In most Eastern European countries, a special document must be provided to give evidence of the link between the product and the producers with the geographical area.
- In the procedure of recognition or registration, some countries will appreciate the constant, local and loyal practices or use.
- Most of the time, the application requires the definition of geographical area which can be done through an administrative delimitation and a product specification including the production process and characteristics and quality of the product.
- Raw material conditions do not appear systematically, nor the obligation to control (bodies).

There are also discrepancies when it comes to the registration or recognition procedure.

Opposition procedure is often available under the *sui generis* legal instruments but not always.

Provisions with regard to the protection of prior rights and the need to verify whether or not a term is generic are often part of the *sui generis* legal instruments.

The extent of the protection granted under *sui generis* GI systems goes beyond what the trade mark regime offers. They often provide for a comprehensive protection against Direct or indirect commercial use of a registered name for products not covered by the registration, Misuse, imitation or evocation of the name on a non registered product. This often 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 used in translation and false or misleading information about the origin,

nature or qualities of products on packaging that might give a false impression as to their origin

Where a GI regulation exists, there is an *ex officio* protection but not systematically. This means that public authorities can take action on their own initiative to protect a registered GI, i.e. the state or public authorities can be responsible for policing and ensuring GI protection.

Protection is generally provided for an indefinite period of time, whereas the trade mark protection is valid for a limited period of time (10 years renewable against the payment of a fee).

Different approaches are being taken at the national level when it comes to *sui generis* legal instruments.

Under most *sui generis* GI laws, controls must be in place and carried out by competent private or public authorities to verify that the product meets the GI specification. This brings costs on producers and/or national authorities.

No non-agricultural foreign GI product has been registered through a *sui generis* legal framework in the countries studied.

6. General conclusion

A detailed analysis of the legal instruments which are currently available in the 31 countries covered by this study to protect the name of a non-agricultural product bearing a geographical indication underlines that there is no harmonised approach for the protection of non-agricultural GI products. The legal frameworks available in these countries differ quite significantly in terms of scope, effect and cost of protection. As a result, products that have been identified enjoy a very different protection depending on their country of origin.

Although unfair competition and consumer deception laws are available to seek redress in all the countries, they are barely used by producers. The protection granted under these laws focus mainly on the protection of consumers and requires producers interested in protecting its IP rights to bring evidence, a process which can be both costly and uncertain. Passing-off actions are also possible but we have not found any such case launched recently.

On the contrary, trade mark laws which are largely similar throughout the EU and beyond are used by producers interested in protecting their IP right on a geographical name. The trade mark regime offers a user friendly legal instrument as requirements and procedures are largely similar throughout the EU and beyond. Moreover, the protection gives a positive right which allows its holder to seek registration in other countries, something that unfair competition and consumer deception laws do not allow. The existence of a Community Trade Mark regime and the Madrid System for the International Registration of Marks facilitates the protection of these names outside of their country of origin. However, it is surprising to note that not many producers have registered Community trade marks with OHIM.

Trade marks offer the right holder with a positive and exclusive right on the use of the name. However, on the one hand, there is a limitation of rights conferred by a mark, notably the impossibility to prevent a third party to use the name in accordance with honest practices. On the other hand, the protection is subject to the consumers' misleading text (which can be hard to prove in a foreign jurisdiction). Overall the system can be expensive when it comes to enforcing trade mark rights, in particular for SMEs. Another limitation aspect derives from the difficulty to secure word trade mark registration and the need to rely on figurative trade marks to protect the name of non-agricultural products bearing a geographical indication. As a result, protection secured through a figurative or semi-figurative mark does not allow for a reservation of the geographical name to the trade mark holder(s).

The research that we conducted shows a limited use of trade mark laws which can be explained by a number of factors including the lack of understanding from relevant stakeholders of the importance and usefulness of IP protection. Other elements, such as specific requirements and costs with regard to the enforcement of trade mark rights have a deterrent effect

Up to now, only 14 countries have sui generis legal instruments available for the protection of non-agricultural GI products and each of them has its own specificities. These instruments can be divided in three categories: regional or national regulations relating to a specific craft, specific laws relating to a product and regional or national laws available for the protection of all non-agricultural GI products.

A detailed analysis of these legal instruments shows that regional or national regulations on specific craft cannot be regarded as providing GI protection. They

merely deal with collective strategies to promote or protect local craft industry or specific sectors and go not much further than consumer deception laws. Moreover, these regulations - which are not available to non local producers - rely in practice on other laws to provide protection: a (trade) mark registration or, in the case of the French decrees, the provisions of the consumer law.

Specific laws on products (with the exception of the Swiss watch ordinance) cannot be considered as a legal instrument which provides for IP protection. The other specific laws relating to Bordado da Madeira in Portugal, Harris Tweed from the United Kingdom and Solingen knives from Germany are in fact product specifications; the protection of their name can only be secured through other IP legal means.

Existing regional or national laws available for the protection of all non-agricultural GI products in some countries differ on many aspects.

First, there is no harmonised definition used in the countries: some use the term appellation of origin, others geographical indication or indication of source, while the two concepts AO and GI are available in 5 countries. As a result, a protected GI name in a country under a sui generis law might not be able to secure similar protection in another country due to the fact that it would not meet the GI definition. For example, a product protected as an indication of source in a country might not be protectable as an appellation of origin in another country.

Second, the analysis of the current legal schemes shows a certain degree of coherence as far as the competent authorities and procedures are concerned. Intellectual property offices play a key role and registration of the GI name. However, procedures also are not as consistent, notably when it comes to the availability of an opposition procedure and the existence of a GI register

Third, the analysis of existing sui generis legal frameworks available for the protection of non-agricultural GI products shows that there is no consistency when it comes to who can apply and with regard to the requirements that have to be met to secure protection. Some countries have not set up any specific requirements beyond meeting the general GI or AO definition, others have a very detailed and extensive list of requirements

Fourth, the protection of non-agricultural products' name as a GI often goes through a registration procedure (except in Switzerland) and requires the payment of a registration fee. Protection is provided for a geographical indication for an indefinite in duration (except in one country – Romania), an important point of difference with the duration of trade mark protection granted for a 10 year period. Most laws include requirements as to the protection of prior rights, but none on the possible coexistence between GIs and earlier trade marks. Very few provide for a definition of genericity although the principle that a generic name cannot be protected as a GI applies in all these texts. Moreover, under these legal schemes, non-agricultural GI products benefit from a wide legal protection which goes beyond the protection granted to trade mark names. They guarantee an exclusive right on the use of the name but also allow for the protection against any direct or indirect use, any misappropriation even if the real origin of goods is stated or the indication and when the name accompanied by terms like “sort”, “type”, “method”, “style”, “imitated” A large majority also provide for the protection of the GI name in translation. Finally, another interesting feature is the availability of an ex officio protection in some sui generis laws.

These schemes provide a far reaching IP protection but their requirements are so different from one country to the other that it is not easy for producers to use them,

notably for those interested in securing protection outside of their country of origin. This creates barriers to the protection of non-agricultural products bearing a geographical name in the EEA countries and Switzerland.

Based on the above, it is interesting to analyse the pros and cons of a harmonisation of the regimes and/or of the creation of a unitary sui generis GI system in order to facilitate the protection of non-agricultural GI products. For more on this, please see part V of the study.

Protection available at the international level for non-agricultural GI products

This section is dedicated to the presentation and analysis of the legal instruments that are currently available for the protection of non-agricultural products bearing a geographical name outside of their country of origin. It covers International agreements, bilateral agreements as well as the Community trade mark regime. We also provide you with an overview of the legal tools that are being used by producers to protect the name of their non-agricultural GI product in third countries.

1. Overview: protection of non-agricultural GI products secured through European and/or International legal instruments

You will find below an overview of the legal tools used by producers of the 129 non-agricultural products that we identified in the context of the study to protect their right on a geographical name, if any.

A presentation and analysis of each European and international legal framework is available in the second part of this section.

Table 16: Type of protection outside the country of origin

Country	Number of products studied	Number of products protected	Type of protection outside the country of origin					
			Benelux level	EU level (trade mark)	Multilateral agreements		Bilateral agreement	Legislation of third countries
					Lisbon Agreement	Madrid Agreement		
EU countries								
Austria	3	2					2	
Belgium	4	2	2	1				1
Bulgaria	13	13			13			
Cyprus	1	0						
Czech Republic	7	7		3	7	1	7	1
Denmark	0	0						
Estonia	1	0						
Finland	1	0						
France	32	18		2	2	2	4	4
Germany	6	5		1			5	1
Greece	0	0						
Hungary	4	4			4			1
Ireland	2	1						
Italy	10	10		4		3		4
Latvia	0	0						
Lithuania	3	0						
Luxembourg	1	0						
Malta	0	0						
Poland	3	2						1
Portugal	5	2				1		1
Romania	5	1						
Slovakia	4	4			2	1	1	1
Slovenia	2	2						
Spain	14	8		2			3	
Sweden	1	1		1				1
The Netherlands	3	3	3	2		2		2
United Kingdom	1	1		1				1
Sub total	126	86	5	17	28	10	22	19
Non EU countries								
Iceland	0							
Liechtenstein	0							
Norway	0							
Switzerland	3	3					2	1
Sub total	3	3	0	0	0	0	2	1
TOTAL	129	89	5	17	28	10	24	20

Source: Insight Consulting

As shown in the table above, a multi-country protection is available only for the Benelux as trade mark protection can only be secured through the Benelux Office for Intellectual

Property (BOIP), which is the official body for the registration of trade marks and designs in the Benelux. Hence, the registration and protection covers automatically the three Member States: Belgium, Luxembourg and the Netherlands. Three Dutch and two Belgian non-agricultural products the name of which could be protected as a GI are currently protected as trade marks in the Benelux countries.

With regard to the protection at the EU level, only 17 out of 86 products identified and protected at the national level in one of the Member States benefit from a protection at the EU level through the Community trade mark system which is the only legal tool available. This represents less than 20%. Products from Belgium, the Czech Republic, France, Germany, Italy, Spain, Sweden, the Netherlands and the United Kingdom have registered trade marks with the Office for the Harmonisation of the Internal Market (OHIM). None of the products from the 4 non EU Member States have registered Community trade marks.

When looking at the international protection secured, 28 products are protected through the Lisbon Agreement for the protection of appellations or origin. They originate from five Member States: Bulgaria, the Czech Republic, France, Hungary and Slovakia. 10 products have used the Madrid Agreement concerning the international registration of marks to obtain protection outside of their country of origin and when the third countries' legislation is used it is always the trade mark legislation that is used.

6 Member States as well as Switzerland have negotiated bilateral agreements that provide for the protection of lists of non-agricultural GI products' names.

Overall, the study underlines that a very limited number of producers have actively sought protection of their IPR beyond their country of origin. This should not come as a big surprise as the products identified are largely produced by small and medium sized enterprises which are traditionally not good at registering IPR⁴². Protection of intellectual property rights implies to dedicate money and time to the protection process as well as to the monitoring of the market afterwards to ensure that the right is not infringed. A lot of producers who were interviewed during the study highlighted that they lacked both of them. As they are small and medium sized enterprises, they have a limited number of employees and thus they do not have an employee who deals with the protection and/or the monitoring of the market to look for infringements. They also seem to think, rightly or not, that the legal protection is a costly task.

42 See a study commissioned by DG Enterprise and Industry on the Effects of counterfeiting on EU SMEs and a review of various public and private IPR enforcement initiatives and resources which underlines that: "Large companies may find it possible to overcome the impacts of IPR abuse, however, the problem of these potential impacts is far greater for SMEs, which lack resources to secure effective protection and enforcement of their IPR." http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=1022

2. The International and European legal framework available for the protection of non-agricultural GI products

With the development of international trade in the 19th century, it became quickly apparent that national protection of intellectual property rights was not sufficient as products were often imitated outside of their country of origin. Several International treaties contain provisions relating to the protection of GIs and, interestingly, none of them limits the scope of the protection to agricultural GI products.

You will find below a presentation of the relevant International agreements that can be used to protect non-agricultural GI products.

a. International Agreements protecting indications of source or appellations of origin

The Paris Convention on the Protection of Industrial Property adopted in 1883 was the first International treaty to provide for the protection of “appellation of origin”⁴³. The Convention included ‘indications of source or appellations of origin’ as separate objects of protection. The Paris Convention identifies GIs as a separate intellectual property right, but does not clearly define this concept. It provides for some remedies -mainly the seizure of the product upon importation or the prohibition of importation - in respect of unlawful use of indications of source on goods, meaning that no indication of source may be used if it refers to a geographical area from which the products in question do not originate. It also makes it mandatory for contracting parties to provide protection against unfair competition and acts that are prohibited such as *indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods (article 10bis)*.

In 1891, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods was adopted. It was the first multilateral agreement to provide specific rules for the repression of false and deceptive indications of source⁴⁴. The Agreement extended protection to false indications under the Paris Convention of 1883 to deceptive indications of source. The Agreement also specifically provides that generic indications of source cannot be protected and considers that it is up to the court of each signatory to decide on the generic character of a name.

As shown in the table below, most of the countries covered by this study are contracting parties to the Paris Convention and the Madrid Agreement. Consequently, they have to provide third countries’ GIs with the minimum protection mentioned above. Moreover, non-agricultural GI products originating from the 31 countries covered by this study can rely in principle on these provisions in all the countries that are contracting parties to these agreements⁴⁵.

⁴³ http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html#P71_4054

Article 1 (2) ‘The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition’.

⁴⁴ http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo015.html

List of contracting parties to the Paris Convention

(http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=2) and to the Madrid Agreement (http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf)

Table 17: Contracting parties to the Paris Convention and the Madrid Agreement

Country	Party to the Paris Convention	Party to the Madrid Agreement
Austria	YES	YES
Belgium	YES	YES
Bulgaria	YES	YES
Cyprus	YES	YES
Czech Republic	YES	YES
Denmark	YES	
Estonia	YES	
Finland	YES	
France	YES	YES
Germany	YES	YES
Greece	YES	
Hungary	YES	YES
Ireland	YES	
Italy	YES	YES
Latvia	YES	YES
Lithuania	YES	
Luxembourg	YES	YES
Malta	YES	
Poland	YES	YES
Portugal	YES	YES
Romania	YES	YES
Slovakia	YES	YES
Slovenia	YES	YES
Spain	YES	YES
Sweden	YES	
The Netherlands	YES	YES
United Kingdom	YES	
<i>EU</i>	YES	
Iceland	YES	
Liechtenstein	YES	YES
Norway	YES	
Switzerland	YES	YES

Source: Insight Consulting

b. International Agreements facilitating the protection of trade marks

As this study shows, a number of non-agricultural products bearing a geographical name are protected through trade mark registrations outside of their country of origin. Several products identified have made use of International agreements that are available to facilitate International registration of marks, such as the Madrid Agreement Concerning the International Registration of Marks, which dates from 1891 and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks of 1989⁴⁶.

The Madrid system establishes an international procedural mechanism which provides a trade mark owner with the possibility to secure protection for his trade mark in several countries which are Members of the Madrid Union⁴⁷.

⁴⁶

http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo016.html

⁴⁷

http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/madrid_marks.pdf

Most of the countries covered by this study are contracting parties to the Madrid Protocol, not to the Madrid Agreement (see table below). As a result, they provide third countries' GIs with the possibility to secure protection on their territory through trade mark protection in simplified and streamlined way.

Table 18: Contracting parties to the Madrid Agreement and the Madrid Protocol

Country	Party to the Madrid Agreement	Party to the Madrid Protocol
Austria	YES	YES
Belgium	YES	YES
Bulgaria	YES	YES
Cyprus	YES	YES
Czech Republic	YES	YES
Denmark		YES
Estonia		YES
Finland		YES
France	YES	YES
Germany	YES	YES
Greece		YES
Hungary	YES	YES
Ireland		YES
Italy	YES	YES
Latvia	YES	YES
Lithuania		YES
Luxembourg	YES	YES
Malta		
Poland	YES	YES
Portugal	YES	YES
Romania	YES	YES
Slovakia	YES	YES
Slovenia	YES	YES
Spain	YES	YES
Sweden		YES
The Netherlands	YES	YES
United Kingdom		YES
<i>EU</i>		YES
Iceland		YES
Liechtenstein	YES	YES
Norway		YES
Switzerland	YES	YES

Source: Insight Consulting

An applicant from one of the countries party to the Madrid Protocol can file an International Registration at the International Bureau of WIPO through the office of origin of the basic application or registration. The procedure eliminates the high filing costs typically associated with filing separate national applications in each foreign country. However, the principle of territoriality still applies which means that examination by national trade mark offices, application formalities, use requirements and local rights still remain. An application can therefore be refused.

As far as costs are concerned, when filing an application for an International Registration under the Madrid Protocol, an applicant must pay a series of fees to its country's trademark office, to WIPO's International Bureau and to each country it designates in the international application. More specifically, there are:

- a basic fee charged by WIPO for the filing of the Madrid Protocol application (the amount of the basic fee depends on whether the applied-for mark is represented in colour, 903 Swiss Francs, or black and white, 653 Swiss Francs),
- a supplemental fee also charged by WIPO,
- a certification fee in some countries charged by the Office of Origin to certify the home application subject to the international registration
- a complementary or individual fee charged by each country or jurisdiction that is designated in the Madrid Protocol application. They vary from country to country.

The amount of these fees is subject to change over time. A list of fees charged by the various countries/jurisdictions that are signatories of the Madrid Protocol can be found on the WIPO website, together with an online fee calculator⁴⁸.

Once registered, international trade marks are valid for ten years upon receipt of the International Registration application in the office of origin. The protection of the mark enjoyed by the owner of an International Registration is identical to the protection that would result from a national registration. The holder of a registered trade mark enjoys the exclusive right on the use of the name. However, there are certain limitations of rights, as explained in the previous part of this study relating to trade mark protection in the 31 countries. Although, application and use requirements can differ from one country to the other, it is important to recall that it is normally important to show a use of the trade mark to maintain the right. Moreover, it is impossible to prevent a third party to use the name registered as a trade mark in accordance with honest practices. With regard to the protection, it is subject to the consumers' misleading text (which can be hard to prove in a foreign jurisdiction).

Overall the system can be an expensive one both in terms of registration and above all enforcement. Another limitation aspect derives from the difficulty to secure word trade mark registration and the need to rely on figurative trade marks to protect the name of non-agricultural products bearing a geographical indication (see the section on the analysis of trademark protection's provisions under 1.4 above. As a result, protection secured through a figurative or semi-figurative mark does not allow for a reservation of the geographical name to the trade mark holder(s).

⁴⁸

<http://wipo.int/madrid/en/fees>

c. The 1958 Lisbon Agreement: a plurilateral agreement for the protection of appellations of origin

The Lisbon Agreement for the Protection of Appellations of Origin and their International registration was adopted on 31 October 1958. It was the first specific international treaty providing for the protection of appellations of origin. The Lisbon system⁴⁹ aims at facilitating the International protection of appellations of origin offering the means to obtain protection in the contracting parties to the Lisbon Agreement through a single registration system.

The Agreement has only 27 contracting parties⁵⁰. Among the 31 countries covered by this study, only Bulgaria, the Czech Republic, France, Hungary, Italy, Portugal and Slovakia are members of the Lisbon Agreement. Greece, Romania and Spain signed the agreement but never implemented it⁵¹. The EU is not a signatory. The Agreement has therefore a limited geographical scope which undermines the interest of this legal instrument when it comes to secure protection.

Moreover, the Lisbon agreement provides in its article 2 a strict definition of appellations of origin: “geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors”. Under Lisbon, the element of reputations by itself does not represent a constitutive element of an appellation of origin.

The strict definition of the appellation of origin and the limited scope of the Lisbon Agreement are the main reasons why not many products are protected under the Agreement. In the context of the study, we have identified only 28 products registered through Lisbon. They originate from five Member States: Bulgaria, the Czech Republic, France, Hungary and Slovakia. It is interesting to note that none of the 10 Italian products and 5 Portuguese products studied in detail enjoys protection through the Lisbon agreement while all of the Bulgaria, Czech and Hungarian products studied in detail are protected through this agreement. 2 out of 4 Slovakian products are also protected and one is pending while only 2 out of 32 French products have been registered.

The Lisbon Agreement gives two basic requirements for an AO to be protected:

- It should be protected in its country of origin as an appellation of origin, and
- It should be registered in the International Register of Appellations of Origin managed by the WIPO.

Names are registered by the International Bureau of WIPO in Geneva upon the request of the competent authorities of the interested contracting State. The International Bureau communicates the registration to the other contracting States.

A contracting State may declare, within one year, that it refuses the protection in its territory, in part or in whole provided that it specifies the grounds for refusal. Such grounds cover for instance the fact that the appellation has already acquired a generic character in its territory in relation to the product to which it refers, the fact that it considers that the geographical designation does not conform to the appellation of origin definition, or the fact that it conflicts with a trademark or other right already protected in the country.

⁴⁹ http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.htm

⁵⁰ List of contracting parties: http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10

⁵¹ http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10

It is interesting to note that the Lisbon Agreement provides for an extensive protection of registered appellations of origin. Article 3 defines that the member States are to protect appellations of origin registered at the International Bureau against any usurpation or imitation of the appellation of origin, even if the true origin of the product is stated or if the appellation is used in translated form or accompanied by terms such as “kind”, “type”, “make”, “imitation” or the like. Moreover, an international registration of an appellation of origin under Lisbon assures it of protection, without any need for renewal, for as long as the appellation is protected in the country of origin and a registered appellation cannot become generic.

The fees for the registration are the following (in Swiss Francs):

- For registration of an appellation of origin: 500
- For entry of a modification of a registration: 200
- For providing an extract from the International Register: 90
- For providing an attestation or any other information given in writing concerning the contents of the International Register: 80

A reform of the Lisbon Agreement is currently ongoing within WIPO at the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT). The Working Group is discussing proposed amendments of the Agreement concerning in particular⁵²:

- the introduction of the concept of GI based on the WTO TRIPS Agreement definition in parallel to the existing concept of appellation of origin
- the scope of protection to be given, notably proposal to confer different level of protection to AO (strong protection) and GIs (TRIPS art. 22 alike protection)
- The relationship with other intellectual property rights
- the registration procedures in order to simplify them, for example the possibility for associations of producers the possibility of filing an international application directly to WIPO
- the possibility to allow intergovernmental organizations to join the Agreement.

⁵²

For more information, see: http://www.wipo.int/meetings/en/details.jsp?meeting_id=17444

d. The WTO Agreement on Trade-Related Aspects of International Property Rights (TRIPS)

In 1995, the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) was adopted by all the Members of the WTO⁵³. The TRIPs Agreement introduced intellectual property rules into the multilateral trading system for the first time and gave another impetus to the protection of geographical indications. Its interest lies mainly with its geographical scope as 157 countries are WTO Members.

The TRIPs Agreement contains a section dedicated to GIs, which includes in its Article 22§1 a definition for geographical indications: “*Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin*”. This definition is much wider than the definition of the Lisbon agreement, notably. It provides for an opportunity to secure protection for many more products’ name. In particular, the protection is available not necessarily to the name of a geographical place but to indication (therefore, iconic symbols or emblems like the Eiffel Tower could be protected). Denominations that are not ‘direct geographical names’, but traditional names can also be protected (such as ‘Basmati’ or ‘Feta’ or ‘Kantele’, a Finnish non-agricultural product identified in the context of this study). Moreover, the ‘indication’ in question has to identify goods as originating in the territory of a Member, a region or a locality of that territory and the name of a country can in theory be a GI which has a quality, a reputation or other characteristics linked to its origin. Finally, it is important to note that GIs apply to any good, whether agricultural or non-agricultural.

Under this Agreement, WTO Members are obliged to protect GIs. However, each Member is free to decide how to protect them. As a result, WTO Members protect GIs in a diverse manner through a variety of intellectual property instruments, from unfair competition and consumer deception protection to passing off, trade mark systems or *sui generis* laws.

The TRIPs Agreement provides for the protection of all GI products with a view to avoid misleading the public and to prevent unfair competition. The Agreement provides a higher level of protection for GIs for wines and spirits in its article 23 which includes:

- the provision of the legal means for interested parties to prevent the use of a GI identifying wines and spirits, not originating in the place indicated by the GI (even if there is no consumer deception);
- the possibility to refuse or invalidate the registration of a trademark for wines or spirits which contains or consists of a GI identifying wines or spirits at the request of an interested party;
- the need to accord protection for each GI for wines in the case of homonymous indications

The TRIPs Agreement also provides for a number of exceptions to the protection of GIs:

- a GI cannot be protected in a third country if it is not protected in its country of origin (article 24.9). Under TRIPs, there are no specific requirements as to the type of protection given in the country of origin.
- a person should not be prevented to use his name in business except if the name is used in such a way as to mislead the public (article 24.8)
- the user of a name can continue to use the name of a GI identifying wines or spirits in connection with goods or services if the name has been used: for at least 10 years

53

http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

preceding the date of the Ministerial Meeting concluding the Uruguay Round preceding April 15, 1994, or in good faith preceding that date (article 24.4).

- a mark that was registered in good faith before the TRIPS Agreement will continue to be a valid trademark (article 24.5.a).
- a trademark consisting of a GI is valid as long as it was registered before the geographical name was protected in its country of origin (article 24.5.b).
- generic terms cannot be registered (article 24.6)⁵⁴.

It is useful to note that in the context of a dispute between the USA and Australia on the one hand and the European Communities on the other hand, a WTO panel ruling on the EC Regulation (EC) No 2081/1992 relating to the protection of agricultural GI products found that Article 17 of the TRIPs Agreement permits Members to provide exception to trade mark rights, confirming the possibility to provide co-existence between a GI and a previously registered trade mark⁵⁵.

Enforcement of intellectual property rights is dealt with in Part III of the TRIPS Agreement. Article 41 of the TRIPS Agreement calls for effective remedies and procedures against infringements of GIs and stipulates that they may not be used obstructively or otherwise abused. Article 42 of the TRIPS Agreement provides that Members must ensure that civil judicial proceedings cover all the rights protected under the TRIPS Agreement, including GIs.

According to Giovannucci, Daniele; Josling, Timothy; Kerr, William; O'Connor, Bernard and Yeung, May T. (2009) in their *Guide to Geographical Indications: Linking Products and Their Origins (Summary)* published in 2009⁵⁶: “At the moment, the TRIPS Agreement provides little effective protection for non-wine and spirit products except in the most egregious passing off of counterfeit goods. It therefore serves primarily as a complaint mechanism for countries when other member countries are not living up to their multilateral obligations i.e. are not enforcing their regulations or have not put in place legislation to protect GIs. A number of countries wish to both extend the higher level of existing TRIPS protection beyond wines and spirits to a broader group of products”

The Agreement has a build-in agenda on GIs and instructs WTO Members to enter into negotiations for the establishment of a multilateral register of notification and registration of wines and spirits. These negotiations were launched at the Fourth WTO Ministerial meeting held in Doha in November 2001 and included as well a discussion relating to the extension of the higher level of protection for wines and spirits to other goods. Both issues are yet unresolved and are part of the much wider ongoing WTO negotiations.

54 Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

55 http://docsonline.wto.org/imrd/gen_searchResult.asp?RN=0&searchtype=browse&q1=%28%40meta%5FSymbol+WT%FCDS174%FCR%2A+and+not+RW%2A%29&language=1

56 see: http://mpr.a.ub.uni-muenchen.de/27955/1/MPRA_paper_27955.pdf

e. The Community trade mark system

As stated in the section above on the national system available for the protection of non-agricultural GI products, a Community Trade Mark (CTM) was introduced in 1996 and is now regulated in accordance with Council Regulation (EC) No 207/2009 of 26 February 2009. The system allows a single registration with the Office for the Harmonisation of the Internal Market (OHIM) to create a single unified right throughout the 27 Member States of the EU. It is not an exclusive system as it co-exists with national or regional (for the Benelux countries) trade mark systems.

The application can be made through a national trade mark office which registered the mark but also directly towards OHIM, i.e. the existence of an application or registration in the home country is not necessary. If ground for rejection applies in just one of the EU Member States, the mark cannot be registered as a CTM. Interestingly, and contrary to the Madrid Protocol, the use of the mark in only one of the 27 Member States is sufficient to protect the CTM registration from cancellation on the ground of non-use⁵⁷.

Once registered, the CTM is valid for ten years. The protection of the mark enjoyed by the owner of is identical to the protection that would result from a national registration. Article 9 of Council regulation (EC) No 40/94 of 20 December 1993 on the community trade mark⁵⁸ defines the rights conferred by a Community trade mark:

1. *A Community trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:*

(a) any sign which is identical with the Community trade mark in relation to goods or services which are identical with those for which the Community trade mark is registered;

(b) any sign where, because of its identity with or similarity to the Community trade mark and the identity or similarity of the goods or services covered by the Community trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

(c) any sign which is identical with or similar to the Community trade mark in relation to goods or services which are not similar to those for which the Community trade mark is registered, where the latter has a reputation in the Community and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the Community trade mark.

2. *The following, inter alia, may be prohibited under paragraph 1:*

(a) affixing the sign to the goods or to the packaging thereof;

(b) offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;

(c) importing or exporting the goods under that sign;

(d) using the sign on business papers and in advertising.

3. *The rights conferred by a Community trade mark shall prevail against third parties from the date of publication of registration of the trade mark. Reasonable compensation may, however, be claimed in respect of matters arising after the date of publication of a Community trade mark application, which matters would, after publication of the registration of the trade mark, be prohibited by virtue of that publication. The court seized of the case may not decide upon the merits of the case until the registration has been published.*

⁵⁷ Joint Statements by the Council and the Commission of 20.10.1995, No B. 10 to 15, OJ OHIM 1996, 615). According to these statements, "The Council and the Commission consider that use which is genuine within the meaning of Article 15 in one country constitutes genuine use in the Community".

⁵⁸ http://oami.europa.eu/ows/rw/resource/documents/CTM/regulations/4094_cv_en.pdf

In a nutshell, a CTM confers an exclusive right on the use of a name to its holder who can prevent all third parties, who do not have his consent, from using in the course of trade the same or similar signs for identical or related goods and/or services as those protected by the CTM. Moreover, it is possible to obtain an injunction against infringement that covers the entire EU.

As far as the protection of geographical names is concerned, registration is not permitted except if the name has become distinctive in relation to a good or a service. In addition, Article 64§2 of Council regulation (EC) No 40/94 provides a derogation to this principle:

“2. In derogation from Article 7 (1) (c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute Community collective marks within the meaning of paragraph 1. A collective mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name”.

The holder of a registered Community (collective) trade mark enjoys the exclusive right on the use of the name. However, there are certain limitations of rights, as explained in the previous part of this study relating to trade mark protection in the 31 countries and to the Madrid system. It is impossible to prevent a third party to use the name registered as a trade mark in accordance with honest practices. With regard to the protection, it is subject to the consumers' misleading text (which can be hard to prove in a foreign jurisdiction). Overall the system is can be an expensive one both in terms of enforcement (see examples provided in the part I point 4). Another limitation aspect derives from the difficulty to secure word trade mark registration and the need to rely on figurative trade marks to protect the name of non-agricultural products bearing a geographical indication. As a result, protection secured through a figurative or semi-figurative mark does not allow for a reservation of the geographical name to the trade mark holder(s).

With regard to the protection at the EU level, only 17 out of 86 products identified and protected at the national level in one of the Member States benefit from a protection at the EU level through the Community trade mark system which is the only legal tool available. This represents less than 20%. We have identified only four products name's - "Solingen" and 3 Italian products "Vetro Artistico Murano" "Alabastro in Volterra" and "Mobile d'arte in stile della pianura Veronese" – that are protected only through the Community trade mark system (i.e. there is no trade mark registration at the national level) as a collective trade marks. Solingen is protected as a collective word mark and the 3 Italian products' name as a collective figurative mark.

Producers do not use much the Community trade mark system despite the fact it offers the same level of protection but on a much wider geographical scope at a relatively cheap cost for registration: 900 € to file online (e-filing) or 1050 € if you use the paper form. Sometimes, there is both a registration at the national level and with the OHIM (Community trade mark): this is the case for one Belgian product (Diamant van Antwerpen), three Czech products (Český granát / Český granátový šperk, Jablonecká bižuterie/Jablonecké zboží/Jablonecké sklo/Jablonecká krystalerie and Sedlecký kaolin, 2 French ones (Porcelaine/Céramique de Sèvres and Couteaux de Thiers/Coutellerie de Thiers), 1 Italian (Marmo Botticino Classico), 2 Spanish ones (Cerámica de Manises and Piel de Ubrique), 1 Swedish product (Morakniv), 2 Dutch ones (Delfts Blauw and Leerdam Crystal) and one UK product (Harris Tweed).

Almost all non-agricultural products bearing a geographical name identified which are protected through a trade mark law rely on a national registration.

Table 19: Products covered by the study for which a trade mark was registered at the OHMI

Country	Products for which a trade mark is registered	Marks registered	Collective trade mark	Individual mark	Word mark	Figurative mark	
Belgium	Antwerp Diamonds	ANTWERP DIAMONDS & JEWELS BY GAUTAM		X	X		
				X		X	
					X		X
					X		X
					X		X
					X		X
Czech Republic	Český granát	GRANÁT  TURNOV		X		X	
	Duchcovský Porcelán			X		X	
	Jablonecká bižuterie	 Made in Jablonec		X		X	
	Sedlecký kaolin			X		X	
France	Couteaux de Thiers			X		X	
		LE THIERS		X	X		
	Porcelaine de Sèvres			X		X	

				x		x
				x		x
Germany	SolingenStahl- und Schneidwaren	Solingen	x		x	
Italy	Alabastro in Volterra		x			x
	Marmo Botticino Classico		x			x
	Mobile d'arte in stile della pianura Veronese		x			x
	Vetro di Murano		x			x
Poland	Szkło krośnieńskie			x		x
				x		x
Spain	Ceramica de Manises		x			x
	Piel de Ubrique	Ubrique		x		x
Sweden	Morakniv	MORAKNIV		x	x	
				x		x
The Netherlands	Delfts Blauw			x		x
		ROYAL DELFT BLUE		x	x	

		ROYAL DELFT		x		x
				x		x
				x		x
	Leerdam Crystal	Leerdam Memoria 		x		x
		ROYAL LEERDAM		x	x	
				x		x
United Kingdom	Harris Tweed	HARRIS TWEED	x		x	
TOTAL	19	35	7	28	7	28

Source: Insight Consulting

3. Bilateral agreements providing for the protection of non-agricultural GI products

In the context of this study, we have identified several bilateral agreements signed by countries covered by this study which include provisions on the protection of non-agricultural GI products.

According to our research, out of the 86 products protected at the national level that have been studied, 23 products enjoy protection in a third country through a bilateral agreement. However, this relates to products coming from only 8 countries: Austria, the Czech Republic, France, Germany, Portugal, the Slovak Republic, Spain and Switzerland. Other countries such as Greece, Hungary and Italy have also signed a number of bilateral agreements as shown below but none of the products protected at the national level that we have studied are included on the lists of products protected through these agreements. Besides these countries, only two bilateral agreements appears to have been concluded with non European countries, one by France with Costa Rica in 1933 and one by Switzerland in 2010 with the Russian Federation.

The protection under international agreements is provided for an indefinite period and free of charge.

- The 2 non-agricultural GI products protected in Austria, Ferlacher Waffen and Schladminger Loden/Perllodenare protected under a bilateral agreement in the Czech Republic, France, Greece, Italy and Spain. Austria signed bilateral agreements on the protection of indications of source, denominations of origin, and denominations of agricultural and non-agricultural products:
 - With Italy in 1952: BGBI. Nr. 235/1954, additional protocol from 1969 focusing on the enlargement to other products BGBI. Nr. 348/1972
 - With Greece in 1972 : BGBI. Nr. 378/1972
 - With France in 1976 : BGBI. Nr. 196/1976
 - With Spain in 1977 (actualised in 1999) : BGBI. Nr. 593/1977
 - With CSSR (Czech Republic) in 1981: BGBI. Nr. 75/1981
- All the 7 Czech products studied⁵⁹ and protected at the national level are protected in Austria, Portugal and Switzerland.
 - Agreement between Austria and CSSR on Indications of Source on Goods, Appellations of Origin of Products and other Marking Concerning the Origin of Agricultural and Industrial Product
 - Agreement between Government of Portugal and CSSR on Indications of Source on Goods, Appellations of Origin of Products and other Geographic Denomination
 - Agreement between Switzerland and CSSR on Indications of Source on Goods, Appellations of Origin of Products and other Geographic Denomination
- Only 4 of the 18 French products protected and studied are protected in third countries through a bilateral agreement (Emaux de Limoges Porcelaine de Limoges,

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1. Český granát, Český granátový šperk
2. Český porcelán, Duchcovský porcelán
3. Jablonecká bižuterie, Jablonecké zboží, Jablonecké sklo, Jablonecká krystalerie
4. Jindřichohradecký gobelin
5. Karlovarská sůl, Karlovarská vřidelní sůl, Karlovarská přírodní vřidelní sůl, Karlovarská přírodní sůl
6. Železnobrodské sklo, Železnobrodské figurky
7. Sedlecký kaolin

Poterie de Vallauris, and Dentelle du Puy). Such agreements have been signed by France with the following countries

- Agreement between French Republic and Federal Republic of Germany for the protection of indications of source, appellations of origin and other geographical denominations 8 March 1960. Non-agricultural products covered by this Agreement : Dentelle du Puy, Emaux de Limoges, Mouchoirs et toile de Cholet, Poterie de Vallauris
<http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA19600038>
 - Agreement between France and Italy for the protection of appellations of origin and denominations of certain products – 28 April 1964. Non-agricultural products covered by this Agreement : Dentelle du Puy, Mouchoirs et toile de Cholet, Poterie de Vallauris, Galoches d’Aurillac (shoes)
<http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA19640056>
 - Convention between French Republic and Spanish State for the protection of appellation of origin, indications of source and denomination of certain products, 27 June 1973. Non-agricultural products covered by this Convention : Dentelle du Puy, Emaux de Limoges, Mouchoirs et toile de Cholet, Poterie de Vallauris
<http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA19730122>
 - Treaty between Swiss Confederation and French Republic for the protection of indications of source, appellations of origin and other geographical denominations – 14 May 1974, entry in force 10 October 1975. Non-agricultural products covered by this Treaty : Dentelle du Puy, Emaux de Limoges, Mouchoirs et toile de Cholet, Poterie de Vallauris
<http://www.admin.ch/ch/f/rs/i2/0.232.111.193.49.fr.pdf>
 - Agreement between French Republic and Austrian Republic for the protection of indications of source, appellations of origin and denomination of agricultural and industrial products – 10 May 1974. Non-agricultural products covered by this Agreement: Dentelle du Puy, Emaux de Limoges, Porcelaine de Limoges, Mouchoirs et toile de Cholet, Poterie de Vallauris
http://basedoc.diplomatie.gouv.fr/exl-php/util/documents/accede_document.php
 - Convention on trade between France and Tchecoslovaquia 2 July 1928
<http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA19700101>
 - Agreement between France and Costa Rica for the mutual protection of industrial property and appellations of origin – 10 July 1933
<http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA19330015>
- 5 out of 6⁶⁰ German products studied and protected at the national level are protected in France (8.3.1960), Italy (23.7.1963), Greece (16.4.1964), Swiss (7.03.1967) - <http://www.admin.ch/ch/d/sr/i2/0.232.111.191.36.de.pdf> - and Spain (11.9.1970)
 - None of the Italian products studied are by bilateral agreements signed by Italy:
 - With Austria in 1952:
http://www.ris.bka.gv.at/Dokumente/BgblPdf/1954_235_0/1954_235_0.pdf , additional protocol from 1969 focusing on the enlargement to other products BGBl. Nr. 348/1972
 - With France on 28 April 1964.
<http://www.diplomatie.gouv.fr/traites/affichetraite.do?accord=TRA19640056>
 - With Germany on 23 July 1963

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1. Erzgebirgische Holzkunst / Erzgebirgische Volkskunst
 2. Edelsteine und Schmuck aus Idar-Oberstein
 3. Oberammergauer Holzschnitzkunst / handgeschnitzte Holzfiguren Oberammergau
 4. Schwarzwälder Kuckucksuhr
 5. Solinger Stahl- und Schneidwaren

- Only one Portuguese product studied, Bordado da Madeira, is protected in the Czech Republic (together with 38 other non-agricultural products and many more agricultural products) through a bilateral agreement signed in 1981 (see above). Under this bilateral agreement, the right holder has to defend his/her right and can act in front the courts.
- One out of 4 Slovak products identified and protected at the national level, Modranska Majolika, is protected through an old bilateral agreement Switzerland which Slovak Republic which entered into force on January 14, 1976 and it is in force.
- Three out of 8 Spanish products identified and protected at the national level enjoy protection through bilateral agreements with Portugal, Germany, France, Switzerland, Italy and Austria (Cerámica de Manises, Talavera Cerámica, and Piel de Ubrique).
 - Agreement between Spain and Portugal on the Protection of Indications of Source, Appellations of Origin and the Denominations of Certain Products, done at Lisbon on 16 December 1970, entering into force in Spain on 23 August 1972: BOE ⁶¹ n. 148 of 21 June 1972 - <http://www.boe.es/boe/dias/1972/06/21/pdfs/A11077-11079.pdf> (only for wines)
 - Agreement between the Spanish State and the Federal Republic of Germany on the Protection of Indications of Source, Appellations of Origin and Other Geographical Denominations, and Annexed Protocol, done at Bonn on 11 September 1970, entering into force in Spain on 27 September 1973 : BOE n. 235 of 1 October 1973 - <http://www.boe.es/boe/dias/1973/10/01/pdfs/A18917-18932.pdf>
 - Convention between the Spanish State and the French Republic on the Protection of Appellations of Origin, Indications of Source and the Denominations of Certain Products, done at Madrid on 27 June 1973, entering into force in Spain on 5 March 1975 : BOE n. 108 of 6 May 1975 - <http://www.boe.es/boe/dias/1975/05/06/pdfs/A09495-09509.pdf>
 - Agreement between the Spanish State and the Swiss Confederation on the Protection of Indications of Source, Appellations of Origin and Similar Denominations, done at Bern on 9 April 1974, entering into force in Spain on 10 March 1976: BOE n. 66 of 17 March 1976 - <http://www.boe.es/boe/dias/1976/03/17/pdfs/A05463-05477.pdf>
 - Agreement between the Spanish State and the Italian Republic for the Protection of Indications of Source, Appellations of Origin and Denominations of Certain Products, signed in Madrid on 9 April 1975, entering into force in Spain on 17 May 1976: BOE n. 301 of 16 December 1980 - <http://www.boe.es/boe/dias/1980/12/16/pdfs/A27701-27709.pdf>
 - Agreement between the Spanish State and the Republic of Austria on the Protection of Indications of Source, Appellations of Origin and Denominations of Agricultural and Industrial Products and Annexed Protocol, signed in Vienna on 3 May 1976, entering into force in Spain on 15 December 1977: BOE n. 303 of 20 December 1977 - <http://www.boe.es/boe/dias/1977/12/20/pdfs/A27730-27733.pdf>
- Switzerland has signed 7 bilateral agreements that provide for the protection of non-agricultural products. Two of the Swiss products studied in detail – Swiss watches and St Galler stickerei / Spitzen are protected through these agreements.
 - Traité du 7 mars 1967 entre la Confédération suisse et la République fédérale d'Allemagne sur la protection des indications de provenance et d'autres dénominations géographiques (RS 0.232.111.191.36)

- Traité du 16 novembre 1973 entre la Confédération suisse et la République socialiste tchécoslovaque sur la protection des indications de provenance, des appellations d'origine et d'autres dénominations géographiques (RS 0.232.111.197.41).
- Traité du 14 mars 1974 entre la Confédération suisse et la République française sur la protection des indications de provenance, des appellations d'origine et d'autres dénominations géographiques (RS 0.232.111.193.49)
- Traité du 9 avril 1974 entre la Confédération suisse et l'Etat espagnol sur la protection des indications de provenance, des appellations d'origine et des dénominations similaires (RS 0.232.111.193.32)
- Traité du 16 septembre 1977 entre la Confédération suisse et la République portugaise sur la protection des indications de provenance, des appellations d'origine et des dénominations similaires (RS 0.232.111.196.54)
- Traité du 14 décembre 1979 entre la Confédération suisse et la République populaire hongroise sur la protection des indications de provenance, des appellations d'origine et d'autres dénominations géographiques (RS 0.232.111.194.18)
- Accord du 29 avril 2010 entre la Suisse et la Russie pour la protection des indications géographiques et des appellations d'origine (RS 0.232.111.196.65). Informations complémentaires.

Apart from the April 2010 bilateral agreement signed by Switzerland with Russia, most of the bilateral agreements mentioned above date back to the 1960s or 1970s, if not before. All of these agreements provide for list of GI names to be protected.

The protection granted under these agreements is in general extensive and covers the protection of the names:

- in translation (not only in the language of registration but also in translation),
- used in combination with other terms such as “like”, “style”, etc. and
- against “delocalizers” (e.g. “name of the GI” associated with the name of another country).

Some of them provide for the phasing out of the use of registered trade marks (see for instance article 9 of the CSSR – Portugal agreement mentioned above).

Ex parte protection applies. This means that, under the bilateral agreements, the right holder has to defend his/her right and can act in front the courts. This right is sometimes explicitly provided by the Agreement, for example article 6 of the Agreement between Switzerland and Czechoslovakia or article 7 of the Agreement between France and Germany.

It is interesting to note that the UE itself has recently signed a bilateral agreement with third countries that provide for the protection of a limited number of non-agricultural GI products in the EU. The Trade Agreement between the European Union and Colombia and Peru (http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf) signed on 26 June 2012 provides a chapter on the protection of GIs. Article 210 provides for an extensive protection of GIs listed in the annex XII of the agreement in the territory of the signatories. Article 211 establishes the rules relating to relationship with trade marks. Interestingly, while the list of EU GIs contains only agricultural products, the Colombian list extends to 1 non-agricultural GI product – Guacamayas Handicrafts, so does the Peruvian list with Chulucanas Pottery.

See: http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147725.pdf

4. Conclusion

None of the International treaties that provide for the protection of geographical indications exclude from their scope non-agricultural products. The Paris Convention, the Lisbon and Madrid Agreements as well as the TRIPS Agreement clearly apply to all kind of products.

These treaties include different definitions of the geographical indication or appellation of origin concepts. They also establish provisions with regard to the legal instruments that can be used for the protection of GIs or AOs which are very diverse. Similarly, the scope of the protection granted to geographical indications differs significantly from one treaty to the other.

The WTO TRIPs agreement provides the overall legal framework for the protection of GIs around the world; it includes derogations and limitations to GI protection, notably with regard to generic names and prior trade mark rights. It provides little effective protection for non-wine and spirit products just a general framework that allows WTO Member countries to challenge countries that have not included provisions for the protection of GIs in their national legislation.

International treaties relating to trade mark protection as well as the Community trade mark system offer legal frameworks that can facilitate the protection of non-agricultural GI products. However, producers interested in using them can face serious challenges with regard to application requirements, use and ability to enforce the right at costs that can be significant. The system can be an expensive one both in terms of registration and above all enforcement. Another limitation aspect derives from the difficulty to secure word trade mark registration and the need to rely on figurative trade marks to protect the name of non-agricultural products bearing a geographical indication (see the section on the analysis of trademark protection's provisions under 1.4 above. As a result, protection secured through a figurative or semi-figurative mark does not allow for a reservation of the geographical name to the trade mark holder(s).

The Lisbon Agreement offers an extensive protection of registered appellations of origin. However, the strict definition of the appellation of origin and the limited geographical scope of the Lisbon Agreement limit greatly its effectiveness.

Bilateral agreements have been used by several Member States of the EU to protect their non-agricultural GI products in other EU Member States in the 1960s and 1970s mainly. Since then, only Switzerland has recently negotiated an agreement with the Russian federation that provides for such protection. In general, they offer a high level of protection to GI products. Interestingly, the EU seems open to non-agricultural GI products protection through bilateral agreements as it recently offered to do so in a bilateral agreement signed with Colombia and Peru in June 2012.

PART II – Overview of infringements and imitations problems identified in the context of this study

Introduction

In the framework of this study, the experts gathered information on imitations and infringement⁶² towards producers and their associations, if any. 94 products out of 127 products on which we had economic data reported infringements of their IP rights or the existence of imitations on the markets.

The information on infringements is sometimes incomplete as producing companies often know that products infringing their rights are marketed but lack clear information on the origin, size and value of the problem. This part of the study is based on information gathered by the experts. It cannot be generalised but should be considered as a case study.

This section presents a summary of the information collected and some practical case studies.

94 products gave information on infringements. Out of these 94 products, infringements were reported as a major problem for 57.4% of them.

Geographical scope

The relative number of the reported cases of infringements differs according to the countries where the product comes from.

In some countries, all products (with available data on that topic) reported infringements (Italy: 6 products, Germany: 5 products, Switzerland: 3 products, Belgium: 2 products, Sweden: 1 product, and the UK: 1 product). In other countries, the infringements are numerous but do not concern all the products (France: 14 cases out of 28 products for which data are available, Spain: 11 out of 13, Czech Republic: 3 out of 7, Austria: 2 out of 4, The Netherlands: 2 out of 3, Romania: 2 out of 3, Lithuania: 1 out of 3, and the Slovak Republic: 1 out of 4). Finally, in some countries, no infringements were reported (Bulgaria, Estonia, Finland, Hungary, Luxembourg, Poland, Portugal, and Slovenia). However, as the information gathered covers only a sample of products, we cannot rule out that products suffer from infringements in all the countries covered by the study.

In Table 20 below:

- “no significant infringements” means that there are infringement’ cases which were reported by the interviewees, but they either do not have a significant impact the enterprises’ profits or they have been considered as marginal to the extent that they do not have any negative impact on the image or profits of the products and of the enterprises.
- “infringements” means that infringements were reported, and that they have a significant impact on the economic situation of the enterprises concerned, such as diminution of market share or volumes of sales and, even, impact on prices. The presence of these fake products has had an impact on the companies’ profits.

⁶² Infringements or counterfeiting refer to products that copy products that benefit from an IP protection; imitations refer to products that copy products that are not protected and to products that imitate products.

Table 20: Number of infringements by country

	Number of products	Infringements	No infringements	No significant infringements	No data for infringements	Percentage (on n=number with available data)
France	31	14	13	1	3	50
Spain	14	11	2	0	1	84.6
Italy	11	6	0	0	5	100
Germany	6	5	0	0	1	100
Czech Republic	7	3	3	1	0	42.9
Switzerland	3	3	0	0	0	100
Belgium	3	2	0	0	1	100
Austria	4	2	1	1	0	50
Netherlands	3	2	0	1	0	66.7
Romania	5	2	1	0	2	66.7
Lithuania	3	1	2	0	0	33.3
Sweden	1	1	0	0	0	100
United Kingdom	2	1	0	0	1	100
Slovak Republic	4	1	2	1	0	25
Ireland	2	0	1	0	1	0
Bulgaria	12	0	0	0	12	
Estonia	1	0	0	0	1	
Finland	1	0	0	0	1	
Hungary	4	0	2	2	0	
Luxembourg	1	0	0	1	0	
Poland	3	0	0	2	1	
Portugal	5	0	1	2	2	
Slovenia	1	0	0	0	1	
Total	127	54	28	12	33	57.4

Percentage on total	127	42.5	22.0	9.4	26.0
Percentage on sample with data	94	57.4	29.8	13	

Source: REDD

Based on the above, the interest of producers, consumers and policy-makers for a new EU framework that would improve the protection of non-agricultural GI products is likely to vary. In the countries where producers currently face competition and pressures from imitations or counterfeited products, they will probably be supportive. For other countries, where the problem is less acute, there could be more reluctance, as the establishment of such a system will generate costs (especially for public authorities if there is an obligation to implement the European regulation, but also to producers and possibly to consumers as costs could be included in the final price of the product). Some might argue that these costs could exceed the potential benefit of a new EU GI system.

Types of infringements

Most producers are aware that imitations and infringements are present on the market. They monitor the markets to try to detect them. Different examples of imitations and infringements

were gathered during the study. The names of the products in brackets are given for illustration purposes; the list is not an exhaustive one:

- Fake products are sometimes made in the country of origin of the GI product: e.g. Aubusson Tapestry, Moustiers Earthenware, Bourgogne Stone and Sèvres Porcelain (France)
- Imitations are also made in the EU, e.g. imitations from Germany for Montafoner Tisch (Austria), imitations from Italy for Bourgogne Stone (France), imitations from Romania for Murano Glass (Italy), imitations from Italy for Lithuanian flax textile (Lithuania), imitations from Bulgaria Horezu ceramics (Romania).
- Imitations and counterfeited products coming from Asia which are sold at a much cheaper price on the EU market, e.g. Binche lace (Belgium), Glass of Železný Brod and Figurines of Železný Brod (Czech Republic), Erzgebirge wood art (Germany), Couteaux de Thiers and Quimper Earthenware (France), Murano Glass and Carrara Marble (Italy), Horezu ceramics (Romania), Natural Stone from Castile and Leon - Pinacal, Majorca cloth or textile, Manises ceramics (Spain), and Swiss Watches.
- Cheap and poor-quality jewellery and components of jewellery which are imported mainly from Asia to the EU. These products often do not meet EU safety and hygienic standards (e.g. Gablonz Jewellery, Gablonz Wares, Gablonz Glass, and Gablonz Crystal Ware (Czech Republic)).
- Internet is more and more used as a means to reach the clients but the authenticity of the product is difficult to ascertain. Imitations and counterfeited products have been found on the internet: e.g. Bourgogne Stone and Aubusson Tapestry (France) and Horezu Ceramics (Romania).
- Use of an EU GI name by products coming from Mexico to the EU where a homonymous city exists (e.g. Talavera Ceramics from Spain), and from China to the EU where a district named Deruta was founded (e.g. Deruta Ceramics from Italy). In the case of Talavera Ceramics, the introduction of these products in Spain has not been detected.
- Use of evocation of the protected name by fake products, for example “Belgian stone” for fake Belgian Bluestone, Turkish marbles marketed under the denomination ‘Botticino Royal’ and ‘The new Botticino’, and Turkish white marbles marketed under the denomination ‘Blanco Macael’ imported to Spain.
- Use of evocation of the protected name by products, which do not belong to the same category of product, e.g. quartz or ceramics using the name “Belgian Bluestone”, painted glass using the name “Murano Glass”, Chinese granite, slate of India and limestone from emerging countries using the name “Natural Stone from Castile and Leon - Pinacal”.
- Use of the pattern by an infringer on the Korean market: e.g. St. Galler embroidery (Switzerland).
- Fake antiques which are sold as if they were the genuine ones, e.g. Sèvres Ceramics (France)

Scale of the infringements

The information collected in the context of the study underlines the fact that the products identified are mostly produced by micro, small and medium sized enterprises (see the paragraph 2.a under Part III).

Table 21: Size of the enterprises and infringements per type of products

	Total number of products	Average of Micro enterprises	Average of Small enterprises	Average of Medium enterprises	Average of Large enterprises	With infringements	Without infringements	Insignificant infringements	No data for infringements
Basket making	2	50.0	50.0	0.0	0.0	0	2	0	0
Bouquet of dried plants	1	100.0	0.0	0.0	0.0	0	1	0	0
Ceramics/pottery	32	77.5	16.8	5.4	0.2	15	8	3	6
Cosmetic product	6	80.0	20.0	0.0	0.0	2	3	0	1
Crystal	1	0.0	100.0	0.0	0.0	0	0	1	0
Embroidery	3	64.7	22.0	13.3	0.0	2	0	1	0
Enamels	3	58.3	8.3	0.0	33.3	0	2	1	0
Firearms	1	10.0	90.0	0.0	0.0	0	0	1	0
Glass	3	30.0	50.0	13.3	6.7	2	0	1	0
Jewellery	6	63.6	15.6	20.2	0.6	3	0	0	3
Knives	4	39.3	24.8	36.0	0.0	4	0	0	0
Lace	8	68.1	30.3	1.6	0.0	3	3	0	2
Leather products	3	79.7	19.0	1.3	0.0	2	1	0	0
Mineral	9	0.0	0.0	11.1	88.9	0	0	1	8
Music instrument	3	61.0	37.3	1.3	0.3	1	0	0	2
Paper cutting	1	100.0	0.0	0.0	0.0	1	0	0	0
Pictures	1	0.0	100.0	0.0	0.0	0	1	0	0
Porcelain	4	12.5	25.0	25.0	37.5	1	1	2	0
Stone/Marble	13	13.0	47.1	14.3	25.6	7	1	0	5
Tapestry	2	23.8	73.8	2.5	0.0	1	1	0	0
Textile (other than wool)	6	20.0	80.0	0.0	0.0	3	2	0	1
Traditional clay Nativity	1	100.0	0.0	0.0	0.0	1	0	0	0
Watches, clocks and alarm clocks	2	25.0	25.0	49.2	0.9	2	0	0	0
Wooden product	8	72.3	27.4	0.4	0.0	4	1	1	2
Wool products	4	33.3	50.0	16.7	0.0	0	1	0	3
Total	127	51.6	28.5	8.5	11.3	54	28	12	33

Source: REDD

For a majority of products, there is a link between the degree of competition and the number of infringements. In fact, in many cases, interviewees mentioned that their competitors make pressure on prices because they are able to compete on costs. Fake products often originate from countries where labour costs are significantly cheaper. The strong reputation of a product's name and its long history often allows companies to enjoy a strong position on the regional and national market often with little competition from very similar products. Competition comes mostly from competitors located outside of the region, who produce

either similar products or imitation products at lower costs then abusing the GI name and deceiving consumers.

Besides the fact that consumers might be attracted by the “lower price” of the other products, they are often not able to perceive the difference between a genuine and a counterfeited or imitation product, as the quality of the counterfeits are becoming increasingly better.

This is particularly the case for:

- Ceramics: out of 32 products, 20 did mentioned strong competition and 15 infringements,
- Wooden products: out of 8, 5 did mentioned strong competition and 4 infringements,
- Stone and Marble: out of 13, 8 did mentioned strong competition and 7 infringements,
- Lace: out of 8, 7 did mentioned strong competition and 3 infringements,
- Jewellery: out of 6, 4 did mentioned strong competition and 3 infringements,
- Cosmetics: out of 6 products, 2 did mentioned strong competition and 2 infringements,
- Knives: out of 4, 3 did mentioned strong competition and 4 significant infringements.

The table below gives an overview of the data on competitors and infringement collected by the experts by categories of products.

Table 22: Number of infringements by type of products, with indication on the competitors

	Total number of products	Competitors	No competitors	No significant competitors	No data for competitors	Infringements	No infringements	No significant infringements	No data for infringements
Basket making	2	2	0	0	0	0	2	0	0
Bouquet of dried plants	1	0	1	0	0	0	1	0	0
Ceramics/pottery	32	20	2	2	8	15	8	3	6
Cosmetic product	6	2	3	0	1	2	3	0	1
Crystal	1	1	0	0	0	0	0	1	0
Embroidery	3	2	0	0	1	2	0	1	0
Enamels	3	0	3	0	0	0	2	1	0
Firearms	1	1	0	0	0	0	0	1	0
Glass	3	2	0	0	1	2	0	1	0
Jewellery	6	4	0	0	2	3	0	0	3
Knives	4	3	0	1	0	4	0	0	0
Lace	8	7	0	0	1	3	3	0	2
Leather products	3	2	0	0	1	2	1	0	0
Mineral	9	1	0	0	8	0	0	1	8
Music instrument	3	1	1	0	1	1	0	0	2
Paper cutting	1	1	0	0	0	1	0	0	0
Pictures	1	0	1	0	0	0	1	0	0
Porcelain	4	2	1	0	1	1	1	2	0
Stone/Marble	13	8	1	1	3	7	1	0	5
Tapestry	2	1	1	0	0	1	1	0	0
Textile (other than wool)	6	2	0	0	4	3	2	0	1
Traditional clay Nativity	1	1	0	0	0	1	0	0	0
Watches, clocks and alarm clocks	2	1	0	1	0	2	0	0	0
Wooden product	8	5	1	0	2	4	1	1	2
Wool products	4	1	0	0	3	0	1	0	3
	127	70	15	5	37	54	28	12	33

Source: REDD

For certain products, the sample of products studied is smaller, but the problem is still important: Embroidery, Glass and Leather products (for each of these two categories: out of 3, 2 did mentioned strong competition and 2 infringements), Music instruments (out of 3, 1 did mentioned strong competition and 1 infringements), Paper cutting (1 producer facing both strong competition and several infringements), Tapestry (each: out of 2, 1 did mentioned strong competition and significant infringements), Watches (out of 2, 1 did mentioned strong competition and 2 significant infringements), Porcelain (out of 4, 2 face competition and 1 infringements) and Traditional Clay Nativity (the producers face both competition and infringements).

For other products such a textile, the pressure appears less high (out of 6, 2 did mentioned strong competition and 3 significant infringements). It is also the case for bouquets of dried plants, crystal, enamels, firearms, mineral, pictures, and wool products.

Financial consequences

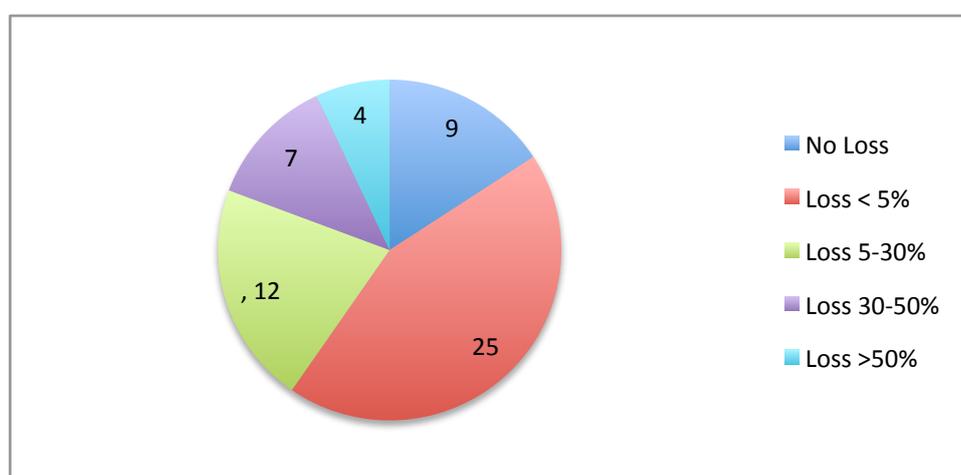
It has proved much more difficult to secure data from the relevant stakeholders on the economic and financial impact of imitations and infringements, as most of them refused to share this information. You will therefore find below only a few examples.

In general, the market value of infringements appears to be much smaller than the turnover of the enterprises producing the non-agricultural GI products. No precise example can be given here, because all the data collected on turnover are confidential.

In the case of the Lithuanian flax textile, the original production almost disappeared and the infringements have become the reference product. This means that, according to the data given by the interviewees, the value of the infringing product is much higher than the turnover of the genuine product.

Out of the 57 products for which data is available on the loss of revenues, the majority (60%) reports a small loss of revenues due to infringements, that is to say no loss at all or a loss which is inferior to 5% of the turnover: 16% (n=9) said that the loss is null and 44% (n=25) said it is below 5% of the turnover. Chart see below gives an overview of the number of products in the defined classes of loss of revenues, while Chart specifies the product categories concerned in each percentage class.

Chart 1: Products⁶³ affected by infringements, classified according to the magnitude of losses



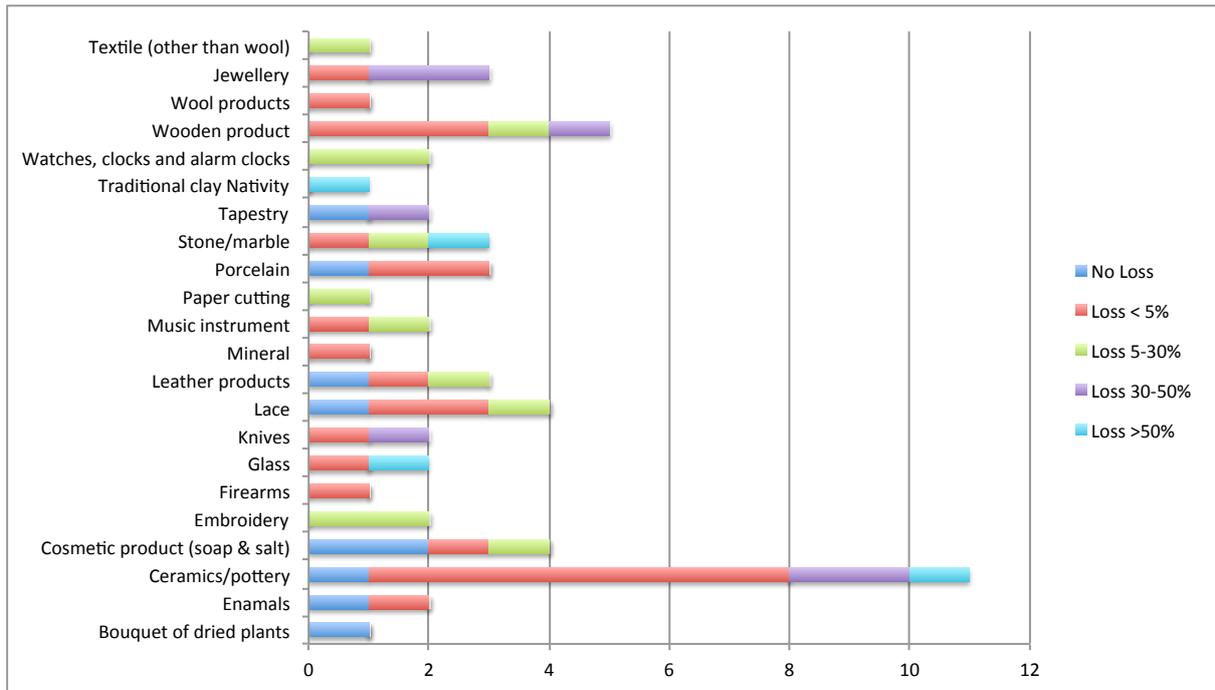
Source: REDD

For 40% of the sample, losses are above 5%. For 21% of the sample (n=12), losses represent between 5 and 30%, while for 12% of the sample (n=7), losses represent between 30 and 50%. These products are in the Ceramics/Pottery, Jewellery, Knives, and Tapestry products categories.

⁶³

Products for which data is available (57)

Chart 2: Proportion of losses due to infringements by product categories



Source: REDD

Losses represent more than 50% of the turnover for 4 products (7% of the sample). These products are in the Ceramics/Pottery, Glass, Stone/Marble, and Traditional Clay Nativity categories.

A study realised in Switzerland in 2004⁶⁴ with a range of enterprises revealed that the damage suffered by them due to infringements of their products is closely linked to their size. Thus, the larger the enterprise, the greater are its losses in terms of turnover. This could not be confirmed by our study, at least not for the sample for which we have available data, as shown in Table 23. All the products recording losses of more than 50% of their turnover are belonging to MSM enterprises. Even those suffering from damages in the category of losses between 30-50% (7 products) are all MSM sized enterprises (see table 24).

Table 23: Products (4) with losses over 50% due to infringements by turnover and enterprise size

Product name	Type	Turnover 2010 (Euros)	Size of enterprise in %		
			Micro	Small	Medium
Glass and figurines of Železný Brod	Glass	n/d	90	10	
Botticino Classico Marble	Stone/marble	136'272'000	5	90	5
Nativity Set of Murcia	Traditional Clay Nativity	68'634	100		
Blue Delftware	Ceramics/pottery	3'602'000		100	

Source: REDD

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Table 24: Products (7) with losses between 30-50% due to infringements by turnover and enterprise size

Product name	Type	Turnover 2010 (Euros)	Size of enterprise in %		
			Micro	Small	Medium
Navajas y cuchillos de Taramundi / Cuchillería de Taramundi	Knives	n/d	100		
Český granát, Český granátový šperk	Jewellery	5'000'000			100
Oberammergauer Holzschnitzkunst	Wooden product	n/d	100		
Tapiserie d'Aubusson	Tapestry	19'000'000	47.5	47.5	
Poteries d'Alsace	Ceramics/pottery	10'000'000	n/d		
"La Cerámica de Totana"	Ceramics/pottery		100		
Jablonecká bižuterie, Jablonecké zboží, Jablonecké sklo, Jablonecká krystalerie	Jewellery	n/d	60	40	

Source: REDD

Even if we do not have quantitative data on the losses in relationship to the turnover, we know that for the losses of the Swiss watch industry due to counterfeiting are important and represent a huge problem (see also case-study box below). The Federation of the Swiss watch industry (FH) estimates the annual loss due to counterfeiting to 528 millions of Euros. More than 42 million fake Swiss watches are produced per year, compared to the 29.8 million Swiss watches exported in 2011.

As a consequence of these losses, the enterprises consider to get better protected⁶⁵ in order to recover a better market share and better profitability. In most cases, the loss of market shares has direct effect on volumes of sales and employment.

In fact, infringements have important impacts on enterprises economic and social wealth and stability. As several studies in Europe⁶⁶ and worldwide have highlighted, infringements lead to loss of revenue, market share and lower profits. In addition, as far as the entire global market is strongly impacted by this parallel activity, counterfeiting is a barrier to export. As a result and in addition to the fact that they face competition of counterfeits on the national and European market, the manufacturers are faced with the loss of export markets. Infringements have also a considerable impact on enterprises' innovation and investment activities, which slow down due to losses in turnover and the loss of financial means for investments in research activities and developing new products or technologies. In addition, the fact that the timeframe for copying new products becomes increasingly shorter (less than 2 years after the product appears on the market (according to a study carried out in France in 2010), the motivation for innovation is also reduced.

The table below classifies the different levels of losses for each category of products.

⁶⁵ Geographical indications are one of the existing means to protect products against imitations, but it does not guarantee a 100% protection as experiences in the field of agricultural GI products show. Its advantage is the collective power, meaning that all enterprises and producers belonging to the GI can join efforts and save money in setting up activities and campaigns against counterfeits.

⁶⁶ Example from France : « L'impact de la contrefaçon vue par les entreprises en France, avril 2010 : <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/104000186/0000.pdf>
Europe : Impacts de la contrefaçon et de la piraterie en Europe, 2004 ; http://ec.europa.eu/home-affairs/doc_centre/crime/docs/study_ceipi_counterfeiting_fr.pdf

Table 25: Loss of revenues due to infringements, and proportion of main markets (domestic/export), by type of products.

	Number of products	No loss of revenues	Loss of revenues <5%	Loss of revenues 5-10%	Loss of revenues 10-30%	Loss of revenues 30-50%	Loss of revenues >50%	No data for loss of revenues	Average of National market	Average of EU+markets	Average of International market	Infringements	No infringements	No significant infringements	No data for infringements
Basket making	2	0	0	0	0	0	0	2	82.5	5.0	12.5	0	2	0	0
Bouquet of dried plants	1	1	0	0	0	0	0	0	100.0	0.0	0.0	0	1	0	0
Ceramics/pottery	32	1	7	0	0	2	1	21	75.0	8.9	16.2	15	8	3	6
Cosmetic product	6	2	1	1	0	0	0	2	65.8	16.8	17.4	2	3	0	1
Crystal	1	0	0	0	0	0	0	1	99.0	0.5	0.5	0	0	1	0
Embroidery	3	0	0	0	2	0	0	1	18.0	47.3	34.7	2	0	1	0
Enamels	3	1	1	0	0	0	0	1	68.3	12.3	19.3	0	2	1	0
Firearms	1	0	1	0	0	0	0	0	15.0	35.0	50.0	0	0	1	0
Glass	3	0	1	0	0	0	1	1	32.7	36.7	34.0	2	0	1	0
Jewellery	6	0	1	0	0	2	0	3	52.6	31.0	10.0	3	0	0	3
Knives	4	0	1	0	0	1	0	2	44.7	35.3	20.0	4	0	0	0
Lace	8	1	2	0	1	0	0	4	42.0	19.1	38.9	3	3	0	2
Leather products	3	1	1	1	0	0	0	0	27.0	27.7	13.0	2	1	0	0
Mineral	9	0	1	0	0	0	0	8	92.5	6.3	1.3	0	0	1	8
Music instrument	3	0	1	0	1	0	0	1	45.8	10.0	10.0	1	0	0	2
Paper cutting	1	0	0	1	0	0	0	0	10.0	15.0	75.0	1	0	0	0
Pictures	1	0	0	0	0	0	0	1	95.0	0.0	5.0	0	1	0	0
Porcelain	4	1	2	0	0	0	0	1	36.3	20.3	19.3	1	1	2	0
Stone/Marble	13	0	1	0	1	0	1	10	43.3	22.0	17.0	7	1	0	5
Tapestry	2	1	0	0	0	1	0	0	60.0	22.5	17.5	1	1	0	0
Textile (other than wool)	6	0	0	0	1	0	0	5	31.2	27.2	9.3	3	2	0	1
Traditional clay Nativity	1	0	0	0	0	0	1	0	93.0	6.0	1.0	1	0	0	0
Watches, clocks and alarm clocks	2	0	0	1	1	0	0	0	7.5	32.0	60.5	2	0	0	0
Wooden product	8	0	3	1	0	1	0	3	81.5	11.3	7.3	4	1	1	2
Wool products	4	0	1	0	0	0	0	3	58.3	27.7	14.0	0	1	0	3
	127	9	25	5	7	7	4	70	58.8	17.7	17.4	54	28	12	33

Source: REDD

Actions to fight against infringements

Producers who have replied to our questions on this point underline that they undertake actions to try to stop infringements and imitations. However, they face difficulties in doing so.

Many producers and/or associations of producers are increasingly concerned with the growing number of counterfeited products or infringements that are abusing their name. They often act to try to stop the infringements.

Examples of actions taken by producers are:

- Creation of an association of producers: e.g. Poteries d'Alsace (France)
- Registration of the name. In the case of the Monoï (France), the number of the counterfeited products on the market declined after the protection was granted (before the protection, they accounted for about 80% of the market). The group of producers "Ente Ceramica Vietrese" also registered a Figurative Collective Mark for the Ceramica Artistica e tradizionale di Vietri sul Mare ("made in vietri - è autentica ceramica vietrese - this is true vietri ceramics").
- Informal contacts exist between producers of similar products from different Member States who face identical problems when it comes to the protection of their intellectual property rights, notably in the stone sector.
- Anti-Counterfeiting Campaigns (see the case study of the Swiss Watches below).
- Letters of protest are regularly sent to infringers, e.g. Harris Tweed (UK) as well as legal warning letters, e.g. Schwarzwälder Kuckucksuhr and Erzgebirge wood art (Germany)
- Legal actions before Courts were undertaken: e.g. Dentelle de Calais and Moustiers Earthenware (France), Schwarzwälder Kuckucksuhr, Erzgebirge wood art and Solingen (Germany), Murano Glass and Deruta ceramics (Italy) and Ceramica de Totana (Spain).
- Legal actions were won by several non agricultural GI producers, e.g. Erzgebirge wood art (Germany), Ceramica de Totana (Spain), Murano Glass (Italy): preliminary injunction - Court of Venice (16 November 2004) against label with the wording "made in Italy-Murano-Venezia" in protection of the Geographical Indication: the product was an imitation made outside the area of Murano.
- Seizures of fake goods were undertaken (see the case study of the Swiss Watches below).

Case studies – example of actions taken by producers

Seizures of fake products and anti-counterfeiting campaigns: the example of Montre Suisse/Schweizer Uhr (Swiss watches)

Counterfeits of Swiss watches are very frequent. The Federation of the Swiss Watch Industry (FH), the private, professional, and non-profit association of the sector estimated that for 26 million watches produced in Switzerland each year, 30 to 40 million counterfeits are produced. The fight against these infringements is part of the daily job of the FH.

Seizure of fake watches

Nowadays, counterfeiters are strengthening their presence in Dubai. Recently, an assembly workshop run by Chinese nationals, concealed in a private apartment, has been discovered by the representatives of the FH. The police raid seized nearly 17000 fake Swiss watches.

Fake watches left the workshops in which they were manufactured (in China, in nine out of ten cases) and were delivered unassembled and partially marked in Dubai. These goods originating from China, after transshipment to Dubai, lose their Chinese origin and take on the origin of the «United Arab Emirates». As European and American customs give priority to controlling goods originating in China, the transshipments is appealing for traffickers of fake products.

For further information, please consult: <http://www.fhs.ch/en/news/news.php?id=951>

Anti-Counterfeiting Campaigns

The “Fondation de la Haute Horlogerie” (the Foundation) was established in Geneva in 2005 by the Richemont Group, Audemars Piguet and Girard Perregaux to promote Fine Watch making internationally. Both the Foundation and the FH are actively committed to fighting counterfeiting. Since 2009, they have implemented a series of measures to raise public awareness of a global problem that plagues the luxury industry in general and watch making in particular.

In January 2009, the Foundation joined forces with the FH to launch an international campaign with visuals and a slogan declaring: “Fake Watches are for Fake People”⁶⁷. The campaign appeared across international magazines and on websites. The Foundation is also partner to international anti-counterfeiting organizations including StopPiracy, Unifab and Indicam.

In 2011, the Foundation produced a new campaign, supported by a selection of short movies on the theme of counterfeiting in the watch segment, made by students of the University of Art and Design (ECAL) in Lausanne⁶⁸.

The FH and the Foundation also have pages on their websites dedicated to counterfeiting. For further information, please consult: <http://www.fhs.ch/en/faq.php#faux> and <http://www.hautehorlogerie.org/en/fondation/fight-against-counterfeiting/anti-counterfeiting-campaigns/>

Unfortunately, very few information was collected on costs of the legal proceedings (costs of actions before the courts or administrative bodies). Legal actions seem to be regularly undertaken by many producers or groups of producers but they do not want to let people know about the induced costs.

⁶⁷ For further information, please consult: <http://www.hautehorlogerie.org/en/fondation/fight-against-counterfeiting/anti-counterfeiting-campaigns/2009-fake-watches-fake-people/press-release/>

⁶⁸ For further information, please consult: <http://www.hautehorlogerie.org/en/fondation/fight-against-counterfeiting/anti-counterfeiting-campaigns/contrefacon/vraifaux-vous-avez-le-choix/>

The information gathered covers:

- Český granát, Český granátový šperk (Czech Republic): estimated costs of actions before the courts or administrative bodies are 200 000 CZK per year
- Schwarzwälder Kuckucksuhr (Germany): since the legal protection became active in 2005, there was one action against infringements before the court, and one formal warning. Each of them cost around 10.000 €.
- Chamber of Industry and Commerce Wuppertal-Solingen-Remscheid, which is the holder of the IP right on the name Solingen(Germany), spends about 50.000 € per year for the protection of the mark “Solingen” which includes fees relating to the trademark registration, actions against misuses, and confiscation of infringing products.
- Erzgebirge wood art (Germany): Since 1995, around 20 actions before the courts have been carried out. They were all won by the Association of craftsmen and toymakers of the Erzgebirgeand, therefore, costs were compensated. However, the majority of actions against infringement are formal warnings with relatively low cost.
- Marmo Botticino Classico (Italy): between 2004 and 2010, 35.000 EUR were spent on notary fees and warning letters, as well as 100.000 EUR in costs of registrations, translations and opposition proceedings.

Difficulties faced by producers

In this fight against infringements and imitations, producers reported to face serious challenges and difficulties to protect their rights. One of the main challenges is to monitor the market and identify infringers. It is also difficult for producers and group of producers to assess the economic impact of such counterfeited products.

The following list provides different examples of problems collected in the context of this study:

- It is difficult to ensure the protection of the product and impossible to prove the infringements. In the case of Glass of Železný Brod, and Figurines of Železný Brod (Czech Republic), the products are protected at the national level by an Appellation of origin and two trade marks. However, there are thousands of designs for these products. It is thus easy for the counterfeiters to make fake products which look like the real one.
- No action is taken by the public authorities despite the fact that producers asked for support and raised concerns with imitation products found on the market (see the case study of the Belgian Blue Stone below).
- Infringers try to secure the registration of the non-agricultural GI products' name as a trade mark at the EU level (see the case study of the Donegal Tweed from Ireland below).
- Competitors worldwide try to register trademarks similar to the GI name in the case of Solingen (Germany).
- In the textile branch, the fight against infringements is difficult as hundreds of new designs are done each year. In many cases, original designs are not entirely copied, but changed a little. This means that the systematic investigation to discover counterfeits would require an enormous human and financial investment which no company can afford. The huge number of patterns is also the reason why nobody is able to estimate the damage (e.g. St. Galler embroidery from Switzerland).
- No actions before the courts or administrative bodies have been done due to the uncertainty to reach any useful result. Furthermore, considering there is no legal framework for GIs of non agricultural products, the cost would be too high to have no results as an outcome (Natural Stone from Castile and Leon –Pinacal from Spain).

- The “Asociación Valenciana de Cerámica AVEC-GREMIO” did not provide information on legal actions before the courts or administrative bodies. However, it stated when infringement cases have been detected by companies high costs of pursuing the infringements and unsuccessful results before Courts have discouraged companies to move forward on the protection of their IP right (Manises ceramics from Spain).

Case studies – examples of difficulties faced by producers

The difficulty of obtaining protection through unfair competition law: the example of the Belgian Blue Stone vs. substitute products

The members of the Federation of the “Pierre Bleue de Belgique” are the holders of several trade marks protecting the “Pierre bleue de Belgique”. The Federation found unfair competition advertisement cases and decided to act to protect its rights.

The Federation of the “Pierre Bleue de Belgique” submitted a complaint in April 2012 to the Directorate General of enforcement and mediation of the Walloon administration “FPS Economy, SMEs, Self-employed and Energy” regarding four unfair competition advertisement cases.

The Federation argued that they were facing unfair competition from four enterprises that were selling composite materials and ceramics with fraudulent denominations. In fact, the denomination of these products evocated natural stone through the use of the word “stone” and made a direct reference to the Federation’s non-agricultural GI product by using the expression “Belgian Blue”.

The Directorate General of enforcement and mediation of the Walloon administration argued that based on the advertisements and catalogues that were attached to the complaint they could only observe that these documents reflected a final appearance that is effectively close to the traditional “Pierre Bleue de Belgique”. Nevertheless, they considered that the documents clearly emphasised that these products were inspired by and recalled the Belgian Blue Stone. Given that they never asserted that it was actual Blue Stone they could not be liable.

The Directorate General of enforcement and mediation of the Walloon administration thus concluded that they could not take action against these enterprises for deceptive marketing practices given that the advertisements in question did not mislead consumers as to the main characteristics of the product, its composition and its benefits. It considered it was just a comparison and that they were not trying to induce confusion in consumers’ minds.

Application for registration of trade mark including the name of geographical indication for products not produced in this area: the case of the Donegal Tweed

During the research of information on potential GIs in Ireland, the expert made a search in the OHMI database to see if 'Donegal Tweed' was registered.

She found that there was an application under examination for 'Donegal Tweed' made by Mr Monahan from Co Wicklow, Ireland (Trade mark No: 010657682). Country Wicklow is situated south of Dublin, whereas Donegal is in the North West of the Country. The applicant is thus not producing products in Donegal.

When she talked with the representative of Magee, the biggest company producing Donegal Tweed in Donegal, it appeared that Magee was not aware of this application. The representative highlighted the fact that Magee had thought about registering a trademark outside Ireland but it decided not to do so because it is, according to them, a lengthy process. The project was thus dropped. During the conversation, the representative said that Magee would look at the application and see what could be done to stop it.

Information on the trade mark request:

Trade mark name: Donegal Tweed

Trade mark No: 010657682

Trade mark basis: CTM

Date of receipt: 20/02/2012

Filing date: 20/02/2012

Nice classification: 18 (Nice classification) for leather and imitations of leather, and goods made of these materials and not included in other classes; Animal skins, hides; Umbrellas and parasols; Walking sticks; Whips, harness and saddlery.

Trade mark: Individual

Trade mark type: Word

Acquired distinctiveness: No

Trade mark status: Application published

Name: Monahan

ID No: 495295

Natural or legal person: Physical

Address: 22 Dunbur Park Wicklow Co Wicklow

Town: Wicklow

Country: IE - IRELAND

The registration was also asked for the class 18 (trunks and travelling bags), 24 (textile and textile goods, not included in other classes; bed covers) and 25 (clothing, footwear, headgear). The OHIM refused to register the name under these classes because the mark is "devoid of any distinctive character to distinguish the goods for which registration is sought".

The registration of the name was not done as of end of November.

PART III – Economic analysis of protected and potential non-agricultural GI products in the EEA countries and Switzerland

Introduction

This economic analysis was aimed at collecting evidence on the economic impact of both existing and potential non-agricultural geographical indications, in the EU Member States. The study covers 31 countries. However, it has proved impossible to identify existing or potential GIs in some of these countries. Moreover, in some countries producers refused to share information with our experts arguing that these data were confidential. As a result, experts gathered economic data in 23 countries. They cover a total number of 127 products. The economic analysis is based on information gathered from April to September 2012.

Methodology used in the framework of the economic study

In the framework of the present study, we have prioritised the inductive empirical method that implies the process of reasoning from particular facts to general principles. Empirical methods rely on observations of facts, association of ideas, and logical reasoning. Induction is the principal means by which the empirical approach derives conclusions. Statistical analysis and econometric modelling are the most known alternative methods to empirical research used in economy to make conclusions. For econometric modelling for example, economic data based on long periods of time are necessary. Appropriate sampling is very important to ensure the sample is reliable and representative. To proceed with sampling in an appropriate manner, it is necessary to start with a good characterisation of the entire “population”, i.e. the whole group out of which the sample will be taken. In the case of this study, as the entire population (i.e. an exhaustive inventory of all non-agricultural GIs) was impossible to define exactly due to a lack of time and resources. This is why the inductive empirical method was chosen.

The study covers a wide number of Member States and sectors which are often very fragmented and poorly documented in terms of economic data specific to the products themselves. This made the collection of comprehensive data collection impossible. Moreover, the quantity and quality of the collected data vary considerably from country to country and depend on each cultural background and knowledge of the subject. In some countries, data are well known and easily shared by the enterprises (for ex. for some products in France) while others enterprise owners or managers were not willing to give any economic data (for ex. Germany). This socio-cultural context largely explains the reason why the number of products varies so much from a Member State to another. Nevertheless, trends can be observed and analysed and must be considered as a basis to get a complete picture of the economic reality of these products.

Following the empirical method, we collected data on some economic facts and phenomena that we have organised systematically in order to draw general conclusions.

All experts had to fulfil for each GI product identified a questionnaire on economic issues (see Annex V) which had been submitted and approved by DG Markt. They have performed this task via desk research (databases, publications and studies) and contacts with producers and/or local authorities and/or intellectual property organisations in their respective countries by phone and e-mails. Considering the budget available very few field visits were conducted.

All the information gathered was inserted in a database (Excel document). Several issues were analysed through the creation of cross tabulations (pivot tables) of two or several variables. Based on these analyses, experts were asked to fine-tune their data and to gather further information. The Excel database was then updated with new elements provided by the experts. The data were crosschecked several times by different experts before undertaking the comparative analysis. In the final phase of the study, the economic analysis was strengthened and fine-tuned by setting up more pivot tables including various variables that we considered relevant, i.e. data for which the analysis can lead to a better understanding of the situation and can demonstrate the potential benefits or possible obstacles to the introduction of a legal regime for the protection of non-agricultural GI products.

Limitations

In general, responses on economic issues proved difficult to obtain. In fact, many enterprises involved in the production of GIs refused to give figures concerning sensitive information such as turnover and market share. In some cases, reported data were not precise enough to make comparisons and did not allow us to draw sound conclusions.

Some producers or representatives of professional bodies' reluctance to reply can also be explained by the fact that many stakeholders ignore the GI concept. Others were just not interested in the study or did not have time to spare to answer to the questionnaire.

Moreover, as stressed by several experts, data research via official statistics is difficult since the special market segments of the identified GI products are often not specifically published. Even if official databases exist, their open access is often limited to "rough" data but does not include precise figures that are necessary for a sound analysis, as we experienced in our analysis on the EU NUTS database⁶⁹. Resources were not sufficient to buy more precise data.

The collection of data was not an easy task. The sources and methods employed in the collection of data differ from one sector to another. Indeed, some sectors are more organised than others and some have a collective organisation. When possible, the expert contacted the collective organisation directly and thus obtained economic data for the whole sector. In other cases, economic data on the turnover were given to the expert directly by the manager of the company. Nevertheless, we were able to compare the data because the experts crosschecked data provided by many different sources. In this way, the quality of the data was ensured and we were able to carry out a sound analysis.

For specific topics, we did not obtain sufficient economic data to allow us to draw conclusions. As a result, for each question, we indicate the size of the sample that answered to it and for which data are therefore available. It is indicated as "n=XXX", "n" meaning the total number of available answers to the question.

It is important to note that the study cannot be considered as representative of the whole non-agricultural GI sector in the 31 countries covered by this study. This is mainly due to the fact that we did not use a statistical method of sampling, i.e. selecting independent samples from a number of subpopulations, group or strata within the whole population of products. The figures are only indicative and must thus be considered carefully. Conclusions have not only been drawn on the basis of these indicative figures but also on the basis of concrete examples (i.e. case studies) and from studies in the field of agricultural GIs.

⁶⁹ <http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/themes>

Structure of the report

The analysis of the market has been made according to different criteria:

- characteristics of the products (section 1),
- of the enterprises (section 2),
- of the related employment (section 3),
- of their sales (section 4),
- of their markets (section 5)
- and of their marketing issues (section 6).

1. Characteristics of the analysed products

a. Types of products

For the purpose of the economic study of potential and existing non-agricultural geographical indications, it was important to identify at the beginning of the research the kind of products to be taken into consideration. The nature of the products is important as well as their link to a specific geographical area from which they derive specific qualities and/or characteristics. The specific quality is defined by the Food and Agriculture Organisation of the United Nations (FAO) as *“a set of characteristics associated with a good or service that is recognised as distinct from mainstream products, in terms of composition, production methods or marketing. These characteristics thus allow the product to be differentiated in the market on the basis of a voluntary approach and specification of the product on the part of economic actors and to the extent that the prerequisites regarding generic quality (or basic quality with regard to consumer protection and respect for the rules of the market) are assured”*. The link to the geographical area, also called “terroir” in some countries, is a strong component of the specific quality. The “terroir” is defined as: *“a delimited geographical area in which a human community has built up a collective intellectual or tacit production know-how in the course of history, based on a system of interactions between a physical and biological environment and a set of human factors, in which the socio technical trajectories brought into play reveal an originality, confer typicity and engender a reputation for a product that originates in that terroir”* (FAO, 2012⁷⁰).

In the first phase of the products’ identification, we observed that the link to a specific origin exists for many products; it is well known and has been promoted by the producers themselves for quite some time. Specific skills have, in general, been developed over decades or centuries and are transmitted from generation to generation. Moreover, some products developed specific new technologies, such as Swiss watches. In some cases, our experts identified schools which bear the name of the GI products themselves and offer courses on the production of these products.

We have classified the products studied under the following categories: Ceramics/Pottery (32 products), Stone/Marble (13 products), Wooden products (8 products), Minerals (9 products), Lace (8 products), and Jewellery, including precious stones (6 products). Six product categories are represented by only one product, namely Bouquet of dried plants, Crystal, Firearms, Paper cutting, Pictures and Traditional Clay Nativity. The analysed products are classified according to country and sector in Table 26.

⁷⁰ Source: Identification of origin-linked products and their potential for development; a methodology for participatory inventories, FAO Division AGN, 2012.

Table 26: Type of analysed products per country

	Basket making	Bouquet of dried plants	Ceramics/pottery	Cosmetic product	Crystal	Embroidery	Enamels	Firearms	Glass	Jewellery	Knives	Lace	Leather products	Mineral	Music instrument	Paper cutting	Pictures	Porcelain	Stone/Marble	Tapestry	Textile (other than wool)	Traditional clay Nativity	Watches, clocks and alarm clocks	Wooden product	Wool products	Total (per type of products)
France	2		11	2			2			1	3	1					1	1	3	1	3					31
Spain			6							1	1		2						2		1	1				14
Bulgaria			1											8					3							12
Italy			3						1	1					1				3					2		11
Czech Republic				1					1	2				1				1		1						7
Germany										1	1				1								1	2		6
Portugal			1			1																		2	1	5
Romania			5																							5
Austria						1		1																1	1	4
Hungary				1			1												2							4
Slovak Republic			1	1								1							1							4
Belgium										1		1							1							3
Lithuania		1																			1			1		3
Netherlands			2		1																					3
Poland			1					1				1														3
Switzerland						1											1						1			3
Ireland												1													1	2
United Kingdom																					1				1	2
Estonia				1																						1
Finland															1											1
Luxembourg			1																							1
Slovenia												1														1
Sweden											1															1
Total (per type of products)	2	1	32	6	1	3	3	1	3	6	4	8	3	9	3	1	1	4	13	2	6	1	2	8	4	127
In percentage of the total number of products (=127)	1.6	0.8	25.2	4.7	0.8	2.4	2.4	0.8	2.4	4.7	3.1	6.3	2.4	7.1	2.4	0.8	0.8	3.1	10.2	1.6	4.7	0.8	1.6	6.3	3.1	100.0

Source: REDD

Traditional non-agricultural products do not have the same importance in all countries in terms of culture, employment and for the country itself. Southern Europe and Eastern Europe seem to retain more traditional products which are designated commonly by their geographical origin. Northern European countries have fewer products but some are highly appreciated and well-known worldwide, for instance Harris Tweed or Irish Linen in the UK.

Countries with the highest number of products studied are: France (31), Spain (14), Bulgaria (12), Italy (11), Czech Republic (7), Germany (6), followed by Portugal and Romania, 5 products each. Thus products from France (24%)⁷¹, Spain (11%), Bulgaria (9%) and Italy (9%) cover more than 50% of the sample in terms of products.

The overrepresentation of these countries is the result of several factors:

- First, the size of the country itself which explains why many products were found in big countries like France or Spain.
- Second, the cultural component which explains the persistence of traditions resulting in a large production of traditional products linked to a specific territory and their continuous production until now (even with an increasing use of new technologies in some cases).
- Third, the use and customs of the enterprises themselves that are ready to provide data or, reluctant to do so. This depends a lot on the region, the sector and the product.

⁷¹

All numbers are rounded to the nearest round number.

We have taken into account this overrepresentation in our analysis in order to draw balanced conclusions. For example, we voluntarily withdrew some products from certain calculations (for example Antwerp Diamonds from the total value of sales).

The number of products analysed in each country is not only related to the total amount of existing products. It came down to the availability and access to data. It is clear that these proportions do not reflect the importance of existing or potential non-agricultural products bearing a geographical indication.

b. Link between the product and a delimited geographical area

The link between the product and a precisely defined geographical area is an important question to be dealt with in order to strengthen the legitimacy for the establishment of a new regime of protection for non-agricultural products. The link between the product and the origin can be seen in different ways. From the legal perspective, the agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) contains provisions according to which the link to the origin can be due to reputation, specific characteristics and qualities linked to natural or human factors.

Out of the 127 products for which data were available, 119 products have a defined geographical area. This represents almost 94% of the sample. 8 products do not have a defined geographical area, namely: Ceramics/Pottery (2 products), Textile (1), Glass (1), Lace (1), Music instruments (1), Bouquet of dried plants (1) and Wooden products (1). In these cases, the experts have gathered no evidence that limits the production to a defined area. This means that the product bears the geographical name of a region or smaller area, but that it can be produced outside the area and still be designated by the geographical name. Ideally, for the registration and protection of GI products, it is important to define the geographical area in order to ensure coherence between the production zone and the products characteristics linked to it. Such process is a sensitive one as it can lead to the exclusion of producers located outside the defined area.

As the existence of a defined geographical area constitutes a major issue for the recognition and protection of a GI. In this section, we focus on products for which the geographical area of production is clearly identified (n=119) in order to assess the importance of these products for the region.

The products for which a defined geographical area exists (n=119) may be linked to their geographical origin through historical factors, know-how and practices. This link through human factors is typical for most non-agricultural or handicraft products.

This analysis does not aim at assessing if a specific quality is linked to a particular origin in the legal sense of the definition of geographical indications in several laws or international agreements. The link to the origin is an objective element which must be proven between a defined geographical area and the product, for instance origin of the raw material. In fact, even if a product has a specific quality due to its geographical origin, the name of this product may become generic, and therefore, the effective quality (and in some cases even the reputation) of the product is not linked to the geographical area anymore.

81 products use local raw material, i.e. almost 64% of the total analysed products (n=127) (see Table 27 below). They represent the following types of products: Stone/marble, Porcelain, Minerals, Cosmetic products, Glass, Basket, Pictures, Bouquet of dried plants and Traditional clay Nativity. All the products analysed in these categories use exclusively local raw materials. Product categories that largely use local raw materials are: Ceramics/Pottery (23 products), Jewellery/precious stone (5 products), and the Wooden products (6 products).

As shown in Table 27, for 6 product types or categories the raw material is not the determining factor for the link to the origin: Crystal, Knives, Music instruments, Embroidery, Firearms, and Paper cutting. Crystal, Knives and Music instruments source their raw material on the domestic market while producers of the last 3 product types source their raw material from European and International markets. To be more precise, products using raw material from the International markets are: Ferlacher weapons, Schladminger Loden and Vorarlberger Embroidery from Austria, Antwerp Diamonds from Belgium, Pyrenees Clothes from France, Madeira Embroidery from Portugal, Donegal tweed from Ireland, Paper cuts of Pays d'Enhaut, St.-Galler embroidery from Switzerland, and Blue Delftware from the Netherlands.

Text Box 1: Example of a typical handicraft product and its link to the geographical origin:
Ferlacher weapons from Austria (extract from an expert's report)

The link of the product to the geographical area is due to the recognised know-how and its long-lasting reputation (for centuries), based on specialised and high quality work. The main difference between the Ferlacher weapons and other hunting weapons is that it is handcrafted. Each weapon is individually crafted according to the buyer's guidelines and wishes. The client's measurements are taken to adapt the length of the gun shaft, while the wood for the shaft is taken from the roots of a walnut tree together with the customer. It is thus unique. The Ferlacher gunsmiths have received international recognition for their craft for centuries and since 2010 they are part of the cultural heritage of Austria.

Table 27: Products for which raw materials originate from the same defined geographical area as the one where the product is made

	Raw material comes from region	Raw material comes out of region	No clear information	Foreign suppliers
Basket making	2	0	0	0
Bouquet of dried plants	1	0	0	0
Ceramics/pottery	23	7	2	1
Cosmetic product (soap & salt)	6	0	0	0
Crystal	0	1	0	0
Embroidery	0	3	0	2
Enamels	1	2	0	0
Firearms	0	0	1	1
Glass	3	0	0	0
Jewellery	5	1	0	1
Knives	0	3	1	0
Lace	1	7	0	0
Leather products	0	0	3	0
Mineral	9	0	0	0
Music instrument	0	2	1	0
Paper cutting	0	1	0	1
Pictures	1	0	0	0
Porcelain	4	0	0	0
Stone/Marble	13	0	0	0
Tapestry	1	0	1	0
Textile (other than wool)	1	4	1	1
Traditional clay Nativity	1	0	0	0
Watches, clocks and alarm clocks	1	1	0	0
Wooden product	6	0	2	0
Wool products	2	1	1	2
Total	81	33	13	9

	Percentage
Link to the territory through raw material	63.8
No link to the territory through raw material	26.0
No clear information on provenance of raw material	10.2

Source: REDD

The strength of the link between the product and the region where it is produced is an important element to take into account when looking at establishing a GI system. Under the EU GI system applicable to agricultural GI products (with the exception of GI spirits), this factor has resulted in the adoption of two definitions: Protected Denomination of Origin (PDO) and Protected Geographical Indication (PGI). A product can be protected as a PDO only if all the raw material comes from the defined geographical area. However, when this is not the case, a product can be protected as a PGI provided that it meets the criteria justifying its link to the defined area. These criteria may be linked to natural or human factors, or only to the reputation.

2. Enterprises

a. Number of enterprises (producers of a GI product)

Looking at the possible introduction of an EU legislation on the protection of non-agricultural products, it is important to observe the contribution of such products to economic welfare. This is the reason why data on the number and the nature of the enterprises, as well as on the employment and the contribution of these products to the local employment were gathered.

The sample of products studied shows that these are mostly produced by micro, small and medium sized enterprises (MSMEs). The number of enterprises that produce the final GI products amounts to an average of 85 per studied product (in total 10,737 enterprises were identified, for the total sample of 127 products for which data are available). However, this number must be balanced as the total number of enterprises differs from sector to sector. The products types with the highest total number of producers are: Wooden products (3,252 – average 407 producers per product), Jewellery, including precious stone (2,406 – average 401 producers per product), Stone/Marble (1,519 – average 117 producers per product) and Leather products (962 – average 321 producers per product). The average number of producers per product type is also a good index to illustrate the relative contribution of the product to the region's local development (see Table 28).

Table 28: Total number of suppliers and producers per type of products

	Number per type	Number of Suppliers	No data suppliers	Number of Producers	Average number of suppliers	Average number of producers
Basket making	2	-	2	21	n/d	11
Bouquet of dried plants	1	-	0	4	-	4
Ceramics/pottery	32	453	8	632	19	20
Cosmetic product	6	1	3	13	0	2
Crystal	1	1	0	1	1	1
Embroidery	3	62	1	146	31	49
Enamels	3	15	0	36	5	12
Firearms	1	-	1	11	n/d	11
Glass	3	37	1	621	19	207
Jewellery	6	61	2	2'406	15	401
Knives	4	121	0	100	30	25
Lace	8	7	5	383	2	48
Leather products	3	585	2	962	585	321
Mineral	9	1	0	9	0	1
Music instrument	3	68	1	203	34	68
Paper cutting	1	-	1	12	n/d	12
Pictures	1	-	1	1	n/d	1
Porcelain	4	8	1	6	3	2
Stone/Marble	13	578	1	1'519	48	117
Tapestry	2	1	1	21	1	11
Textile (other than wool)	6	12	3	57	4	10
Traditional clay Nativity	1	-	0	12	-	12
Watches, clocks and alarm clocks	2	366	0	270	183	135
Wooden product	8	4'945	1	3'252	706	407
Wool products	4	1	3	39	1	10
	127	7'323	38	10'737		

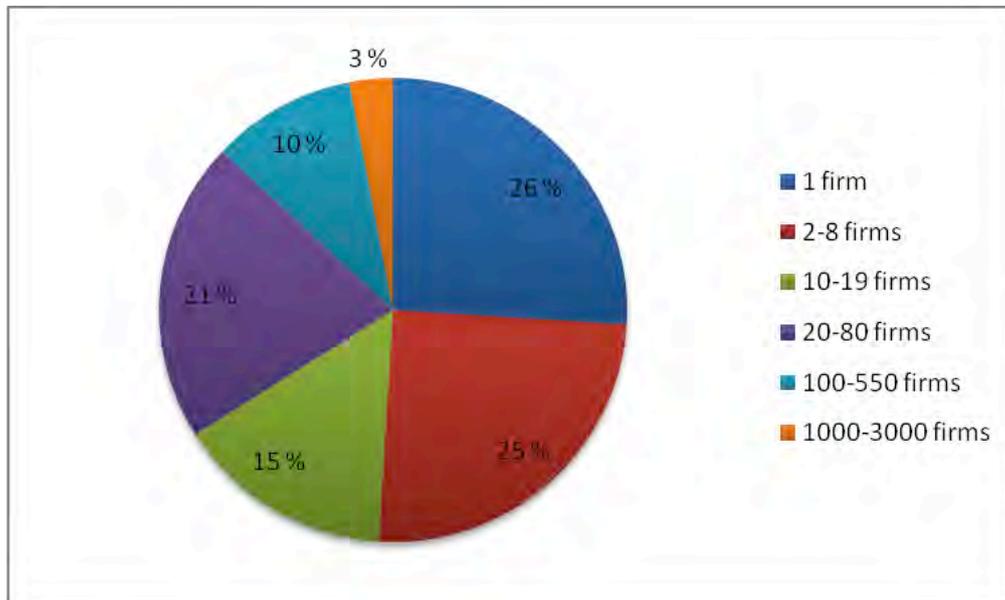
Source: REDD

Legend

Suppliers: enterprises upstream in the supply chain.
Producers: enterprises, which produce the final product.

The proportion of “one-business type” (i.e. enterprises that are run by a single person) is high. In fact, out of the 127 products studied, 26% (33 out of 127) are produced by individual firms. On the contrary, 3% of the products studied are manufactured by a high number of enterprises (between 1,000 and 3,000 firms). Some examples of this trend are: Art furniture of Bassa Pianura Veronese (Italy) with 2,593 enterprises, followed by Antwerp diamonds (Belgium) with around 1,500 enterprises and Carrara Marble (Italy) with 1,053 enterprises (see Table 29). 13 products record between 110 and 550 enterprises, 27 products between 20 and 80, 19 products between 10 and 19, and 31 products between 2 and 8 (see Table 28 and Chart 3).

Chart 3: Products classified according to the number of producing firms



Source: REDD

b. Number of enterprises (suppliers of raw material)

The total number of enterprises upstream in the supply chain which produce the raw material (not including the enterprises producing the final non-agricultural product) amounts in average to 79 enterprises per product (in total 7,323 for a sample of n=92 products; data were not available for 38 products). The data reveal that in the case of 15 products no single enterprise is involved upstream in the supply chain.

The categories with the highest total number of suppliers are: Wooden products (4,945 – average per product: 706), Leather products (585 – data available only for 1 product) and Stone/Marble (578 – average per product: 48). The watches category has also a high average number of suppliers (183), but data are available only for 2 products. These figures can be partly explained by the fact that some of these categories record the most important number of products out of the total of the 127 studied products: Ceramics/Pottery products (32 products, 25%), Marble/Stone products (13 products, about 10% of the total of products), Jewellery (6 products, 4.7%). Wooden products (8 products, 6.3%) have the highest number of suppliers and producers: respectively 4,945 suppliers and 3,252 producers.

The production process may take place within a single enterprise and without separate independent suppliers or firms upstream in the supply chain. It is the case for a certain number of products: Minerals (8), Stone/Marble (4), Ceramics/Pottery (2), Cosmetic (2), Jewellery (1), and Lace (1) products. Indeed, for Minerals and Stone/Marble, there are enterprises that are both owner of mines and producer of the GI product. This is the case in

Bulgaria where a single firm produces 11 products analysed which belong to the category of Minerals (7), Limestone (1), Marble (1), Perlite (1) and Muschelkalk (1). This is probably due to the fact that these are local raw materials and that there is only 1 firm specialised in mining and processing these natural resources or raw materials (Table 29).

The countries with the highest number of suppliers (enterprises in the upstream part of the GI production process) are: Italy (5,694), Spain (653), Switzerland (353), France (266) and Germany (135). The countries with the highest number of producers are: Italy (5,189), Belgium (1,517), Spain (1,333), Germany (814), France (607) and Poland (383) (Table 29 below). As this is just a sample, these figures should not be considered as representative but they can provide an idea of the balance between the number of producers of the final products and the suppliers of raw materials in each country.

Table 29: Number of suppliers and producers per country and per product

	Number of Suppliers		Number of Producers	
		No data for number of suppliers		
Austria	45	3	133	
Ferlacher weapons	0	1	11	
Montafon table	0	1	10	
Schladminger Loden	0	1	2	
Embroidery of Vorarlberg	45	0	110	
Belgium	9	1	1,517	
Antwerp Diamonds	9	0	1,500	
Belgian Bluestone	0	0	15	
Binche Lace	0	1	2	
Bulgaria	0	0	76	
Ceramics from Trojan	0	0	65	
Kaolin from Kaolinovo	0	0	1	
Kaolin from Senovo	0	0	1	
Kaolin from Vjatovo	0	0	1	
Kuartz sand Junak	0	0	1	
Kuartz sand Kaolinovo	0	0	1	
Kuartz sand Senovo	0	0	1	
Kuartz sand Vjatovo	0	0	1	
Limestone from the city of Vratza	0	0	1	
Marble from Ilindenci	0	0	1	
Muschelkalk from Manastirishte	0	0	1	
Perlite-Kardzali	0	0	1	
Czech Republic	8	2	165	
Carlsbad Thermal Spring Salt	1	0	1	
Czech garnet jewellery	1	0	1	
Duchcov porcelain	4	0	1	
Gablonz Jewellery, Wares, Crystal Ware	0	1	80	
Glass and figurines of Železný Brod	0	1	80	
Kaolin Sedlec	1	0	1	
Tapestry of Jindrichuv Hradec	1	0	1	
Estonia	0	1	1	
Haapsalu therapeutic mud	0	1	1	
Finland	18	0	3	
Kantele	18	0	3	
France	266	20	607	
Alsace Potteries	0	1	17	
Anduze Vase	1	0	7	
Argentan Lace	0	1	1	
Aubusson Tapestry	0	1	20	
Betschdorf Pottery	8	0	8	
Bourgogne Stone	40	0	118	
Calais Lace	0	1	15	
Du Puy Lace	0	1	2	
Epinal picture	0	1	1	
Gironde Tiles	0	0	11	
Granite from Bretagne	100	0	100	
Limoges China	0	1	15	
Limoges enamels	1	0	30	
Longwy enamels	10	0	5	
Lyon silk	0	1	40	
Marseille Soap	0	1	3	
Martres Tolosane Earthenware	0	1	7	
Moustiers Earthenware	0	1	15	
Nevers Earthenware	3	0	4	
Pyrenees Clothes	0	1	2	
Quimper Earthenware	0	1	2	
Romans shoes/leather	0	1	50	
Saint Samson la Poterie Tiles	1	0	1	
Sèvres Porcelain/Ceramics	0	1	1	
Tahiti Monoi	0	1	6	
Thiers Knives and Cutlery	100	0	61	
Touraine Silk	2	0	2	
Vallabrègues Basketworks	0	1	1	
Vallauris Pottery	0	1	36	
Villaines Basketwork	0	1	20	
Vosges Sanstone	0	1	6	
Germany	135	1	814	
"Solingen" cutting equipment	20	0	26	
Cuckoo Clock made in Black Forest	30	0	10	
Erzgebirge wood art	35	0	200	
Idar-Oberstein Gemstone products	0	1	500	
Oberammergau wood carvings	0	0	18	
Vogtland Music Instruments	50	0	60	
Hungary	8	0	6	
Alginate and salt of algin acid from Gérce	0	0	1	
Enameled pots from Bonyhád	4	0	1	
Porcelain from Herend	2	0	2	
Porcelain, pot and fancy goods from Hollóháza	2	0	2	
Ireland	0	2	13	
Kenmare Lace	0	1	7	
Donegal Tweed	0	1	6	
Italy	5,694	1	5,189	
Alabaster in Voleterra	4	0	23	
Art furniture of the Bassa Pianura Veronese	2,744	0	2,593	
Bassanese Artistic Furniture	2,149	0	415	
Botticino Classico Marble	56	0	11	
Carrara Marble	318	0	1,053	
Ceramics of Faenza	55	0	45	
Cremona Violinmaking	0	1	140	
Deruta artistic and traditional ceramics	220	0	23	
Murano Glass	7	0	536	
Vietri sul Mare artistic and traditional ceramics	91	0	50	
Jewels from Torre del Greco	50	0	300	
Lithuania	10	0	21	
Lithuanian crosses	0	0	12	
Lithuanian flax textile	10	0	5	
Vilnius region palms	0	0	4	
Luxembourg	18	0	8	
Peckvillchen/Peckvillercher	18	0	8	
Netherlands	1	2	6	
Blue Delftware	0	1	4	
Leerdam Crystal	1	0	1	
Makkumer	0	1	1	
Poland	67	0	383	
Boleslawiec pottery	30	0	28	
Koniakow laces	7	0	350	
Krosno glass	30	0	5	
Portugal	19	1	32	
Black Clay of Olho Marinho	1	0	2	
Blankets wool of Mértola	1	0	1	
Flower sticks-Small wooden artefacts of Vila Nova de Poiares	15	0	2	
Madeira Embroidery	0	1	25	
Mask of Vinhais	2	0	2	
Romania	18	0	102	
Horezu Ceramics	3	0	23	
Cucuteni Ceramics	4	0	1	
Corund Ceramics	7	0	55	
Maramures ceramics	2	0	15	
Oboga ceramics	2	0	8	
Slovak Republic	0	0	4	
Golden onyx of Levice	0	0	1	
Lace of Soľná Baňa	0	0	1	
Majolica of Modra	0	0	1	
Piešťany mud	0	0	1	
Slovenia	0	0	5	
Idrija lace	0	0	5	
Spain	653	2	1,333	
Elche shoes	585	0	410	
Jet of Asturias	1	0	25	
Majorca cloth or textile	0	1	3	
Manises ceramics	7	0	32	
Marble from Macael	0	0	150	
Nativity Set of Murcia	0	0	12	
Natural Stone form Castile and Leon-Pinacal	60	0	39	
Portillo Traditional Pottery	0	0	14	
Pottery and Ceramics of La Rambla	0	0	55	
Pottery of Salvatierra de los Barros	0	0	19	
Talavera Ceramics	0	0	32	
Taramundi knives and pocket knives	0	0	12	
Totana Ceramics	0	0	28	
Ubrique Leather	0	1	502	
Sweden	1	0	1	
Mora knife	1	0	1	
Switzerland	353	1	283	
Paper cuts of Pays d'Enhaut	0	1	12	
St.Galler embroidery	17	0	11	
Swiss watches	336	0	260	
United Kingdom	0	1	35	
Harris Tweed	0	1	30	
Irish Linen	0	0	5	
Total	7,323	38	10,737	

Source: REDD

c. Size of enterprises (producers of the non-agricultural GI)

According to the European definition of enterprises, there are 4 categories based on the number of employees:

1. Micro enterprises: 1-9 employed persons.
2. Small enterprises: 10-49 employed persons.
3. Medium-sized enterprises: 50-249 employed persons.
4. Large enterprises: 250 or more employed persons.

Out of the 127 products, data on the size of the enterprises has not been provided for 9 products. The analysis on this issue is thus based on a total number of 118 products (see extensive results for each product in Table 30).

Among these 118 products, the large majority (n=83) is produced by only one type of enterprise size (see Chart 4):

- 45 products are exclusively produced by micro-enterprises (38%).
- 20 products are exclusively produced by small-sized enterprises (17%).
- 6 products are exclusively produced by medium-sized enterprise (5%).
- 12 products are exclusively produced by large-sized firms (10%).

In average, out of the 118 products, 51.6% are produced by micro enterprises, 28.5% by small enterprises, 8.5% by medium enterprises and 11.3% by large enterprises. Therefore, most of the products are produced by enterprises which are micro and small-size enterprises (80.1%) (see Table 31).

According to statistics published in 2012, the majority of European enterprises are micro-enterprises (92.2%). Small enterprises represent 6.5%, medium enterprises represent 1.1% and large enterprises represent 0.2%⁷². In our sample: 35.24% of the enterprises are micro, 60.45% are small, 3.86% are medium and 0.45% are large enterprises. Compared to the general structure of enterprises in the EU mentioned above, the proportion of large enterprises in our sample is much higher (11.3% instead of 0.45%).

For example, the Českýgranát - Českýgranátovýšperk are garnets (precious stones) used in jewellery and ornaments. All the production steps are made in the geographical area: garnet mining, garnet processing, production of jewellery and others "objets d'art". There is only one enterprise producing the product. It is a medium-sized enterprise equipped with modern technological facilities for precious stones cutting as well as for jewellery production. Its market share is 50% and 60% of the production sold on the national market.

Another example is Krosno glass, manufactured from supreme quality soda lime glass using only the best raw materials. Producers of the glass products manage to combine ancient craft of manual work with modern technologies and quality control procedures. There are five companies producing Krosno glass. Two of them are small enterprises, two others are medium-sized enterprises and one is a large enterprise. The market share of the product is 25%. One-third of the product is sold at the national level, one-third at the EU level and one-third at the international level.

A third example is Calzado de Elche, a footwear for men, women and children, produced and elaborated historically in the boundary of the city of Elche (province of Alicante, Spain). It

⁷² EU SMEs in 2012: at the crossroads, Annual report on small and medium-sized enterprises in the EU, 2011/12. See: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/supporting-documents/2012/annual-report_en.pdf

includes dressed-up, casual, sports and anatomic shoes. The production of Elche shoes started with the production of espadrilles/sandals with jute, given the abundance of this material in the area, which was being used to make soles for footwear among others. The production initially handmade became industrially produced in the late 19th century. Craftsmen began to produce in an industrial way, incorporating new materials such as leather and fur, and developing new systems in the elaboration of the product (floor nailing, gluing floors with the technique of “desvirado” (trimming), gluing premade floors, sewing the floors, vulcanising, etc.). Currently, the product has an excellent reputation; it is known for its quality, design and innovation and is exported in particular in numerous countries. 410 enterprises work in the production of the final product; while 585 enterprises are engaged upstream in the supply chain (see Table 29). The Elche shoes production employs over the equivalent 9,000 full-time workers. It currently represents 40% of the market share. Approximately, 10% of Elche shoes are sold at regional level, 30% at national level, 40% at European level and 20% at international level.

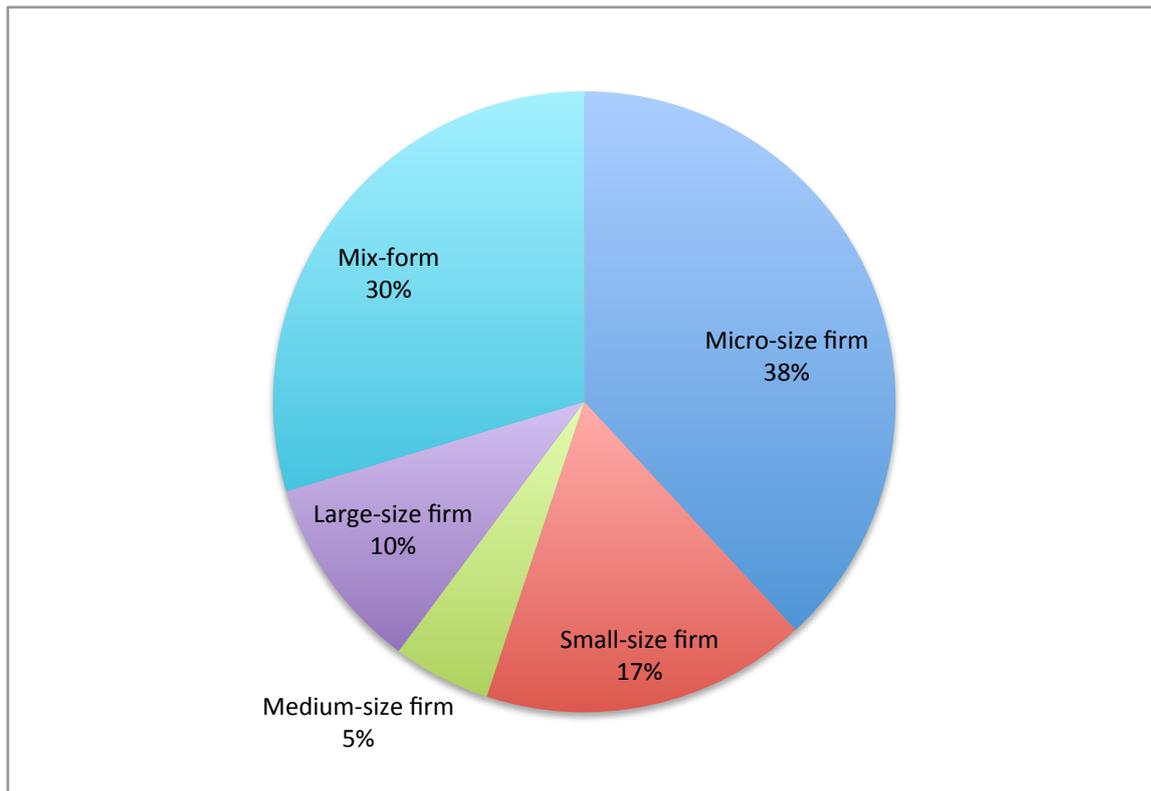
The last interesting example is Swiss watches (Montre Suisse/Schweizer Uhr). This denomination encompasses different types of Swiss watches and clocks (mechanical or quartz watches) made of different materials (case materials, crystal, bracelets, precious metal, stainless steel, wood, plastic, high-tech ceramic) and having different designs. The mass production of watches began at the turn of the 20th century, thanks to the researches and new technologies introduced by reputed watchmakers (i.e. Frédéric Ingold and Georges Léchet). The increase of the productivity, the interchangeability of parts and the standardisation progressively led the Swiss watch industry to its world supremacy. For more than four centuries now, tradition, craftsmanship, high technologies and permanent innovation have allowed the Swiss watch industry to keep its leadership in the world watch market. In 2010, the whole Swiss watch industry comprised 596 companies, including enterprises involved upstream in the supply-chain and enterprises producing the final product. The sector is mainly constituted by medium-sized enterprises (98.3%) but there are also a number of large enterprises producing this product (1.7%), such as the Swatch group, Patek Philippe and Rolex. In 2010, the Swiss industrial sector (sector II, not comprising services) generated 1,859,686 full-time jobs, while the Swiss watch industry alone provided 48,500 full-time jobs and contributed therefore with about 2.6% to the total amount of full-time jobs generated in the national industrial sector. Regarding the exports of watches in 2011, Switzerland is the world leader in value (21.8 billion dollars), followed by Hong Kong (8.8 billion dollars), China (3.7 billion dollars) and Germany (2 billion dollars).

Table 30: Size of enterprises for all products (sorted by country of origin)

	Percentage of Micro enterprises	Percentage of Small enterprises	Percentage of Medium enterprises	Percentage of Large enterprises	No data for the size of enterprises
Austria					
Schladminger Loden	0.0	50.0	50.0	0.0	0.0
Ferlacher weapons	10.0	90.0	0.0	0.0	0.0
Montafon table	100.0	0.0	0.0	0.0	0.0
Embroidery of Vorarlberg	70.0	30.0	0.0	0.0	0.0
Belgium					
Belgian Bluestone	15.0	0.0	30.0	55.0	0.0
Binche Lace	100.0	0.0	0.0	0.0	0.0
Antwerp Diamonds	0.0	0.0	0.0	0.0	1.0
Bulgaria					
Kaolin from Kaolinovo	0.0	0.0	0.0	100.0	0.0
Kaolin from Senovo	0.0	0.0	0.0	100.0	0.0
Kaolin from Vjatovo	0.0	0.0	0.0	100.0	0.0
Kuartz sand Junak	0.0	0.0	0.0	100.0	0.0
Kuartz sand Kaolinovo	0.0	0.0	0.0	100.0	0.0
Kuartz sand Senovo	0.0	0.0	0.0	100.0	0.0
Kuartz sand Vjatovo	0.0	0.0	0.0	100.0	0.0
Marble from Ilindenci	0.0	0.0	0.0	100.0	0.0
Muschelkalk from Manastirishite	0.0	0.0	0.0	100.0	0.0
Perlite-Kardzali	0.0	0.0	0.0	100.0	0.0
Limestone from the city of Vratza	0.0	0.0	100.0	0.0	0.0
Ceramics from Trojan	0.0	100.0	0.0	0.0	0.0
Czech Republic					
Duchcov porcelain	0.0	0.0	0.0	100.0	0.0
Czech garnet jewellery	0.0	0.0	100.0	0.0	0.0
Kaolin Sedlec	0.0	0.0	100.0	0.0	0.0
Carlsbad Thermal Spring Salt	0.0	100.0	0.0	0.0	0.0
Tapestry of Jindrichuv Hradec	0.0	100.0	0.0	0.0	0.0
Gablonz Jewellery, Wares, Crystal Ware	60.0	40.0	0.0	0.0	0.0
Glass and figurines of Zelezny Brod	90.0	10.0	0.0	0.0	0.0
Estonia					
Haapsalu therapeutic mud	100.0	0.0	0.0	0.0	0.0
Finland					
Kantele	0.0	100.0	0.0	0.0	0.0
France					
Limoges China	0.0	0.0	0.0	0.0	1.0
Sèvres Porcelain/Ceramics	0.0	0.0	100.0	0.0	0.0
Quimper Earthenware	0.0	50.0	50.0	0.0	0.0
Thiers Knives and Cutlery	47.0	19.0	34.0	0.0	0.0
Calais Lace	0.0	87.0	13.0	0.0	0.0
Aubusson Tapestry	47.5	47.5	5.0	0.0	0.0
Bourgogne Stone	0.0	0.0	0.0	0.0	1.0
Granite from Bretagne	0.0	0.0	0.0	0.0	1.0
Epinal picture	0.0	100.0	0.0	0.0	0.0
Pyrenees Clothes	0.0	100.0	0.0	0.0	0.0
Touraine Silk	0.0	100.0	0.0	0.0	0.0
Villaines Basketwork	0.0	100.0	0.0	0.0	0.0
Vosges Sanstone	0.0	100.0	0.0	0.0	0.0
Anduze Vase	43.0	57.0	0.0	0.0	0.0
Du Puy Lace	45.0	55.0	0.0	0.0	0.0
Longwy enamels	75.0	25.0	0.0	0.0	0.0
Alsace Potteries	0.0	0.0	0.0	0.0	1.0
Lyon silk	0.0	0.0	0.0	0.0	1.0
Argentan Lace	100.0	0.0	0.0	0.0	0.0
Betschdorf Pottery	100.0	0.0	0.0	0.0	0.0
Gironde Tiles	100.0	0.0	0.0	0.0	0.0
Limoges enamels	100.0	0.0	0.0	0.0	0.0
Marseille Soap	100.0	0.0	0.0	0.0	0.0
Martres Tolosane Earthenware	100.0	0.0	0.0	0.0	0.0
Moustiers Earthenware	100.0	0.0	0.0	0.0	0.0
Nevers Earthenware	100.0	0.0	0.0	0.0	0.0
Romans shoes/leather	100.0	0.0	0.0	0.0	0.0
Saint Samson la Poterie Tiles	100.0	0.0	0.0	0.0	0.0
Tahiti Monoi	100.0	0.0	0.0	0.0	0.0
Vallabrègues Basketworks	100.0	0.0	0.0	0.0	0.0
Vallauris Pottery	100.0	0.0	0.0	0.0	0.0
Germany					
Vogtland Music Instruments	83.0	12.0	4.0	1.0	0.0
"Solingen" cutting equipment	10.0	80.0	10.0	0.0	0.0
Erzgebirge wood art	78.0	20.0	2.0	0.0	0.0
Idar-Oberstein Gemstone products	95.0	4.0	1.0	0.0	0.0
Cuckoo Clock made in Black Forest	50.0	50.0	0.0	0.0	0.0
Oberammergau wood carvings	100.0	0.0	0.0	0.0	0.0
Hungary					
Enameled pots from Bonyhád	0.0	0.0	0.0	100.0	0.0
Porcelain from Herend	0.0	50.0	0.0	50.0	0.0
Porcelain, pot and fancy goods from Hollóháza	50.0	50.0	0.0	0.0	0.0
Alginate and salt of algin acid from Gérce	100.0	0.0	0.0	0.0	0.0
Ireland					
Kenmare Lace	100.0	0.0	0.0	0.0	0.0
Donegal Tweed	0.0	100.0	0.0	0.0	0.0
Italy					
Botticino Classico Marble	5.0	90.0	5.0	0.0	0.0
Vietri sul Mare artistic and traditional ceramics	75.0	20.0	5.0	0.0	0.0
Carrara Marble	0.0	100.0	0.0	0.0	0.0
Art furniture of the Bassa Pianura Veronese	0.0	99.0	1.0	0.0	0.0
Murano Glass	0.0	100.0	0.0	0.0	0.0
Bassanese Artistic Furniture	0.0	100.0	0.0	0.0	0.0
Ceramics of Faenza	100.0	0.0	0.0	0.0	0.0
Cremona Violinmaking	100.0	0.0	0.0	0.0	0.0
Deruta artistic and traditional ceramics	100.0	0.0	0.0	0.0	0.0
Alabaster in Violetera	0.0	0.0	0.0	0.0	1.0
Jewels from Torre del Greco	63.0	34.0	0.0	3.0	0.0
Lithuania					
Lithuanian flax textile	0.0	100.0	0.0	0.0	0.0
Vilnius region palms	100.0	0.0	0.0	0.0	0.0
Lithuanian crosses	100.0	0.0	0.0	0.0	0.0
Luxembourg					
Peckvillen/Peckvillercher	100.0	0.0	0.0	0.0	0.0
Poland					
Krosno glass	0.0	40.0	40.0	20.0	0.0
Boleslawiec pottery	33.0	53.0	7.0	7.0	0.0
Koniakow laces	100.0	0.0	0.0	0.0	0.0
Portugal					
Madeira Embroidery	84.0	16.0	0.0	0.0	0.0
Black Clay of Olho Marinho	100.0	0.0	0.0	0.0	0.0
Blankets wool of Mértola	100.0	0.0	0.0	0.0	0.0
Flower sticks-Small wooden artefacts of Vila Nova de Poaires	100.0	0.0	0.0	0.0	0.0
Mask of Vinhais	100.0	0.0	0.0	0.0	0.0
Spain					
Marble from Macael	60.0	36.0	3.0	1.0	0.0
Natural Stone form Castile and Leon-Pinacal	50.0	45.0	5.0	0.0	0.0
Elche shoes	53.0	44.0	3.0	0.0	0.0
Ubrique Leather	86.0	13.0	1.0	0.0	0.0
Manises ceramics	80.0	20.0	0.0	0.0	0.0
Pottery and Ceramics of La Rambla	95.0	5.0	0.0	0.0	0.0
Jet of Asturias	100.0	0.0	0.0	0.0	0.0
Majorca cloth or textile	100.0	0.0	0.0	0.0	0.0
Nativity Set of Murcia	100.0	0.0	0.0	0.0	0.0
Portillo Traditional Pottery	100.0	0.0	0.0	0.0	0.0
Pottery of Salvatierra de los Barros	100.0	0.0	0.0	0.0	0.0
Talavera Ceramics	100.0	0.0	0.0	0.0	0.0
Taramundi knives and pocket knives	100.0	0.0	0.0	0.0	0.0
Totana Ceramics	100.0	0.0	0.0	0.0	0.0
Switzerland					
Swiss watches	0.0	0.0	98.3	1.7	0.0
St.Galler embroidery	40.0	20.0	40.0	0.0	0.0
Paper cuts of Pays d'Enhaut	100.0	0.0	0.0	0.0	0.0
Sweden					
Mora knife	0.0	0.0	100.0	0.0	0.0
United Kingdom					
Irish Linen	0.0	100.0	0.0	0.0	0.0
Harris Tweed	0.0	0.0	0.0	0.0	1.0
Netherlands					
Makkumer	0.0	0.0	100.0	0.0	0.0
Blue Delftware	0.0	100.0	0.0	0.0	0.0
Leerdam Crystal	0.0	100.0	0.0	0.0	0.0
Romania					
Horezu Ceramics	100.0	0.0	0.0	0.0	0.0
Cucuteni Ceramics	100.0	0.0	0.0	0.0	0.0
Corund Ceramics	100.0	0.0	0.0	0.0	0.0
Maramureş ceramics	100.0	0.0	0.0	0.0	0.0
Oboga ceramics	100.0	0.0	0.0	0.0	0.0
Slovak Republic					
Golden onyx of Levice	0.0	100.0	0.0	0.0	0.0
Lace of Solná Baňa	0.0	100.0	0.0	0.0	0.0
Majolica of Modra	0.0	100.0	0.0	0.0	0.0
Piešťany mud	0.0	0.0	0.0	0.0	1.0
Slovenia					
Idrija lace	100.0	0.0	0.0	0.0	0.0

Source: REDD

Chart 4: Products exclusively produced by one size-type of enterprise
(in percentage on the number of products n=118)



Source: REDD

Our analysis shows that 12 products are only produced by large enterprises. They are mainly based in Bulgaria and are active in the production of stone and marble products, namely quartz sand, kaolin, marble, Muschelkalk and perlite (a total of 10 products). The other 2 products are porcelain from the Czech Republic and Enamelled pots from Hungary. 11 products are processed in all categories, except in large firms (see Table 30): Thiers Knives and Cutlery and Aubusson Tapestry (France); "Solingen" cutting equipment, Erzgebirge wood art and Idar-Oberstein Gemstone products (Germany); Botticino Classico Marble and Vietrisul Mare artistic and traditional ceramics (Italy); Natural Stone from Castile and Leon-Pinacal, Elche shoes and Ubrique Leather (Spain) and St.Galler embroidery (Switzerland). Finally, 3 products are manufactured in all enterprise types, namely the Vogtland music instruments (Germany), Marble from Macael (Spain) and the Boleslawiec pottery (Poland).

Table 31: Size of enterprises (average in %) for the different product types

	Number of products	Average percentage for Micro enterprises	Average percentage for Small enterprises	Average percentage for Medium enterprises	Average percentage for Large enterprises
Basket making	2	50.0	50.0	0.0	0.0
Bouquet of dried plants	1	100.0	0.0	0.0	0.0
Ceramics/pottery	32	77.5	16.8	5.4	0.2
Cosmetic product (soap & salt)	6	80.0	20.0	0.0	0.0
Crystal	1	0.0	100.0	0.0	0.0
Embroidery	3	64.7	22.0	13.3	0.0
Enamels	3	58.3	8.3	0.0	33.3
Firearms	1	10.0	90.0	0.0	0.0
Glass	3	30.0	50.0	13.3	6.7
Jewellery	6	63.6	15.6	20.2	0.6
Knives	4	39.3	24.8	36.0	0.0
Lace	8	68.1	30.3	1.6	0.0
Leather products	3	79.7	19.0	1.3	0.0
Mineral	9	0.0	0.0	11.1	88.9
Music instrument	3	61.0	37.3	1.3	0.3
Paper cutting	1	100.0	0.0	0.0	0.0
Pictures	1	0.0	100.0	0.0	0.0
Porcelain	4	12.5	25.0	25.0	37.5
Stone/Marble	13	13.0	47.1	14.3	25.6
Tapestry	2	23.8	73.8	2.5	0.0
Textile (other than wool)	6	20.0	80.0	0.0	0.0
Traditional clay Nativity	1	100.0	0.0	0.0	0.0
Watches, clocks and alarm clocks	2	25.0	25.0	49.2	0.9
Wooden product	8	72.3	27.4	0.4	0.0
Wool products	4	33.3	50.0	16.7	0.0
Total	127	51.6	28.5	8.5	11.3

Legend:
Micro-Sized enterprises = 1-9 persons employed
Small-Sized enterprises = 10-49 persons employed
Medium-Sized enterprises = 50-249 persons employed
Large-Sized enterprises = 250 or more persons employed

Source: REDD

Looking at product categories represented by only one product, namely Bouquet of dried plants, Paper cutting, Traditional clay nativity, Crystal, Firearms and Pictures, we can observe that the enterprises are either 100% micro- or 100% small-scale ones, except for Firearms where 10% are micro- and 90% small-scale firms.

As Table 31 shows, 80% of the products are made by micro or small-sized enterprises, and 96% of the enterprises of our sample (n=118) are micro or small-sized enterprises with less than 50 employees. Products are exclusively made by micro-enterprises under 10 employees for 38% of the 118 products having answered the question on size of enterprises.

Considering that these figures provide us with a rough picture of the situation of non-agricultural GI products all over Europe and even though the sample is not representative, we can draw some conclusions. A better tool of protection for the geographical names of these products would clearly benefit micro and small enterprises because they are predominant in the enterprises' structures. They are not only important for social inclusion in remote areas, but also play a key role in preserving the traditions and local culture. Micro and small enterprises have a long tradition in producing non-agricultural GI products. By doing so, they contribute to the products' high reputation, to the preservation of specific knowledge and to the different ways of life across Europe. This is mainly due to the fact that their production method is less industrialised and relies heavily on specific human skills.

However, there are also counter-arguments for introducing a stronger regime of protection for non-agricultural GIs. It may be argued that due to their small size, these enterprises might find it difficult to use any new system of intellectual property protection. They might find it difficult to understand and/or to implement. Furthermore, in particular micro-enterprises, might be unable to offset the costs of protection by raising the products' price. The FP7 project CERTCOST recently estimated the costs of certification for organic farming, and concluded that this cost may vary across Member States from 0.06% to 0.91% (Dabbert& al, 2012)⁷³. Furthermore, the report states that some are fixed costs (i.e. audit, control management and compliance with standards) which do not vary according to the size of the enterprise. Therefore, the certification costs may be a greater burden for small enterprises than for large ones.

⁷³ Dabbert& al, 2012, Economic analysis of certification systems in organic food and farming, www.certcost.org

3. Employment

a. Importance of employment (producers of non-agricultural GIs)

For 37 products, the data regarding the equivalent full-time positions are missing. Based on the sample with available data (n=90), the total of full-time jobs is 160,579 and the average number of full-time equivalent jobs is 1,784 jobs/product (see Table 32).

Table 32: Overview of analysed employment issues
(total and average equivalent full-time jobs)

	Total number of products	Total Full time jobs	No data for full timejobs	Average full-time job
Basket making	2	46	0	23
Bouquet of dried plants	1	4	0	4
Ceramics/pottery	32	6'060	5	224
Cosmetic product	6	115	3	38
Crystal	1	5	0	5
Embroidery	3	1'540	0	513
Enamels	3	70	2	70
Firearms	1	120	0	120
Glass	3	5'602	1	2'801
Jewellery	6	39'200	1	7'840
Knives	4	6'195	0	1'549
Lace	8	745	3	149
Leather products	3	17'150	1	8'575
Mineral	9	80	8	80
Music instrument	3	1'950	1	975
Paper cutting	1	9	0	9
Pictures	1	15	0	15
Porcelain	4	420	2	210
Stone/Marble	13	10'244	5	1'281
Tapestry	2	164	0	82
Textile (other than wool)	6	288	2	72
Traditional clay Nativity	1	34	0	34
Watches, clocks and alarm clocks	2	49'100	0	24'550
Wooden product	8	21'131	2	3'522
Wool products	4	292	1	97
Total	127	160'579	37	1'784

Source: REDD

As shown in Table 32, the large majority of the products have a number of full-time equivalent jobs ranging between 100 and 9,000. Considering the different types of sectors, the one employing the highest number of workers is the Watches/Clocks and Alarm Clocks sector (49,100 equivalent full-time jobs, mainly provided by Swiss watches with 48,500 jobs). Then follows:

- Jewellery, including precious stone products (39,200 equivalent full-time jobs-average 7,840, among them Antwerp Diamonds with 34,000),

- Wooden products (21,131 equivalent full-time jobs- average 3,522, among them Art furniture of the Bassa Pianura Veronese with 12,944)
- and Leather products (17,150 equivalent full-time jobs-average 8,575, Elche shoes with 9,150 and Ubrique Leather with 8,000).

The data collected in the framework of the present study thus show that the total amount of jobs provided by non-agricultural GI products is significant.

b. Contribution to local and European employment

For 28 products, the data regarding their contribution in percentage to local employment are missing. For 55 enterprises out of 99 for which data are available, the product itself does not contribute to more than 5% to total local employment, as shown in Table 33. These figures are based on estimations given by the interviewees.

For the rest of the products (44.4%), their contribution to local employment is more than 5%. As already explained these figures are not representative of all non-agricultural GI products but give a rough estimate of the situation.

Table 33: Contribution to local employment

Contribution to local employment	<5%	5-10%	11-20%	21-30%	>31%	TOTAL
Number of products	55	27	7	1	9	99
In percentage of answers	55.6	27.3	7.0	1.0	9.1	100

Source: REDD

The types of product which contribute to more than 30% to local employment are:

- Wooden products (Italy: Art furniture of the Bassa Pianura Veronese, Bassanese Artistic Furniture, Germany: Erzgebirge wood art);
- Porcelain (Hungary: Porcelain from Heren);
- Stone/Marble (Spain: Marble from Macael);
- Jewellery including precious stones (Czech Republic: Gablonz Jewellery, Wares, Crystal Ware);
- Leather products (Spain: Elche shoes, Ubrique Leather);
- Ceramics/Pottery (Romania: Corund Ceramics).

Table 53 in Annex provides the list of the products studied which contribute to more than 5% to local employment. Products for which the contribution to local employment is estimated of being more than 5% are located in Southern, Alpine and Eastern European countries, except for 7 products: 5 in Germany ("Solingen" cutting equipment, Cuckoo Clock made in Black Forest, Erzgebirge wood art, Idar-Oberstein Gemstone products, Vogtland Music Instruments), 1 in Sweden (Mora knife) and 1 in Ireland (Donegal tweed). In this regard, we can conclude that these products are often strategic for economically less favoured areas of the EU.

Two thirds of the regions from which non-agricultural GI products originate have a poverty rate or an employment rate above 20% (source: European statistics on poverty and unemployment for NUTS 2 Region). This is the case for example of Binche Lace (Belgium), Black Clay of Olho Marinho (Portugal) and Wool Blankets of Mértola (Portugal). This reinforces the idea that non-agricultural GIs may contribute to the maintenance of employment in less favoured areas of the EU.

19 non-agricultural GI products are produced in NUTS 2 regions where the poverty and the unemployment rate are above 20%. The products concerned are: Nativity Set of Murcia (Spain); Totana Ceramics (Spain); Cuckoo Clock from the Black Forest (Germany); Cucuteni Ceramics (Roumanie); Donegal Tweed (Ireland); Elche shoes (Spain); Jet of Asturias (Spain); Lace of Solná Baňa (Slovakia); Majorca cloth or textile (Spain); Manises Ceramics (Spain); Marble from Macael (Spain); Natural Stone from Castile and Leon (Spain); PINACAL (Spain); Porcelain, pot and fancy goods from Hollóháza (Hungary); Portillo Traditional Pottery (Spain); Pottery and Ceramics of La Rambla (Spain); Pottery of Salvatierra de los Barros (Spain); Talavera Ceramics (Spain) ; Taramundi knives and pocketknives/Taramundi cutlery (Spain); Ubrique Leather (Spain).

According to the data collected, the total number of employment for non-agricultural GI products exceeds 160,000 equivalent full-time jobs. However, as the data collected cover only a sample of the sector (99 products), we can expect that the contribution of these products to the regional and European employment rate will be higher. This study identified 834 potential or existing non-agricultural GIs which do not represent an exhaustive inventory. Nevertheless, estimations were made relying on the representativeness of the 834 products.

Among the 834 products identified, data on employment are available for a sample of 99 products representing 11.87% of the total identified products. If we cast a projection of the total of equivalent full time-jobs on the 834 products, the impact at the European level on employment is inferior to 1% (the range of the total employment for the 834 products is between 1,800,000 and 2,200,000, divided by the number of total employment at the EU level, i.e. 216.7 million workers in 2010⁷⁴).

In order to have more accurate figures regarding the total contribution of non-agricultural GI products to employment, we assessed the importance of the whole “population” of these products. It is most likely that this figure is greater than the number of products identified in this study. As the objective of the study was not to establish an inventory of all existing or potential non-agricultural GIs, we have to take a high confidence interval. We propose to consider a range between 2,000 and 9,900 products as the total number of potential non-agricultural GIs products in the EU. According to the lower estimate, the 99 products represent 5% of the total number of products (i.e. 2,000) and their contribution to the total employment in the EU would then represent 1.4%. According to the higher estimate, the 99 products represent 1% of the total number of products (i.e. 9,900) and their contribution to the total employment would then represent 7.4%. This last estimate is more unlikely and should be considered as a maximum as the 834 products identified by the experts represent the most visible and notorious products. A comparison with agricultural GIs shows that only 1,500 products have been registered 20 years after the entry into force of a specific regulation.

It would hence be more cautious to assume that the real contribution to the total employment in the EU ranges between 1% and 1.4%. It is important to note that the 99 products do not represent a stratified sample of the whole inventory and that therefore these figures are given mostly on basis of deductions.

It is also important to stress that the contribution to the local employment differs significantly between Northern countries and the other countries covered by this study. Indeed, unlike the rest of the European countries, the products studied in Northern Europe (except for Erzgebirge wood art, Solingen Knives and Vogtland Music Instruments in Germany, for Donegal Tweed in Ireland and for Mora knife in Sweden) contribute to less than 5% to the local employment.

⁷⁴ILO labour statuses and supplementary indicators, EU, age 15-74, 2011.

In order to complete these figures, it is possible to assess the impact of non-agricultural GI products on indirect employment. For every job created by the production of a non-agricultural GI, other jobs are indirectly generated or at least maintained. This may be explained by the fact that each paid worker has a “basic needs of services” that need to be fulfilled (i.e. grocery shopping, schools, doctors etc.).

In fact, in economics, this idea is known as the multiplier principle, introduced in 1931 by Kahn⁷⁵. On the basis of this principle, a study in France evaluated the average of the multiplier on employment at 1.77⁷⁶.

Based on this estimate, a low estimate for the non-agricultural GI sector in the EU gives a multiplier effect on employment 1.5. This means that for every equivalent full-time job in the processing of the final non-agricultural GI product an additional 0.5 equivalent full-time job in the region is created. Moreover, as explained above, in average 0.7 jobs are created upstream⁷⁷. As a result, the multiplier effect of one job in the non-agricultural GI sector can be evaluated as follows: 1 job + 0.5 additional (1.5) + 1.5 x 0.7 jobs upstream (1.05) that is a total of 2.55. This means that for each equivalent full-time job 2.55 additional full-time jobs are created.

If we assume that our sample of 99 products represents only 10% of the total number of non-agricultural GIs and that they add up to 160.000 equivalent full-time jobs, then all non-agricultural GI products could potentially contribute to 1.600.000 equivalent full-time jobs. In addition, in conformity with the multiplier effect mentioned above, the sector could contribute to total of more than 4 million jobs ($1.600.000 \times 2.55 = 4.080.000$).

These calculations bring us to the assumption that the total direct and indirect employment generated by the sector can be significant: 4.08 million jobs represent more than 1.88% of the total employment in the European Union (216.7 million workers in 2010 – see footnote on previous page). However, as already mentioned several times, these figures should be handled with caution.

This estimate represents a solid argument in favour of improving the protection of non-agricultural GI products as it aims at strengthening the local anchorage of the production in the long-term. Supporting the GI approach would hence contribute to the maintenance and development of employment in that area.

c. Employment issues compared with Eurostat NUTS data

To strengthen our analysis on the products impact on regional employment and on the basis of the comments made by the European Commission to our interim study report, we referred to Eurostat data on NUTS regions. The database distinguishes 3 NUTS levels:

- NUTS 1 refers to major socio-economic regions;
- NUTS 2 refers to basic regions;
- NUTS 3 refers to small regions.

For the purpose of our study we decided to refer to the NUTS 3 level as non-agricultural GI products are generally linked to small geographical regions (except for Swiss watches for

⁷⁵R. F. Kahn, 1931, "The Relation of Home Investment to Unemployment". The Economic Journal (Wiley-Blackwell) 41 (162): 173-198.

⁷⁶T Y. Une étude sur la mesure du multiplicateur d'emploi. In: Population, 20^e année, n°2, 1965 pp. 287-293.

⁷⁷ The figure 0.7 derives from our data on suppliers (see Table 29). If we take the ratio between 7,323 suppliers/ 10,737 producers the result is 0.68 which is rounded up to 0.7

instance). However, we were unfortunately not able to establish a comparison with this level as the NUTS database allows access only to data for the NUTS 2 level. Our analysis is therefore not sufficiently detailed to draw sound conclusions.

Mainly we faced three problems:

- A. The 10 major categories⁷⁸ of NUTS 2 level do not fit with the products studied. For our study we used categories 2 and 10, even though we had serious doubts about category 10 in terms of suitability for handicraft products.
- B. The scope of the geographical area provided by NUTS 2 level does not fit with the products studied. Indeed, the data focuses on larger regions than those of the products concerned. For instance, Antwerp diamonds from Belgium have a defined geographical area, namely the municipality of Antwerp but NUTS 2 provides only data on the greater area of Antwerp (including the district of Antwerp, Mechelen and Turnhout).
- C. Finally, some regions where non-agricultural GI products are manufactured are not referenced in the NUTS database. This is the case of French Polynesia, an overseas territory producing the cosmetic product Tahiti Monoï. Therefore, for this product, we were unable to proceed to any comparisons with NUTS.

Even though we faced these problems we were able to crosscheck the answers gathered by the experts.

Table 34 gives the figures of equivalent full-time jobs for six products which have the highest contribution to local employment. Four of them contribute with less than 5% to the local employment. These last figures can be explained by the fact that the population and the total employment in the producing regions concerned are high.

Table 34: Products which have the highest impact on employment (equivalent full-time jobs).

Products	Total Full time jobs	Percentage contribution to the employment
Antwerp Diamonds	34 000	24,2
Swiss watches	48 500	7,5
Ubrique leather	8 000	3,2
Elche shoes	9 150	2,8
Art furniture of the Bassa		
Pianura Veronese	12 944	2,1
Bassanese Artistic Furniture	6 957	1,1

Source: REED

We tried to determine the contribution of non-agricultural GIs to the regional employment by using the database of the NUTS 2 level (Table 35). For some products, it was possible but not very precise, as the delimitation of the products' origin area does not necessarily match with the corresponding NUTS 2 region. That is why the data gathered by the experts were

⁷⁸ 1. Agriculture, forestry and fishing; 2. Industry (except construction); 3. Construction; 4. Wholesale and retail trade, transport, accommodation and food service activities; 5. Information and communication; 6. Financial and insurance activities; 7. Real estate activities; 8. Professional, scientific and technical activities, administrative and support services activities; 9. Public administration, defence, education, human health and social work activities; 10. Arts, entertainment and recreation; other service activities; activities of household and extra-territorial organizations and bodies.

not exactly similar to the ones obtained through statistics, and we were not able to draw consistent conclusion. It is important to note that the NUTS employment data are not given in equivalent full-time jobs, and this is also a source of possible misinterpretation.

Table 35: Employment according to NUTS 2 and contribution of the product studied to the employment, measured in equivalent full-time jobs

	Number of products	Unemployment (NUTS2)	Employment in the region (NUTS2)	Employment by activity (NUTS2)	Total Full time jobs	Contribution of full time jobs to employment in the economical sector (NUTS2) in %
Watches, clocks and alarm clocks	2	220,200	3,945,400	970,800	49,100	5.1
Jewellery, including precious stone	4	452,600	3,121,000	551,200	39,200	7.1
Wooden product	8	913,900	9,210,700	2,195,300	21,177	1.0
Leather products	2	1,824,500	4,600,500	580,100	17,150	3.0
Stone/Marble	8	854,500	7,012,800	1,386,100	10,244	0.7
Ceramics/pottery	29	5,266,700	32,600,200	5,403,100	6,330	0.1
Knives	4	349,900	3,488,500	707,600	6,195	0.9

Source: REDD

N.B: An overview of all product types can be found under Table 56 in Annex and the contribution of generated full time jobs created to the overall employment per country can be found under Table 58 in Annex.

Other relevant socio-economic issues linked to the region have been analysed on the basis of NUTS data, namely regional unemployment and poverty. However the results were not of direct use since we were unable to compare the same geographical levels. For some countries, such as Austria, we had only data related to poverty for NUTS 1 level (i.e. country level). It was thus impossible to make coherent and valuable comparisons with the other countries for which data were based on NUTS 2 level. This explains why we did not integrate these considerations in the present study.

d. Female labour

Equal job opportunities and equal economic independency for men and women are among the priorities of the EU gender policy. We have therefore looked at this element in the context of the study. However, the object of this study wasn't to analyse the pay gap between men and women, so we didn't gather any data on salaries.

Specific data on female labour was available for 104 products. Table 36 illustrates the proportion of female labour by type of product. It shows that female labour is not predominant in most of the production of non-agricultural GIs. As we were unable to gather the absolute

percentage of men and women, we cannot make direct comparisons with EU statistics on this issue. Nevertheless, the figures gathered appear to be consistent with the preponderance of male workers in the EU where the general average employment rate for women is 62.1%, compared to 75.1% for men⁷⁹.

However, for certain products female workers are more involved in their production. This is for instance the case for the Lace category where 7 out of 8 studied products are made by women thus showing that this sector remains traditionally occupied by women. The types of product that involve more than 81% of female labour are: Lace, Embroidery, Tapestry, Glass, Ceramics/Pottery, Wool products and Bouquet of dried plants. The products without significant female labour (less than 20%) are Firearms, Knives and Stones/marbles. For more detailed information on these last two points please refer to Table 54 and Table 55 in Annex.

Table 36: Proportion of female work per type of product

	Number of products	Female work <20%	Female work 20-40%	Female work 41-60%	Female work 61-80%	Female work >81%	No data for female work
Basket making	2	1	0	1	0	0	0
Bouquet of dried plants	1	0	0	0	0	1	0
Ceramics/pottery	32	8	4	8	7	3	3
Cosmetic product	6	2	1	2	1	0	0
Crystal	1	0	0	1	0	0	0
Embroidery	3	1	0	1	0	1	0
Enamels	3	0	1	0	2	0	0
Firearms	1	1	0	0	0	0	0
Glass	3	0	0	1	0	1	1
Jewellery	6	2	1	0	2	0	1
Knives	4	1	2	0	0	0	1
Lace	8	0	0	1	0	7	0
Leather products	3	0	0	2	0	0	0
Mineral	9	0	1	0	0	0	8
Music instrument	3	1	1	1	0	0	0
Paper cutting	1	0	0	0	1	0	0
Pictures	1	0	0	1	0	0	0
Porcelain	4	0	0	1	3	0	0
Stone/Marble	13	7	3	0	0	0	3
Tapestry	2	0	0	1	0	1	0
Textile (other than wool)	6	0	2	0	1	1	2
Traditional clay Nativity	1	0	0	1	0	0	0
Watches, clocks and alarm clocks	2	0	0	2	0	0	0
Wooden product	8	3	0	1	0	1	3
Wool products	4	0	0	2	0	1	1
Total	127	27	16	27	17	17	23
Percentage on n=104	104	26	15	26	16	16	

Source: REDD

⁷⁹

Source :http://ec.europa.eu/justice/newsroom/gender-equality/news/20120416_en.htm

As shown in Table 36, 43 products are mainly manufactured by male workers (27 under 20% + 16 under 40%) and 34 products record female dominance (17 over 60 % + 17 over 80%), while there is a better gender balance in the production of 27 (categorie 41-60%).

We were asked by the European Commission to add a more detailed question concerning the possibility to evaluate the proportion of enterprises which have a good gender balance. As the data gathered were cases based on a limited number of interviews, not precise or lacking, it was impossible for us to draw any scientifically consistent conclusions. Experts, nevertheless, were asked to provide more precise data on the 41-60% category. Results of this more accurate research are illustrated in Table 37.

Table 37: Distribution of the number of products vis-à-vis the 41-60% category of female work

	41-44%	45-49%	50%	55-59%	60%	41-60% without more detailed data	Total
Number of products	1	4	5	2	3	12	27

Source: REDD

The figures in Table 37 reveal firstly that more detailed data are available for only 15 out of 27 products in the category 41-60%, and secondly, that the distribution between the female labour groups is balanced (i.e. there is almost an equal repartition among the different categories). For the purpose of our study and as an overall observation, one can point out that some production sectors employ very specifically women in rural areas (for example the embroidery, lace and certain ceramic/porcelain sectors). In some other production sectors, requiring special physical hard work (the production of marbles for example), the employment of women is generally limited. Finally, for other production sectors, more efforts could be done in hiring women and promoting a better gender balance.

According to information gathered by our experts in the context of this study, non-agricultural GIs support social inclusion and provide opportunities to gain specific knowledge, with a special attention to women in certain cases such as Glass and figurines of Železný Brod in the Czech Republic, Dentelle de Binche in Belgium, Faïence Martres Tolosane in France etc.

e. Age of workers at the final production stage

For 82% of the products studied for which data are available (n=100), the workers' average age is situated between 40 and 50 years. Table 59 in Annex, provides details on the average age of workers by product and country and Table 38 here below shows the average age of workers for our sample.

Table 38: Average age at producers' stage

	<40	>=40 - <50	>=50 – 67	TOTAL
Number of products (and percentage because n=100)	9	56	35	100

Source: REDD

The average age of our sample (n=100) is 45.5 years. Product categories recording the oldest average age are Wool products and Porcelain, with an average age of 52 and 50 respectively. The types of product with the youngest average age are Stone/Marble products and Leathers products with an average age of 24 and 25 respectively.

The average age might be an indicator of the attractiveness or unattractiveness of certain professions or crafts. The exception is the type of work, which requires specific abilities, such as strong physical fitness (for Marbles and Stones) or acute eyesight or nimble fingers (for embroidery or watches). Products that are produced by workers with a high average age might be threatened to disappear. On the contrary, products or supply chains with workers of a low average age appear to be attracting young people and should thus have a better chance to maintain their production capacity or even to grow. However, the extrapolations made for the sustainability of the aforementioned sectors cannot be generalised to the sectors because the sample of products covered by the study constitutes only a small part of it.

If we compare data on the average age of workers with data on the number of producers for the above-mentioned product types (see Table 59 in Annex), we notice that for the Embroidery and Wool sectors the number of producers is very small (respectively 146 and 39) whereas the Jewellery (including precious stones) and the Stone/Marble sectors have a high number of producers (respectively 2,406, and 1 519) (Table 28). However, these data have to be put into perspective since the number of products covered by our sample is larger for the last two mentioned categories: 6 for Jewellery and 13 for Stone/Marble against 3 for Embroidery and 4 for Wool products.

Should the protection of non-agricultural GI products be improved, it would most certainly serve the interests of some enterprises which attract young workers. Some examples could be: Natural Salt from thermal spring, alimentation supplement in the Czech Republic (average age: 31 years); Emaux de Limoges, Faiences de Nevers, Imagerie d'Epinal in France and Ceramica Artistica e Tradizionale di Vietri sul Mare in Italy (average age: 35 years); Navajas y Cuchillos de Taramundi/Cuchillería de Taramundi in Spain (average age: 37).

f. Level of education

Data on the level of education are not easy to comment on, as the education systems are very diverse across the European Union. Furthermore, most products do not require high-level education, but only the completion of primary or secondary education. However, it is

interesting to highlight that 22 products out of 127 have established specific education programs or schools to train their workers (Schladminger or Schladminger Jacket; Embroidery of Vorarlberg; Binche Lace; Belgian Bluestone; Antwerp Diamonds; Gablonz Jewellery, Gablonz Wares, Gablonz Glass, Gablonz Crystal Ware; Tapestry of Jindrichuv Hradec, Neuhauser Gobelin; Glass of Železný Brod, Figurines of Železný Brod; Haapsalu Therapeutic mud; Kantele; Vallabrègues Basketworks; Du Puy Lace; Calais Lace; Cremona Violin making; Art furniture of the Bassa Pianura Veronese; Murano Glass; Jewels from Torre del Greco; Blue Delftware; Leerdam Crystal; Makkumer; Manises Ceramics; Paper cuts of Pays d'Enhaut).

Some respondents underline the maintenance of very specific skills which are transmitted over generations, in the case of micro-enterprises, or often within the families.

4. Sales

a. Total turnover per product

Producers and producer organisations were in most of the cases not willing to share information regarding their turnover. As a result, our experts managed to gather turnover related data only for 72 products. Among them, 44 provided data for a five year period (2006-2010), 5 for a 4 year period, 4 for a 3 year period, the 7 others for a 2 year period, while for 12 products we obtained information only for 1 year⁸⁰ (see Table 39). The consolidated turnover for our sample is estimated at 4.174 billion Euros in 2010.

⁸⁰

1 for 2007 and 11 others for 2010.

Table 39: Turnover in Euros per type of product in 2010

	Total number of products	Global Turnover 2010
Basket making	1	€ 2'320'000
Bouquet of dried plants	1	€ 3'600
Ceramics/pottery	12	€ 119'393'939
Cosmetic product	3	€ 4'302'051
Crystal	1	€ 1'139'000
Embroidery	3	€ 159'495'871
Enamels	2	€ 8'200'981
Firearms	1	€ 20'000'000
Glass	2	€ 167'500'000
Jewellery	3	€ 175'910'000
Knives	3	€ 691'400'000
Lace	3	€ 70'031'112
Leather products	2	€ 624'909'581
Mineral	1	€ 50'000'000
Music instrument	2	€ 80'923'000
Pictures	1	€ 908'584
Porcelain	4	€ 22'542'861
Stone/Marble	9	€ 1'473'082'484
Tapestry	2	€ 19'400'000
Textile (other than wool)	3	€ 9'830'000
Traditional clay Nativity	1	€ 68'634
Watches, clocks and alarm clocks	1	€ 15'000'000
Wooden product	5	€ 443'544'728
Wool products	3	€ 14'800'000
	69	€ 4'174'706'426

Source: REDD

Among the products analysed, Elche shoes in Spain registered the highest turnover in 2012: 621,208,781 Euros. We decided not to put forward the total turnover of Antwerp Diamonds (estimation of 30 billion Euros) since it is a very particular industry where the price of the raw material itself (diamond) has an important impact on the turnover. Therefore, this estimation would not have helped to measure the potential added value and economic size of non-agricultural GIs in Europe. Moreover, the data do not differentiate enterprises that produce/commercialise only Antwerp Diamonds and those that produce/commercialise other diamonds.

b. Turnovers' trend

Our analysis of the turnovers' trend is based on the products for which we have been able to collect data for the 5 year period of 2006-2010 (n=44). For this analysis, we have not taken into consideration the inflation rate. Inflation between 2007 and 2011 has been at an average of 2.44% per year and 12.2% in total in the EU with strong differences between Member States. In fact, this inflation rate is considered to be a moderate one and does not impact considerably on the relative market shares inside a given sector.

Considering the overall trend illustrated in Chart 5, there is not a single product recording a steady increase in turnover. 6 products show a decline in turnover and 4 products record small variations (declines and increases) in turnover. For the majority of the products (34) the rough estimate of the turnover is stable and does not indicate variations.

Chart 5: Trend in turnover by number of products

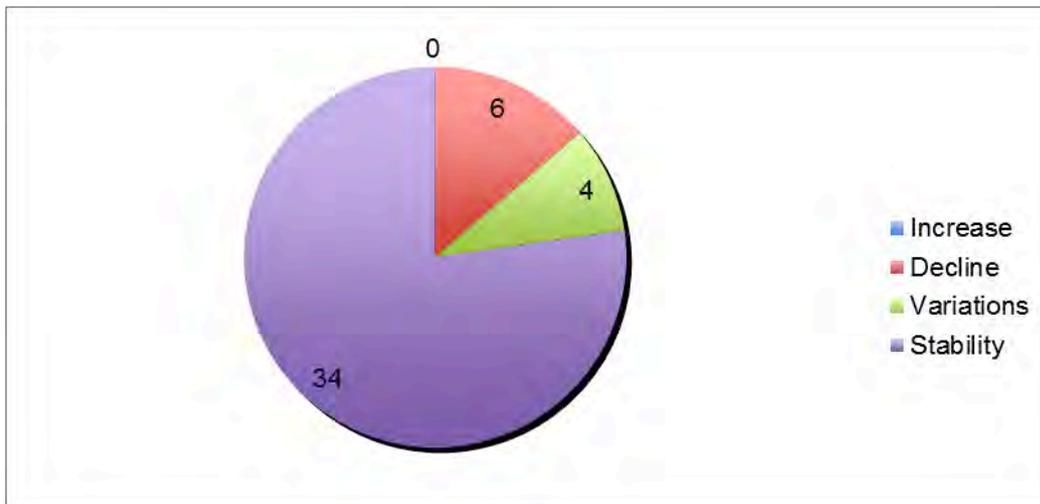
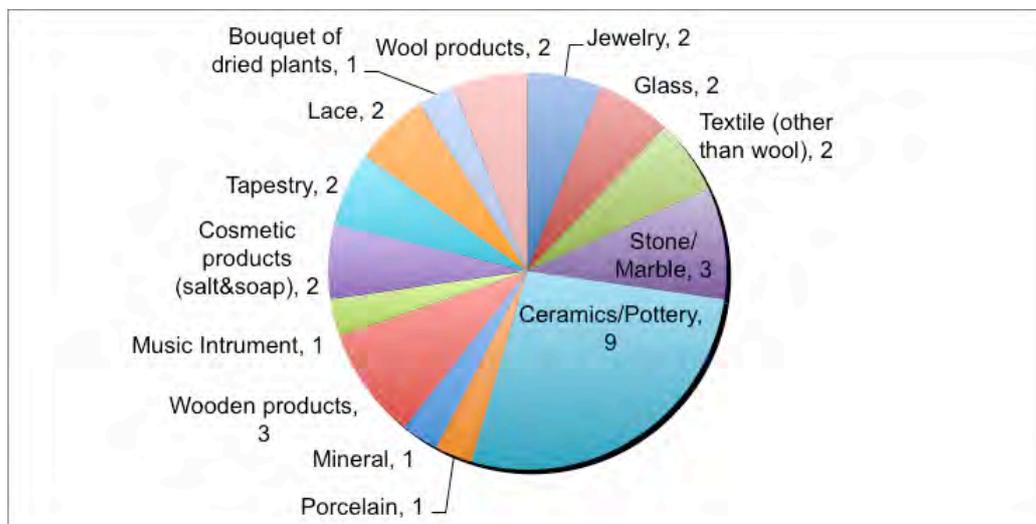


Chart 6: Number of products by type with stable turnover



Source: REDD

Considering the fact that more than 34 of these products show stable turnover we can assume that their markets are in general stable. The products with stable turnover, shown in Chart 6, are diverse in terms of market types and number of clients. It is thus difficult to draw sound conclusions about the trends on national and international markets as well as the turnover in general due to the lack of data. In fact for 55 products, representing 43.3% of the overall sample (n=127), we do not have a single figure for the 5-year period (2006-2010) and for 28 other products, representing 22% of the overall sample (n=127), we have only figures for 1, 2 or 3 years.

Putting aside the exceptional economic value of the Antwerp Diamonds, the total value of the studied products for which experts gathered turnover related data (n=72) exceeded 4.17 billion Euros in 2010. This figure is significant especially for regions where the percentage of direct and indirect employment is high.

5. Characteristics of the markets

a. Markets main characteristics

The analysis of the products' markets is based only on 100 products of our overall sample (n=127) since we did not have reliable data for 27 products:

- For 18 products: no data at all.
- For 7 products: no precise percentage.
- For 2 products: data just for the domestic market.

Due to the lack of data, we were not able to specify the contribution of the regional market to the domestic one. We have therefore distinguished 3 categories of markets, namely:

- Domestic market: domestic market including the regional one.
- EU+ market: European Union + Norway, Iceland, Liechtenstein, Switzerland.
- International market: others such as America, Asia, Africa, Russia.

The following tables and figures show that the most common market for the analysed products is the domestic one.

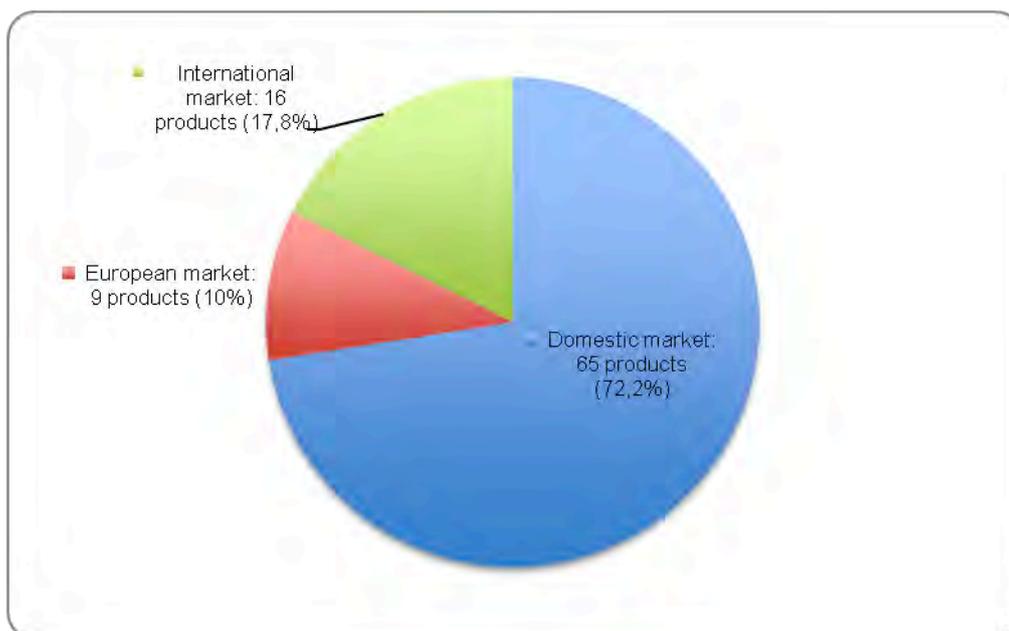
Chart 7 (see below) is based on a sample of 90 products as it focuses on sales exceeding 50%. For the remaining 9 products of our sample, none of the markets exceeds 50%.

For 65 products, the main market segment representing 50% and more of their sales is the domestic and regional one. Only 9 products make more than 50% of their sales on the European markets (including Norway, Iceland, Liechtenstein and Switzerland) while 16 products make more than 50% of their sales on International markets (see Table 55 in Annex for more detail).

Even if this sample of 90 products is not a representative stratified sample, these figures are interesting when they are compared with the European average of exports made by SMEs, which was in average 5.58%⁸¹, a figure based on the "SME Performance Review" conducted under the auspices of the European Commission.

⁸¹ Small Business Act factsheets, available at http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm

Chart 7: Number of products having 50% and more sales per relevant market segments (domestic, European, International)



Source: REDD

The categories of products having their most important sales (over 90%) on the domestic markets are Bouquet of dried plants, Crystal, Mineral, Pictures and Traditional Clay Nativity, but these categories are composed of only 1 product each, except Mineral with 9 products (see Table 41). It is thus not representative for the whole sample of analysed products.

A table on the percentage of the different geographical markets per product can be found in Annex (see Table 60 in Annex). These detailed figures show that 16 products of our analysed sample (n=100) are sold only on the national market. Consequently, 84% of the products (n=100) are sold on the European and/or international markets.

b. Competition on the markets

Another dimension to consider is the pressure of competitors, even at the regional or national level. Thanks to an efficient protection of intellectual property rights', enterprises can prevent unfair competition more efficiently and consumers can be better protected against deception.

On the overall sample of 127 products, there is a lack of data for 37 products. 70 products face important competition and for 15 products there are no competitors. For 5 products, according to producers, competition is not significant, meaning that there is no important pressure exercised by their competitors (n=90) (see Table 40Table).

Table 40: Degree of competition faced by the products studied

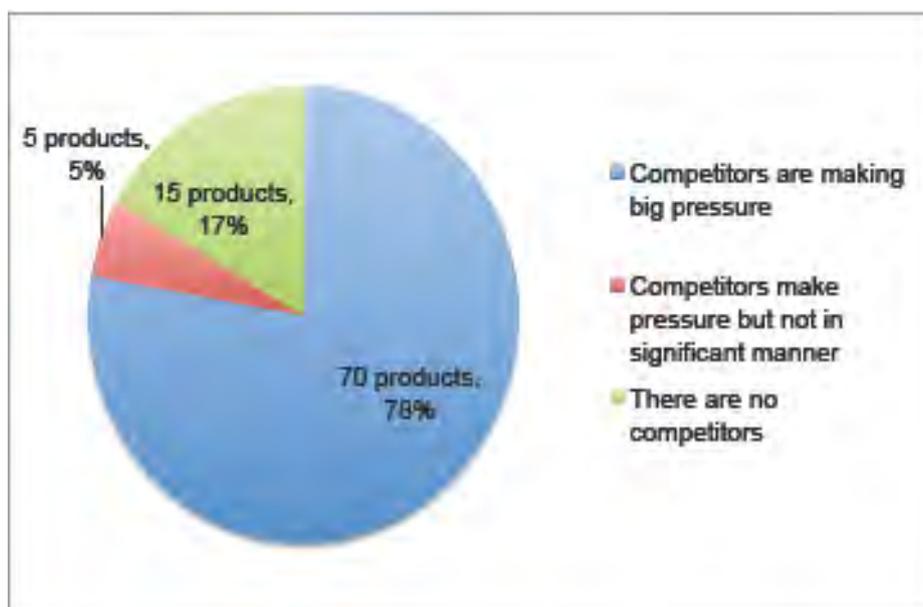
Competitors	Number of products	On the total (%)	On the answers (%)
No data for competitors	37	29.1	
Important competition	70	55.1	77.8
No significant competition	5	3.9	5.6

No competition	15	11.8	16.7
TOTAL	127	100	100

Source: REDD

70 products, representing 55.1% of our overall sample (n=127) and 77.8% (rounded up to 78%) of the studied sample (n=90) face strong competition, meaning that their producers have several competitors who threaten their market share in a tangible way (i.e. risk of clients switching to a competitor or posing conditions for a significant price decrease or a quality increase). The products most concerned by this are: Ceramics & Pottery (20 products), Stone/Marble (8 products), Lace (7 products) and Wooden products (5 products), Jewellery (4 products) and Knives (3 products).

Chart 8: Type of competitors by products



Source: REDD

Among the 15 products that have declared that they do not have competitors, Cosmetic products and Enamels represent the biggest sectors with an amount of 3 products each.

Concerning the origin of the products without competitors, 2 are produced in the Czech Republic (Carlsbad thermal spring salt and tapestry of Jindrichuv Hradec), 1 in Finland (Kantele), 5 in France (Epinal picture, Limoges Enamels, Longwy Emanels, Saint Samson la Poterie Tiles and Sèvres Porcelain/Ceramics), 2 in Hungary (Alginate and salt of algin acid from Gérce and Enameled pots from Bonyhád), 2 in Lithuania (Lithuanian crosses and Vilnius region palms), 1 in Luxembourg (Peckvillchen/Peckvillercher) and 2 in the Slovak Republic (Golden onyx of Levice and Piešťany mud).

Depending on the product, competitors are national or international ones. This is the case for instance for 4 Austrian products: for 2 of them the competition takes place on the international market, while the other 2 products have national competitors. In the case of Switzerland, all 3 products have international competitors, mostly from China. For Spanish Pottery, Ceramics and Stone/Marble products competitors are national ones, while for Leather products beside the national market, the biggest international competitors come from Italy.

Table 41: Competitors and average sales on different geographical market, per type of product (in number of products resp. in average percentage)

	Number of products	Having strong competitors	Having no competitor	Having competitors, but not significant	No data for competitors	Average sold on domestic market (in %)	Average sold on EU markets (in %)	Average sold on International markets (in %)
Basket making	2.0	2.0	-	-	-	82.5	5.0	12.5
Bouquet of dried plants	1.0	-	1.0	-	-	100.0	-	-
Ceramics/pottery	32.0	20.0	2.0	2.0	8.0	75.0	8.9	16.2
Cosmetic product	6.0	2.0	3.0	-	1.0	65.8	16.8	17.4
Crystal	1.0	1.0	-	-	-	99.0	0.5	0.5
Embroidery	3.0	2.0	-	-	1.0	18.0	47.3	34.7
Enamels	3.0	-	3.0	-	-	68.3	12.3	19.3
Firearms	1.0	1.0	-	-	-	15.0	35.0	50.0
Glass	3.0	2.0	-	-	1.0	32.5	30.0	37.5
Jewellery	6.0	4.0	-	-	2.0	59.0	31.0	10.0
Knives	4.0	3.0	-	1.0	-	44.7	35.3	20.0
Lace	8.0	7.0	-	-	1.0	42.0	19.1	38.9
Leather products	3.0	2.0	-	-	1.0	40.0	41.0	19.0
Mineral	9.0	1.0	-	-	8.0	92.5	6.3	1.3
Music instrument	3.0	1.0	1.0	-	1.0	80.0	10.0	10.0
Paper cutting	1.0	1.0	-	-	-	10.0	15.0	75.0
Pictures	1.0	-	1.0	-	-	95.0	-	5.0
Porcelain	4.0	2.0	1.0	-	1.0	48.0	26.7	25.3
Stone/Marble	13.0	8.0	1.0	1.0	3.0	52.7	26.6	20.7
Tapestry	2.0	1.0	1.0	-	-	60.0	22.5	17.5
Textile (other than wool)	6.0	2.0	-	-	4.0	46.3	40.3	13.5
Traditional clay Nativity	1.0	1.0	-	-	-	93.0	6.0	1.0
Watches, clocks and alarm clocks	2.0	1.0	-	1.0	-	7.5	32.0	60.5
Wooden product	8.0	5.0	1.0	-	2.0	81.5	11.3	7.3
Wool products	4.0	1.0	-	-	3.0	58.3	27.7	14.0
	127.0	70.0	15.0	5.0	37.0	63.4	18.4	18.3

Source: REDD

Competition seems to be stronger when the product is sold on international markets (see Table 42 here below): products facing strong competition make their sales on 19.9% while products that do not face such pressure make only 16.1% of their sales on international markets.

Table 42: Average sales (in percentage) in each geographical market for products facing no competition vs. strong competition

	Average National market	Average EU+markets	Average International market
For products which have no competitors or no significant competitors	66.1	17.9	16.1
For products which face strong competitors	61.4	18.7	19.9

Source: REED

As mentioned in the introduction part of the present section, the analysis of the products' markets is based only on 100 products. For 45% of the products (meaning 45 products), the domestic market represents 80% or more of the sales (n=100). At the same time, 80% have access to the European or even the International markets (n=100) (see Table 64 in Annex). Considering the increasing trade globalisation, European and international markets will likely be of greater importance for most of these products in the future. If we accept the assumption that competition increases when the products are sold on global markets, then the need for a better protection of non-agricultural European GI products is obvious. Therefore, it is important to explore the possibility to establish a legal framework for a better protection of these products at the EU level.

c. Clients

Experts gathered detailed information on 92 products of our overall sample (n=127) as shown in Chart 9 below. The findings reveal that:

- 31 products have less than 1,000 clients;
- 28 between 1,000 and 10,000 clients;
- 33 more than 10,000 clients.

In terms of percentages, the situation is as follows: 33.7% (rounded up to 34%) have less than 1,000 clients, 35.9% (rounded up to 36%) have more than 10,000 clients, while 30.4% (is rounded down to 30%) have more than 1,000 clients but less than 10,000 clients (n=92). The percentage rates are thus identical or balanced between the three defined numerical groups of clients.

Chart 9: Number of products per client class



Source: REED

For the category with « more than 10,000 clients »:

- Ceramics/Pottery are represented by 6 products,
- Cosmetic products, Stone/Marble, Jewellery and Glass products are represented by 3 products each,
- Knives, Porcelain, Leather products, Watches & Clocks, Wooden products and Enamels are represented by 2 products each,
- Textile, Music instruments and Traditional Clay Nativity are represented by 1 product each.

6. Marketing

a. Labelling

In the context of this study, we have identified the following types of labels used by non-agricultural GI products:

- Type 1: Enterprises using their own label: 89 products.
- Type 2: Enterprises using a common private label owned by an association with a system of membership: 24 products.
- Type 3: Enterprises enrolled in voluntary schemes (like bio, fair-trade, etc.): 0 product.
- Type 4: Enterprises enrolled in a common mandatory scheme, which is controlled by an institution (public or private): 19 products.
- Type 5: Enterprises free to use a common label, which is not controlled nor certified: 25 products.
- Type 6: Enterprises using a common label, which is certified by an independent third-party certification body: 8 products.

Table 43: Type of labels used

Type of labels	Type 1	Type 2	Type 3	Type 4	Type 5	Type 6	Total
Number of product	89	24	0	19	25	8	165
In percentage of answers	53.9	14.5	0	11.5	15.2	4.8	100

Source: REDD

Certain products bear several labels. A detailed table on the type of labelling schemes used by each sector can be found in Table 62 in Annex.

It is interesting to note that a majority of enterprises (53.9%) use their own label, i.e. brand name and/or registered trade mark(s). Collective labelling schemes are not widely used by enterprises. This might be explained by the limited number of producers' collective organisations that we identified in the context of this study.

A common protection and a common label could prove interesting and useful for non-agricultural GI products which are not able to develop individual or collective branding strategies due to a lack of resources or expertise. The importance of branding was demonstrated by Tihomir Vranešević and Ranko Stancec (2003)⁸², "*consumers do not value products based exclusively on their physical characteristics and [that] in the process of making a purchasing decision when choosing an alternative, consumers will first perceive the brand as "a sign of quality" and then other evaluation criteria (physical appearance and packaging, price, the reputation of the retail network)*". Therefore, introducing a labelling scheme for all non-agricultural GI products could have a positive impact. It could be perceived as a real "credible quality sign" for a set of products thus improving the visibility and recognition of the link between the product and its' geographical area (this aspect was highlighted by Belletti et al. 2007⁸³).

b. Promotion

Experts gathered information on promotion for 48 products. 22 products reported not having any budget for promotion. This means that 45.8% (almost 50%) of the studied products for which we have data do not invest to promote their product.

26 products benefit from promotion budgets which are estimated between 10 and 25 % of their global turnover (n=48), allowing them to carry out advertising campaigns in a professional way.

⁸² Source: "The effect of the brand on perceived quality of food products", British Food Journal, Vol. 105 Iss: 11, pp.811 – 825.

⁸³ Source: Belletti G., Burgassi T., Manco E., Marescotti A., Pacciani A., Scaramuzzi S., The impact of geographical indications (PDO and PGI) on the internationalization process of agro-food products, Contributed Paper prepared for presentation at the 105th EAAE Seminar 'International Marketing and International Trade of Quality Food Products', Bologna, Italy, March 8-10, 2007.

Conclusion

Despite the difficulties faced in trying to gather precise economic data in the context of this study, it is interesting to look at the figures obtained as illustrative of some important facts when it comes to non-agricultural GI products.

The economic analysis on non-agricultural GI products shows that for 94% of the analysed products (n=127), the link to their geographical origin is made through a production already confined in a defined geographic area. 81 products (64% of the sample) have both a defined geographical area and source raw materials from this defined area.

The consolidated turnover for 72 products with solid data is estimated at 4.174 billion Euros in 2010. This can be considered as significant. Moreover, although the importance of the products on the employment for our sample is not prominent as the total employment for the products with an answer to this question (n=90) is around 160,500. It is interesting to highlight that 44.4% of the products (n=90) represent more than 5% of local employment. This is very significant in terms of economic stability, especially for remote and poor regions, where alternative economic activities are not present and difficult to launch.

The number of enterprises that produce the final GI products amounts to an average of 85 per product analysed while the enterprises involved upstream average to 69 enterprises per product. In average, about 80% of the products are manufactured by micro to small enterprises.

The majority of the products (72.2%) continue to have as their main market (markets where sales exceed 50%) the domestic one. However, for 27.8% of the products, the European and the international markets appear to be their core markets and 84% of the products studied (n=100) are present on the European and/or International markets.

77.8% of studied products (n=90) face strong competition on the market. 55.1% of our overall sample (n=127) suffer from counterfeiting. With regard to the economic interest of the companies, there is evidence that a better protection would support their fight against unfair competitors and counterfeiters, as well as improving the marketing of their products.

In a broader perspective, a better protection would maintain local identities and traditions linked to these products as well as traditional knowledge associated with their production. The introduction of a better protection tool for non-agricultural GIs at the EU level could also have positive effects on a large majority of the analysed products. It is certainly an important socio-economical issue for several remote regions where many of these products are manufactured, as well as for young and female workers seeking local job opportunities. Pressure of increased competition is experienced by a large amount of enterprises in our set of products, and tends to rise in the context of globalisation and the increase of international trade. The need for a better protection tool should therefore be taken into consideration in the near future.

PART IV– Stakeholders’ survey on the needs and expectations in relation to potential future instruments of legal protection for non-agricultural GIs in the EU

Introduction

In the terms of reference of the study on geographical indication protection for non-agricultural products in the internal market, DG Internal Market and Services indicated that it wanted the tenderer to examine the:

“stakeholders' needs and expectations in relation to a potential future instrument of the legal protection of geographical indications of non-agricultural products at European Union level. In this regard, a stakeholders' survey should be undertaken by the contractor in order to establish their opinions and specific concerns. The stakeholder's survey should be conducted in the appropriate language for the target stakeholders and the results summarised in English. The list of stakeholders to be interviewed, questionnaire, interview guides or any other documents structuring this type of fact finding will be discussed with and fine tuned in agreement with the Commission. The survey also may be promoted through the Commission website. The questionnaire should be designed in an appropriate way, so as to avoid answers which are too general as well as a low response rate, and should necessarily include the following issues:

- satisfaction/dissatisfaction with the existing means of protection of geographical indications for non-agricultural products in the EU Member States, in particular whether producers of non-agricultural products wish to have a broader choice of legal instruments to protect their geographical indications effectively at EU level;*
- whether a uniform legal protection of geographical indications for non-agricultural products at European Union level is needed;*
- what non-agricultural producers or sectors should benefit from the uniform legal protection of geographical indications ;*
- extent to which consumers would benefit;*
- what are the specific qualities of non-agricultural products bearing geographical indications that should be controlled by a public body (before and after registration).”*

The terms of reference also stated that:

“the relevant stakeholders who should be consulted include but need not be confined to, EU officials, OHIM officials, officials of Member States' bodies dealing with protection of geographical indications for non-agricultural products, notably Intellectual Property Offices (IPOs) and national enforcement bodies, relevant international organisations, in particular the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), professional associations and user groups, such as BUSINESSEUROPE, EuroChambres, and EuroCommerce, the European Association of Craft, organisations of private companies in particular Small and Medium-sized Enterprises (UEAPME), consumer organisations or associations, as well as legal experts active in the field of protection of geographical indications. Furthermore, to the extent appropriate, the contractor shall carry out surveys of market participants using geographical indications for non agricultural products in order to establish their opinion”.

In accordance with our proposed methodology, we undertook this survey after the information gathering phase and not at the same time. The first phase helped our experts to better understand the legal and economic situation, as well as to identify the most relevant

stakeholders. We asked each expert to put together a list of stakeholders to be contacted based on their first screening of existing and potential non-agricultural GI products as well as on their identification of the non producers' public and private organisations. In the meantime, the team leader and the senior economist prepared a draft questionnaire. It was sent to DG Markt of the European Commission for comments. A meeting was organised with the European Commission to discuss the content of the questionnaire and its wording was agreed upon with the Commission.

Once the green light was been given by the European Commission, each expert received clear instructions as to who he/she should contact and the tools that needed to be used. They were notably asked to translate the questionnaire in the local language (if deemed necessary).

In our methodology we had proposed to conduct this survey online but it was finally decided by DG Markt that due to issues relating to the protection of data, this would not be done.

Two questionnaires were prepared (see annex VIII&IX of the study):

- one for producers and their associations
- one for non producers' stakeholders

In June, the questionnaires were sent by e-mail to:

- producers of non-agricultural products identified during the first phases, whether or not they had answered to previous queries,
- private bodies (e.g. consumers association, national or regional Chambers of Commerce, Craft Chambers, Federations of handicraft products, famous professors on Law or Geography),
- public bodies (e.g. intellectual property Offices, Ministries, Regional Authorities, Municipalities).

When no answer was received, the experts sent reminders by e-mail and placed phone calls in July. Another round of e-mail reminders was sent in September and final attempts to get answers from several stakeholders were made in November.

In Estonia, the expert chose to contact directly by phone a limited number of stakeholders he knew would have a strong interest in replying to the survey. He received an answer from all these stakeholders except from the Ministry of Agriculture, which answered that it did not have any opinion relating to non-agricultural GIs since it is not within its field of competence.

At the EU and international levels, the following stakeholders were contacted, but none of them replied: OHIM officials⁸⁴, the Benelux Office for Intellectual Property, WIPO, WTO, BUSINESSEUROPE, EuroChambres⁸⁵, EuroCommerce, the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), and the European Consumers' Organisation (BEUC).

⁸⁴ The OHIM looked through the questionnaire but considered that it exceeded the competences of the Office and thus decided that it was best not to answer despite its strong interest for this study. However, we would like to underline that OHIM officials collaborated in organising meetings with EUAPME and EuroChambres and provided great support to the Consortium throughout the study, notably by providing important information on registered marks with OHIM.

⁸⁵ EUROCHAMBRES forwarded the survey to its members. However, EUROCHAMBRES as such claimed that it did not have a position on this issue and therefore decided not take part in the survey.

Results of the survey

Our experts sent the questionnaires to over 700 stakeholders, including producers' organisations, as well as private body (e.g. chambers of commerce) and public bodies (e.g. IP offices). Even if stakeholders were consulted in all the countries covered by the study, answers were not received from some countries. As this survey was based on voluntary answers, organisations which were consulted had the choice to answer or not. Stakeholders in some countries seem to have a higher interest in the issue, which may be due to historical or cultural reasons. This is why many answers were received from France and Spain.

219 answers were received as of end of October. The table below classifies the answers between countries and between the types of answers (producers or non producers).The studied sample cannot be considered as representative and should be treated only as case studies.

Table 44: Number of answers to the survey from producers and non producers

Countries	Number of answers from producers	Number of answers from non producers
EU Member States		
Austria	1	1
Belgium	1	0
Bulgaria	1	2
Cyprus	0	0
Czech Republic	3	9
Denmark	0	1
Estonia	1	3
Finland	0	0
France	19	3
Germany	2	1
Greece	9	0
Hungary	0	0
Ireland	3	2
Italy	3	1
Lithuania	0	4
Luxembourg	0	0
Malta	0	0
Poland	8	1
Portugal	4	2
Romania	5	10
Slovakia	3	3
Slovenia	1	1
Spain	42	49
Sweden	0	1
The Netherlands	3	0
United Kingdom	1	1
Total EU Member States	110	95
Other EEA countries		
Iceland	0	2
Norway	0	5
Liechtenstein	0	0
Switzerland	3	4
Total other EEA countries	3	11
Total for all the studied countries	113	106

Source: Insight Consulting

The answers of the non producers were classified between public and private bodies for the analysis of the answers.

Table 45: Number of answers to the survey from public and private bodies

Countries	Public	Private
EU Member States		
Austria	1	0
Belgium	0	0
Bulgaria	1	1
Cyprus	0	0
Czech Republic	8	1
Denmark	1	0
Estonia	1	2
Finland	0	0
France	0	3
Germany	0	1
Greece	0	0
Hungary	0	0
Ireland	2	0
Italy	0	1
Lithuania	4	0
Luxembourg	0	0
Malta	0	0
Poland	1	0
Portugal	1	1
Romania	6	4
Slovakia	3	0
Slovenia	0	1
Spain	23	26
Sweden	1	0
The Netherlands	0	0
United Kingdom	1	0
Total EU Member States:	54	41
Other EEA countries		
Iceland	2	0
Norway	2	3
Liechtenstein	0	0
Switzerland	1	3
Total other EEA countries:	5	6
Total for all the studied countries	59	47

Source: Insight Consulting

Many answers were received from Spain: 42 out of 110 for producers and 49 out of 95 for non producers. These answers thus represent 38.2% of the answers of producers and 51.6% of the answers of non producers. However, as you can see in the analysis below, the answer received from Spanish respondents corresponds largely to the answers given by the majority of the respondents from other countries.

There are exceptions:

- Question on the satisfaction on the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the national level. The majority

of respondents judged this level of protection dissatisfying. However, without taking into account the Spanish answers:

- A clear majority cannot be found amongst the EU private bodies which answered; they seem to be rather neutral on the question.
- The majority of EU public bodies is satisfied by their national system.
- Question on the satisfaction on the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the European level. The majority of respondents judged this level of protection dissatisfying. However, without taking into account the Spanish answers the EU private bodies and public bodies' answers are neutral.
- Question on the satisfaction on the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the international level. The majority of respondents judged this level of protection dissatisfying. However, without taking into account the Spanish answers EU non producers' answers show that the majority of them are neutral on the question.

A majority of respondents thinks that the economic effects of the introduction of an EU wide protection of geographical indications for non-agricultural products could notably be a positive impact on the price of the product from a producer's point of view, and an impact on employment, but respondents seem not to have a clear opinion on the question as many are neutral on the issue, Without taking into consideration the Spanish answers, the responses of the private bodies are neutral on these questions.

For most of these questions, the outcome of the results are only slightly modified as without taking into consideration the Spanish answers, the respondents seem to be neutral, except in the case of the majority of EU public bodies which are satisfied by their national level of protection. However, the Spanish answers do not change the outcome of the survey.

No answers were received from Cyprus, Finland, Hungary, Liechtenstein, Luxembourg, and Malta. The experts in these countries contacted the stakeholders and followed-up when they did not receive any answers. In these countries, even though no mail delivery failure notice was received, no answer was received. Considering the fact that many e-mails were deleted before being read, the experts pointed out to several reasons why no answer was received: a lack of interest for or a lack of knowledge of the GI concept, limited resources available with small and medium size companies.

Few answers were received in the following countries: Belgium, Bulgaria, the Czech Republic, Denmark, the Baltic and Nordic countries and the UK. It is interesting to note the feedback given by the experts to try to understand better why.

In Belgium, where a regional *sui generis* law exists at the regional level in Wallonia, in an official letter, the Director General of the "Direction Générale Opérationnelle de l'Economie, de l'Emploi et de la Recherche" of Wallonia stressed that his department had not received a demand for GI registration for a very long time and that hence they did not have sufficient expertise to answer to the survey. In Bulgaria, according to the experts, there is a lack of understanding of IP protection and of GIs. The experts also highlighted the negative influence of the economic crisis on industrial bodies. In the Czech Republic, the current economic crisis was also put forth as a reason why producers were not willing to co-operate to the survey: it was not directly linked with some economic benefit. Concerning non-producers, there are several negative factors, especially a low awareness of administrative bodies and other organisations about Appellations of Origin and Geographical Indications systems, something that is also true for Denmark.

In the Baltic countries, the identified producers refused to answer the questions, either because they were not interested in the protection of their products or because they did not

feel they had enough knowledge on the existing means of protection to make any estimation. In Estonia, the expert highlighted that some IP experts face difficulties since they have a hard time distinguishing the GI concept from the trademark system. Entrepreneurs are more familiar with the trademark system. GI registration is seen rather as a loss of resources than as a good investment. It is a common belief that IP enforcement is very hard and expensive for SMEs. As the majority of Estonian companies are micro-enterprises, their activities are confined to Estonia. GI registration would not give them any commercial advantage. Entrepreneurs who are doing business in the EU or at the international level are not sure they could enforce their IP rights abroad. However, the existing means of protection (mostly trademarks) are considered satisfactory. In the UK, given the very small scale and scope of those producing GI products there was very little capacity to respond.

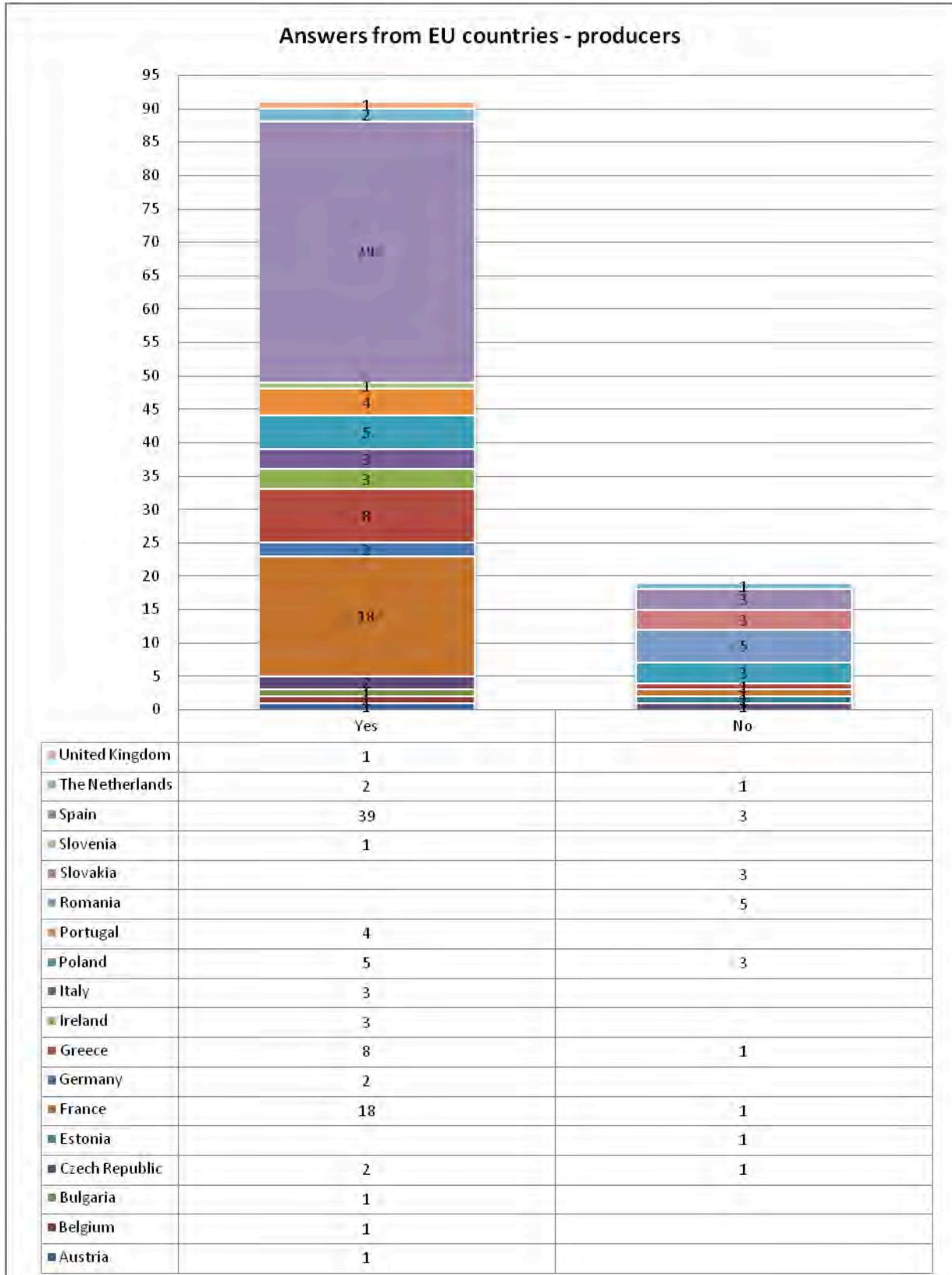
In Iceland, Norway and Sweden, stakeholders have been identified and selected in co-operation with national authorities. In Iceland, one private organisation declined to answer because they felt they were "not suited" to respond to this kind of questionnaire, and two Ministries also declined to answer because they did not have a view on this matter or because it did not fall under their competences. In Norway, two non-producers declined to answer either because they had no opinion on the topic, or because this issue is not within their competences. In Sweden, a public organisation and several private organisations declined to answer because the issue felt outside its scope of activities. They also underlined that this issue was not a priority although the fight against counterfeiting should be a priority. They consider that any legislation on Geographical Indication protection for non-agricultural products should lead to real improvements for both producers and consumers. Moreover, it should not create new administrative burdens on companies and hence this issue could possibly be better dealt with through private certification initiatives.

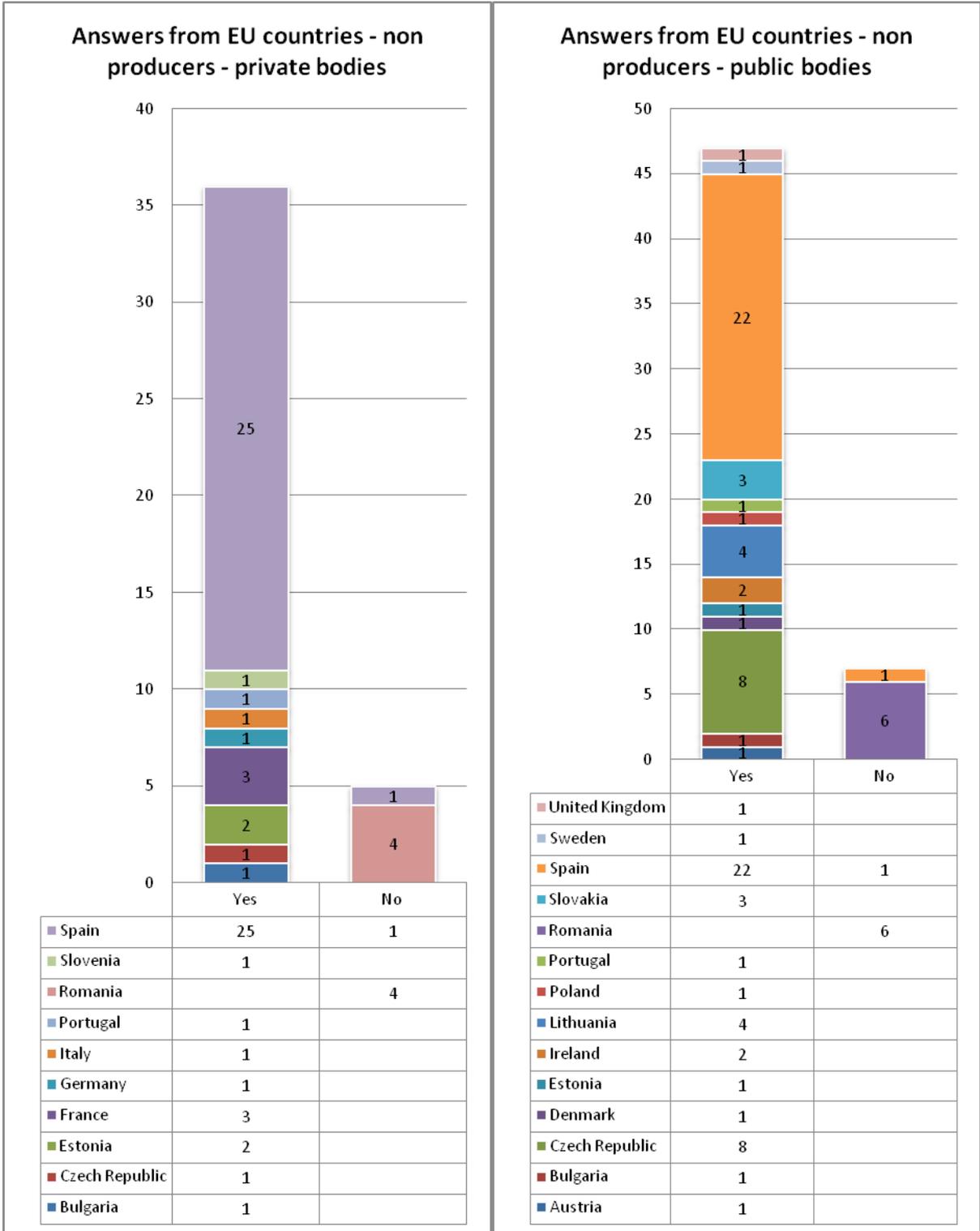
The analysis hereinafter is based on the answers received from stakeholders willing to take part to the survey and thus only covers a sample of the non-agricultural GI sector. The results of the analysis cannot be generalised to all the stakeholders involved in the non-agricultural GI sector.

Disclaimer : the answer of the Estonian public body is not an official one.

General questions

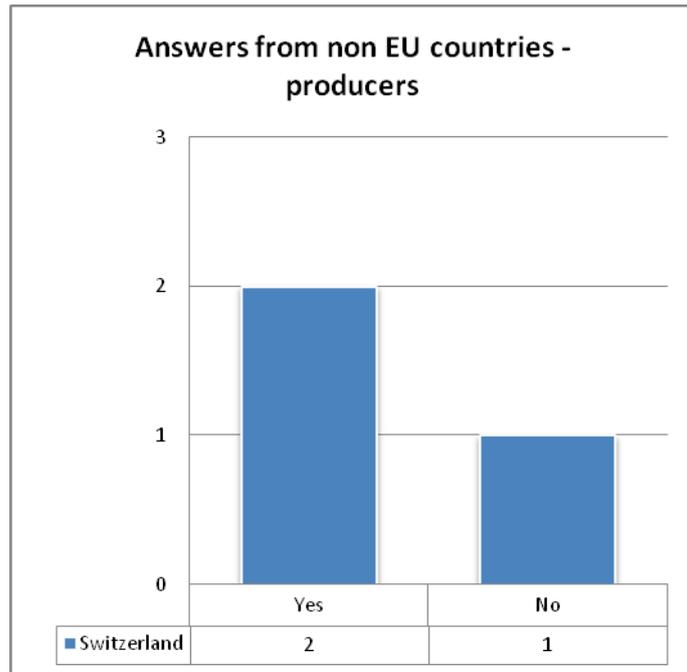
Do you know what a geographical indication commonly known as “GI” is?



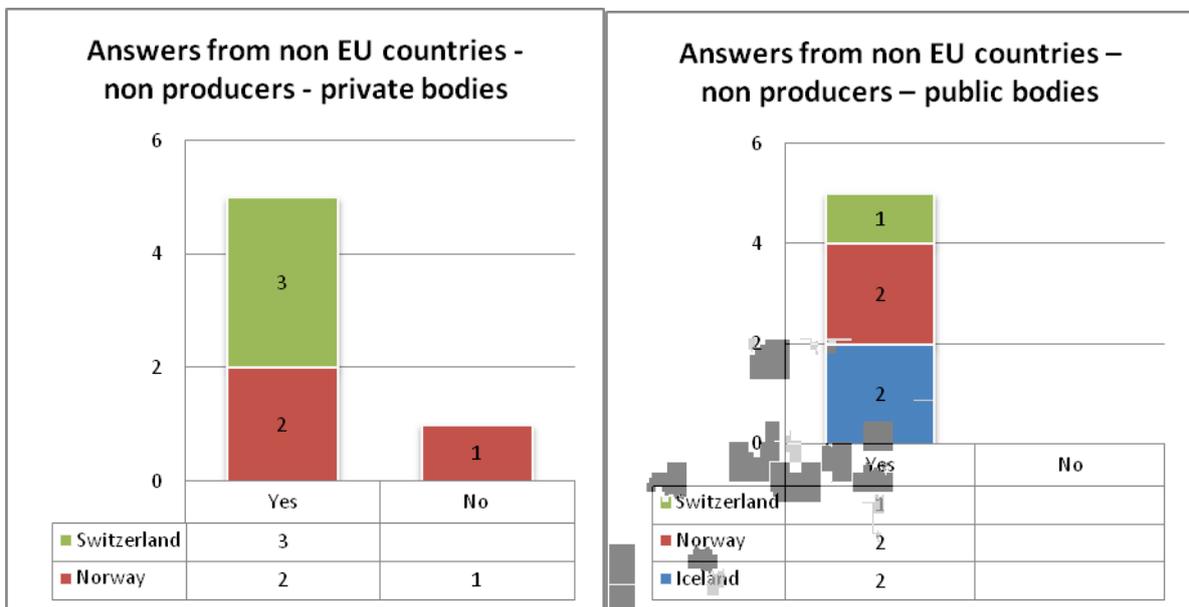


The answers to the survey show that in the EU, a large majority of the respondents know what a GI is. The non producers seem to have a better knowledge of the concept.

Even without taking into account the answers of the Spanish respondents, the results show that a majority of producers (52 out of 68), of private bodies (11) and public bodies (25) which answered the survey know the GI concept.



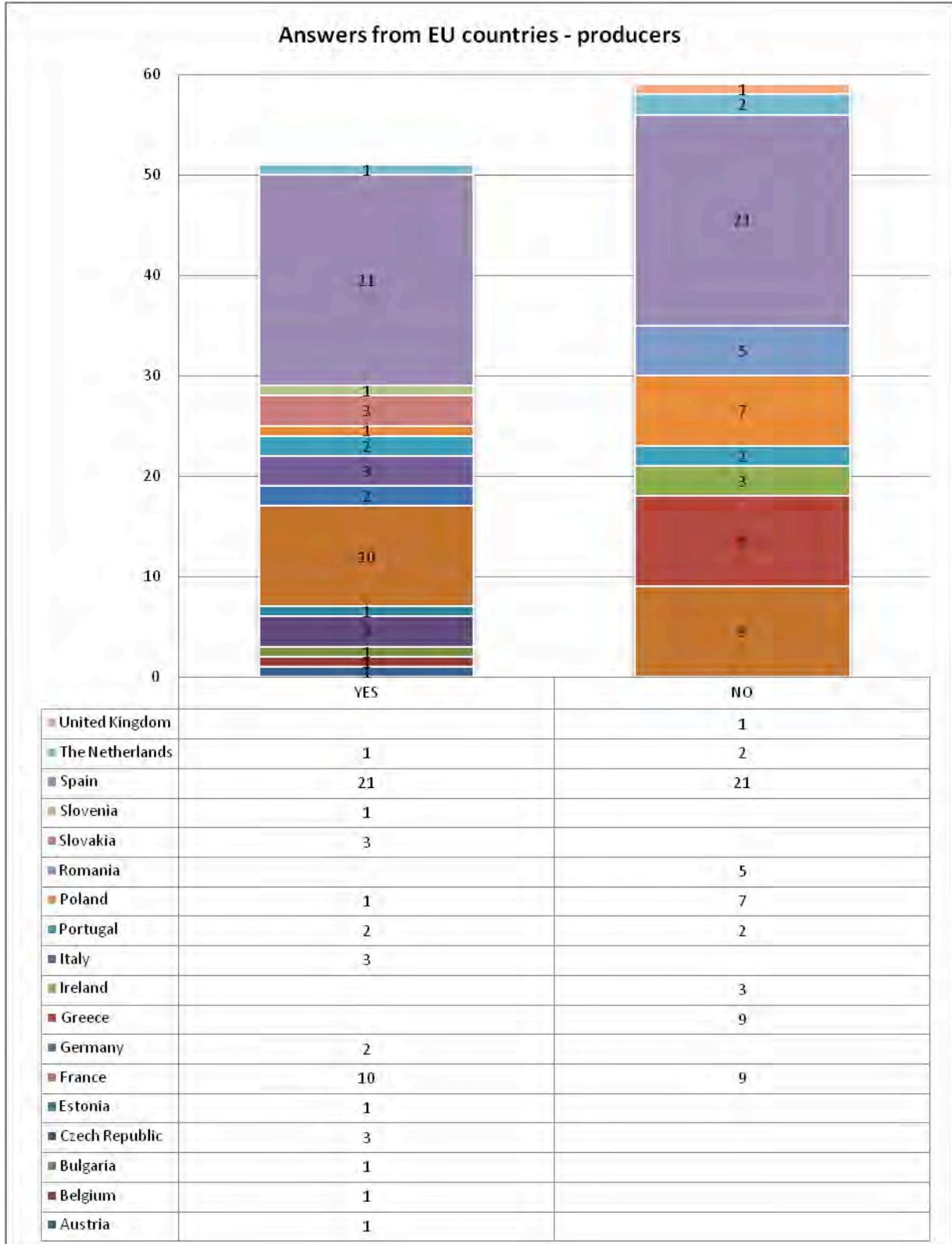
In the non EU countries, two Swiss producers, who answered, knew what a GI is, whereas the third one did not.

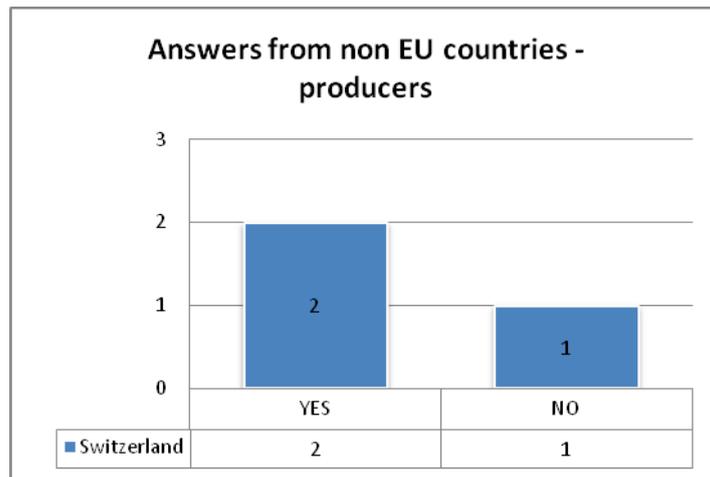


Almost all the non producers who answered know what a GI is.

Specific questions for producers

Is the name of your of non-agricultural product comprising a GI or potential GI legally protected beyond unfair competition law?

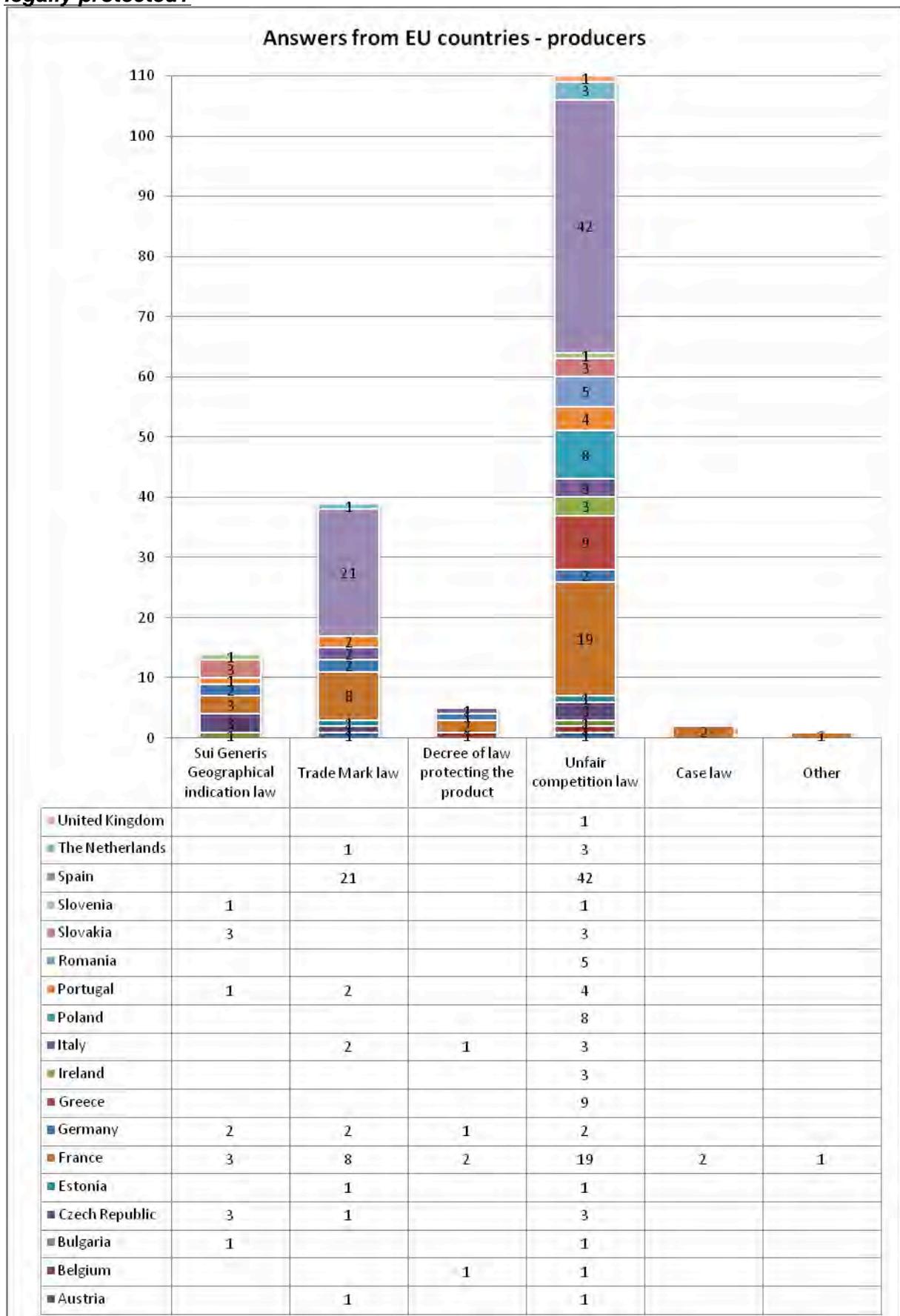




The answers of EU and non EU producers show that less than half of the respondents have protected the name of their products (53 out of 113).

Even without taking into account the Spanish answers, the results show that a majority of EU producers (38 out of 68) have not protected the name of their products.

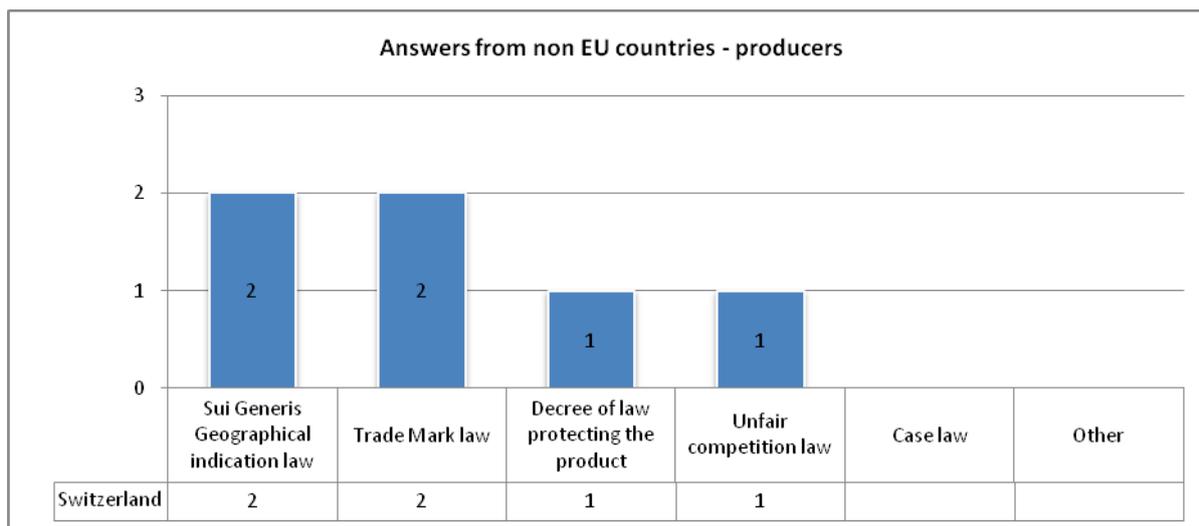
How is the name of your non-agricultural product comprising a GI or potential GI legally protected?



All products are protected by unfair competition law.

39 (including 21 Spanish products) of the protected EU products are protected through the trade mark scheme and 14 through a *sui generis* law on the protection of GI. 5 are protected by a specific decree or law protecting the product, 2 by case laws and 1 as intangible heritage of the UNESCO⁸⁶.

Even without taking into account the answers of the Spanish respondents, trade marks remain the main means of protection used (18 products). 14 products are protected through *asui generis* law on the protection of GI. 5 are protected by a specific Decree or law protecting the product, 2 by case laws and 1 as intangible heritage of the UNESCO.



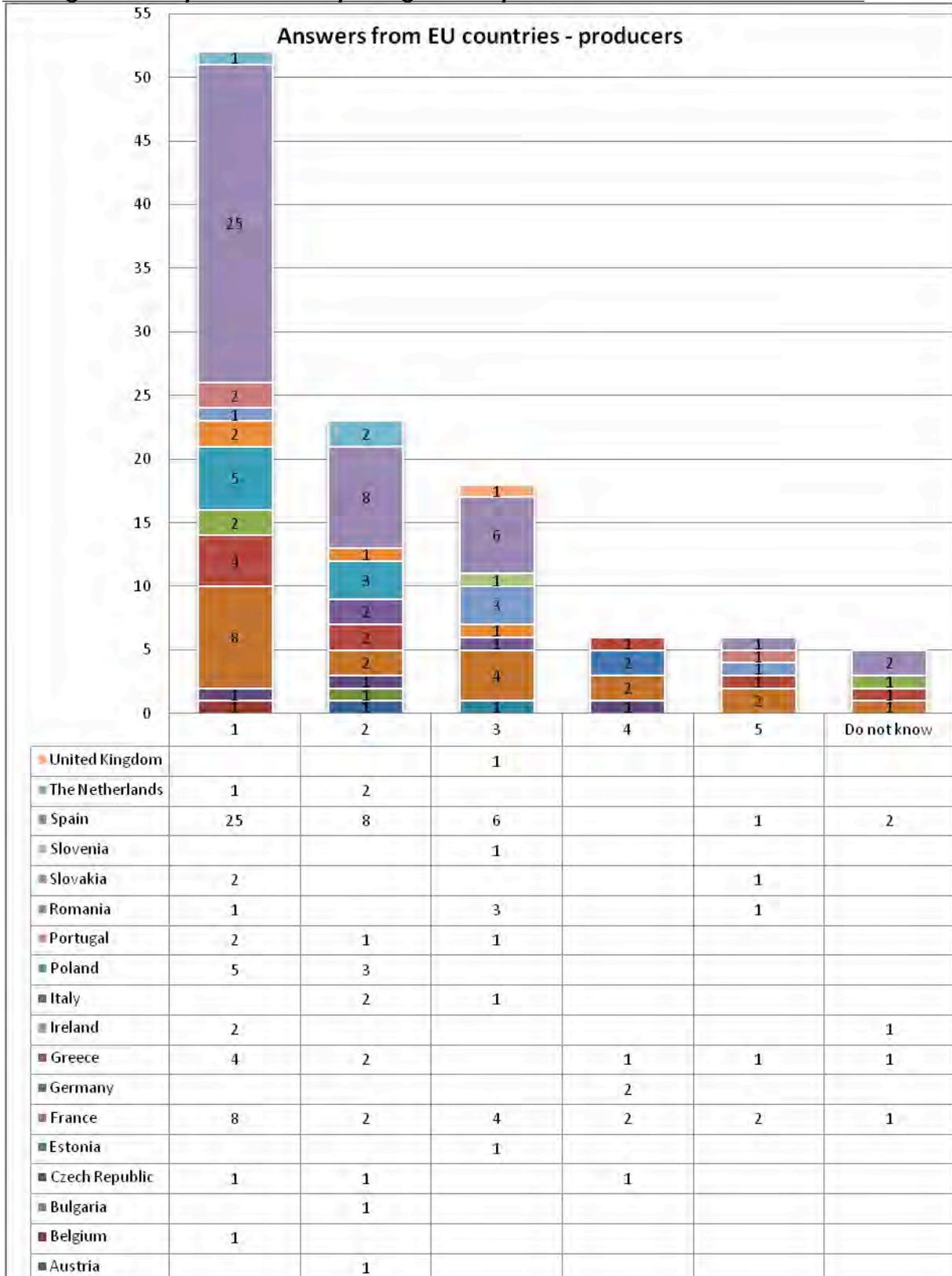
Two Swiss producers protected the name of their product under the *sui generis* geographical indication law and the trade mark law. Only one of the two protected it under a special decree protecting the product. Furthermore, the products enjoy protection under the unfair competition law.

⁸⁶ United Nations Educational, Scientific and Cultural Organization of the United Nations. For more information, see: http://portal.unesco.org/culture/en/ev.php-URL_ID=34325&URL_DO=DO_TOPIC&URL_SECTION=201.html

Questions on the levels of protection

In the following questions, 1 means that the person is disappointed or totally disagrees with the option and 5 means that the person is satisfied or totally agrees with the option.

On a scale of 1 to 5, how would you rate the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the national level?



The vast majority of EU producers' respondents are dissatisfied with the current level of protection at the national level. Out of 113 respondents, 52 producers rated the protection "1" and 23 rated it "2".

Even without taking into account the Spanish answers, the results show that a majority of respondent producers (42 out of 68) is dissatisfied as they rated the protection "1" (27 out of 68) or "2" (15).

Respondents were asked to explain their evaluation, in particular the strengths and weaknesses of the existing means of protection.

You will find below an overview of these comments classified by subject matter. Comments are divided into two groups: comments from producers from EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain) and the others.

Comments of respondent producers from Member States with a *sui generis* legislation:

Main comments:

- The lack of knowledge of any existing means of protection of names of non-agricultural products at national, EU and international levels (one Polish producer) or at national level (four Romanian producers and one Slovak producer).
- The belief that there is no protection means (one Polish producer) or efficient protection means (one Romanian producer) available or that such protection as Appellation of Origin or Geographical Indication is only available for agricultural products (5 French producers and 1 Polish producer).
- The feeling that there is not enough protection on the market (one Portuguese producer) and it is important to fight counterfeiting (one Polish producer).
- The protection as Appellation of Origin or Geographical Indication for agricultural products is efficient in terms of protection of the products and of communication towards the consumers (one French producer).
- The weaknesses of the current system are that, for small enterprises or syndicates, it is difficult to fight frauds (few financial means, low interest given by the administration in charge of the repression of the frauds, less support than the one given to big enterprises, complexity of the system) (one French producer).

Concerning the *sui generis* system of protection in their countries, producers underlined the following:

- Strengths:
 - The national *sui generis* protection lasts for an unlimited period of time and consumers are certain of the true origin of the product (one Portuguese producer).
 - The advantage of the national protection system is that the same criteria are imposed for the production of a product and that it allows for the promotion of the product, and guarantees jobs in the region (one Slovak producer).
- Weaknesses:
 - The protection is managed by local authorities, which do not have the rapidity imposed by the action of controls. This producer gave the example of a seasonal product, for which the prejudice can be huge if the controls and actions are not done rapidly (one French producer).
 - In order to register a name of a non food product in Portugal, it is required, among other documents, to give a declaration from the competent authority

that, in the production region, is responsible for this type of production. As this type of competent authority does not exist, names cannot be registered or, at least, it is very difficult to register a name as a GI (one Portuguese producer).

- Consumers do not know what a GI is. There is a strong competition with similar products which do not have a GI and have the same prices as those with a GI (one Slovenian and one Slovak producer).

Regarding the trade mark regime, they insisted upon the following elements:

- Strengths: the national recognition, the visibility, clarity and precision of the system (one French producer).
- Weaknesses:
 - There is a problem of protection of “word geographical mark”, as town names, cannot be protected (one French producer).
 - The trade mark system is reliable but costly. It also supposes a continuous monitoring after the registration of the trade mark in the country (two French producers).
 - The trade mark law does not give enough protection (one Portuguese producer).

Comments of the respondent producers from Member States with no *sui generis* legislation:

Main comments:

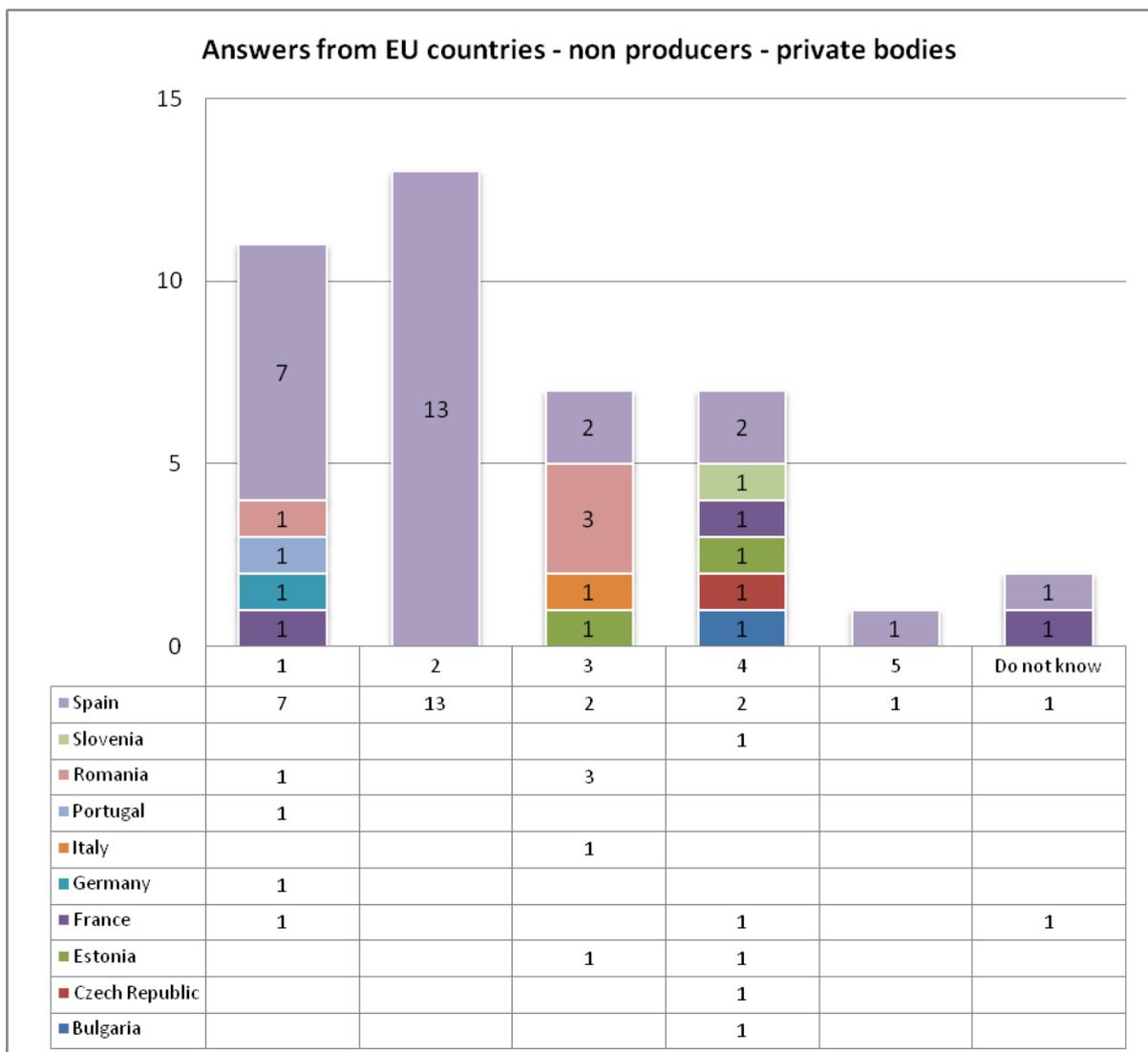
- There is no specific protection for products bearing a geographical name at the national level (one Irish producer & one Greek producer).
- The trademark is the only system available to protect names of non-agricultural products comprising a geographical indication or a potential geographical indication (two Italian producers).
- Non-agricultural GI products would benefit from the establishment of a system of protection (one Greek producer).

Regarding the trade mark regime, they said that:

- Strengths: thanks to the collective mark, the product is acquiring some distinctiveness in terms of quality on the market (one Italian producer).
- Weaknesses:
 - Buyers do unfortunately not perceive the strong link between the specific characteristics of the products and its area of origin. In practice, the collective mark proved to be a very expensive system for producers because of the registration costs and renewals (a payment of a fee is required every 10 years). In addition, the enforcement of the right can be very costly (opposition proceedings, legal actions against infringements). These costs are not always sustainable for right holders, notably for small producers/groups (one Italian producer).
 - In Italy, the Law 188/1990 established a national mark to promote and protect traditional and artistic ceramics and quality ceramics. This mark guarantees the quality and origin of ceramics accordingly to the product specifications adopted by the 34 Municipalities with reputed tradition in ceramic production. However, producers (very few use this mark) as well as consumers are not familiar with such a mark. In practice, the system proved to be very expensive for producers which are mostly small companies (at national level the average is 3.3 employees). To obtain the authorisation to use the mark, producers have to present a detailed application and be registered in the specific “Registry of artistic and traditional ceramics”. The procedure is costly and the authorisation of use requires the payment of an annual fee. In addition, the

expenses to verify the compliance with the product specifications are also charged to producers submitted to the process of control. Furthermore, there are limits to what the law 188/90 can achieve in terms of legal protection of artistic and traditional ceramics. In fact, the law defines the scope of protection but does not specify the object and the extension of the protection enjoyed by the registered names. This legal shortfall makes it difficult to defend original products from abuse and misappropriations. Therefore, producers seek additional protection by registering trademarks and/or collective marks (at national and/or EU level) in case of groups, associations or collective entities. However, the trademark system (including collective marks) also proved to be inefficient (one Italian producer).

- The trademark system does not provide programmes or funds for the promotion of non-agricultural GIs neither at national nor at international level (one Italian producer).
- There is a problem of protection of “word geographical mark”, as town names, cannot be protected (one Dutch producer).



The private bodies which answered tend to find their national level of protection dissatisfying, as 24 of them rated their national system at 1 or 2, whereas only 8 of them rated it 4 or 5.

Without taking into account the Spanish answers, a clear majority cannot be found. The answers of the private bodies show that they are satisfied by their national level of protection only by a small majority: 5 private bodies rated it “4” compared to 4 which rated “1”. However, the number of neutral rate “3” is higher (5) than the rate of satisfied respondents.

Respondents were asked to explain their evaluation, in particular the strengths and weaknesses of existing legal means of protection.

You will find below an overview of these comments classified by subject matter. Comments are divided into two groups: comments from producers from EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain) and the others.

Comments of EU respondent private bodies from Member States with a *sui generis* legislation⁸⁷:

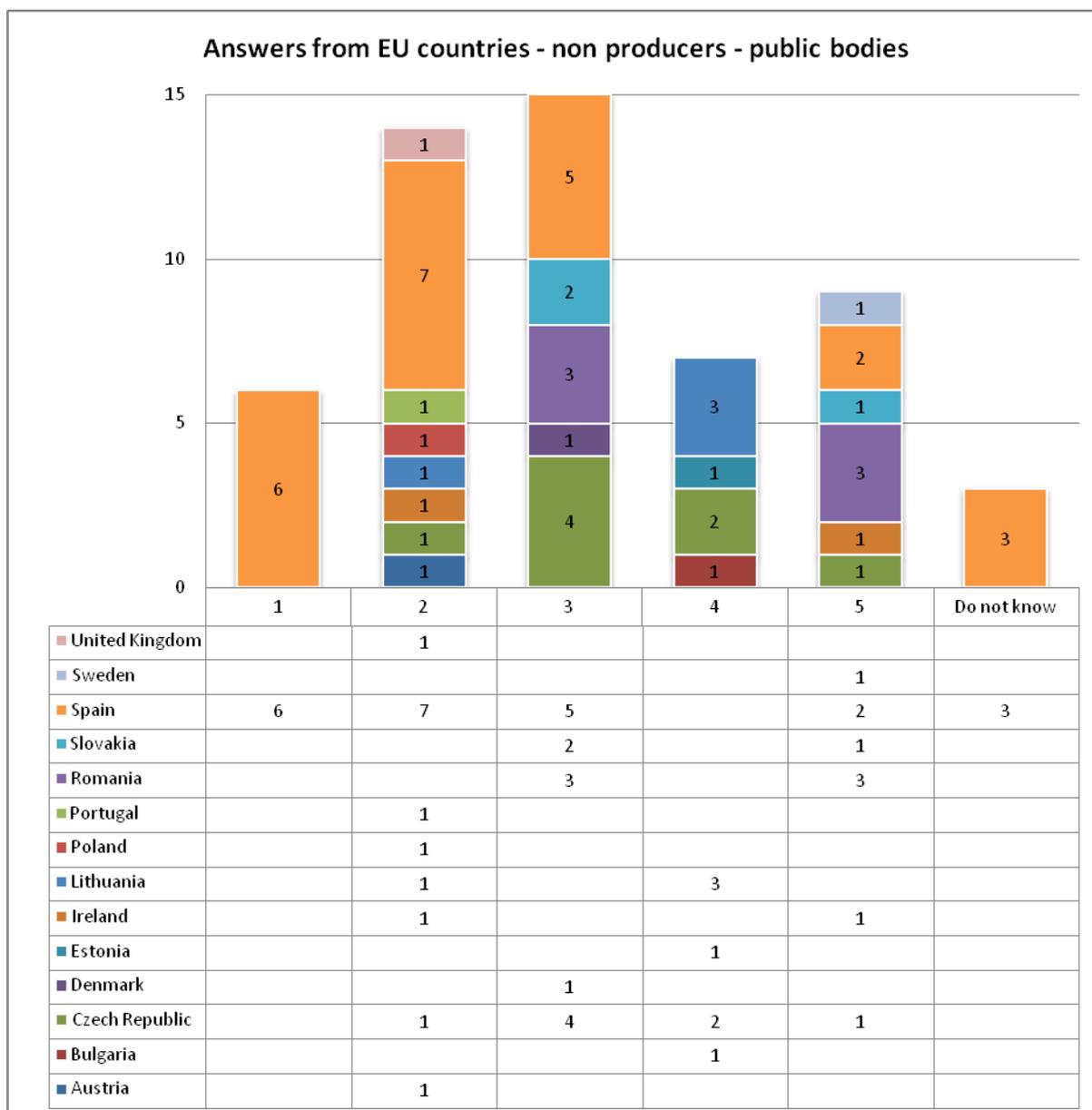
Main comments:

- The lack of knowledge on existing national legislative framework (three Romanian private bodies).
- The belief that there is no protection means at the national level (one Romanian private body).

Concerning the *sui generis* system of protection in their countries, EU private bodies gave several strengths and weaknesses:

- Strengths: prohibition of any use in the commercial activity of similar geographic name for similar goods as far as it exploits the popularity of the protected GI, as well as the protection against incorrect use, imitation or use of any other incorrect or misleading indications (a Bulgarian private body).
- Weaknesses:
 - In absence of a compulsory labelling, which the EU is the only one able to establish, the provisions of the consumption code and the controls of the responsible national authority (DGCCRF-DGDDI) which can be contradictory are totally insufficient and lead to the existence of misleading allegations (one French private body).
 - Protection is very weak as authorities only act after a complaint from producers. Nevertheless the situation is better as GI protection gives more comfort to producers than a single trade mark and allows them to impose production rules (one Portuguese private body).

⁸⁷ EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain)



The public bodies which answered to the survey also tend to be dissatisfied by their national system as 14 rated it “2” and 6 chose “1”. However, this rating can be counterbalanced by the fact that 15 public bodies opted for a neutral vote (“3”) and 3 opted for “do not know”.

Without taking into account the Spanish answers, the results are different as a majority of public bodies is satisfied by their national system: 7 rated it “4” and 7 rated it “5”. However 10 public bodies opted for a neutral vote (“3”).

Respondents were asked to explain their evaluation, in particular the strengths and weaknesses of the existing means of protection.

You will find below an overview of these comments classified by subject matter. Comments are divided into two groups: comments from producers from EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain) and the others.

Comments of the respondent EU public bodies from Member States with a *sui generis* legislation:

Main comments:

- The lack of knowledge on existing national legislative frameworks (four Romanian public bodies & one Slovak public body).
- The low awareness of the population about GI protection (one Romanian private body & one Slovak public body).
- The names should be protected and reserved for local producers to help them fight counterfeiting (three Romanian public bodies).

Concerning the *sui generis* system of protection in their countries, they highlighted several strengths and weaknesses.

- Strengths:
 - GIs can only be used by a person registered as its user (one Bulgarian public body).
 - The national law prohibits any use in the commercial activity of similar geographic name for similar goods as far as it exploits the popularity of the protected GI, against incorrect use, imitation or use of any other incorrect or misleading indication (one Bulgarian public body).
 - The legal protection of the registered GI shall be terminated when the link between the qualities or the peculiarities of the commodity with the geographic environment stops to exist (one Bulgarian public body).
 - The non-agricultural GI protection at the national level is quite sufficient (one Czech public body).
 - The strengths of the current system of protection are the conditions, which are defined in a general manner, and the means of protection, including the possibility to combine different kinds and means of the protection (one Czech public body).
 - The law regulates all matters relating to the procedure for protection of geographical indications for non-agricultural products (one Polish public body).
 - The legislation protects the interests of the holders of certificates of registration of designations of origin or geographical indication of product registration (one Slovak public body).
- Weaknesses:
 - The means of control of compliance with specific features or characteristics set in the production requirements before registration, including the control of the definition of the boundaries of the geographical area where the product can be made, if any, are not sufficient or missing (one Bulgarian public body).
 - The evaluation is chaotic when several institutions have their own evaluation methods. Some indications have regional authorities, some local action groups, some Ministries (one Czech public body).
 - There is still space to improve the existing systems of protection (one Czech public body).
 - Strengthening and clarifying the level of protection of registered indications and common signs, larger promotion and better accessibility of information are needed (one Czech public body).
 - The absence of some evidently elaborated system, which would set up clear and comprehensive defined conditions/requirements and means of evaluation of non-agricultural products. This system should be based on the assessment of geographically bounded uniqueness of each product in a defined area of production (one Czech public body).
 - The current rules are not adjusted to non-agricultural products, which resulted in no geographical indications being registered at the national level. Protection

of GI under the law of unfair competition is also illusory because it is not used in practice (one Polish public body).

- There is a low interest of the competent authorities in the country regarding the protection of the territory favouring the advancement of products with specific characteristics in a specific geographical territory (one Slovak public body).

An Estonian public body⁸⁸ which replied said that the Estonian Geographical Indication Protection Act enables the protection of names of non-agricultural products. The names of non-agricultural products can be protected under the Trademark Act in the form of guarantee marks and/or collective marks, as an additional possible alternative.

Comments of the EU public bodies from Member States with no *sui generis* legislation:

Main comments:

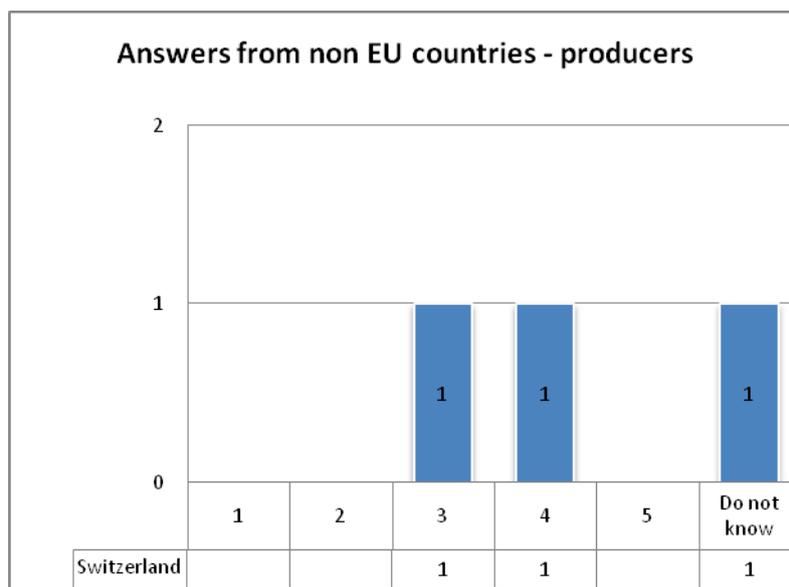
- There is no special legislation to protect GIs at the national level (one Austrian public body & one Danish public body).
- The protection is achieved only by means of instruments of the Federal Law against unfair competition or consumer protection (one Austrian public body).
- Access to knowledge is very limited (One Irish public body).

Concerning the trade mark regime, they highlighted its strengths and weaknesses:

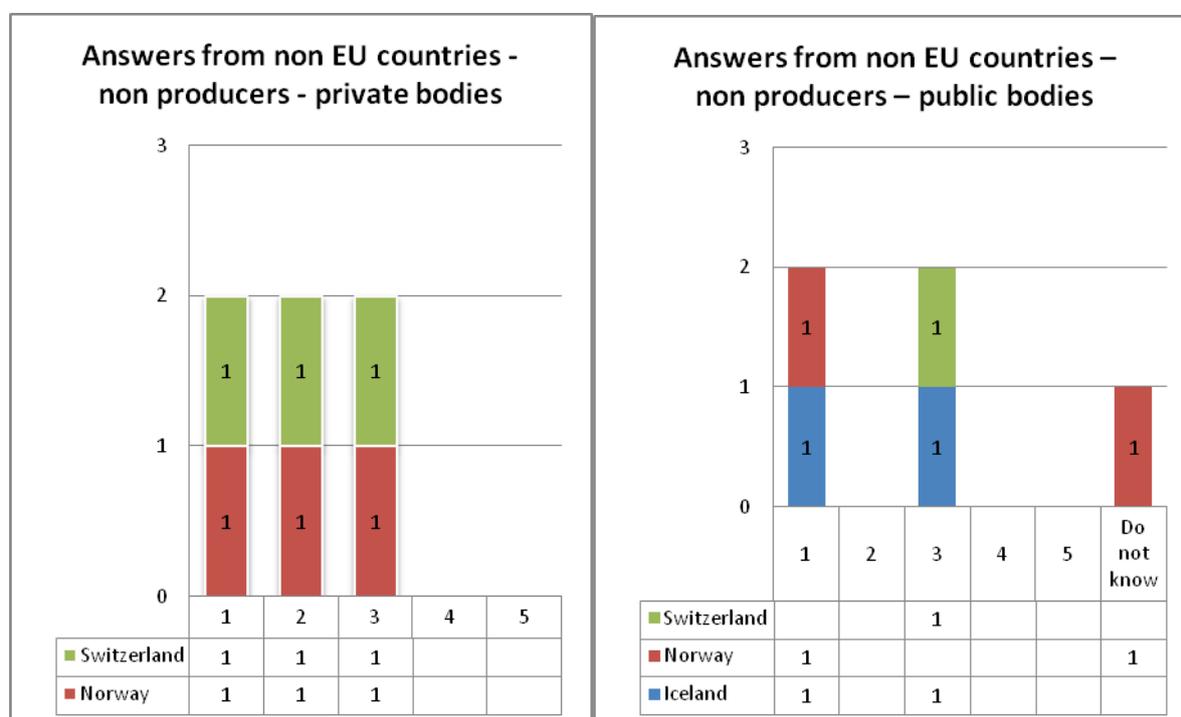
- Strengths
 - The trade mark registration is an effective means of protection of non-agricultural GIs (one Irish public body)
 - The new Trade Marks Act gives further protection to GIs (one Swedish public body).
 - Weaknesses: there is no evidence of the trade mark scheme being effective in the promotion of the products in question; it is slow, costly and difficult to implement (one UK public body).

⁸⁸

This is not an official answer from the Estonian public body



Swiss producers were rather neutral in their answers concerning the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the national level as two of them rated either “3” or “do not know”. The last one rated it “4”.



Outside the EU, public or private bodies are dissatisfied by their national systems.

Norwegian and Icelandic bodies took the opportunity to comment on the national levels of protection. Both countries do not have a *sui generis* law on the protection of GIs.

Comments of the non EU private bodies on their national legislation:

The Norwegian private bodies highlighted general topics:

- The protection of intellectual property rights (IPR) are product oriented and difficult to use for services and experience concepts (i.e. tourism) where it is necessary to

combine a variety of IPR. This is hard to understand and to maintain (one Norwegian private body).

- There is no protection of names of non-agricultural products comprising a GI or potential GI at the national level (one Norwegian private body).

Comments of the non EU public bodies on their national legislation:

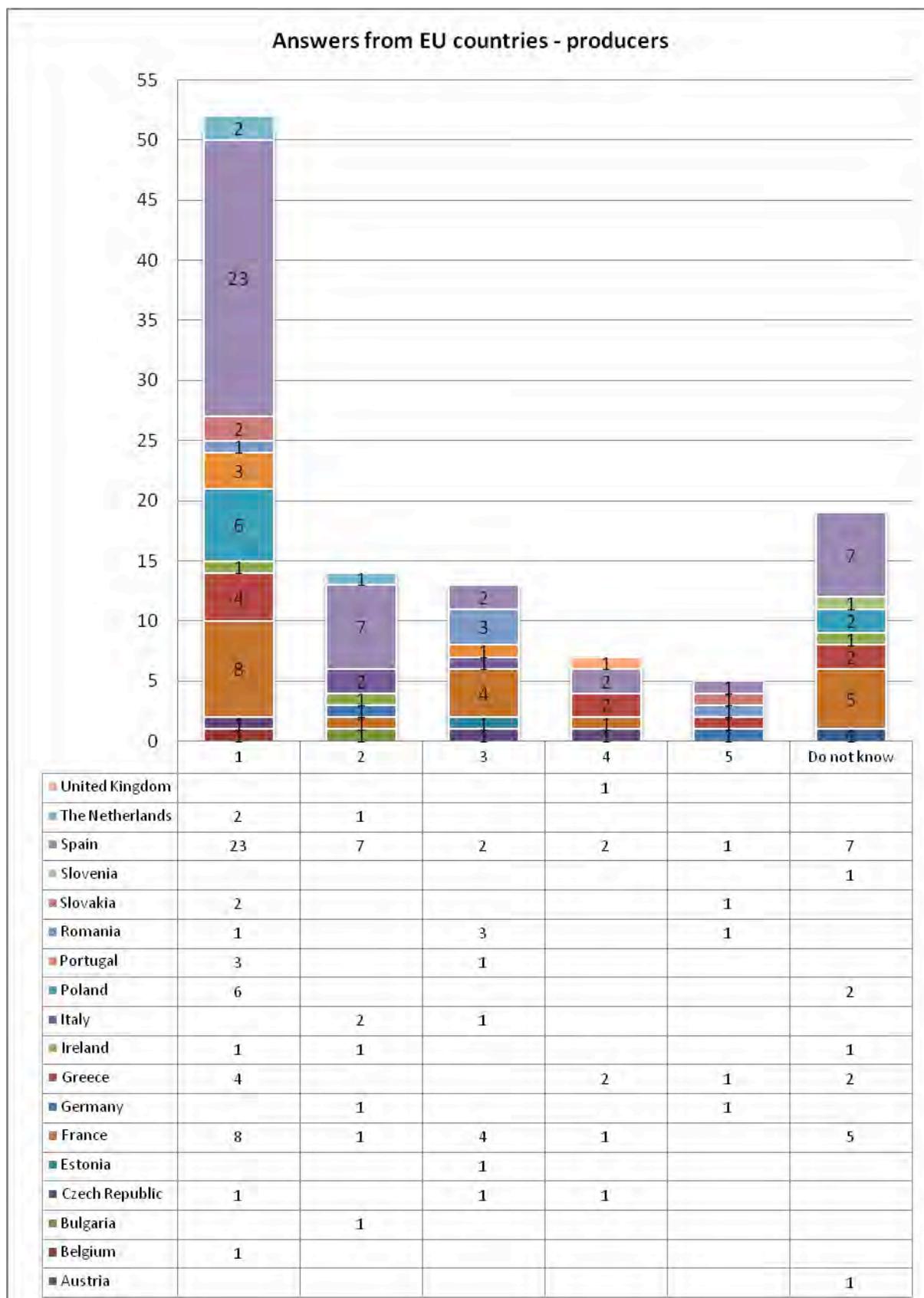
The Norwegian and Icelandic public bodies highlighted general topics:

- There is no specific regime for the protection of names of non-agricultural products comprising a GI or potential GI which applies to non-food GI in the national legislation (one Norwegian public body & one Icelandic public body).
- The needs of most users and market participants seem to be covered by the Trademark Act, possibly the Design Act and the Marketing Act (one Norwegian public body).

Concerning the trade mark system, a second Icelandic public body answered that names of products comprising a GI or potential GI at national level are protected under Article 14.1.2 of the Icelandic Trademark Act No 45/1997 (the "TMA").

- The strengths of this law are:
 - A trade mark cannot be registered if the mark is liable to cause confusion, for instance, as to the type of product, condition or origin (Article 14.1.2). A trademark for wines and spirits which implies a geographical name for wine or spirits may not be registered unless the product originates at the location in question, cf. Article 14.3 of the TMA. The above mentioned provisions of the TMA are based on Articles 22 and 23 of the TRIPS Agreement and apply to both agricultural and non-agricultural products.
 - Further, protection under the Icelandic Collective Marks Act No 155/2002 (the "CMA") may also apply. According to Article 1 of the CMA, associations or unions may acquire sole rights for their members to use in business activities a joint special mark, collective mark, for goods or services. Authorities, establishments, associations or unions supervising or determining standards for goods or services may acquire sole rights to use or permit the use of a mark for the goods or services to which the supervision or standards apply. According to Article 3 of the CMA, marks or information which does in business indicate the geographical origin of goods or services may be considered to constitute collective marks, notwithstanding the provision of Article 13.1 of the TMA.
- Weaknesses of the law are that:
 - Such a mark does not, however, grant its owner the right to forbid a third party the use of the mark or the information for professional purposes, provided the use be in conformity with good business practices. The existing means of trademark protection at national level is an exclusive right to use a trademark for certain goods or services that is not liable to cause confusion as to the type of origin, or a geographical name for wine or spirits that originates at the location in question. Such protection is however not as effective as the existing means of protection at the European and International level. The protection provided at national level is thus mainly for the benefit of the consumer, as a trademark cannot be registered if it is liable to cause confusion amongst them. A greater protection is therefore needed for both agricultural and non-agricultural products, in the benefit of the producer as well.

On a scale of 1 to 5, how would you rate the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the European level?



When asked to rate the current means of protection of names of non-agricultural products comprising a GI or potential GI at the European level, the majority of the producers, who answered, expressed their dissatisfaction with the system (52 rated it “1” and 14 chose “2”).

Even without taking into account the Spanish answers, the results show that a majority of respondent producers are dissatisfied by the system (29 rated it “1” and 7 chose “2”).

Respondents were asked to explain their evaluation, in particular the strengths and weaknesses of the existing means of protection.

You will find below an overview of these comments classified by subjects. Comments are divided into two groups: comments from producers coming from EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain) and the others.

Comments of respondent EU producers from Member States with a *sui generis* legislation:

Main comments:

- The fact that they have no knowledge of the protection existing at the EU level (two French producers & four Romanian producers).
- The fact that there is little awareness of the EU level of protection (one Slovak producer), notably amongst consumers (another Slovak producer).
- The feeling that there is not enough protection at the European level (one Portuguese producer).
- An EU system of protection does not exist (one Portuguese producer).
- The protection as Appellation of Origin or Geographical Indication is only available for agricultural products (two French producers).
- The protection as Appellation of Origin or Geographical Indication for agricultural products is efficient in term of protection of the products and of communication towards the consumers (one French producer).
- Producers had have problems to get help from the region or the administration, and most of the time they do not receive any answer to letters or phone calls to the EU level (two French producers).
- The process of protection is complex (one French producer).
- An EU system of protection is necessary as there are forgeries of traditional products (one Romanian producer).

Regarding the trade mark regime, they put forward:

- Strengths: national recognition, the visibility, clarity and precision of the system (one French producer).
- Weaknesses:
 - The trade mark system is reliable but extremely costly. It also supposes a continuous monitoring after the registration of the trade mark in the country (two French producers).
 - The huge amount of Chinese imitations demonstrates the weakness of the EU protection (one Polish producer).

Comments of respondent EU producers from Member States with no *sui generis* legislation:

Main comments:

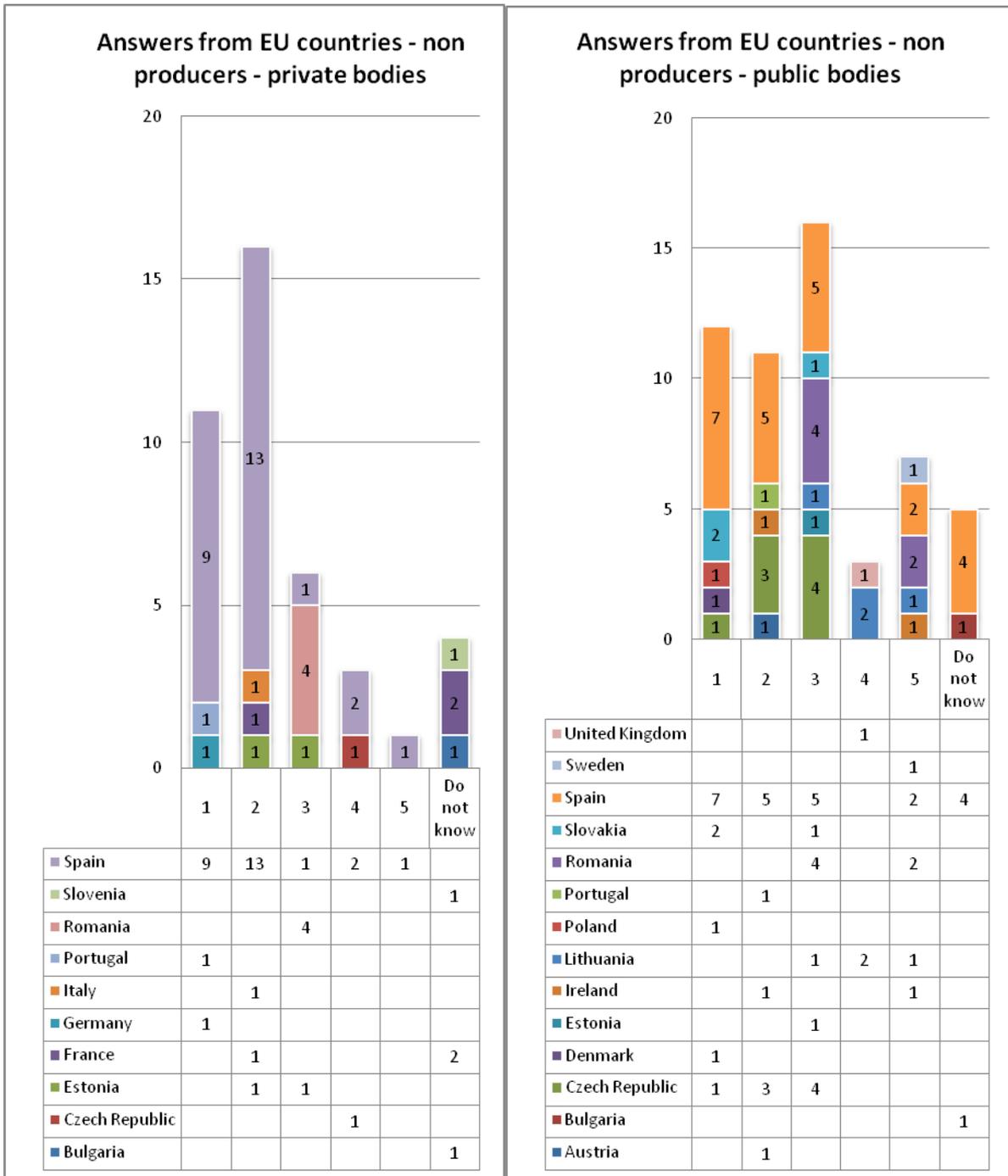
- The registration of a community trademark at the Office for Harmonization in the Internal Market (OHIM) is the only system available to protect names of non-

agricultural products comprising a geographical indication or a potential geographical indication at the EU level (two Italian producers).

- The protection as Appellation of Origin or Geographical Indication for agricultural products is efficient and it may be of great help for non-agricultural products (one Irish producer).
- The fact that they have no knowledge of the protection existing at the EU level (one Greek producer).

On the trade mark regime, they said that:

- Strengths: registration with the OHIM grants protection to the name in the 27 countries members of the EU (one Italian producer).
- Weaknesses:
 - Difficulties for producers to access the system (one Italian producer).
 - High costs for the registration, renewal and enforcement (a plaintiff in a trademark case has the burden of proving that the defendant's use of a mark has created a likelihood-of-confusion for consumers about the origin of the product, which is not simple to demonstrate in a foreign country) are very costly for small producers, which are the majority in the sector of artistic and traditional ceramics. Moreover, producers have to bear enforcement costs, without any support from public authorities (two Italian producers).
 - The trademark system does not provide programmes or funds for the promotion and valorisation of non-agricultural GIs neither at national nor at international level (one Italian producer).
 - There is a problem of protection of "word geographical mark", as town names, cannot be protected (one Dutch producer).



The non producers of the EU which answered to the survey, are also not satisfied by the current means of protection of names of non-agricultural products comprising a GI or potential GI at the European level, even if public bodies tend to be more neutral on the question (answer “3” or “do not know”).

Without taking into account the Spanish answers, the private bodies’ answers are neutral as 5 of them rated the European system “3”, whereas only 2 rated “1” and 3 chose “2”. Without considering the Spanish answers, the public bodies are also neutral on the question (12 chose “3” or “do not know”)

Respondents were asked to explain their evaluation, in particular the strengths and weaknesses of the existing means of protection.

You will find below an overview of these comments classified by subjects. Comments are divided into two groups: comments from producers coming from EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain) and the others.

Comments of respondent EU private bodies from Member States with a *sui generis* legislation:

Main comments:

- The fact that they do not have information on the EU legislative framework (four Romanian private bodies)
- The protection as Appellation of Origin or Geographical Indication is only available for agricultural products (two French private bodies) or does not exist at the EU level (one Portuguese private body).
- Producers must thus register in a case by case procedure, depending on each Member State's law. It is very expensive and it does not give confidence to neither producers or to consumers (one Portuguese private body).
- The protection as Appellation of Origin or Geographical Indication for agricultural products seems efficient (one French private body).
- Efficient tools do not exist for the non-agricultural products (one French private body).

Comments of respondent EU public bodies with a *sui generis* legislation:

Main comments:

- The fact that they do not have information on the EU legislative framework (one Czech public body & four Romanian public bodies) or that they do not understand very well the meaning of the protection (one Romanian public body).
- It is in favour of the protection at the European level, because it knows that the reputation of the local products tempt other producers from other geographical areas to sell ceramics under this name (one Romanian public body).

Regarding the *sui generis* system at the EU level, they said that:

- Strengths: each Member State may create a protection system at the national level to adjust it to the specificities of the domestic non-agricultural products (one Polish public body).
- Weaknesses:
 - There is no system of protection for non-agricultural GI products at the European level (one Polish public body & three Slovak public bodies).
 - The level of protection of non-agricultural GI at the EU level is not satisfying (one Czech public body).
 - There is still space to improve existing systems of protection (one Czech public body).
 - Strengthening and clarifying the level of protection of registered indications and common signs, larger promotion and better accessibility of information are needed. Information should be available in several languages because of the problems generated by language barrier (one Czech public body).

Concerning the trade mark regime, they said that:

- Weaknesses: the names of non-agricultural products can currently be protected at the EU level by a collective mark. The main problem is that the specific features or characteristics of the product or the link with the specific geographical area are not established by the public body. Moreover, the obligation to deal with possible non-

agricultural products name infringements only falls on the trade mark holder (one Estonian public body⁸⁹).

Comments of the respondent EU public bodies without a *sui generis* legislation:

Main comments:

- The fact that there is no legal framework to protect non-agricultural products with a GI at the European level (one Austrian public body).
- Several trade agreements or cooperation treaties that the EU has concluded with third countries or is still negotiating contain provisions on the protection of non-agricultural products with a GI (one Austrian public body).
- 2012 is the first time it has been contacted or notified about GIs (one Irish public body).

Concerning the *sui generis* system of GI protection at the EU level, the following weaknesses were highlighted by one Danish public body:

- It is very dissatisfying that GI's are offered such an extensive protection at the EU level. It is too easy to obtain a GI, which grants a protection not only against confusingly similar or misleading signs, but also signs which may "exploit the reputation" of a GI, even as it is not a registration requirement to register a GI which it has a reputation in the EU (or even has a reputation at the national level).
- There is no requirement that a GI is being used before it is registered as a GI.
- The GI does not have to contain anything that, in relation to the public concerned, – which in relation to a registration scheme which grants protection for the whole territory of the EU must be all relevant consumers in the EU – denotes the geographical origin or any other characteristic of the goods. It is quite clear that a great deal of GI registrations in the Door and E-Bacchus are only used (if even that) and consequently known in a very small part of the EU.
- It is quite clear that affording such GI a protection against "exploitation of the reputation" is absolutely disproportionate, just as it is questionable whether such Gs should even be protected against use of signs which are similar (or even identical) in jurisdictions where the GI has never been used. In the field of Intellectual Property Rights the protection against "exploitation of the reputation" is generally concerning a protection against the misappropriation or misuse of a sign, which through extensive use have obtained a considerable "goodwill" and/or recognition in the market. The basic requirement for this type of protection is that the sign must have a reputation, which is a knowledge threshold requirement. Thus, whether the requirement of "reputation" is actually met will always have to be decided on a case by case basis. In this assessment, all relevant factors must be taken into account, including the relevant group of consumers' perception of the sign, i.e. consumers in the jurisdiction in x country, which is influenced by the level of use by the proprietor of the sign in that particular jurisdiction. However, the relevant EU-regulations, i.e. Regulation (EC) No 1234/2007, Article 118m(2)(a)(ii), does not clearly specify that the sign must - without due cause - take unfair advantage of, or be detrimental to, the distinctive character or the repute of the GI. This does seem to lead to the unfortunate and disproportionate misinterpretation of the law that GI have an "extended" protection without it being necessary to establish that the GI has a reputation and that the use of an identical or similar sign takes unfair advantage of or is detrimental to that reputation. Furthermore, it seems completely disproportionate that GI are protected against "evocations". As is clear from the jurisprudence of the Court of Justice, i.e. case C-87/97 Gorgonzola, that a sign may constitute an "evocation" of a GI even in situations where the relevant consumers are not misled or confused, just as it is not a requirement that the sign takes unfair advantage of or is detrimental to the

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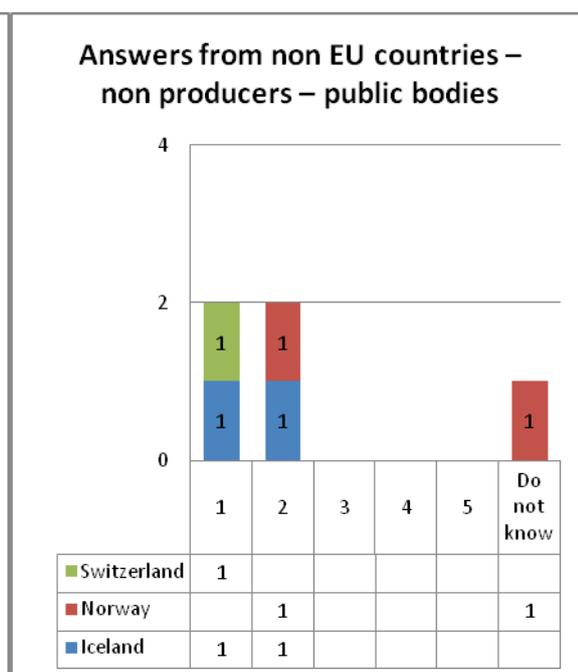
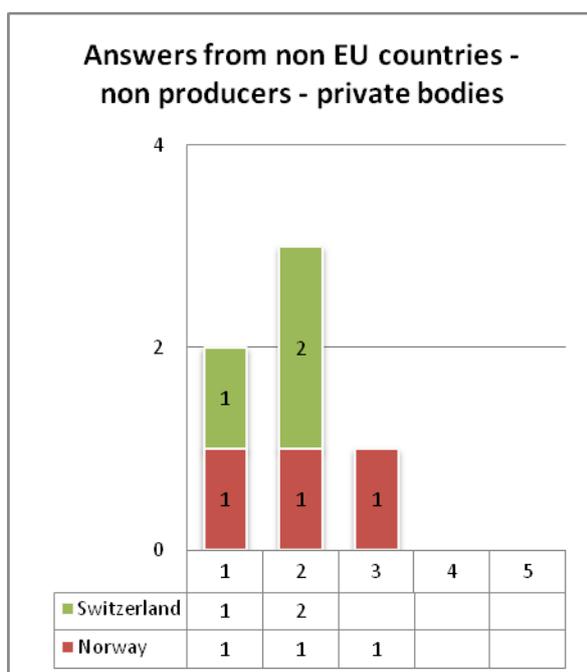
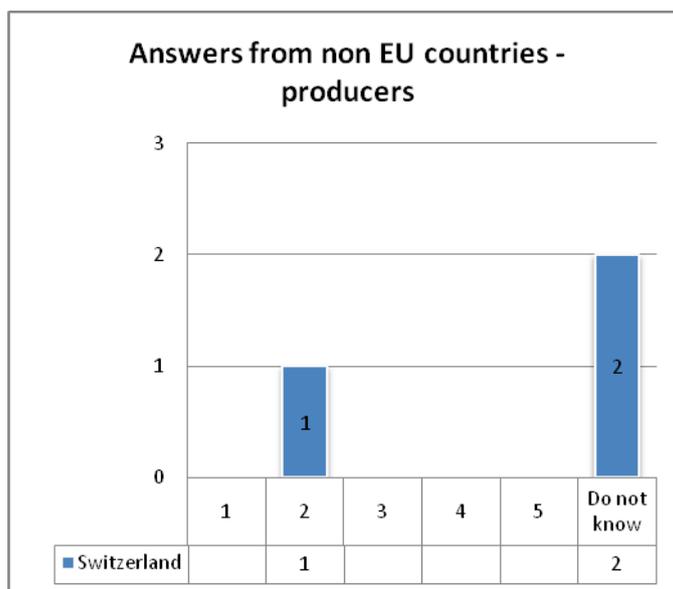
This is not an official answer from the Estonian public body

“reputation” of the GI. This protection of GI goes way beyond any other type of protection in the field of Intellectual Property Rights, and there seems to be no reasonable justification for protecting GI in this manner.

- It is also highly dissatisfactory that it is extremely difficult to deduce from a GI registration in the EU what actually is protected. As the decision from the Court of Justice has demonstrated in case C-469/00, Grana Padano, national authorities cannot rely on the information contained in the databases DOOR or E-Bacchus, as the GIs registered in the databases are not only protected “as registered”, as “parts of” the GIs may be protected “in themselves”, whereas other parts may be considered to be “generic” terms, which are not protected. The databases do not contain any information of such facts.
- The protection of GIs in the EU lacks coherence with the protection of other IP-rights, such as trademarks, company names and trade names. The level of protection afforded GIs seem as yet unjustified and disproportionate – especially when the ease by which the GI protection is obtained, the lack of a requirement of use and the relationship with trademarks and other IP-rights as stipulated in the Regulations governing GIs is taken into account. Finally, it should be noted that GIs in view of the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights are considered to be “Intellectual Property Rights”, cf. Statement by the Commission concerning Article 2 of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights (2005/295/EC). Consequently, it is important that the level of protection of GIs is brought in line with the level of protection afforded other type of signs, such as trademarks or collective marks.

On the trade mark regime, they said that:

- Strengths: the trade mark system is an effective means of protection of non-agricultural GIs (one Irish public body).



The producers and non producers in non EU countries, which answered to the survey, also rated poorly the European system.

Comments of respondent private bodies:

A Swiss private body indicated that, as it had no knowledge of means of protection of names of non- agricultural products comprising a GI or potential GI at the European level, it believed that a collective system of protection is quasi inexistent.

Comments of respondent public bodies:

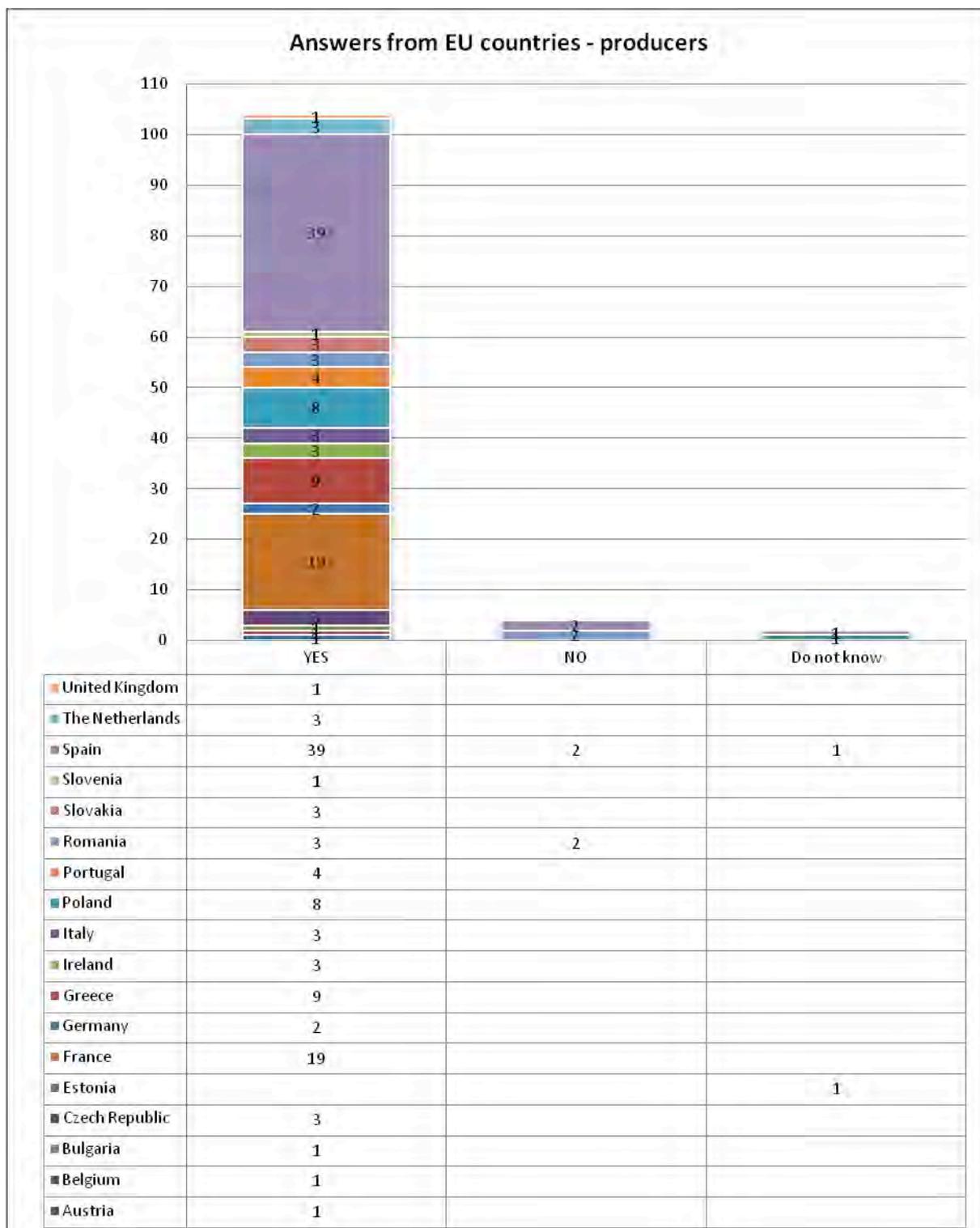
One Icelandic public body answered that the only possibility for protection of names of non- agricultural products comprising a GI or potential GI in Europe is the registration of a community trademark under Regulation (EC) No 207/2009. A much stronger protection is provided for agricultural products and foodstuffs under Regulation (EC) No 510/2006. A similar protection of names of non-agricultural products therefore seems to be needed.

Broader protection

Two specific questions were asked to producers. You may find in this section, first, the questions specifically asked to producers, and then the two questions common to producers and non producers.

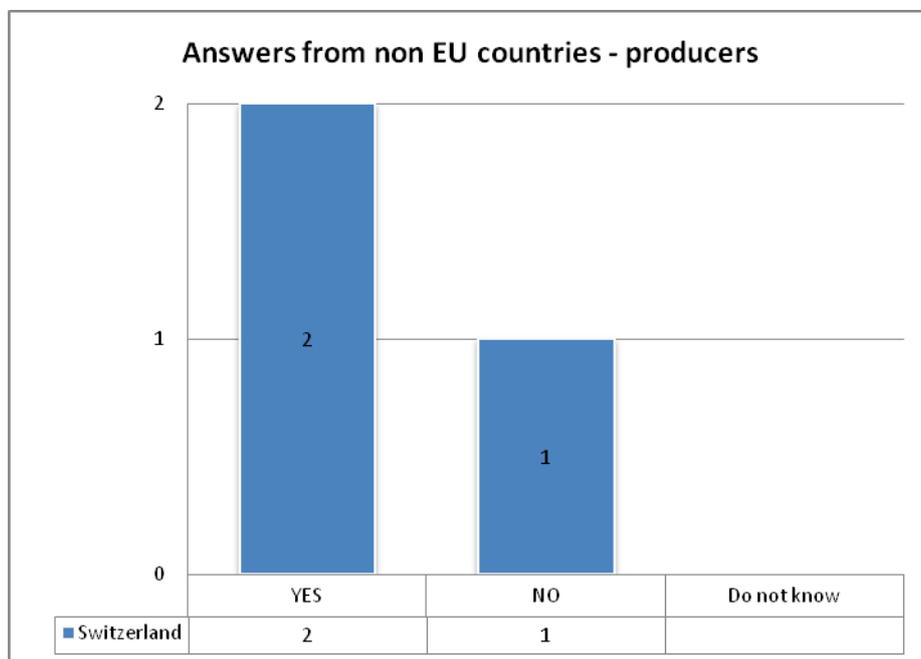
Specific questions for producers

Do you wish to have a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level?



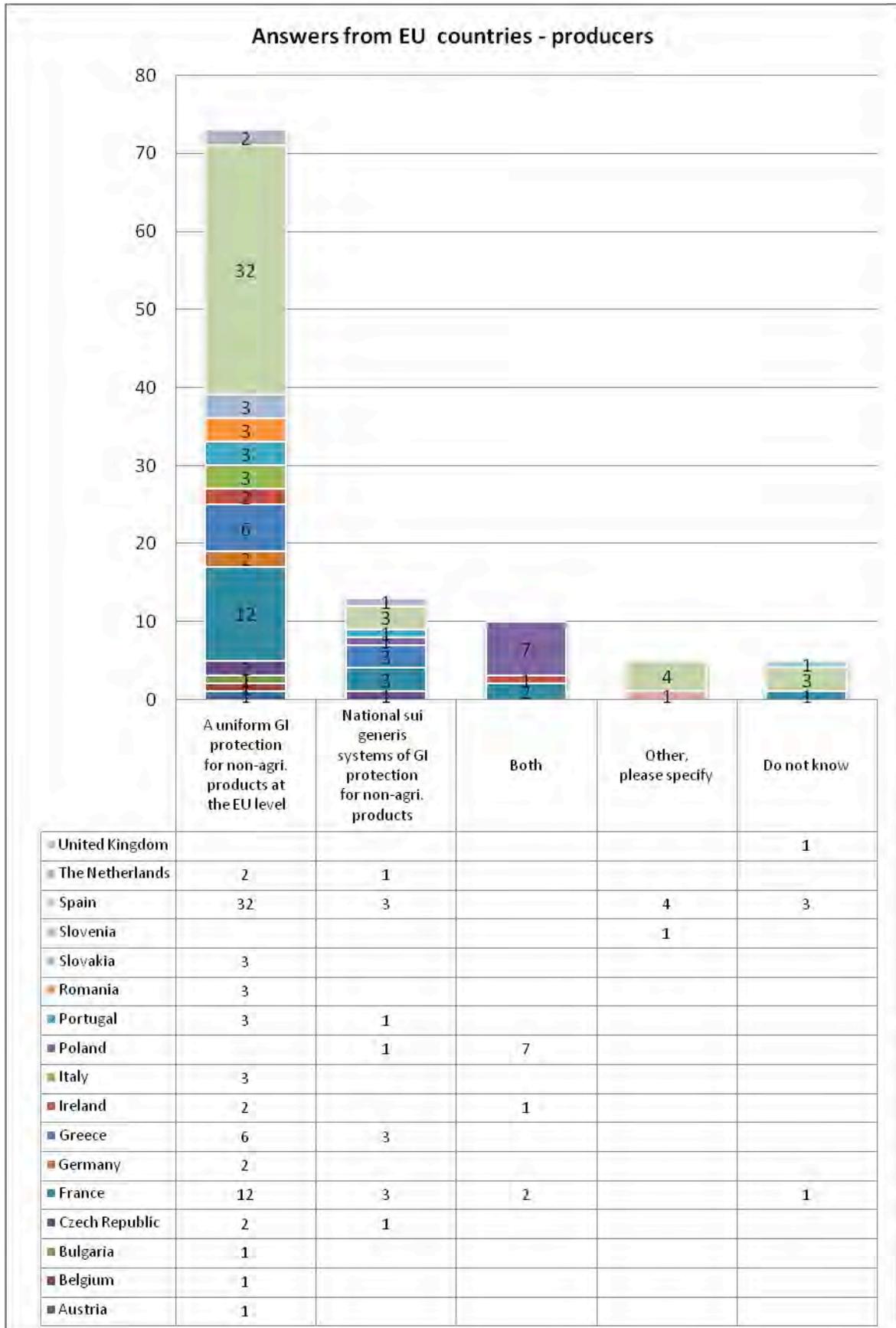
Almost all EU producers, who answered to the survey, replied that they wish to have a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level.

Even without taking into account the Spanish answers, the results show that a majority of producers (65 out of 68) wish to have a broader choice of legal instruments.



Two out of the three Swiss producers which answered to the survey indicated that they wished to have a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level.

If yes, please indicate which type of protection you would like to enjoy



The majority of the respondents said that they would prefer a uniform GI protection for non-agricultural products at the EU level.

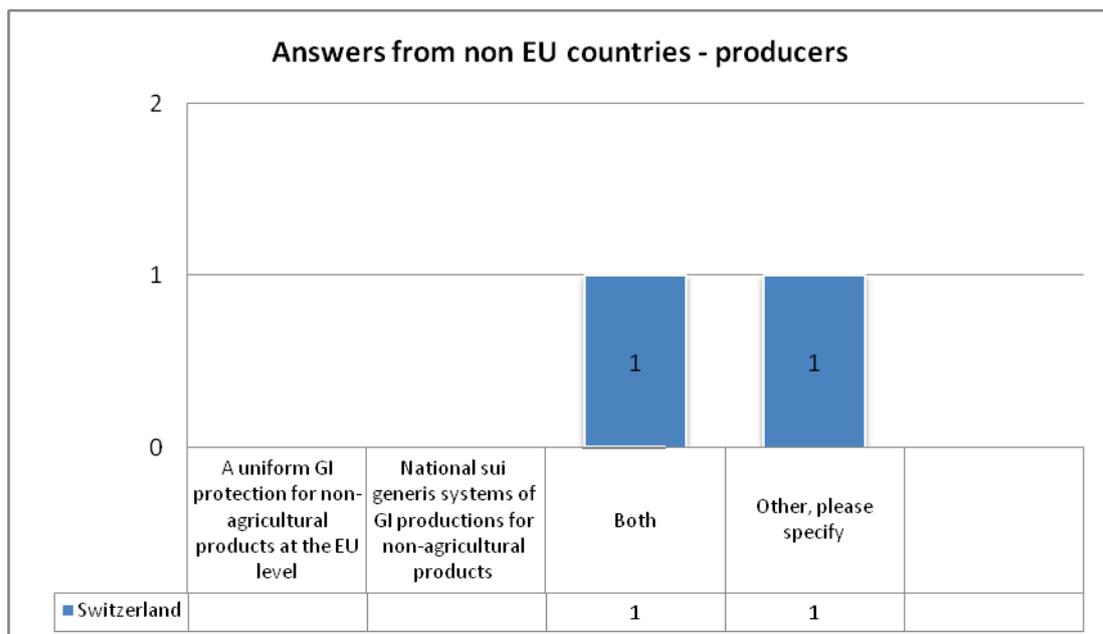
Even without taking into account the Spanish answers, the results of the survey show that a majority of producers (41 out of 68) would prefer a uniform GI protection for non-agricultural products at the EU level.

10 preferred a national *sui generis* system of GI protection for non-agricultural products: 1 Czech, 2 French, 1 Irish, 1 Polish, 1 Portuguese, 3 Spanish and 1 Dutch. However, the Czech Republic, Poland, Portugal and Spain have regional or national laws providing for the protection of non-agricultural GI products. France does have sectoral decrees, but the two producers who specified that they wished to have a national *sui generis* system for the protection of non-agricultural GIs produce products which cannot be protected under these decrees.

It is interesting to note that if even the option “both” was not proposed as an answer, some respondents from France, Ireland and Poland chose it.

A Slovenian producer, who answered “other”, would like an EU framework with the possibility to keep the specificities of the national system. The four Spanish producers, who answered “other”, would like:

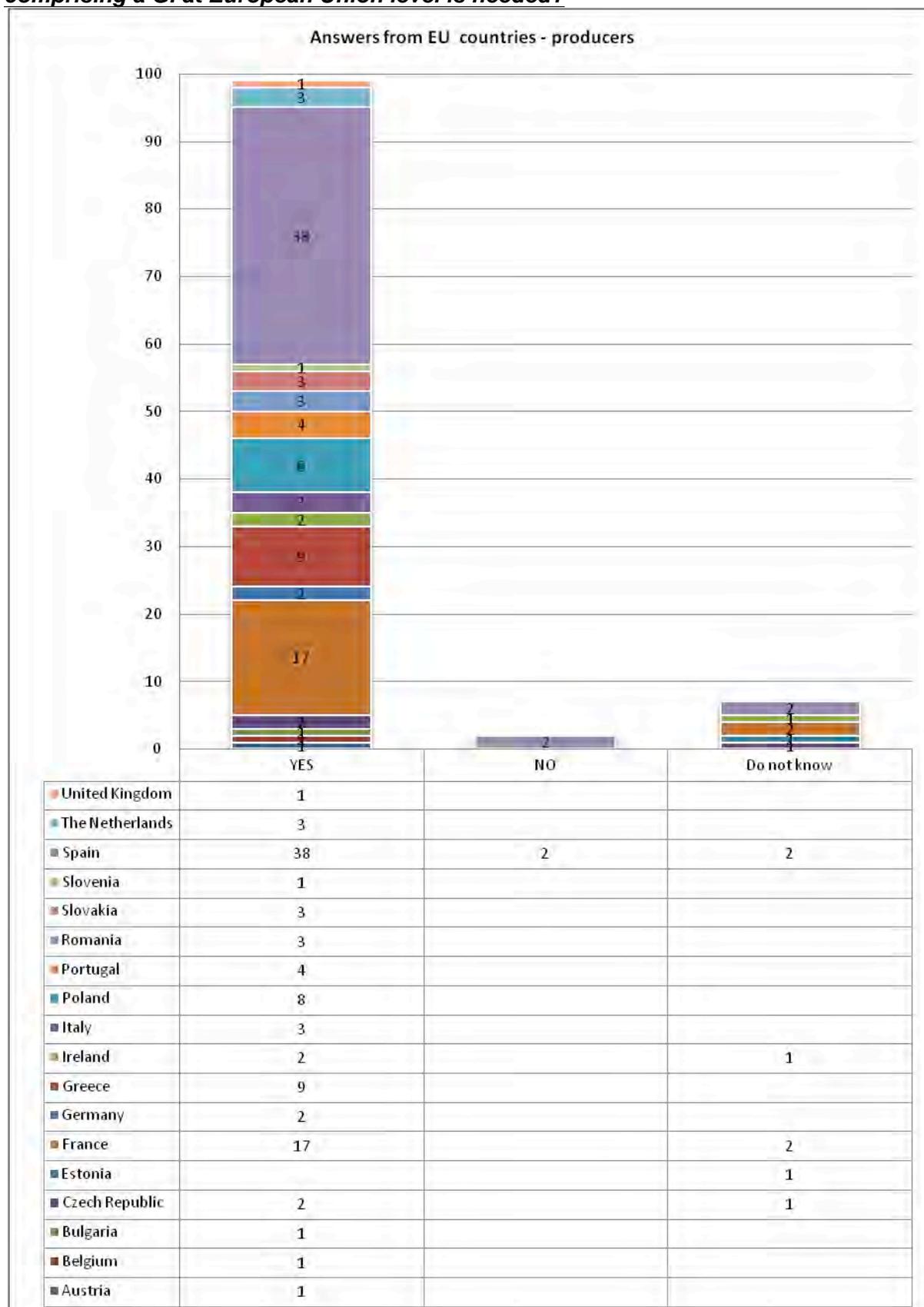
- A uniform protection at the EU level and a certificate for each producer after an evaluation,
- A means to authenticate the origin of the product,
- A legislation at the EU, national and regional levels to protect handicrafts as cultural goods,
- The protection of the origin of the product at the EU level and recognition of their trademark at the EU level.



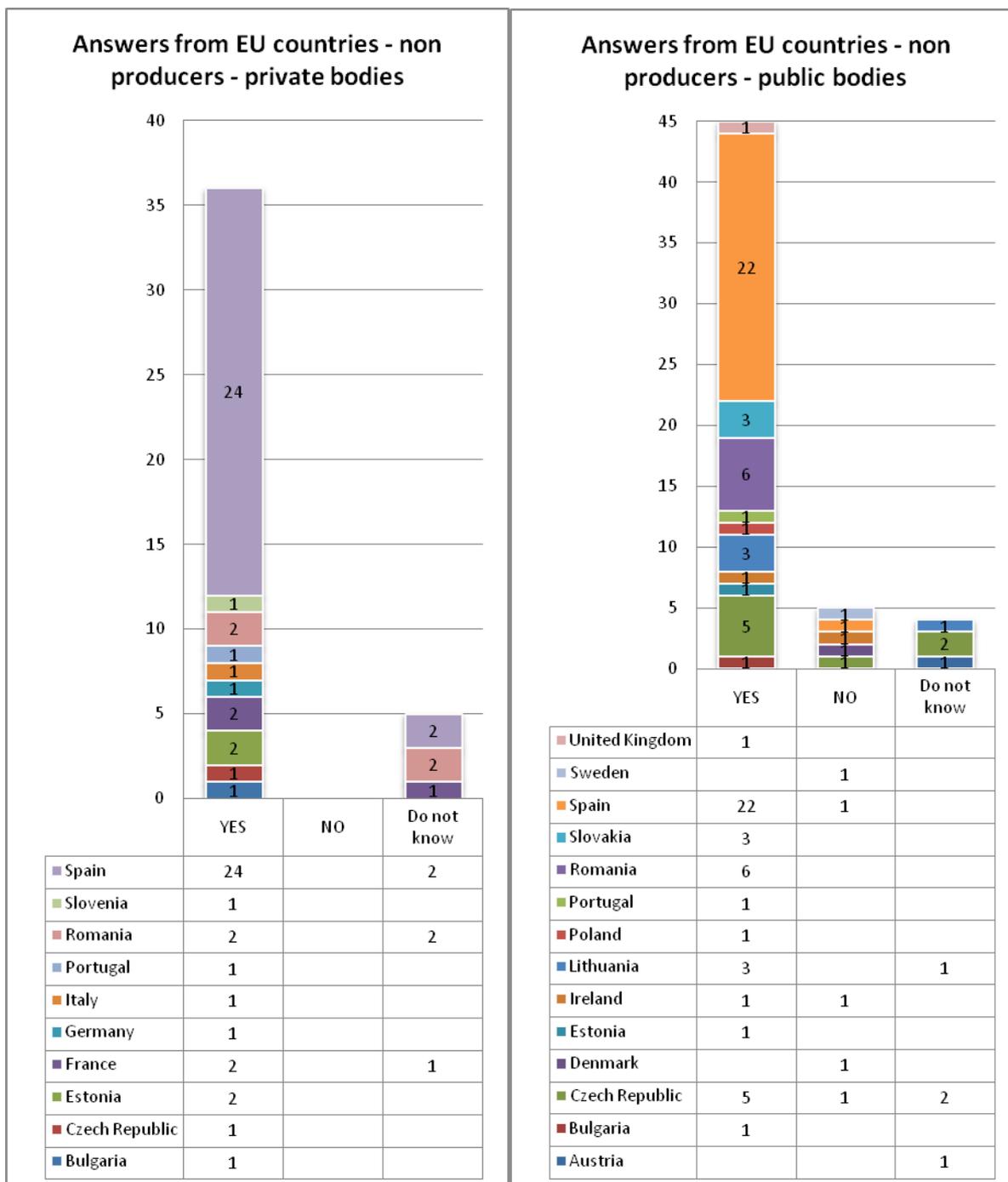
A Swiss producer indicated that he would like to have both levels of protection: the national level and the EU level. The second Swiss producer wrote that she wanted a protection against imitation and copy. However, she did not know which kind of protection would be more appropriate.

Questions common to producers and non producers

Do you think a uniform legal protection of the name of non-agricultural products comprising a GI at European Union level is needed?



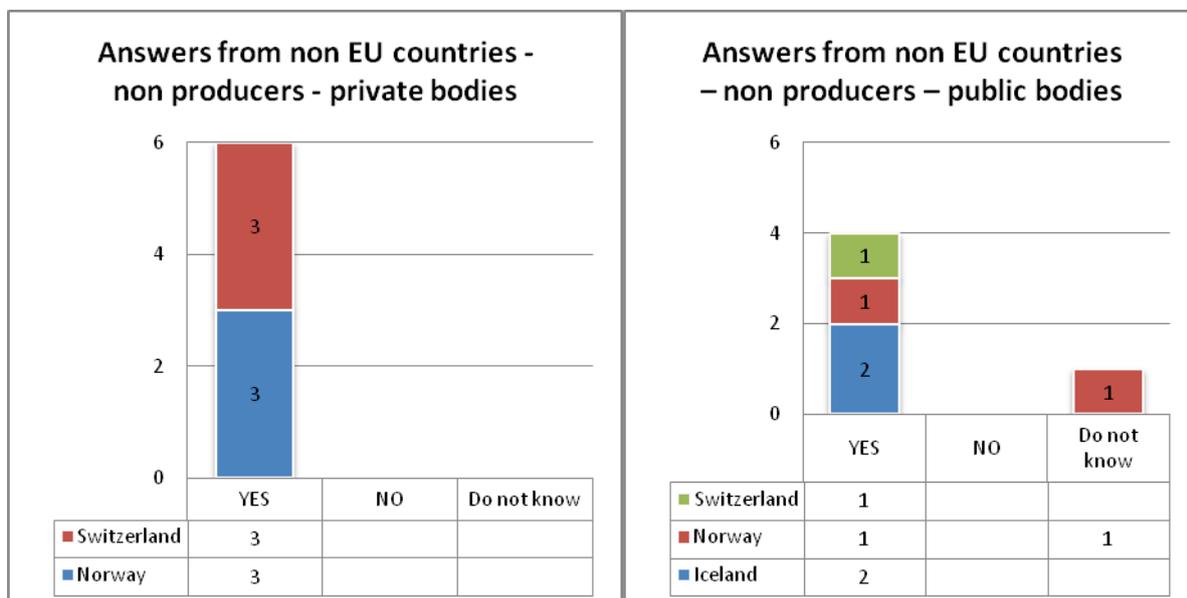
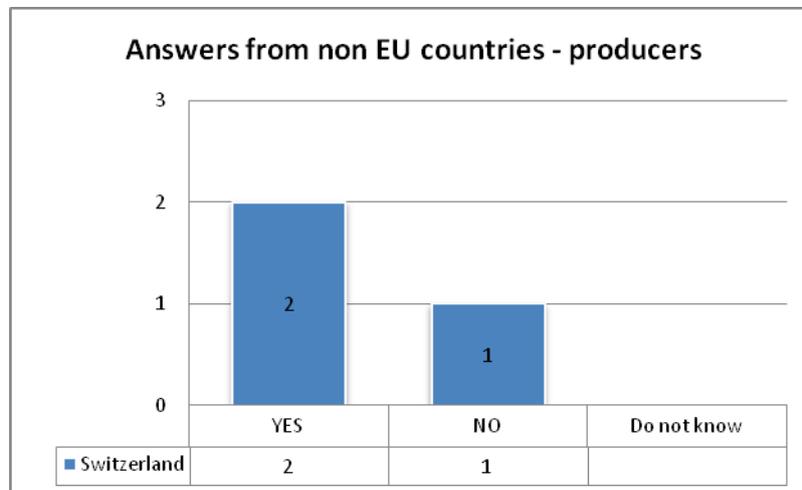
A large majority of the EU producers who answered to the survey underlined the need for a uniform legal protection of the name of non-agricultural products comprising a GI at European Union level. Even without taking into the Spanish answers, the results show that a majority of producers who answered to the survey (61 out of 68) believe that a uniform legal protection of the name of non-agricultural products comprising a GI at European Union level is needed.



Non producers in the EU which answered also wish to have such a uniform legal protection of the name of non-agricultural products comprising a GI at the European Union level. It is however interesting to note that public bodies in the Czech Republic, Denmark, Ireland, Spain and Sweden do not want such a level of protection.

Even without taking into account the Spanish answers, the results show that a majority of private bodies (12 out of 15) and public bodies (23 out of 31) which answered wish to have such a uniform legal protection of the name of non-agricultural products comprising a GI at the European Union level.

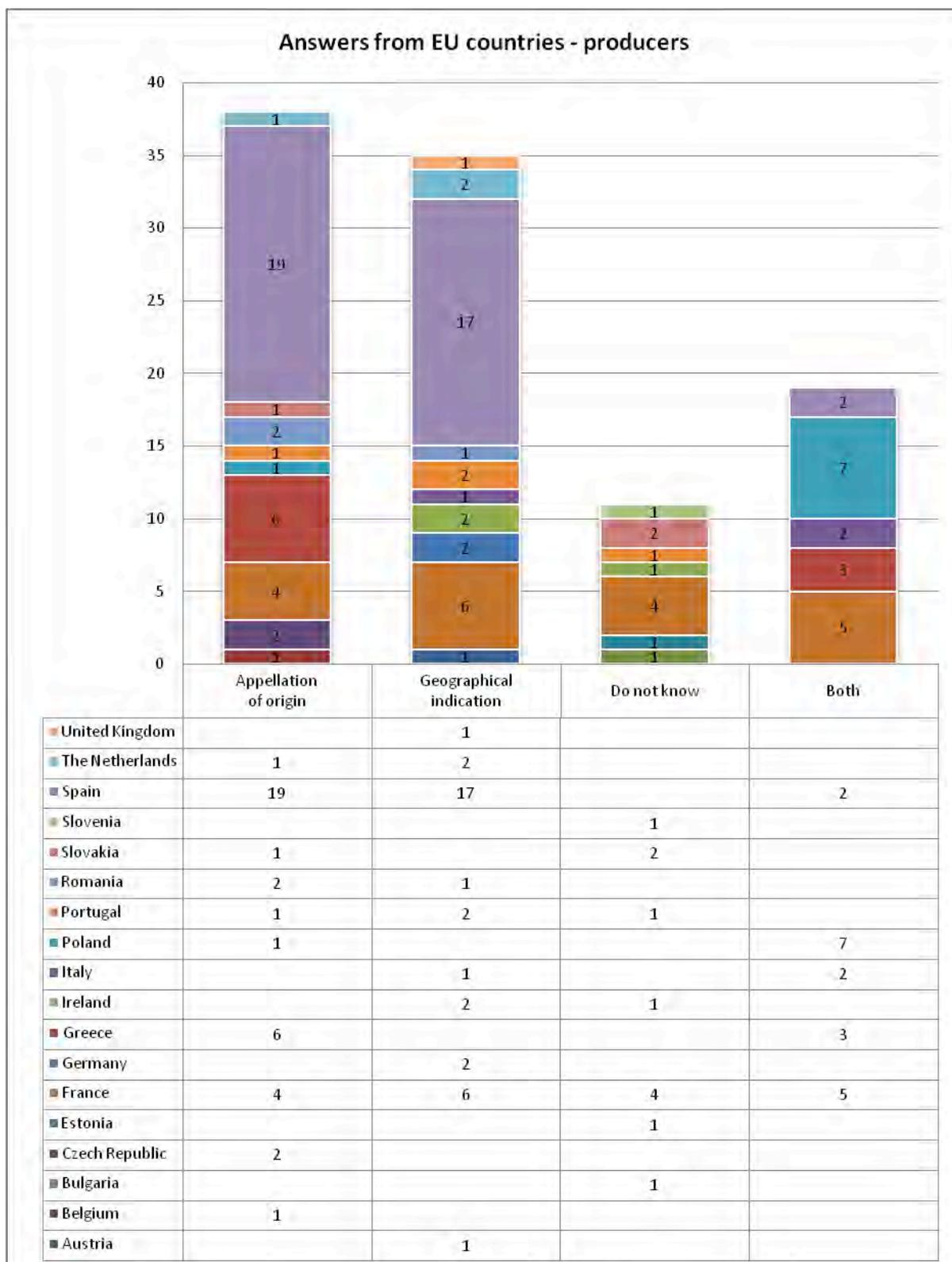
One Czech public body, willing to have a new system of protection, added that a possibility of protection at national level should also be maintained for the products which are not exported.



Producers and non producers from non EU countries, which replied to the survey, answered that they would like a system of protection at the EU level, except one Swiss producer and one Norwegian public body.

Only the answers of respondents who said they are in favour of a new system of protection are taken into account in the following questions.

If yes, for which type of protection do you have a preference?

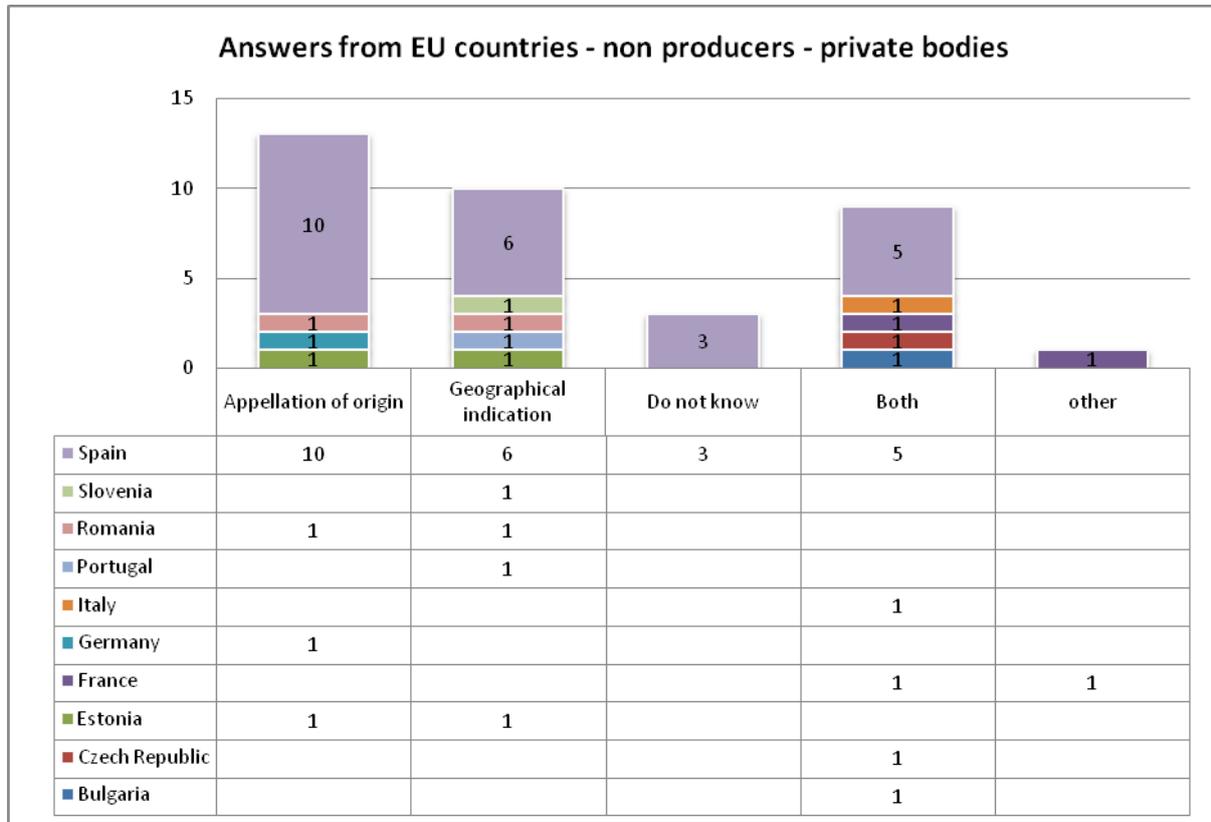


When asked for which type of protection they have a preference, 38 producers answered “Appellation of origin” (AO) and 35 “Geographical Indication” (GI). It is not possible to extract a clear majority in favour of one option or the other. A geographical distribution in favour of one or another option cannot be found either, as AO are favoured by a majority of respondents in Belgium, the Czech Republic, Greece, Romania and Spain, whereas GI are

favoured by a majority of respondents in Austria, France, Germany, Ireland, Portugal and the Netherlands. This may be due to the lack of knowledge on the specificities of these two concepts.

Even without taking into account the Spanish answers, the results show that a majority of producers cannot be found as 19 out of 68 favoured AO, 18, GI and 17 both of them.

It is interesting to note that even if the possibility of answering “both type of protection” was not proposed in the survey, some producers from France, Greece, Italy, Poland and Spain affirmed that this is the type of protection they would prefer.

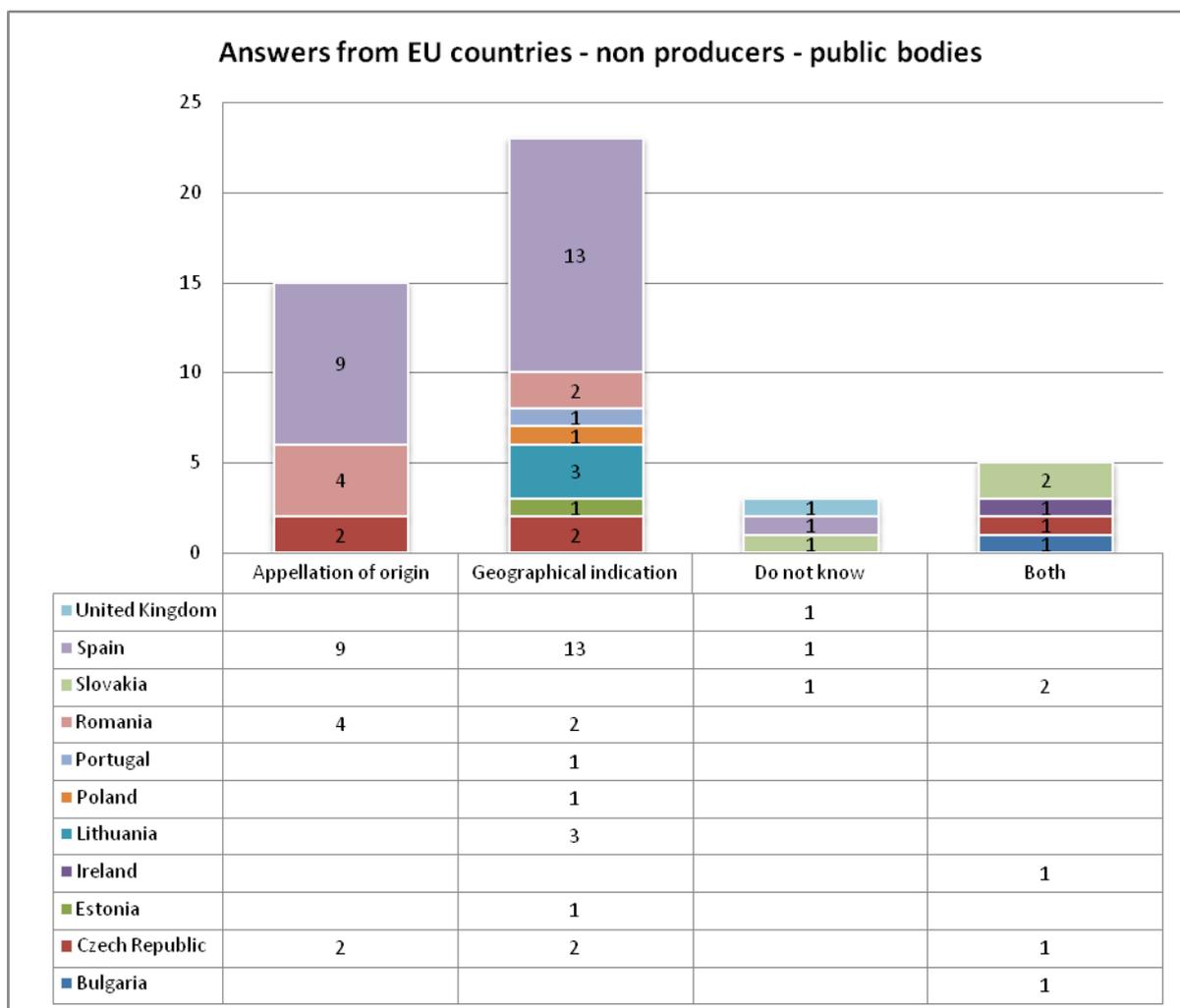


A majority cannot be found in the answers of the private bodies which answered: 10 favoured GI and 13 AO.

Once again, the option “both type of protection” was put forth by 9 respondents, even if it was not proposed in the survey.

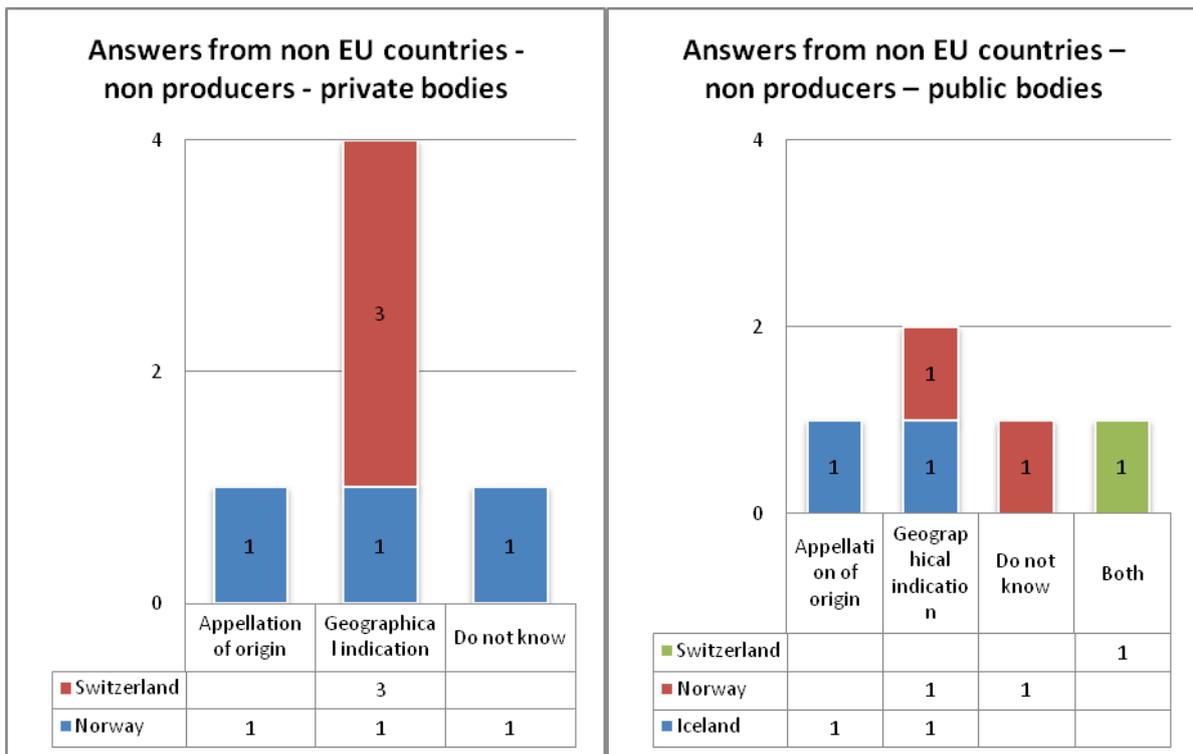
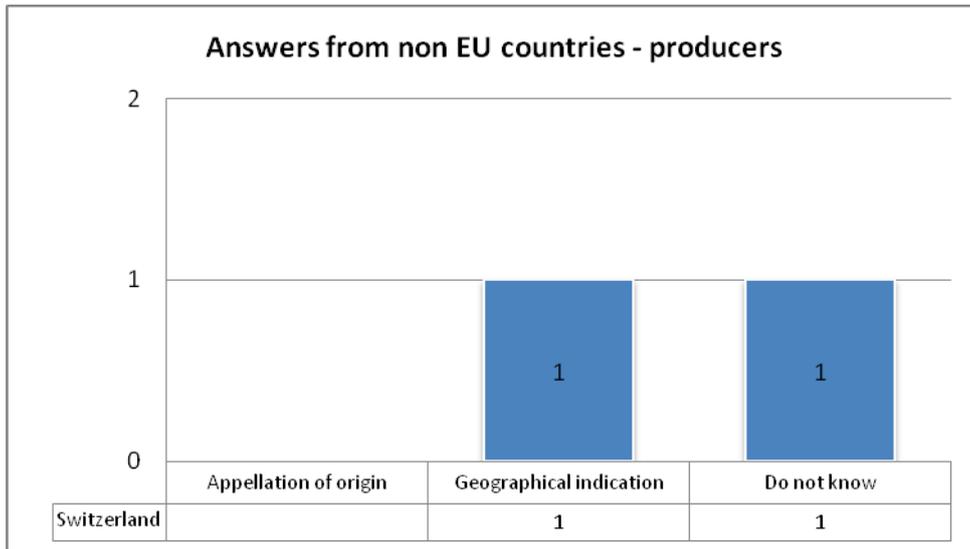
One French private body answered “other” and explained that the new system should emphasise a concept like the Traditional Speciality Guaranteed, which exists for agricultural products, but without keeping the “traditional” term as it would not be pertinent for non-agricultural products.

Even without taking into account the Spanish answers, the results show that a majority of private bodies cannot be extracted as 3 preferred AO, 4 GI and 4 both of them.



On the other hand, the answer of the public bodies show that they favoured GI (23) against AO (15), but the option “both type of protection” was again chosen by 5 respondents.

Even without taking into account the Spanish answers, the results show that a high number of public bodies (10 out of 23) chose GI, 6 AO and 5 both of them.



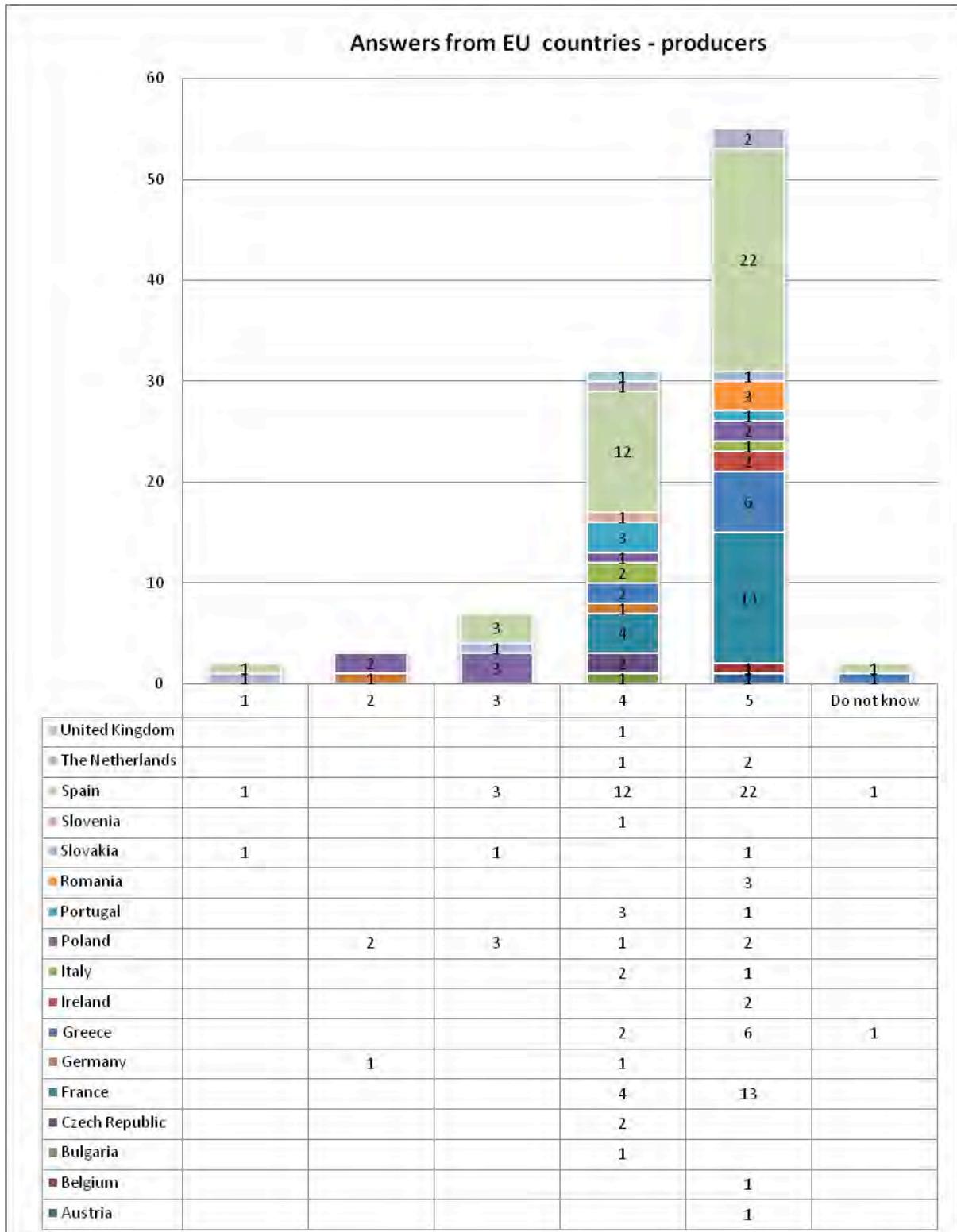
Outside the EU, GI seems to be preferred by all respondents, both private and public bodies, as well as producers.

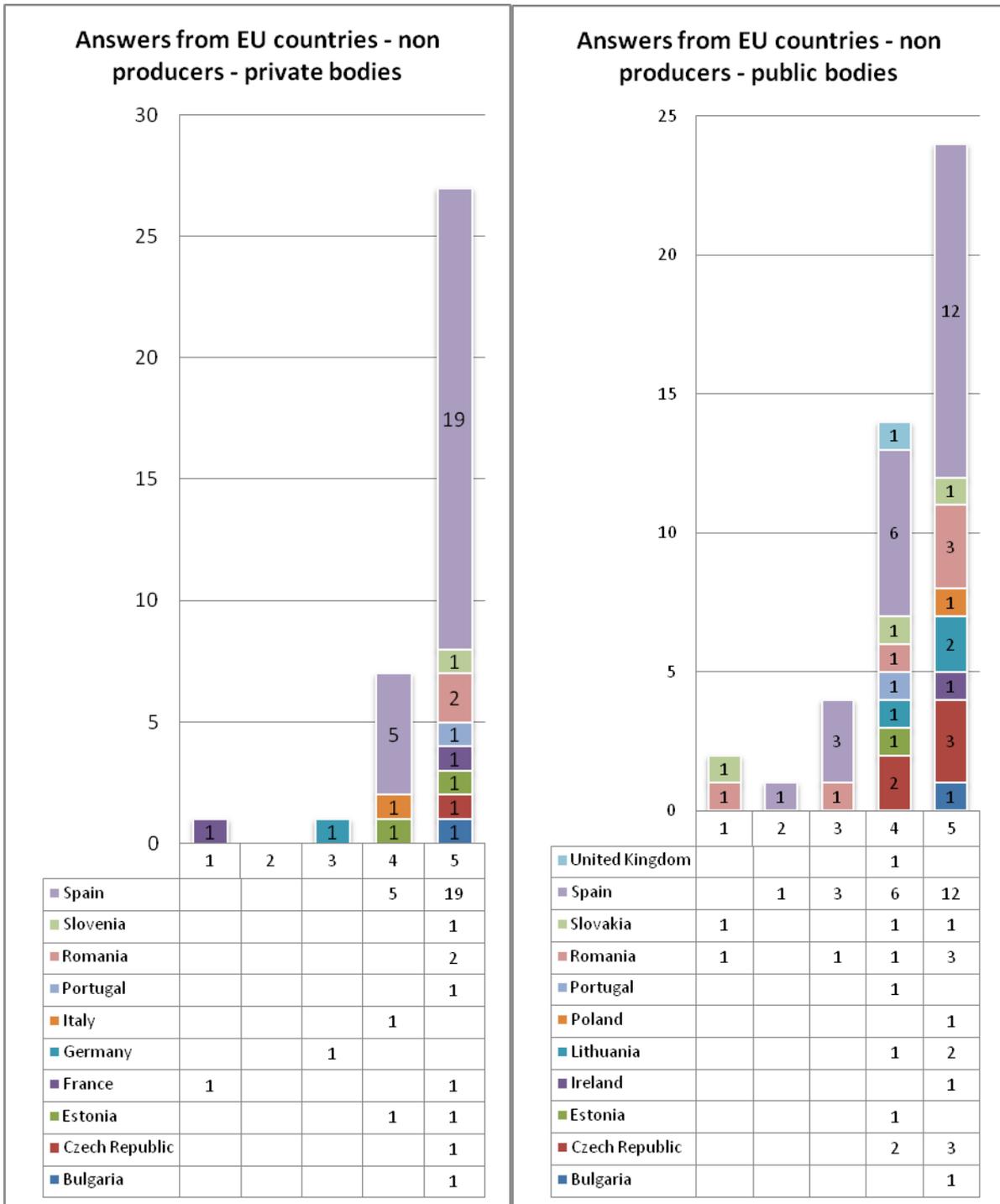
For the following questions, only the answers of those who would like a broader scope of protection have been taken into account.

Legal benefits

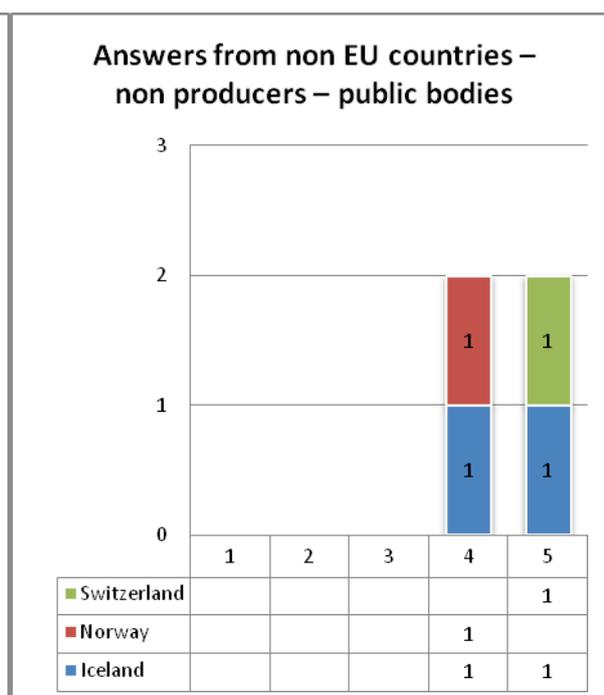
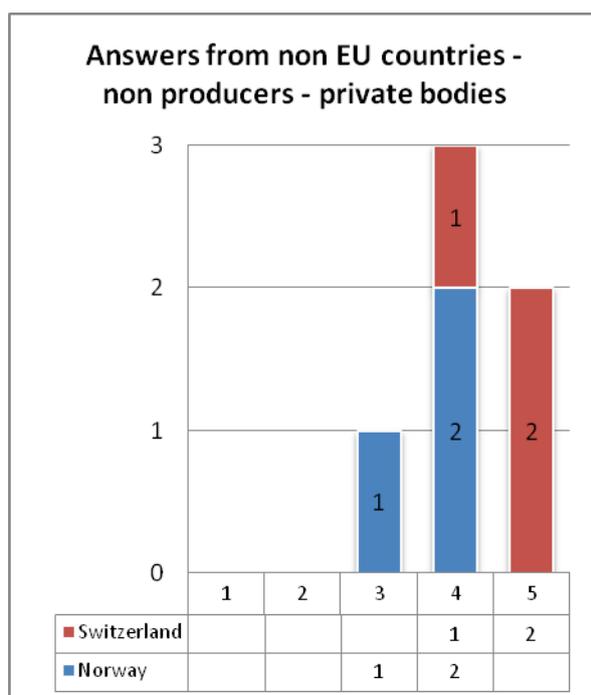
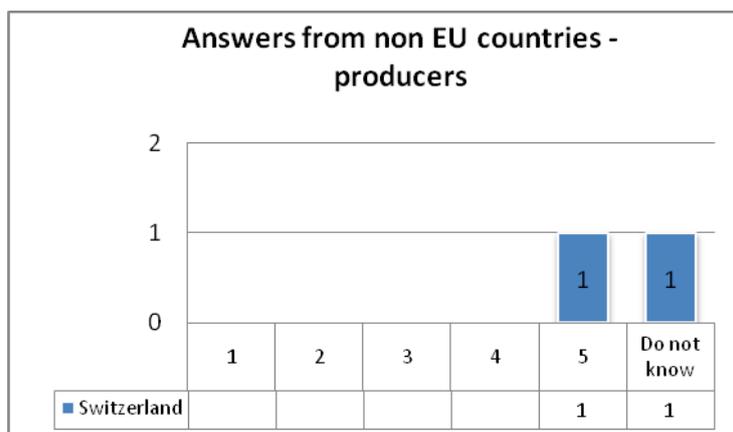
What could be, in your opinion, the benefits of such legal protection?

Option n°1: The name of the non-agricultural product comprising a GI would benefit from a EU-wide protection



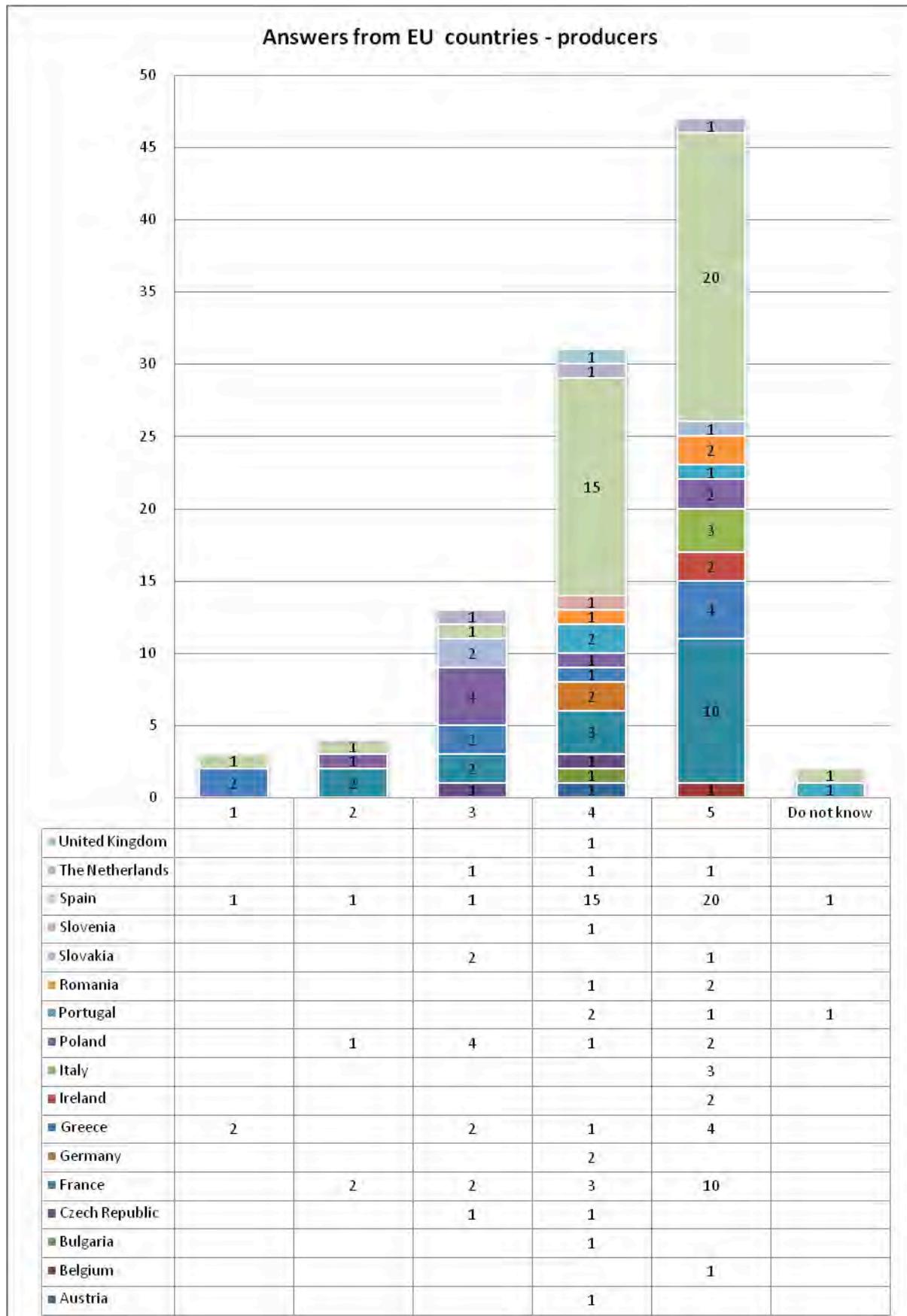


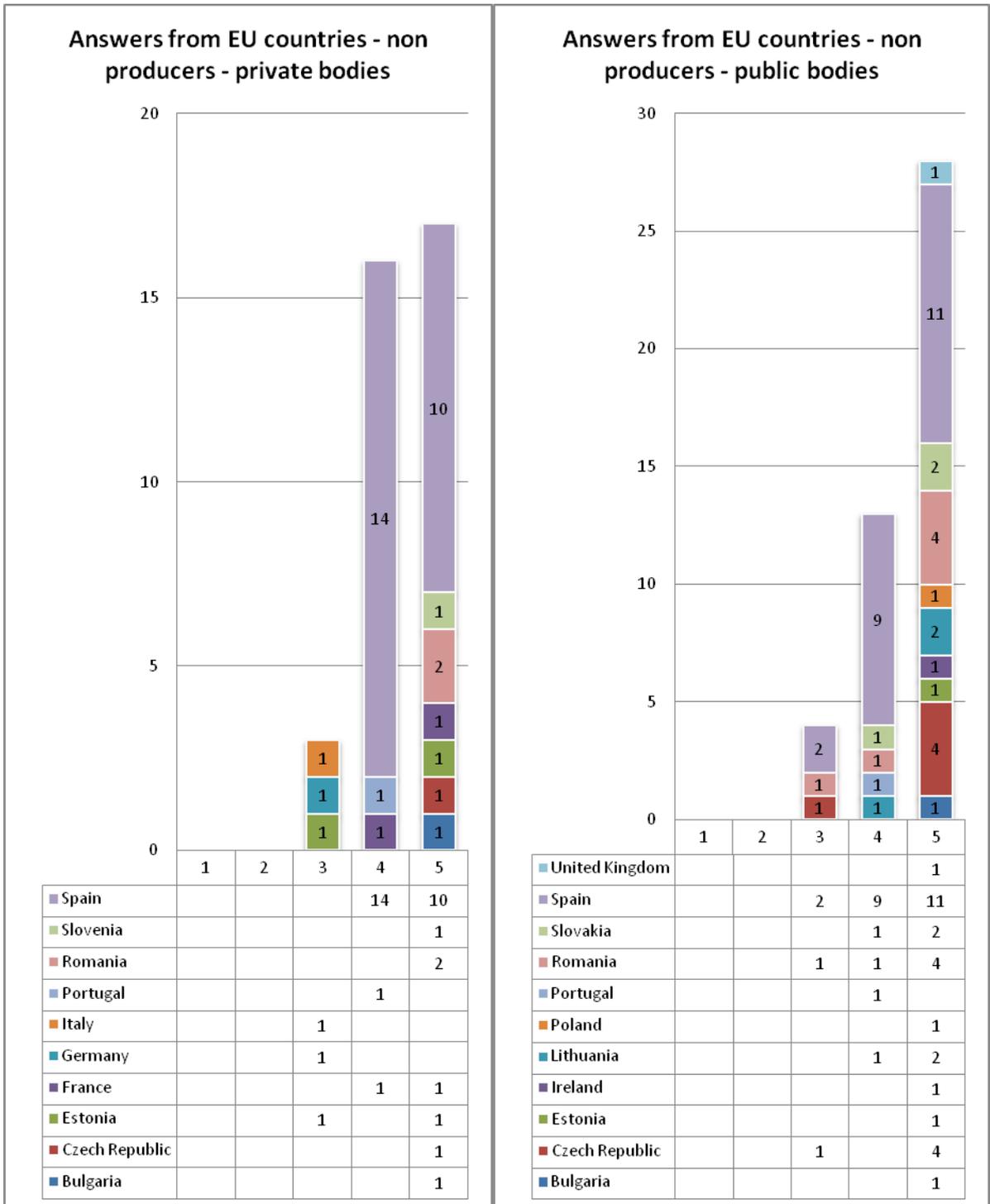
A large majority of respondents from the Member States of the EU, even without taking into consideration the Spanish answers, strongly believe that one of the benefits of such legal protection would be the fact that the name of the non-agricultural product comprising a GI would benefit from an EU-wide protection.



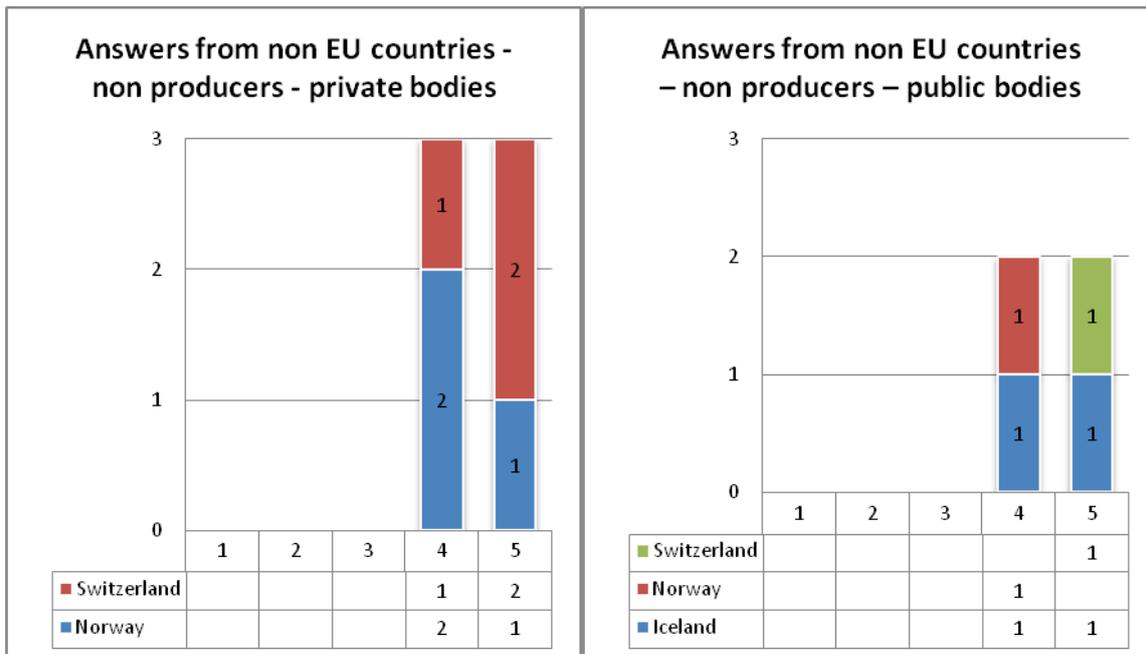
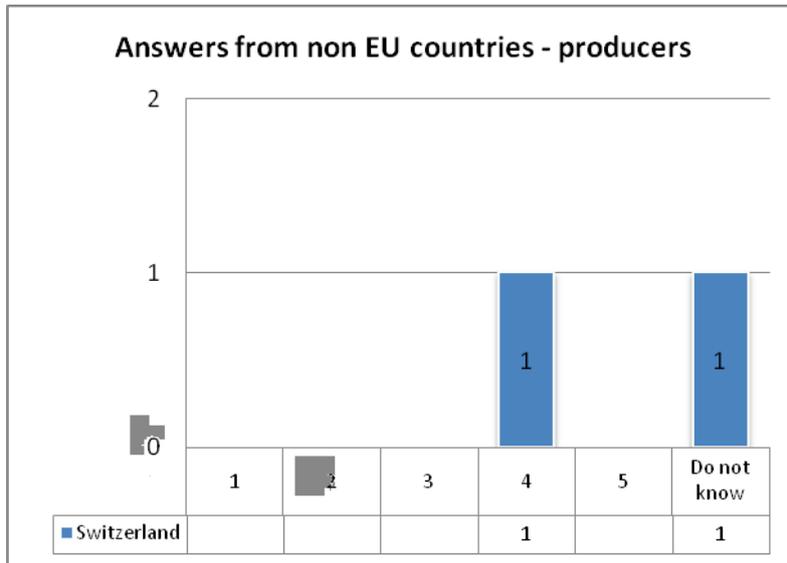
The producers and non producers from non EU countries, which answered to the survey, also think that one of the benefits of such legal protection would be the fact that the name of the non-agricultural product comprising a GI would benefit from an EU-wide protection.

Option n°2: It would help producers to communicate on the product



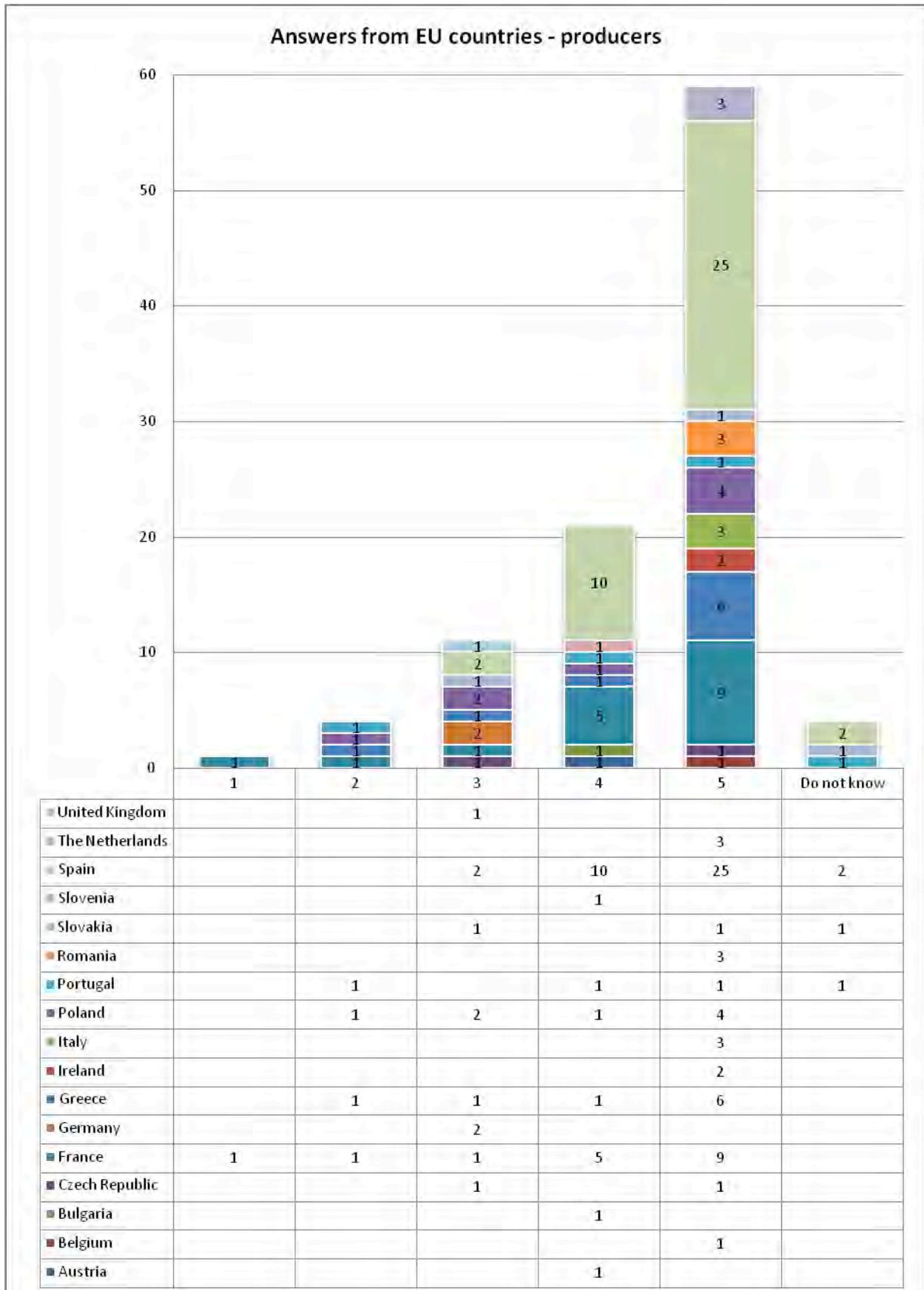


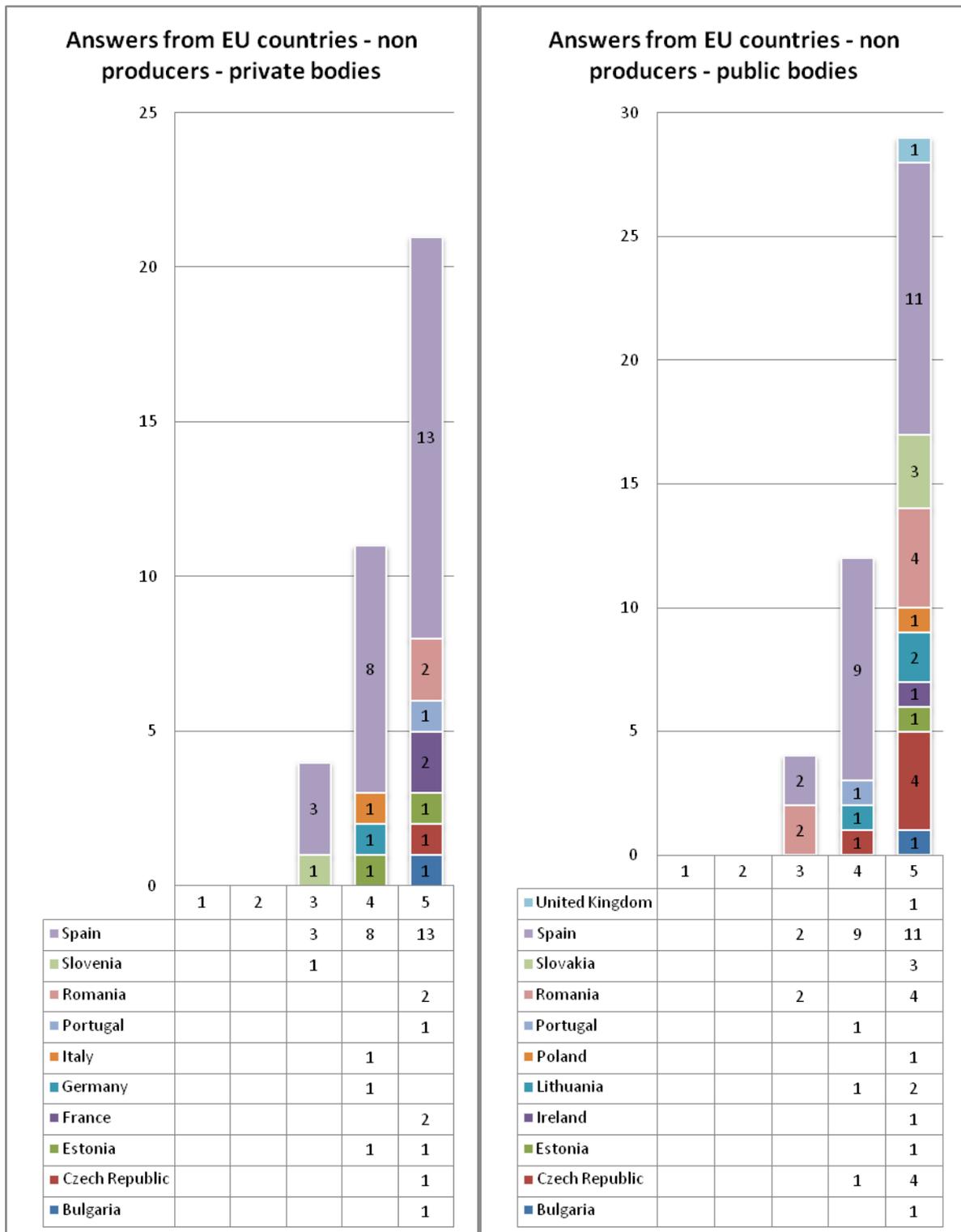
A large majority of respondents from EU Member States, even without taking into consideration the Spanish answers, strongly believe that one of the benefits of such legal protection would be the fact that it would help producers to communicate on the product.



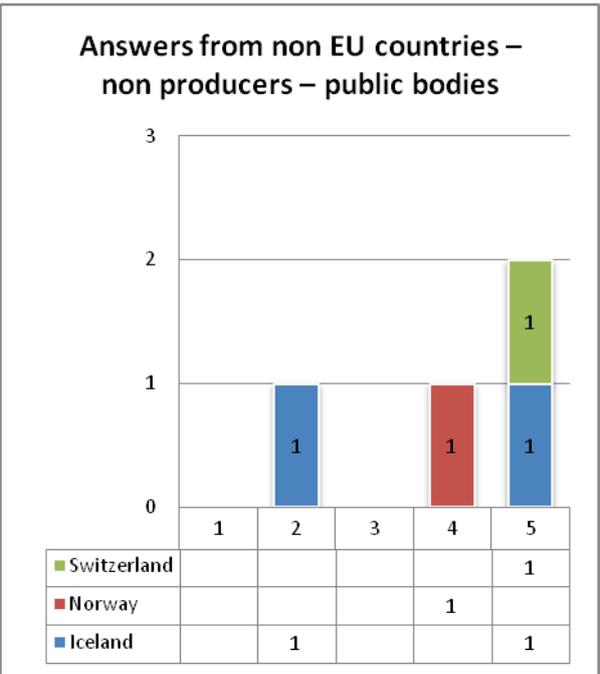
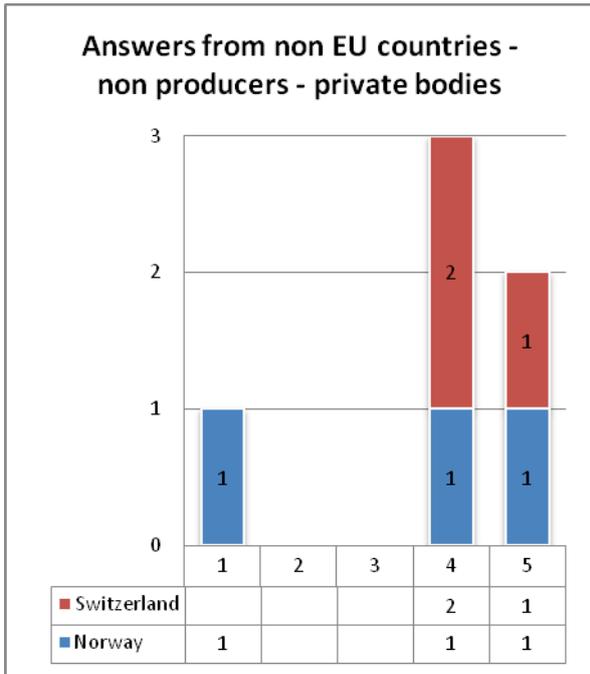
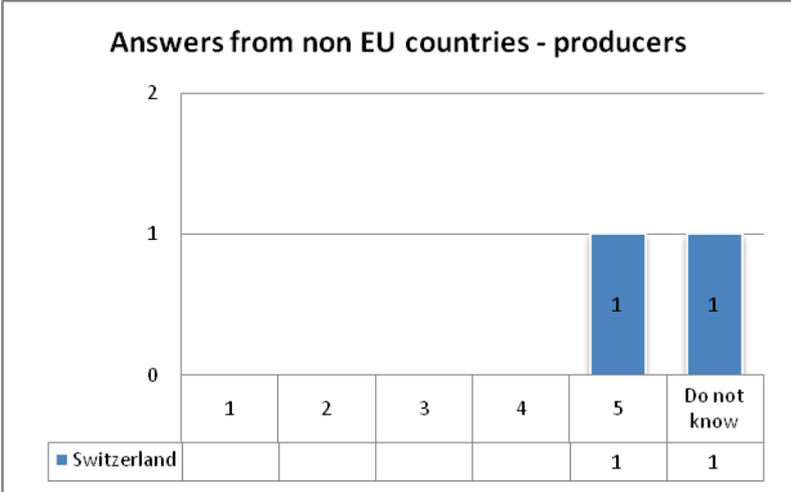
The answers of producers and non producers from non EU countries show that they also strongly believe that one of the benefits of such legal protection would be the fact that it would help producers to communicate on the product.

Option n°3: All the producers will have to fulfil the same criteria to use the name of the non-agricultural product comprising a GI



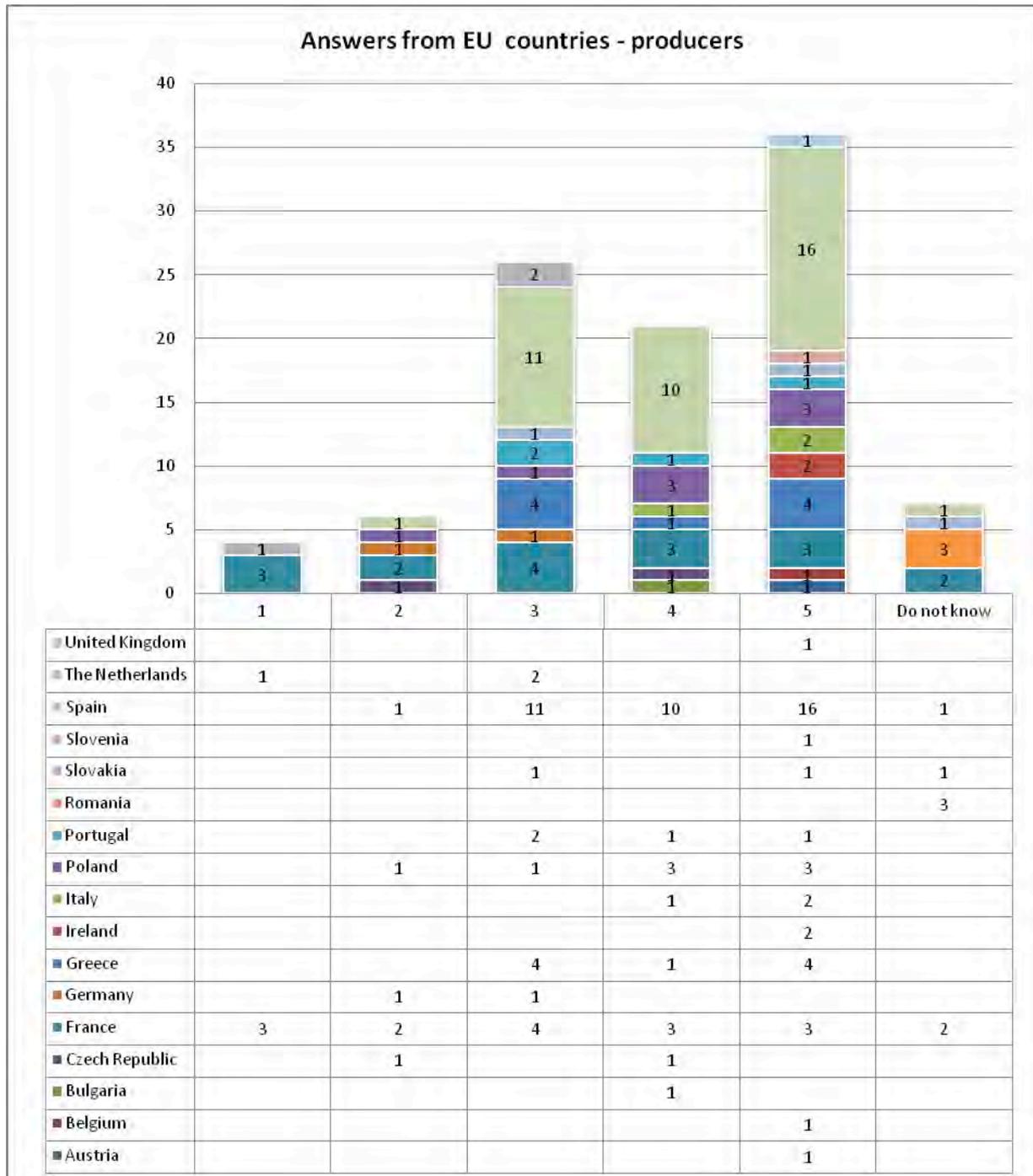


A large majority of respondents from EU Member States, even without taking into consideration the Spanish answers, strongly believe that one of the benefits of such legal protection would be the fact that all producers will have to fulfil the same criteria to use the name of the non-agricultural product comprising a GI.



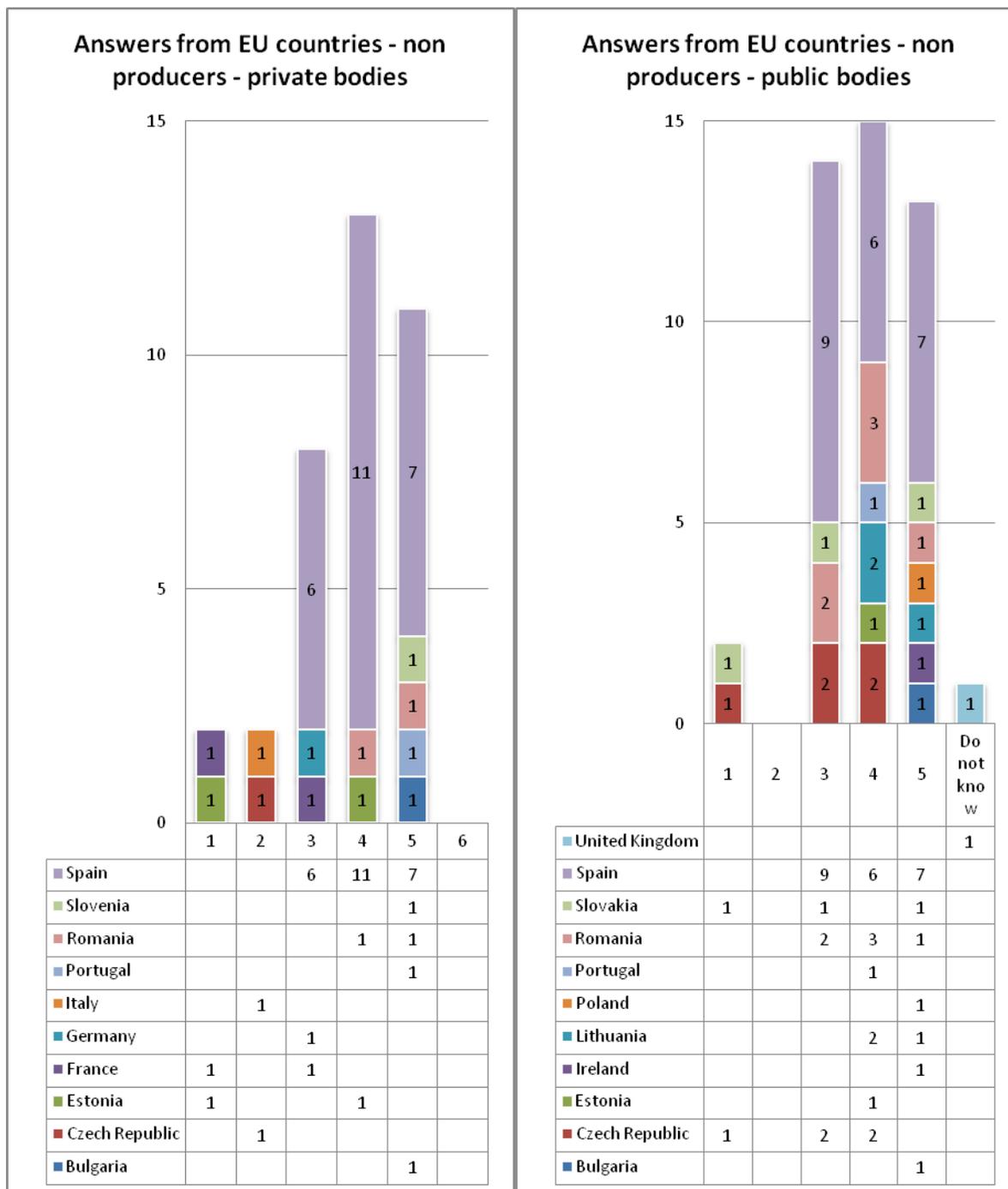
The producer and non producers from non EU countries which answered to the survey, mostly share their view, even if a Norwegian private body and an Icelandic public one disagree with this option.

Option n°4: It would have a positive impact on the price of the product from a producer's point of view



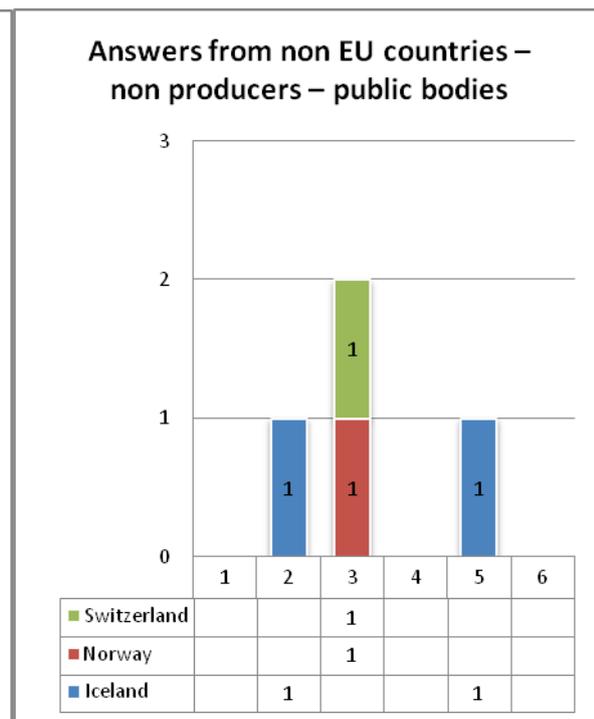
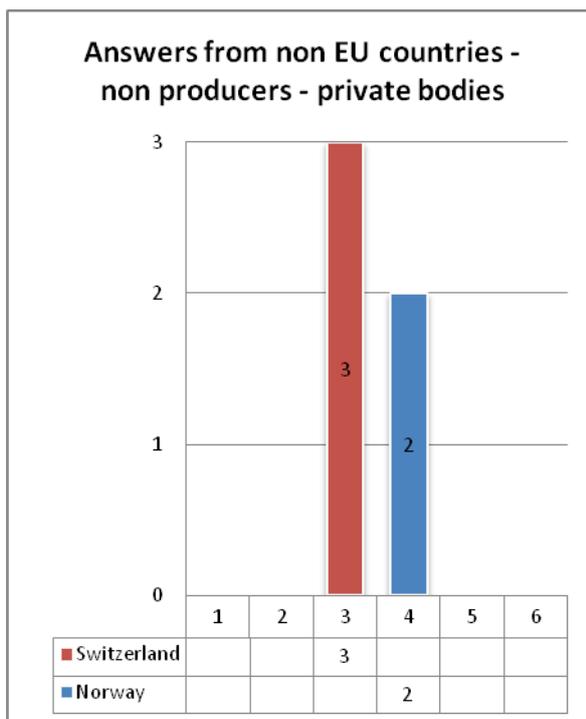
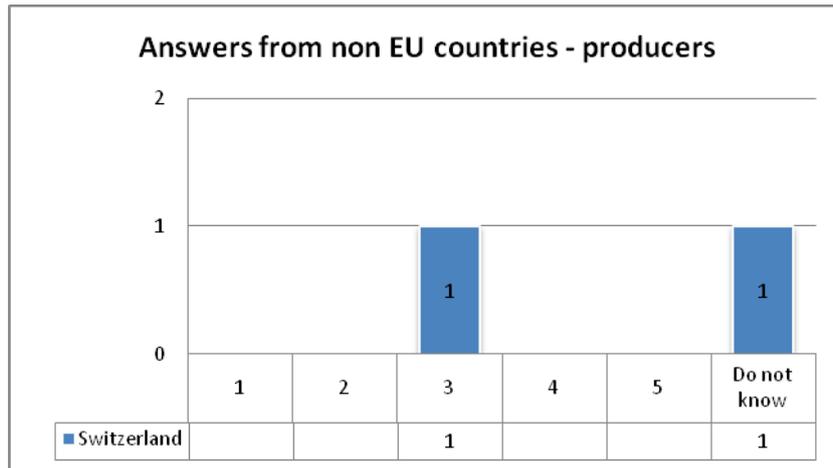
The answers to this question are not as clear as the others. A majority of the respondent producers' answers indicate that they think that it could have a positive impact on the price of the product from a producer's point of view (21 rated it "4" and 36 "5"). However, many of the respondents are neutral (26 rated it "3" and 7 "do not know") and some even disagree with the fact that it will have a positive impact on prices.

Even without taking into account the Spanish answers, the results do not change.



Non producers' answers, especially those of public bodies, seem to indicate that they are more likely to agree with this affirmation, even if (again) a high number of them are neutral (answer "3").

Even without taking into account the Spanish answers, the results do not change.



Producers and non producers from non EU countries, which answered to the survey, also doubt of the positive impact of the protection on price of the product from a producer's point of view.

Option n°5: other (please specify)

The respondents had the possibility to add an option on the benefits of such legal protection if they wanted to. Please note that they also rated their proposal on a scale of 1 to 5, 1 not being important, 5 being extremely important.

Amongst EU producers, French, Spanish and Portuguese producers added the following comments:

- All the producers will have to create associations of producers to benefit from the protection (French producer – rate: 5).
- It will prevent the use of the potential GI by inferior products and insure it is made in the region of origin to a high quality (Irish producer – rate: 5).
- It would help to eliminate unfair competition (Spanish producers – rate: 4),
- The creation of only one register would be more effective and cost-free (Portuguese producer- rate: 4).

Amongst EU private bodies, French and Portuguese private bodies added the following comments:

- One of the main impacts would be the increase of the quality, as it will reinforce the position of quality products, and thus the added value of the whole European sector. It will also make the upstream quality sector more dynamic (French private body).
- Only one register should be created to cover all Member States, as it would be more effective and cost-free (Portuguese private body - rate: 5).

Amongst EU public bodies, Czech, Polish and UK public bodies added the following comments:

- It could have a possible positive impact on tourism, in connection with destination promotion (Czech public body - rate: 5).
- This new legal protection would help producers to advertise their products (Polish public body - rate: 5).
- There is a need to create and sustain criteria for the product, including potentially quality measures. The backing of the EU is important as this is seen as providing high quality implementation (UK public body - rate: 5).

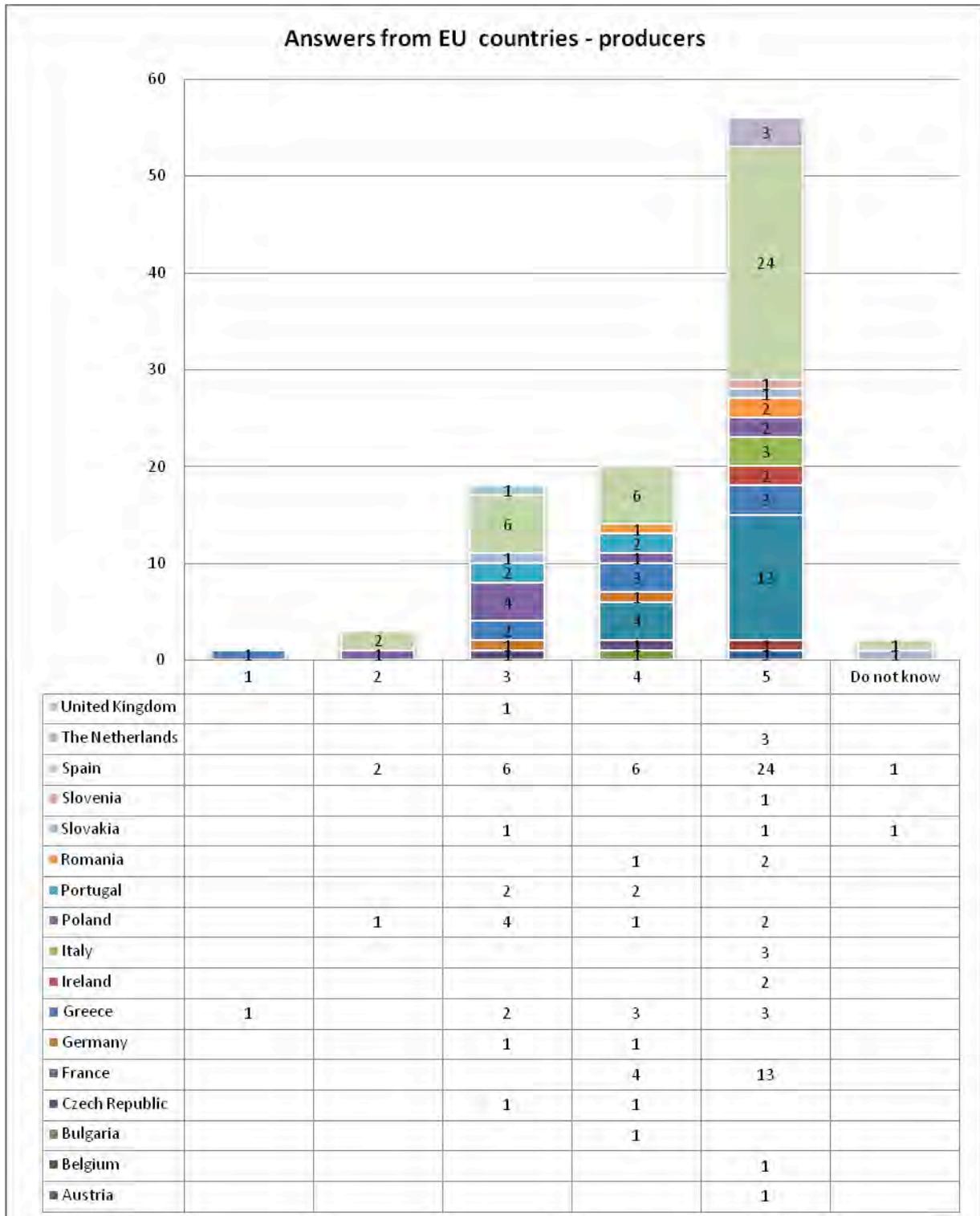
One Swiss producer answered that this new legal protection would help to prevent abuses (rate: 5).

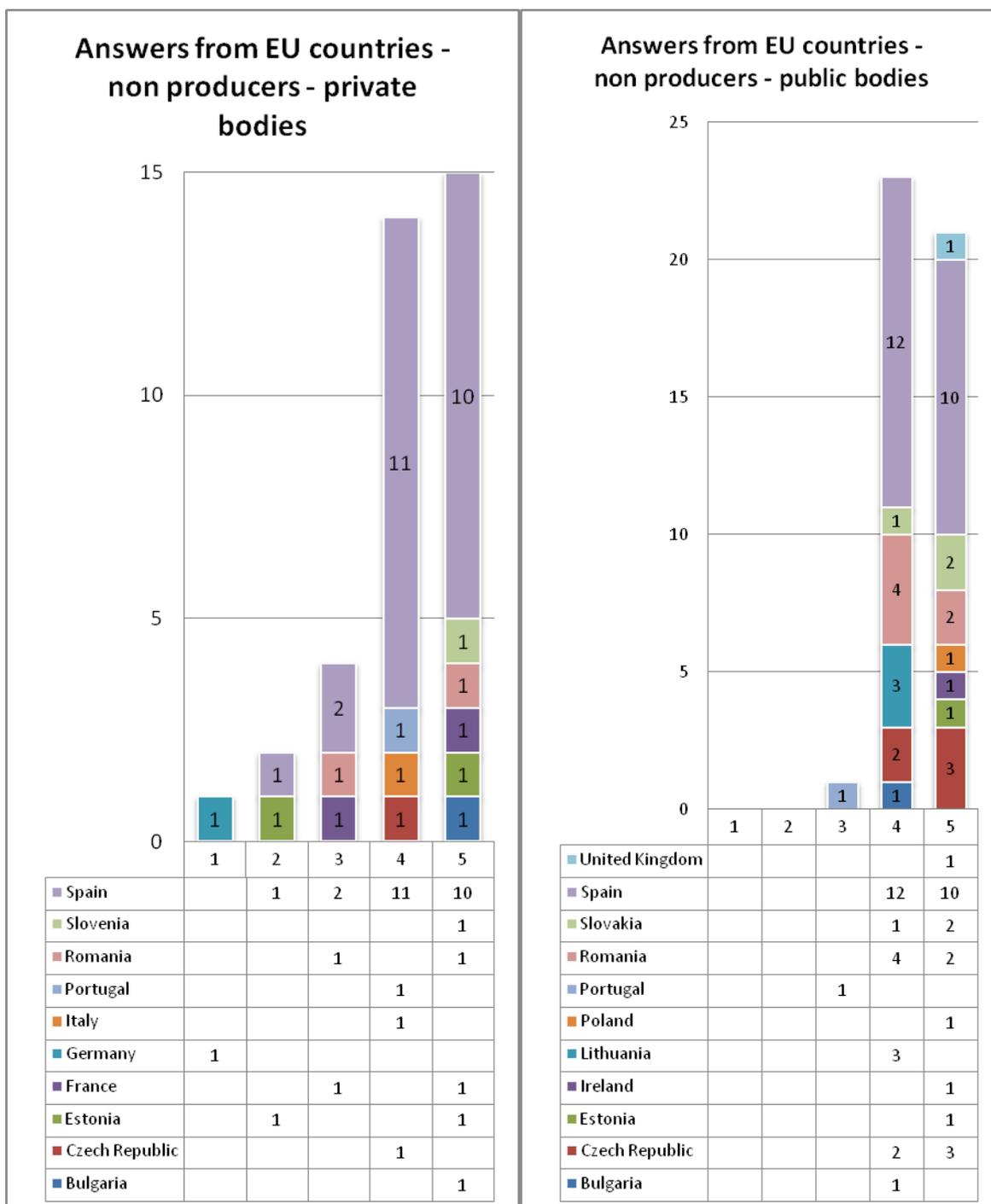
One Swiss private body stated that one specification for each GI would increase their average quality (rate: 4).

Benefits for consumers

To which extent do you think consumers could benefit from such an EU wide protection scheme for the name of the non-agricultural product comprising a GI?

Option n°1: They will be better informed on the specific features or characteristics of the product

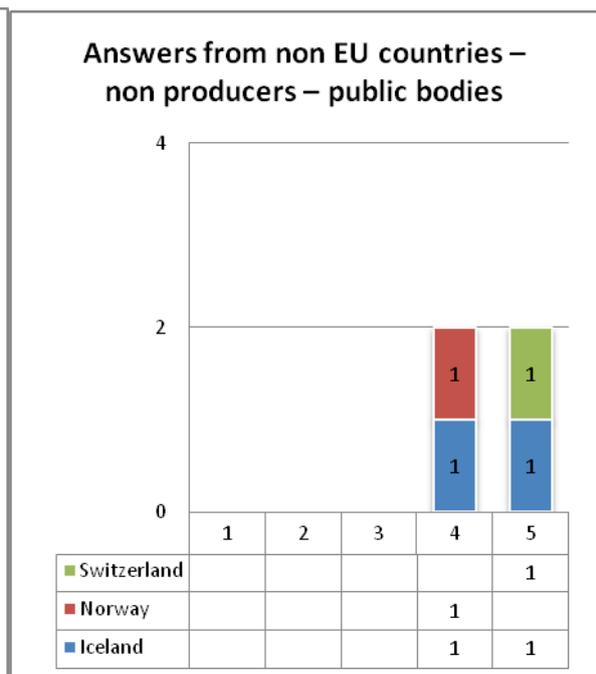
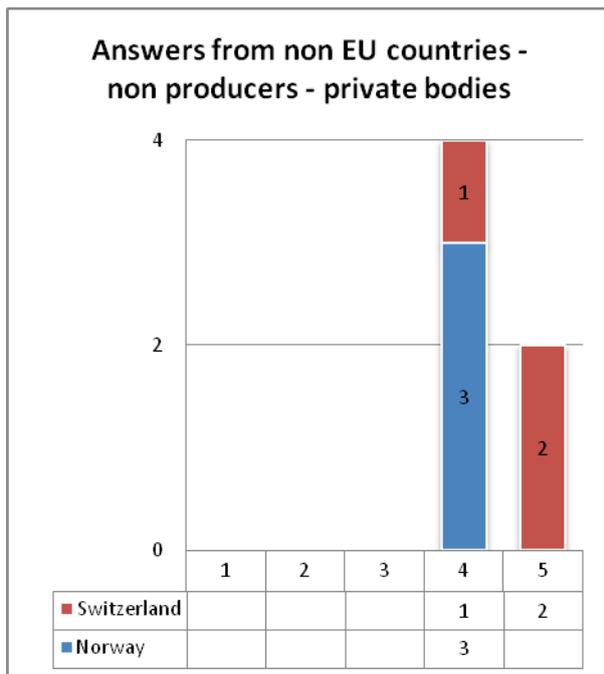
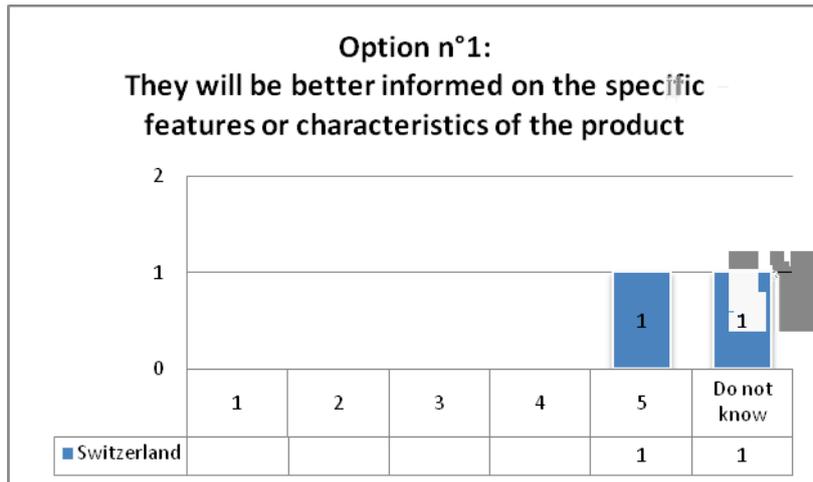




A majority of respondent producers and non producers (private bodies), even without taking into consideration the Spanish answers, thinks that consumers will be better informed on the specific features or characteristics of the product if a new level of protection is created.

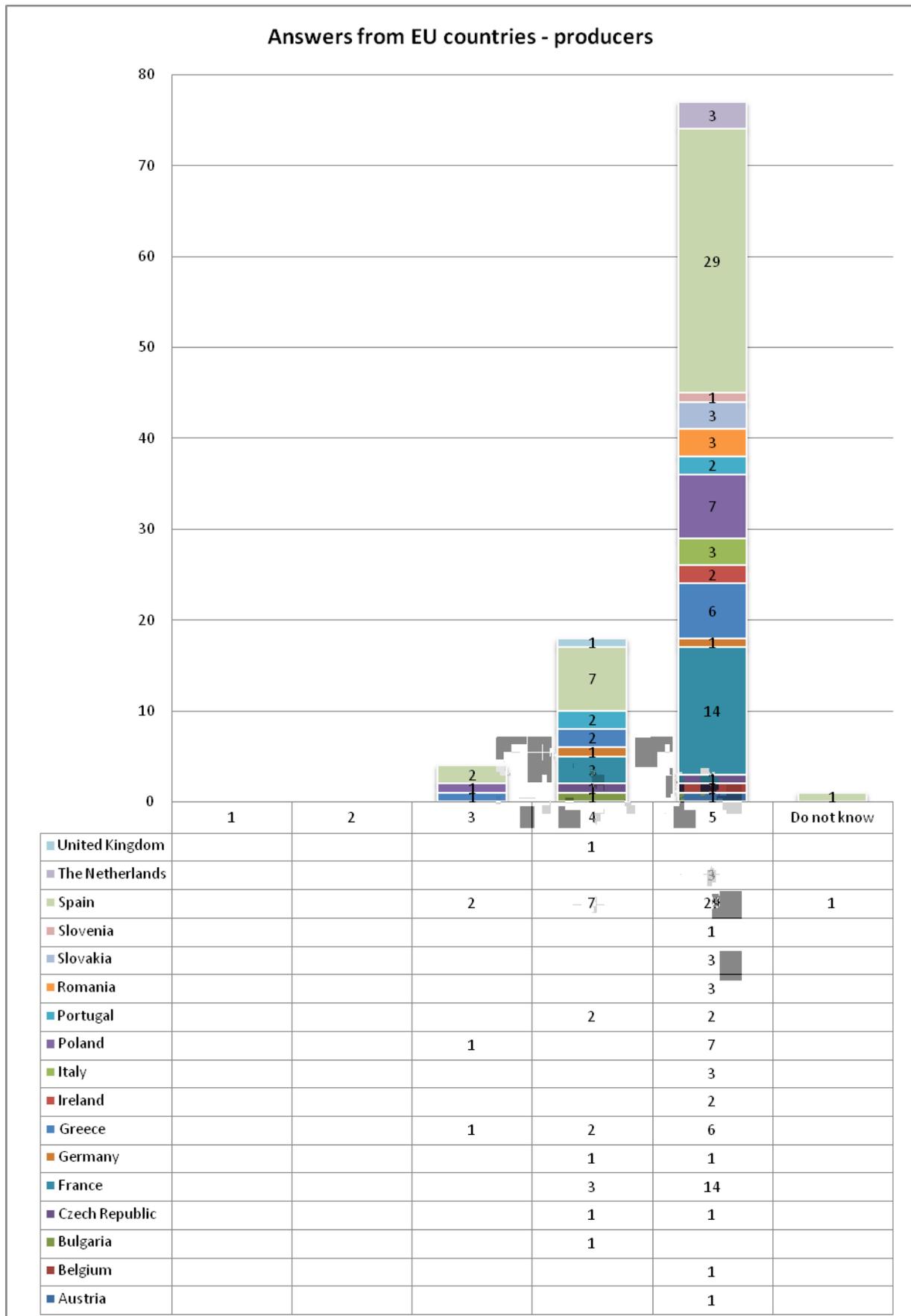
All the public bodies who answered, even without taking into account the Spanish answers, are also of this opinion.

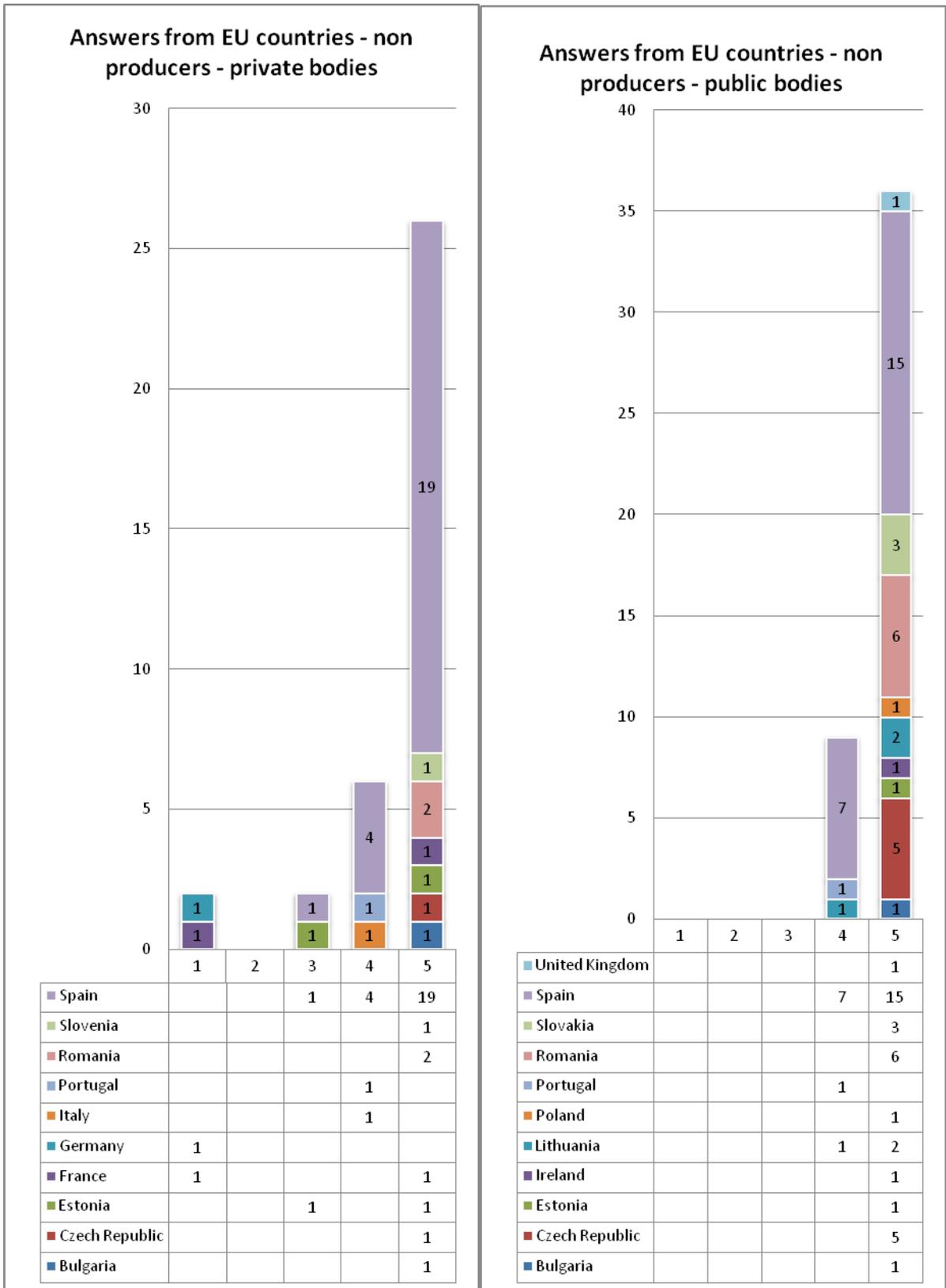
As the question relates to the benefits for consumers of the introduction of a new system of protection for non-agricultural GI, it is interesting to note that, contrary to the other respondents, the private body which disagrees with the previous remark (rate "1") is a German consumer association.



Outside the EU, the answers show a consensus on the fact that consumers will be better informed on the specific features or characteristics of the product.

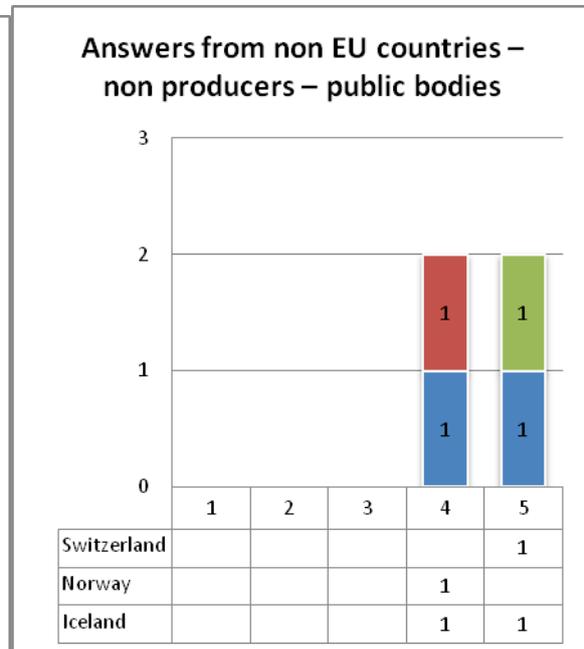
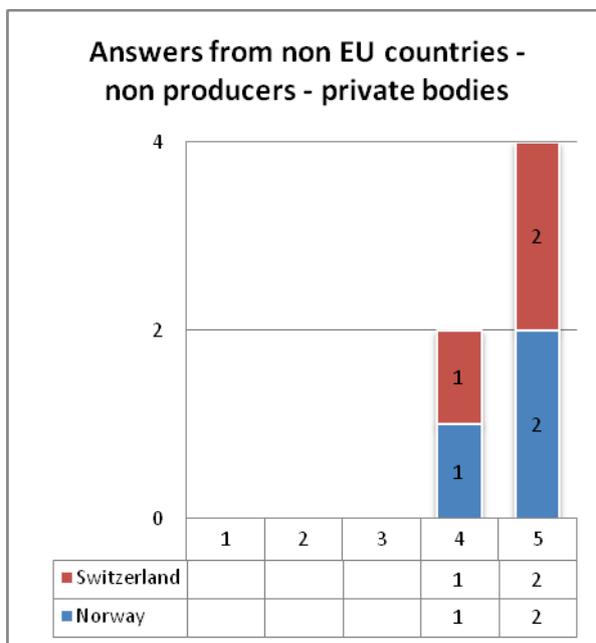
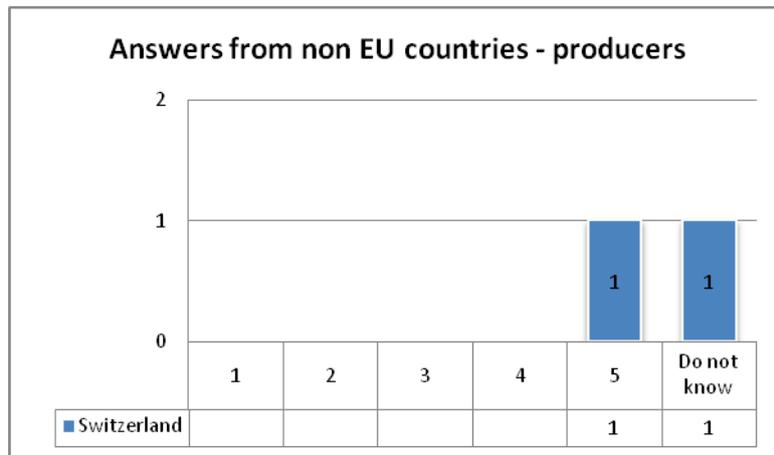
Option n°2: They will be sure the product comes from a specific area





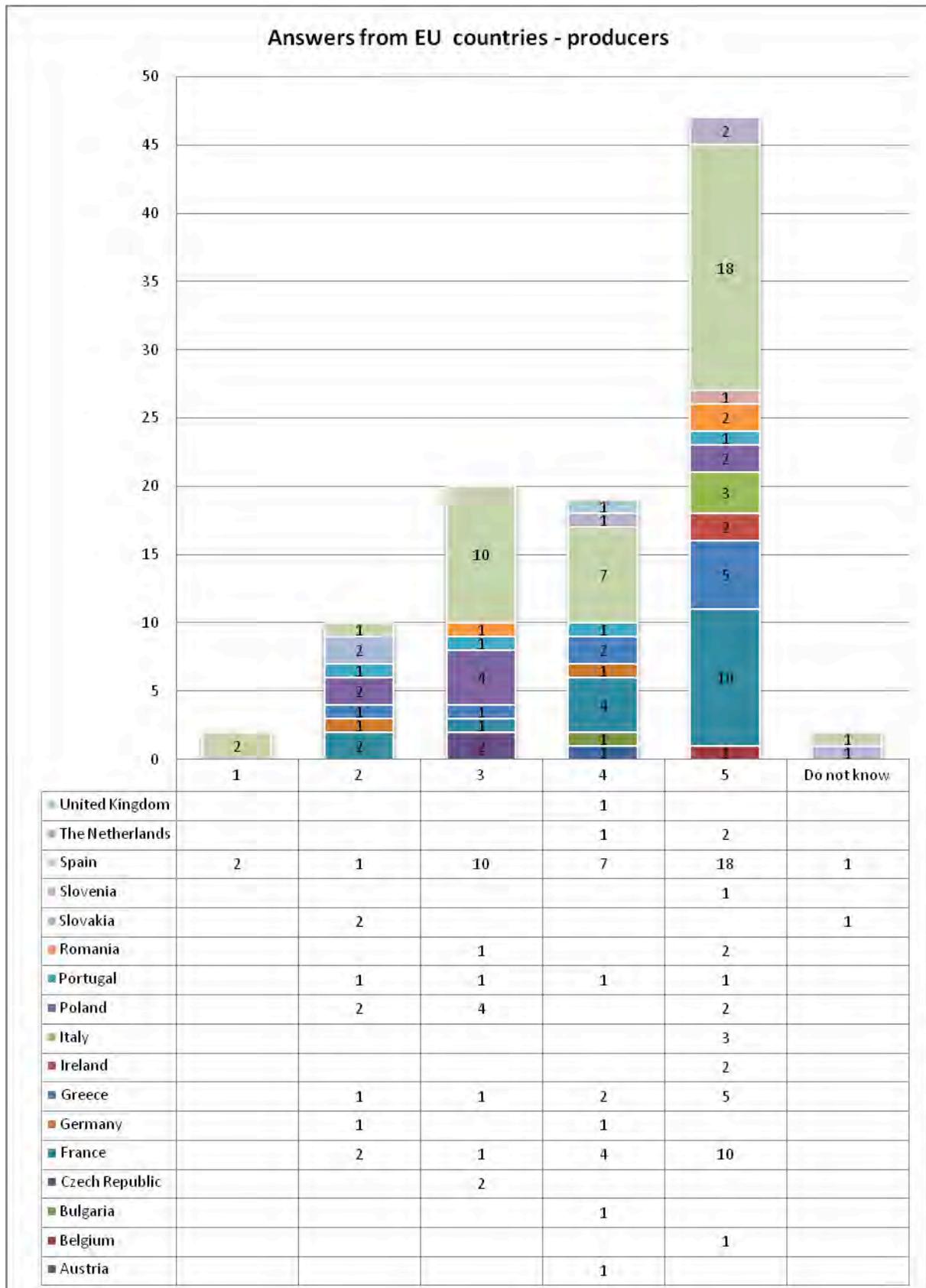
The majority of the respondents from the EU, even without considering the Spanish answers, agree that one of the benefits for consumers is that they will be sure the product comes from a specific area.

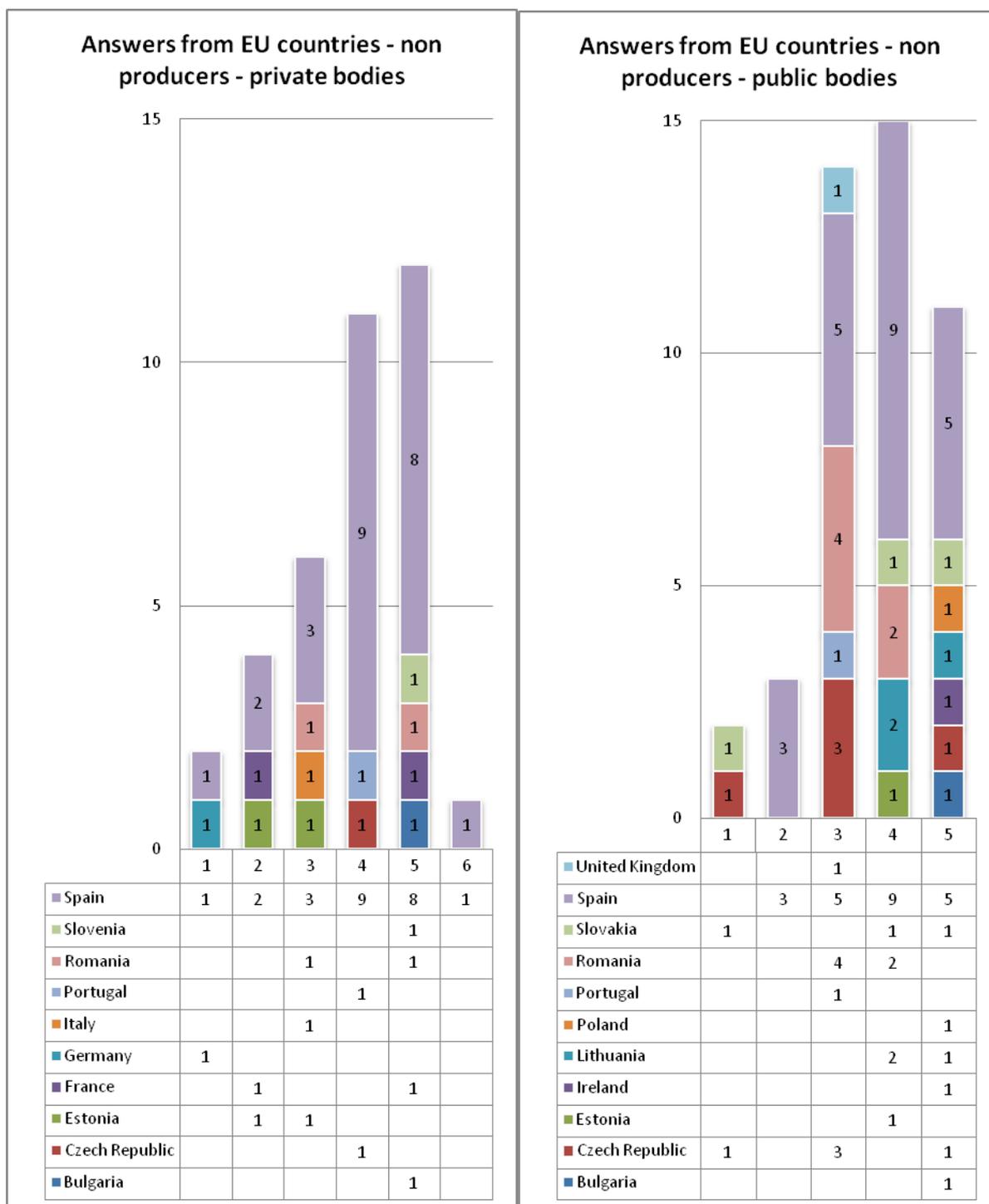
It is interesting to note that the question relates to the benefits for consumers and that the German private body which disagrees with the fact that consumers will be sure the product comes from a specific area (rate “1”) is a consumer association. This consumer association thus has an opinion which is the opposite of most of the respondents.



The respondents from outside the EU also agree that one of the benefits would be that consumers will be sure the product comes from a specific area.

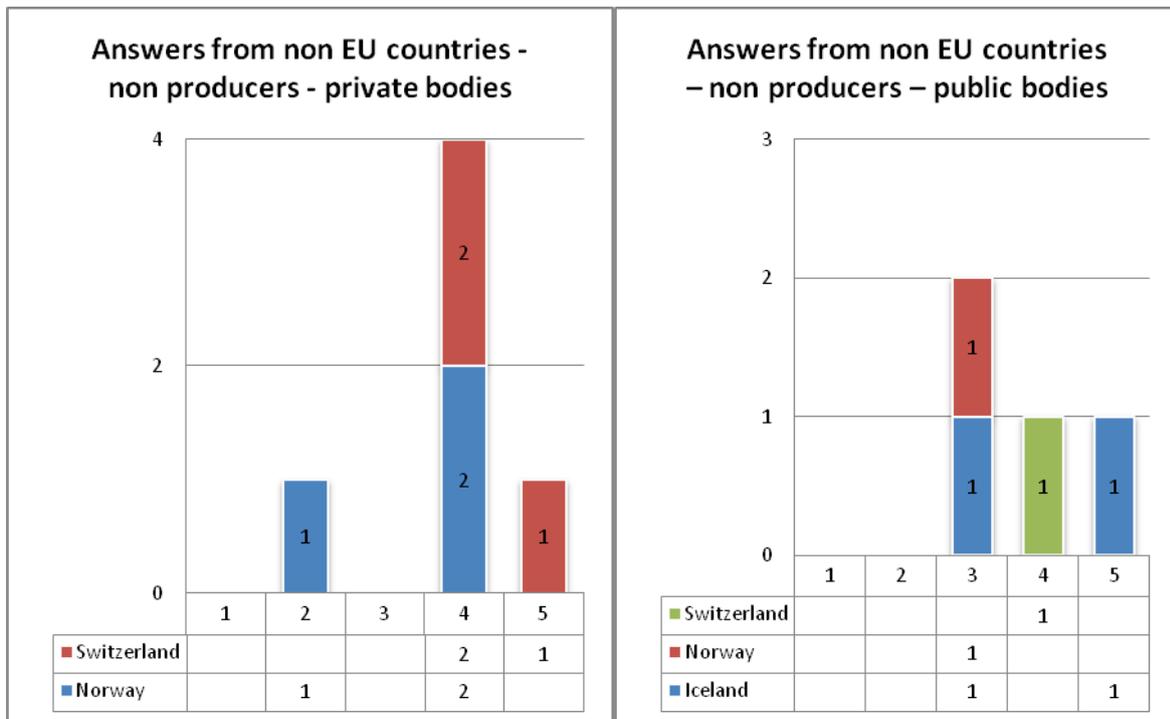
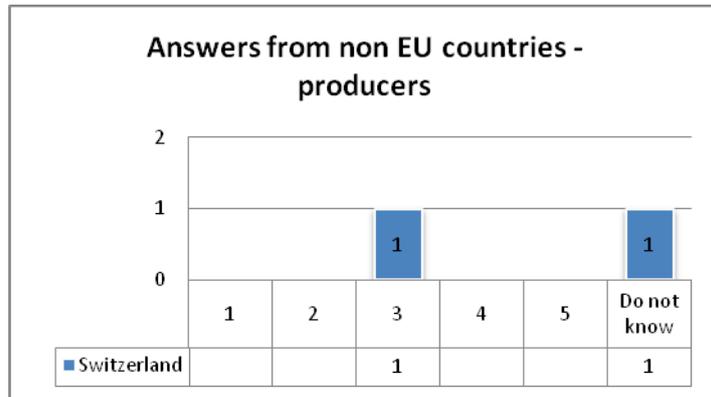
Option n°3: They will be better informed on the specificities of the GI scheme





If most of the respondents to this question agree that consumers will be better informed on the specificities of the GI scheme if an EU wide system is introduced, there is still a number of respondents who believe this might not be the case, especially in Spain. It is interesting to note that the German private body which does not agree that consumers would be better informed on the specificities of the GI scheme (rate “1”) is a consumer association.

Even without considering the Spanish answers, the results show that the respondents believe that consumers will be better informed on the specificities of the GI scheme if an EU wide system is introduced.



Respondents which are non producers from outside the EU rather agree with the fact that consumers will be better informed on the specificities of the GI scheme if an EU wide system is introduced, whereas the answers of the producers are neutral on the question.

Option n°4: other (please specify)

The respondents had the possibility to add an option on the benefits for consumers if they wanted to. Please note that they also rated their proposal on a scale of 1 to 5, “1” not being important, “5” being extremely important.

Some EU producers added comments:

- The consumers will be given some guarantees while purchasing the product (French producer - rated: 5).
- The consumers would participate to the recognition of a “terroir” and to the enhancement of a sector (French producer - rated: 5).
- It will be easier for consumers to understand the GI system if the system is the same all over the EU (Portuguese producer - rated: 4)

EU Private bodies also added further comments:

- Consumers and producers will benefit from the protection of the geographical origin if it is seen as the valorisation, through distinction, of a production process, which high quality is associated to a geographical name (French private body)
- It will be easier for consumers to understand the GI system if the system is the same all over the EU (Portuguese private body - rate: 4)
- It will have a positive impact on the environment because of the reduction of transportation (Spanish private body - rate: 3).
- The product will benefit from the guarantees of a recognised quality (Spanish private body - rate: 4).

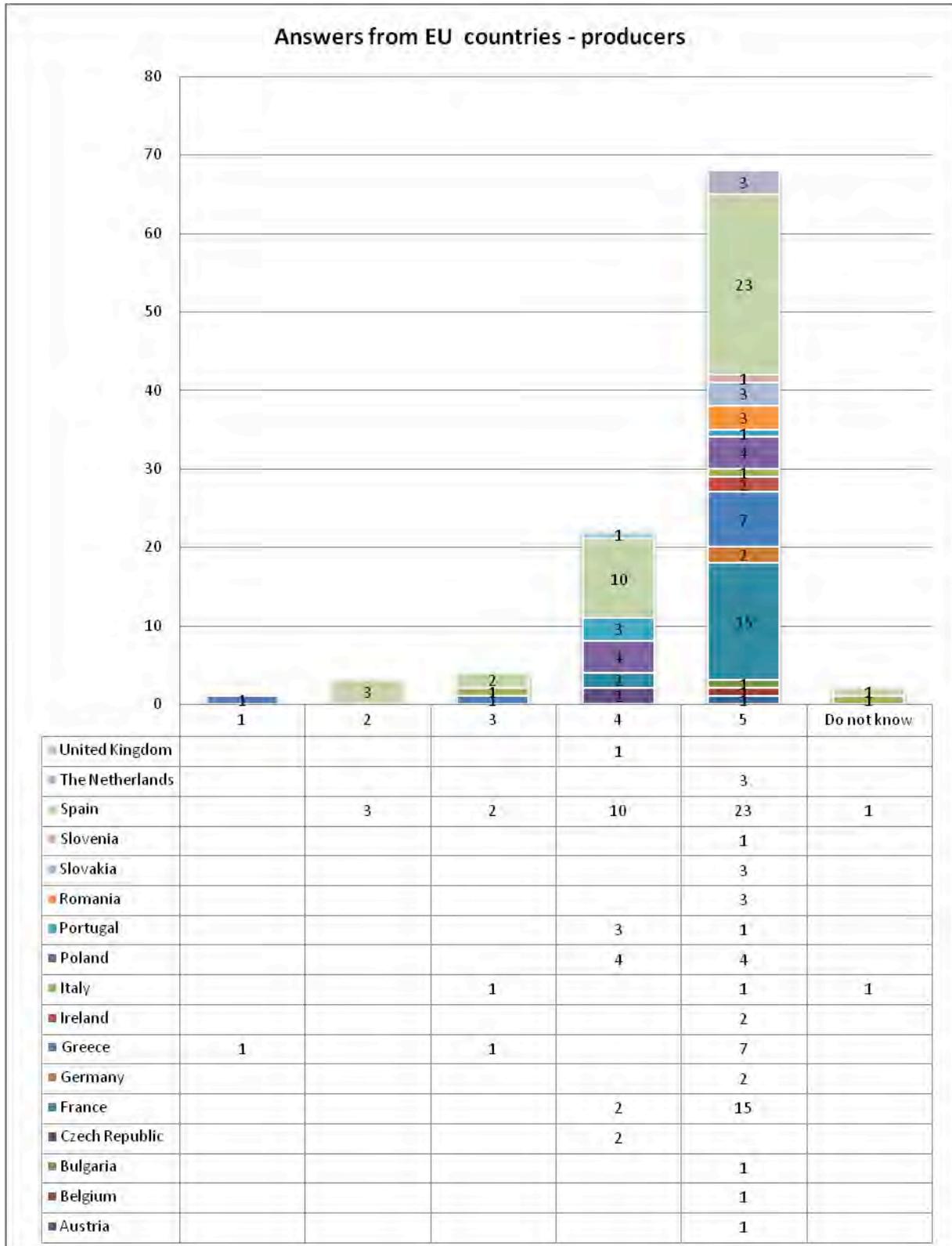
EU Public bodies added the following comments:

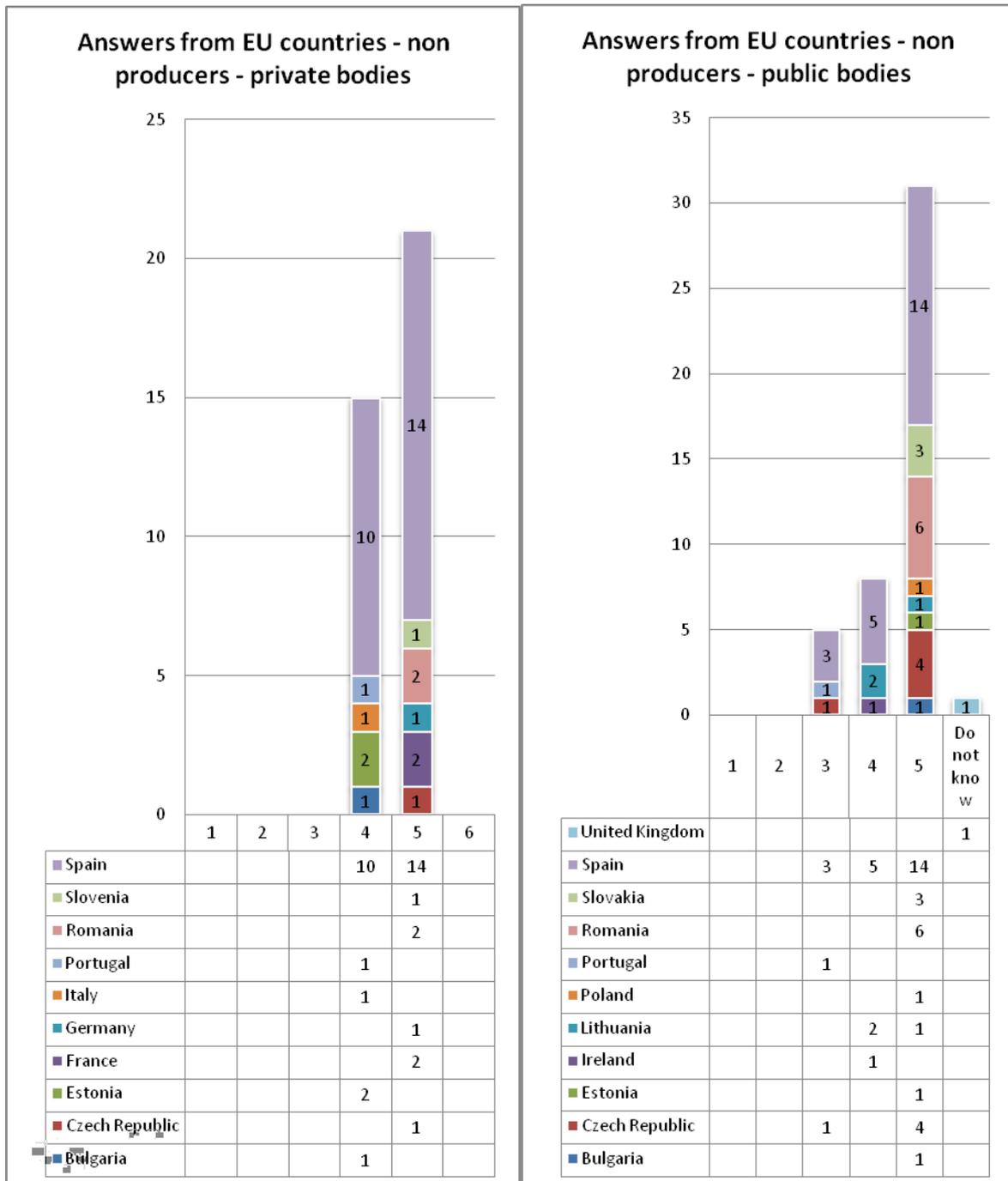
- Consumers will be assured of quality and provenance (Irish public body - rate: 5).
- Consumers will be sure the products guarantee a specific quality (Polish public body - rate: 5).

Role of public bodies before and during registration

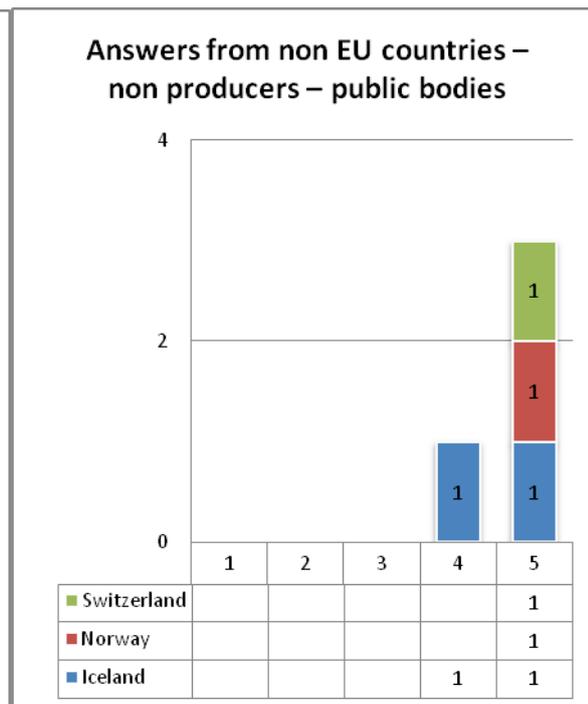
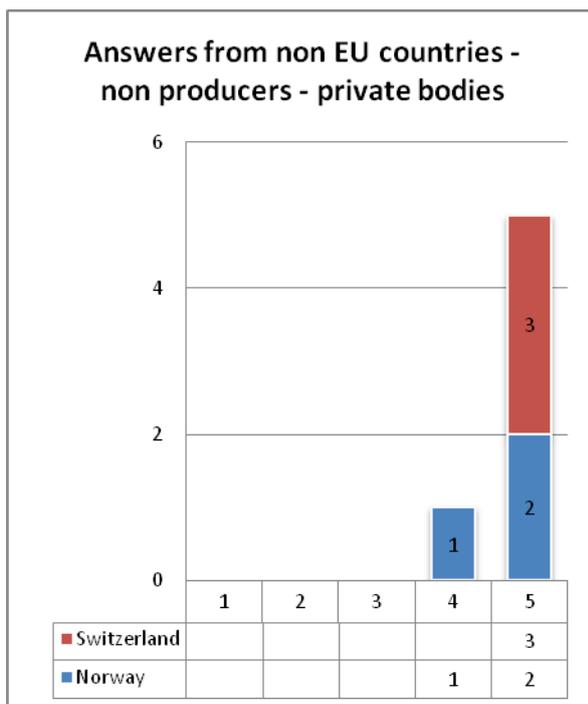
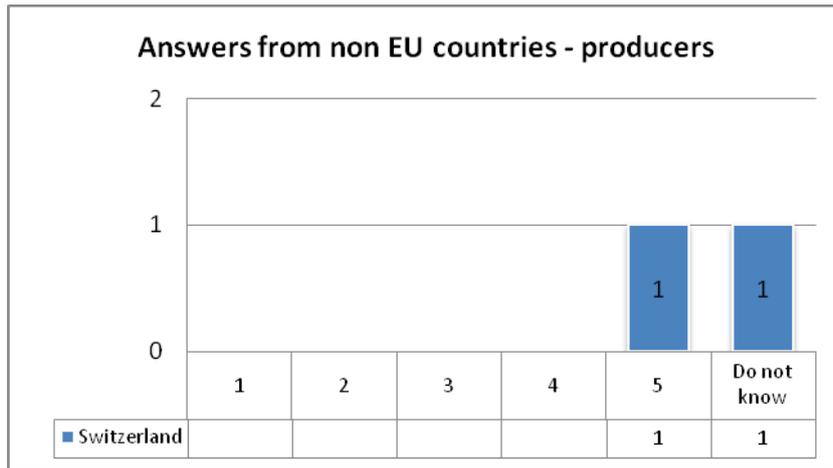
What should be the role of public bodies before and during registration?

Option n°1: Verification of the link to the specific area



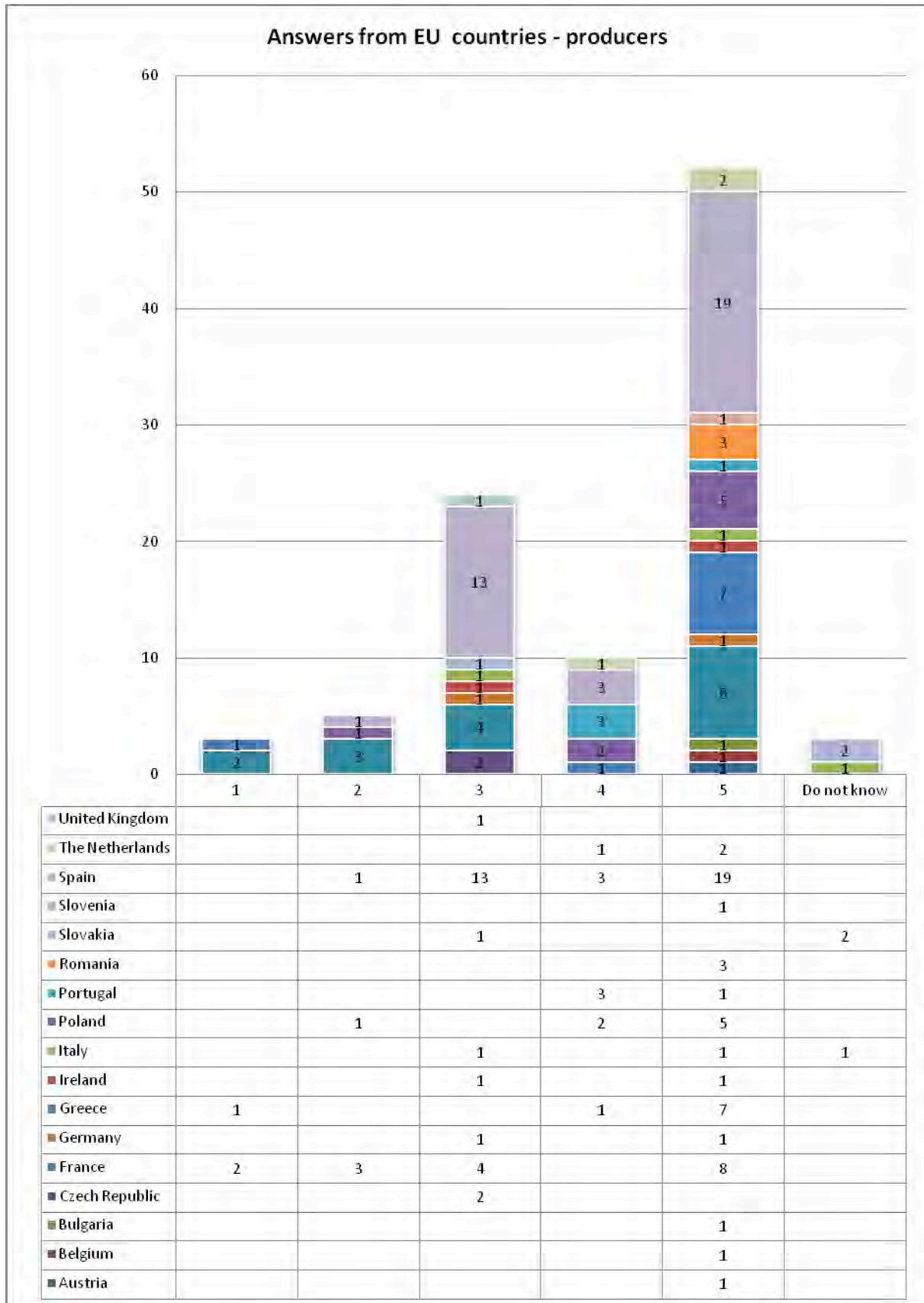


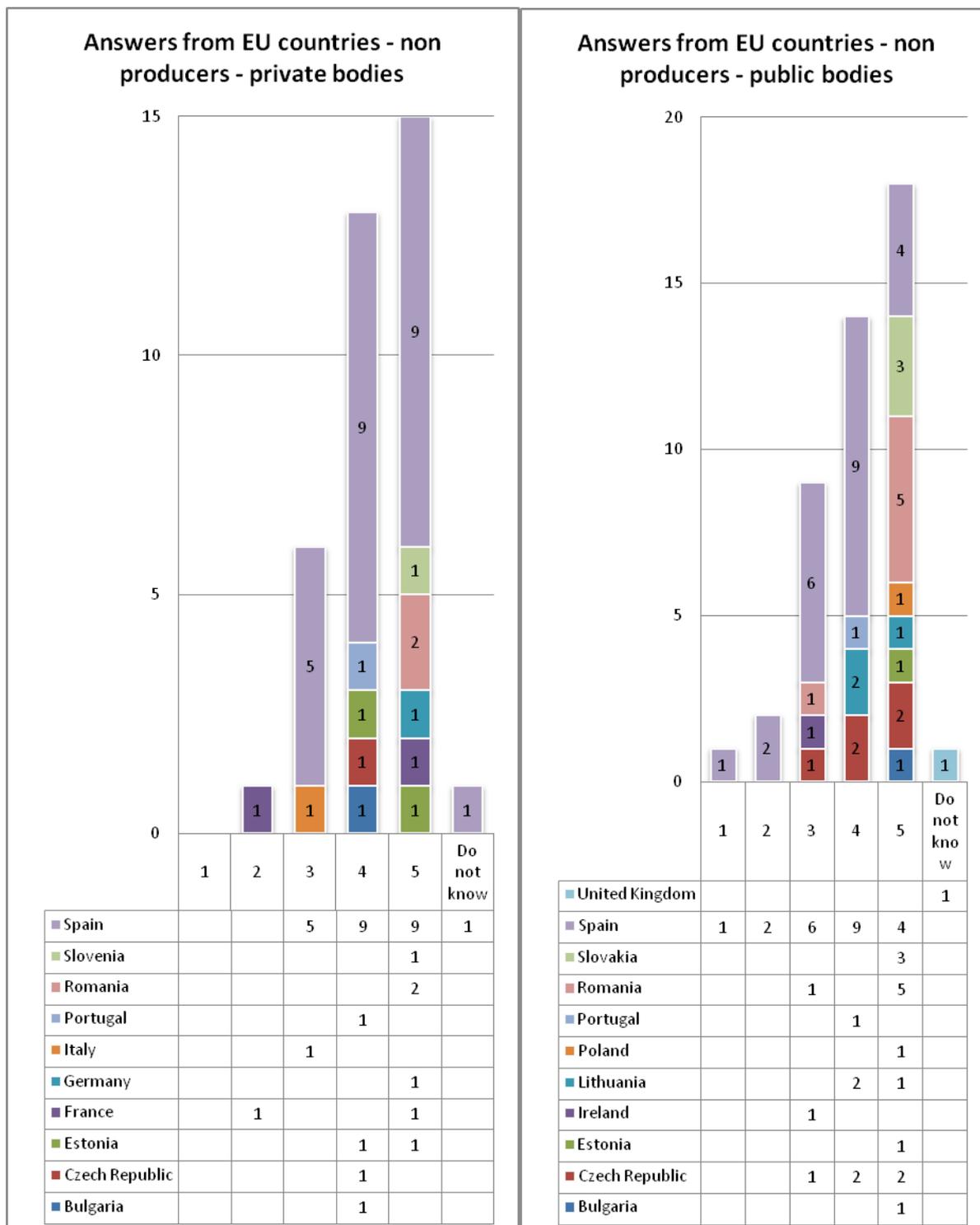
The majority of the respondents, even without taking into account the Spanish answers, believe that one of the roles of public bodies before and during registration should be to verify the link of the product to the specific area.



Respondents from outside the EU totally agree with the fact that one of the roles of public bodies before and during registration should be to verify the link of the product to the specific area.

Option n°2: Assessment of the specific features or characteristics of the product

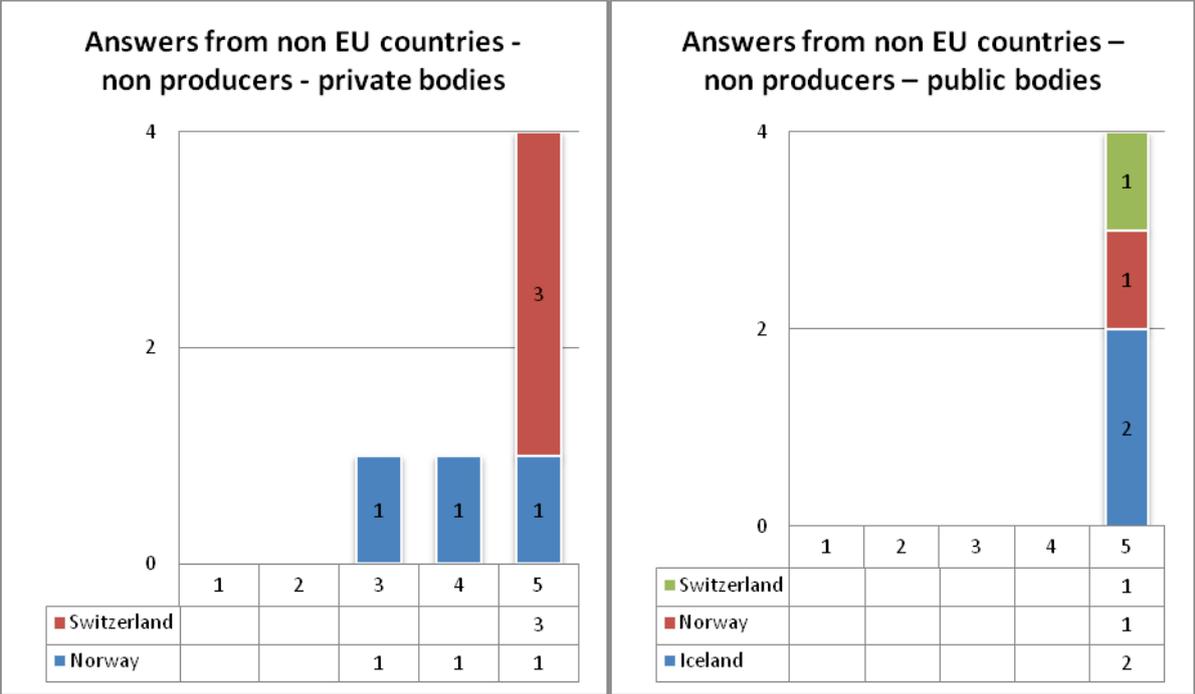
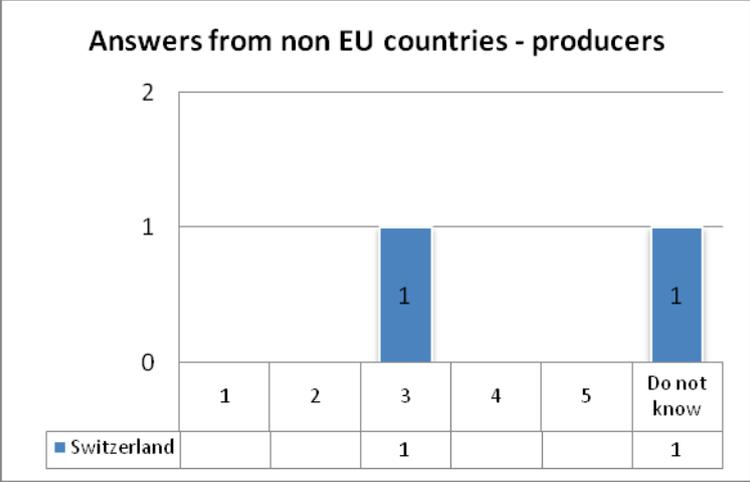




If the respondents which are non producers, even without considering the Spanish answers, seem to agree that one of the roles of public bodies before and during registration should be to assess the specific features or characteristics of the product, producers, who answered, have a more nuanced point of view. The majority of producers (61) are in favour of it (answers “4” and “5”) but a high number (27) stayed neutral (answer “3” or “do not know”). Even without taking into account the Spanish answers, the results show that a majority of producers (39 out of 68) agree with this option.

One Czech public body, which rated this option ‘4’, wrote that producers themselves know best, what are the specific features of their products and what differentiates their production

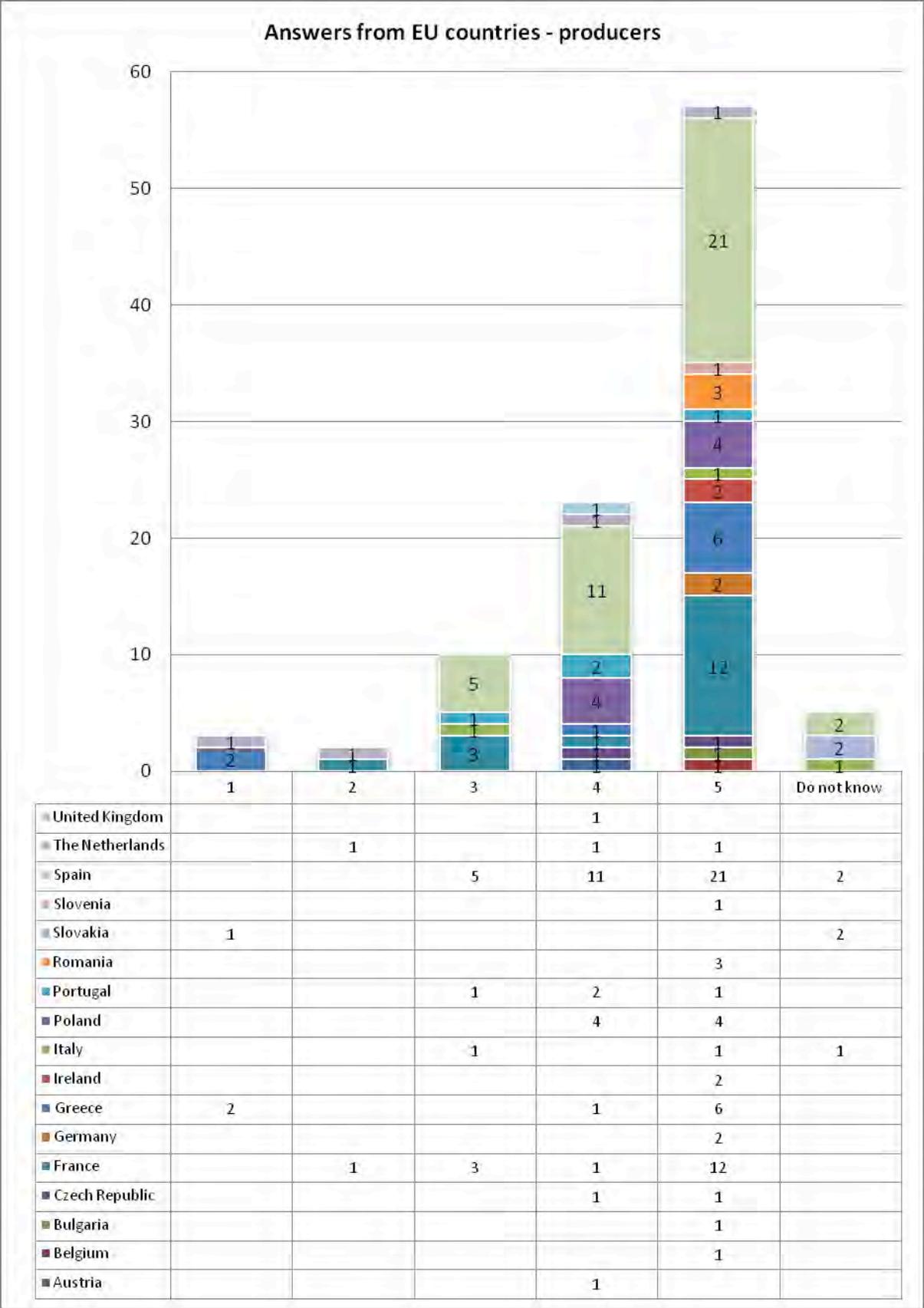
from other products produced in other regions. At the same time it would be suitable to have a correction from the public bodies against creation of monopolies (e.g. registration of a specific feature, which can be done only by one or two enterprises, regardless the necessity of such feature for GIs etc.).

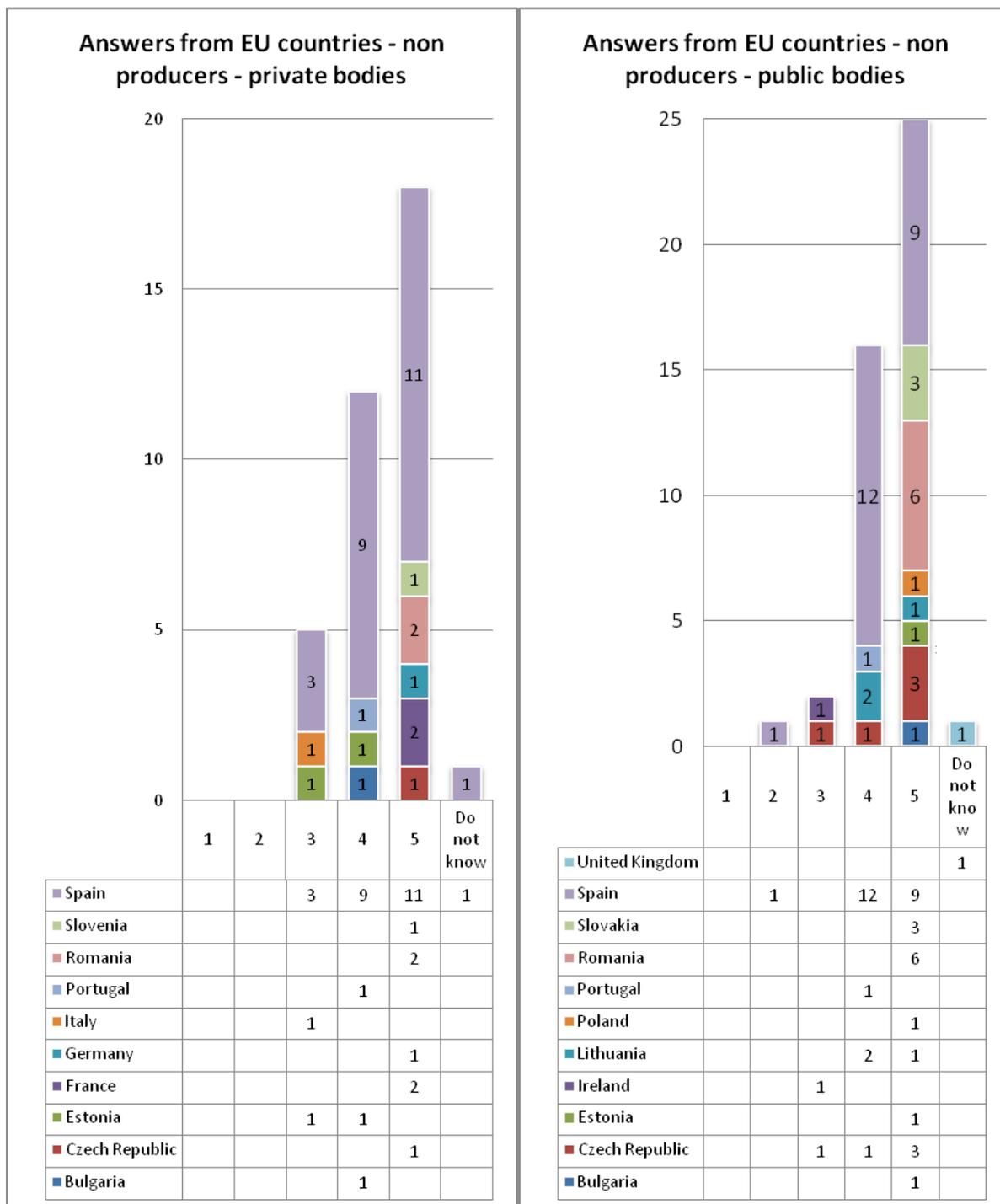


On the other hand, the answers of the non EU public and private bodies show that they believe that public bodies should be in charge of the assessment of the specific features or characteristics of the product.

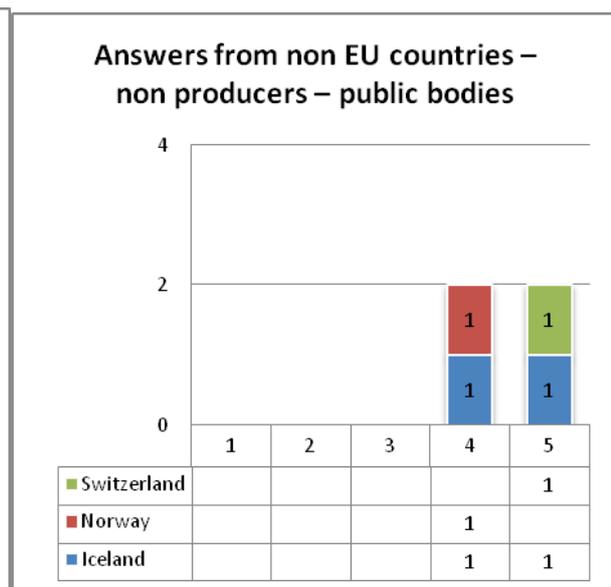
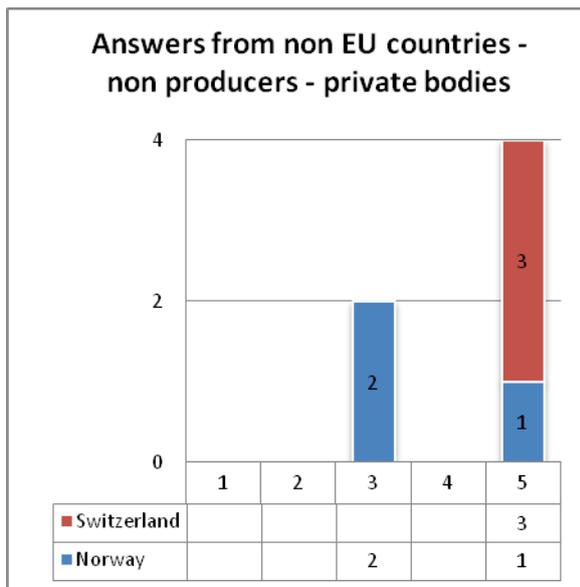
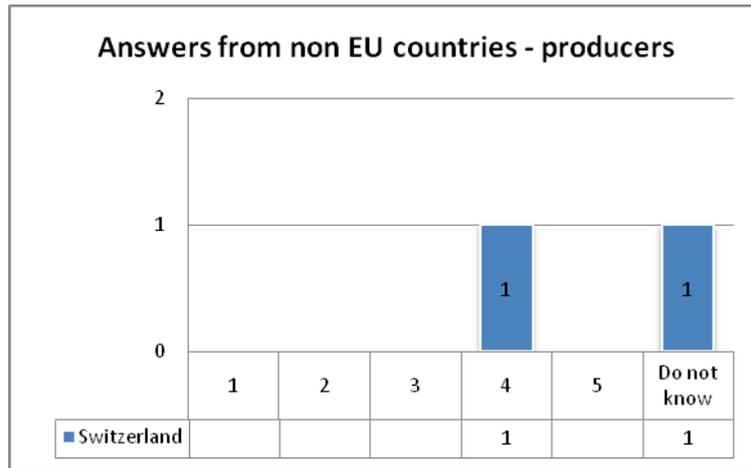
The Swiss producers, who answered, remained neutral.

Option n°3: Control of the compliance with the definition of the boundaries of the geographical area where the product can be produced



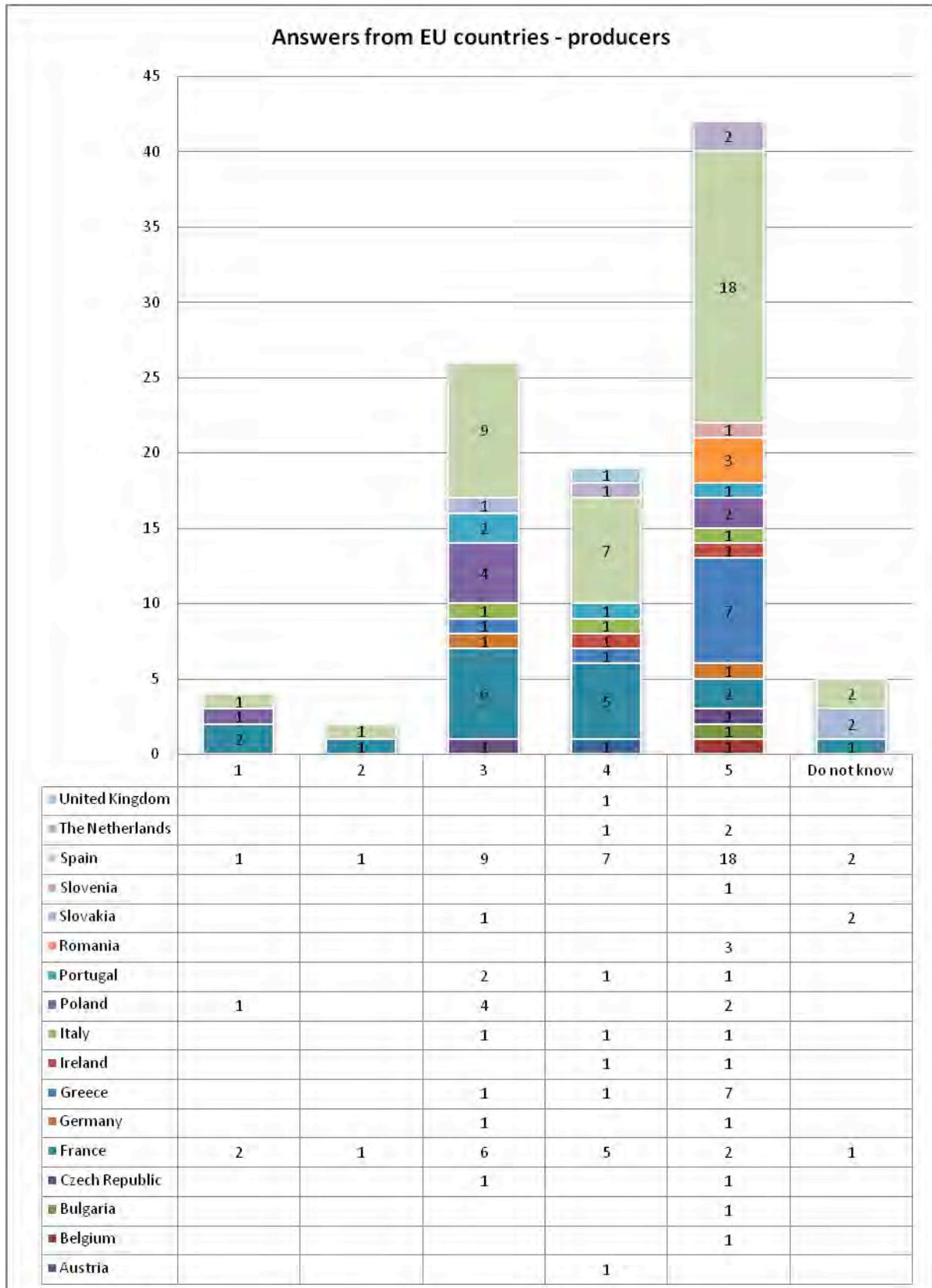


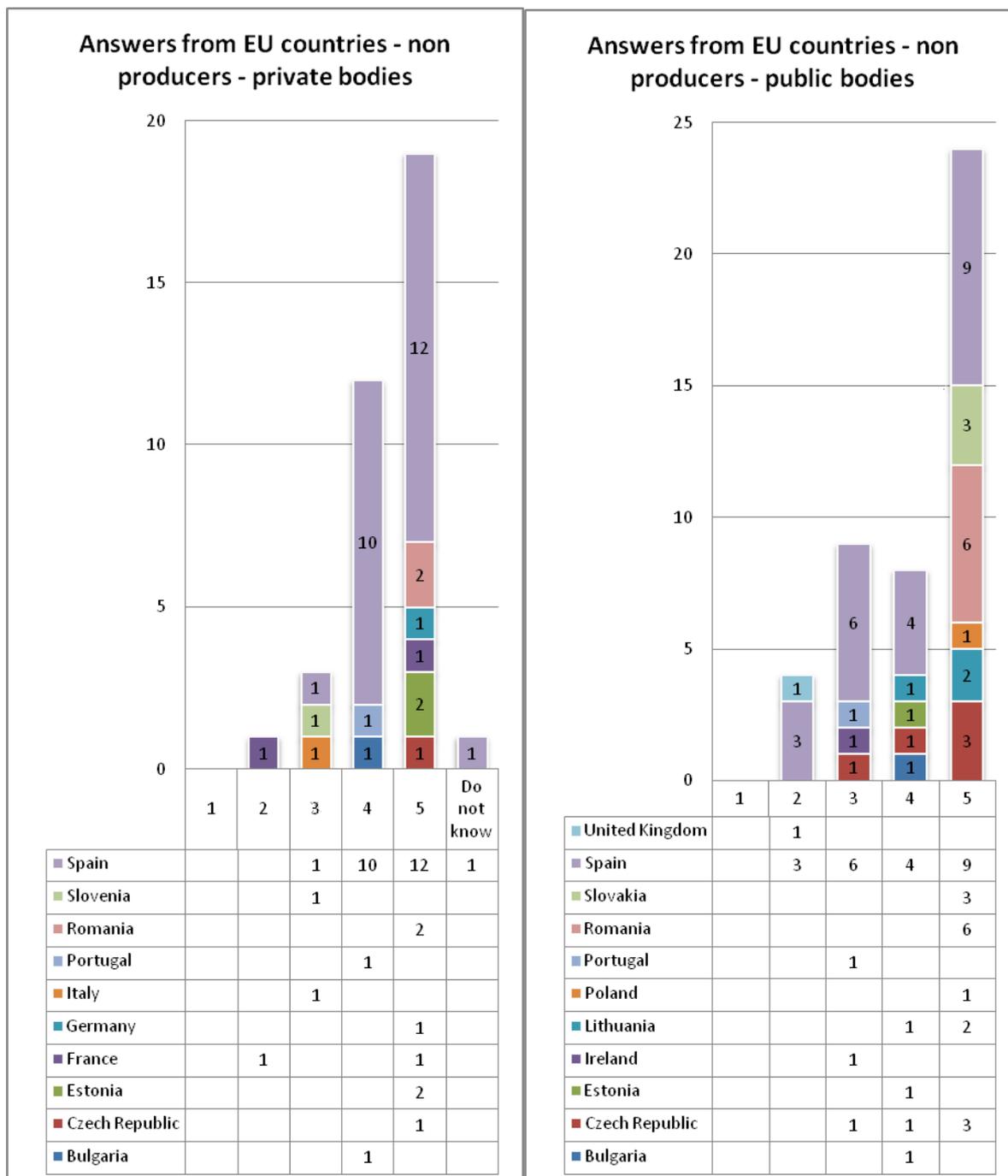
Most respondents, even without taking into the Spanish answers, agree that public bodies should be in charge of the control of the compliance with the definition of the boundaries of the geographical area where the product can be produced.



Respondents from outside the EU also agree that public bodies should be in charge of the control of the compliance with the definition of the boundaries of the geographical area where the product can be produced.

Option n°4: Provide adequate procedure to allow third parties to take position on registration procedure (opposition)



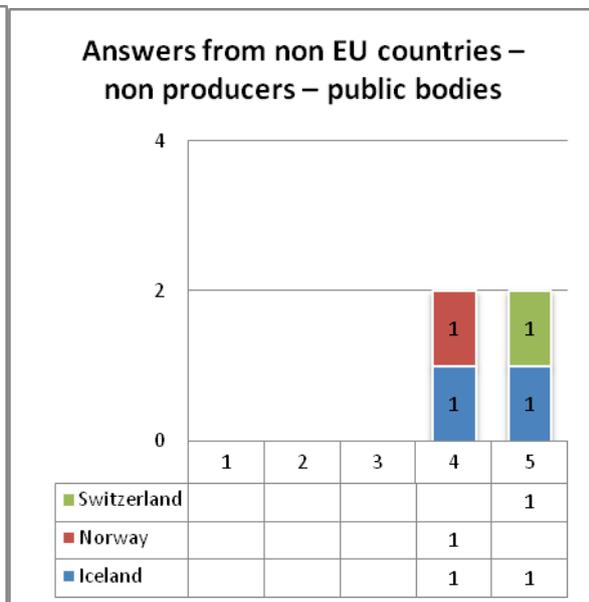
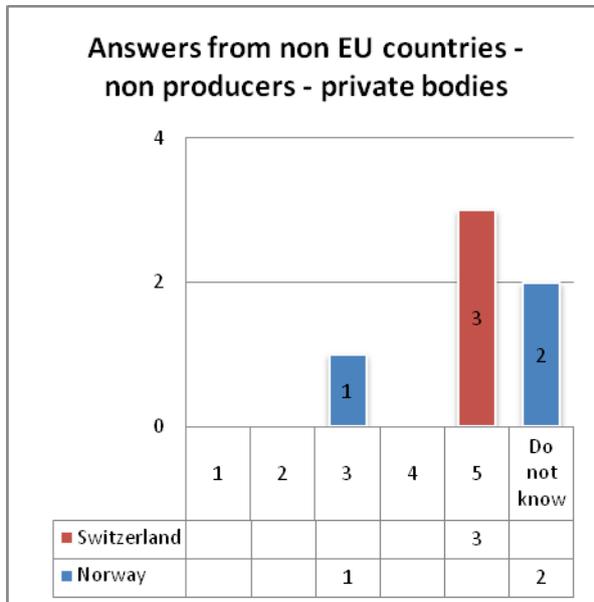
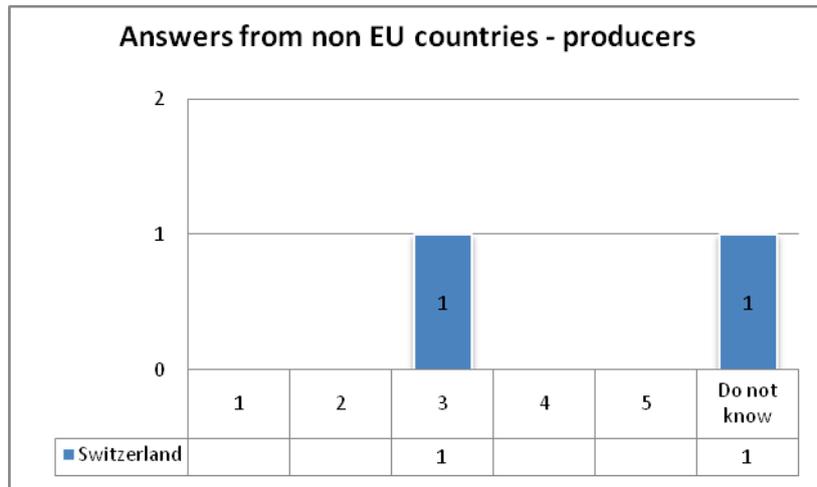


Regarding the opposition procedure, the respondents which are non producers clearly believe this should be a competence given to public bodies. However, EU producers' answers show that, even if they globally agree with this, they have a more nuanced answer as many of them (31) answered "3" or "do not know" to this question.

Even without taking into account the Spanish answers, the outcome of the answers to this question does not change.

A Czech public body, which rated this option '4', wrote that only to a certain extent should third parties be allowed to enter the registration procedure. If a product is typical of the area, the contribution of the GI is indisputable. For example during the registration of a GI for an area which is reputed for quality toilets, there could be a wave of oppositions from inhabitants

who would not like their region renown in the world for toilets. However for the producers and for the region such registration would be beneficial.



Swiss producers, who answered, gave neutral answers (“3” or “do not know”) to the question.

However, respondents which are non producers from non EU countries think that the opposition procedure should be part of the competences of the public body before registration.

Option n°5: other (please specify)

The respondents had the possibility to add comments on the role of public bodies before and during registration if they wanted to. Please note that they also rated their proposal on a scale of 1 to 5, "1" not being important, "5" being extremely important.

Two Italian producers answered that public bodies should be competent to verify that all legal requirements are satisfied in order to obtain the protection (rate: 3 and 5).

One French producer said that public bodies could help in the preparation of the specifications.

One Polish producer added that a comment on the role of public bodies before and during registration should be to set up an appropriate registration authority (rate: 5).

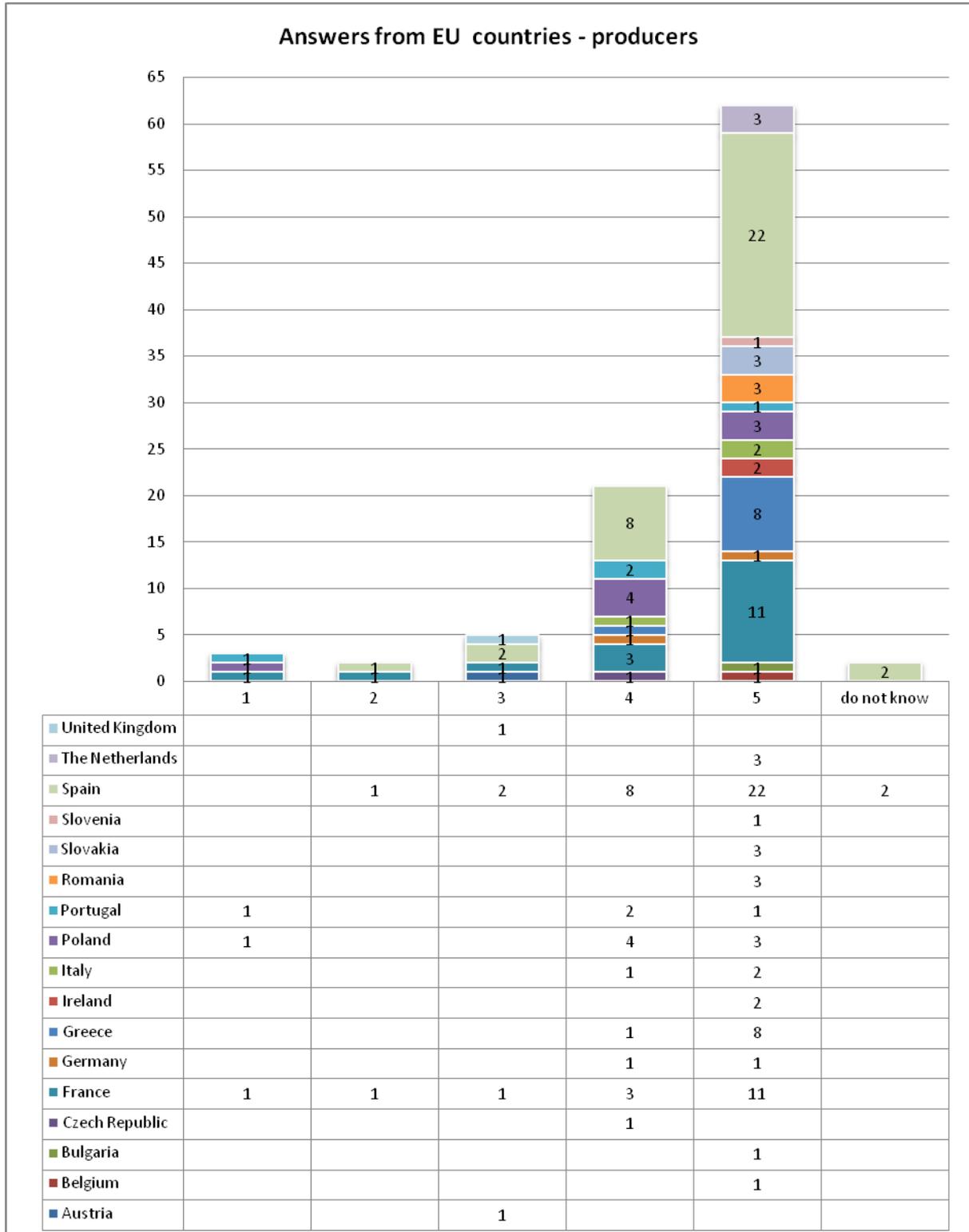
One French private body said that, in order to reduce mistakes, public bodies should consult one or several groups of persons, which are qualified and independent, from the public and private sector (excluding syndicates or professional organisations of the sector) before and during registration.

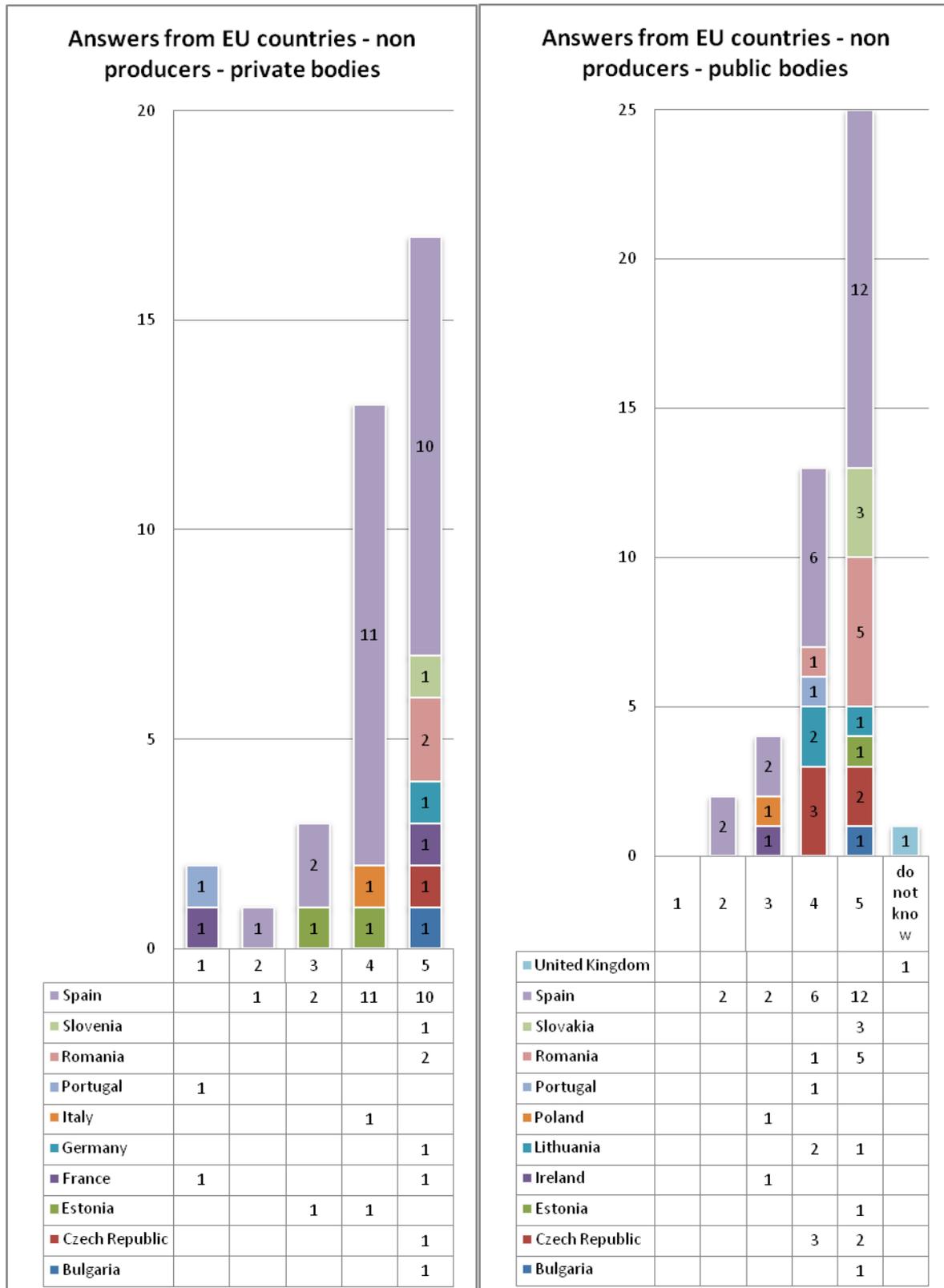
One Swiss private body stated that one role of public bodies before and during registration could be the verification of the representativeness of the applicant group (rate: 5).

Role of public bodies after registration

What should be the role of public bodies after registration?

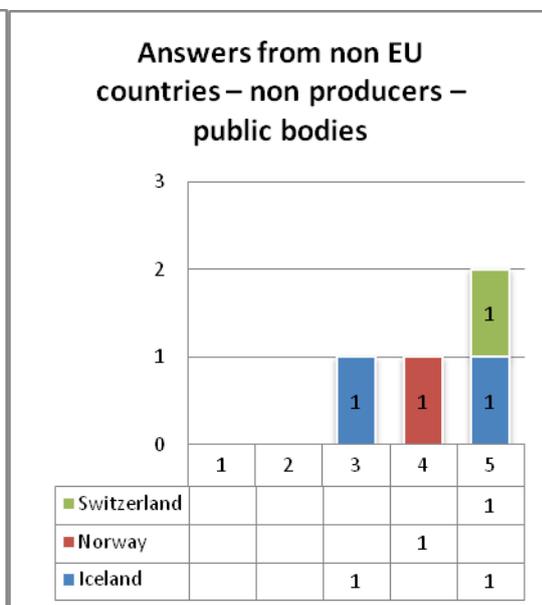
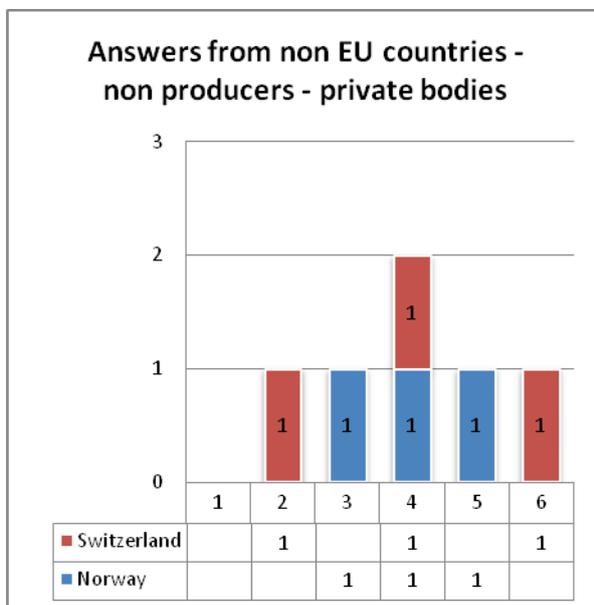
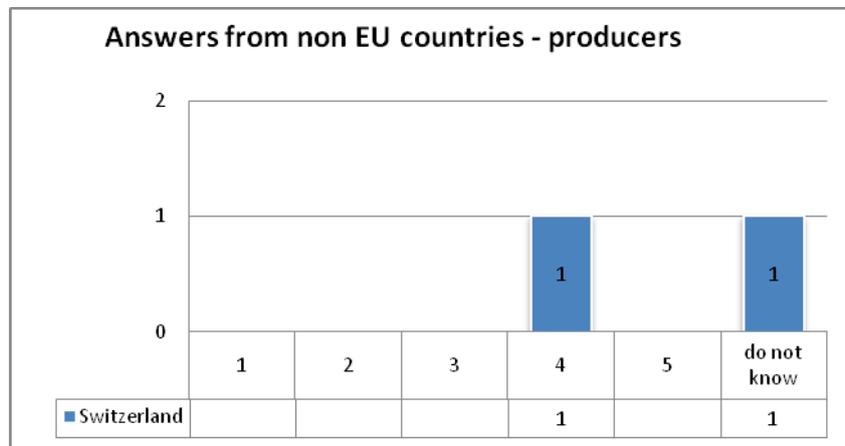
Option n°1: Control of compliance with specific features or characteristics set in the production requirements before registration, including the control of the definition of the boundaries of the geographical area where the product can be made





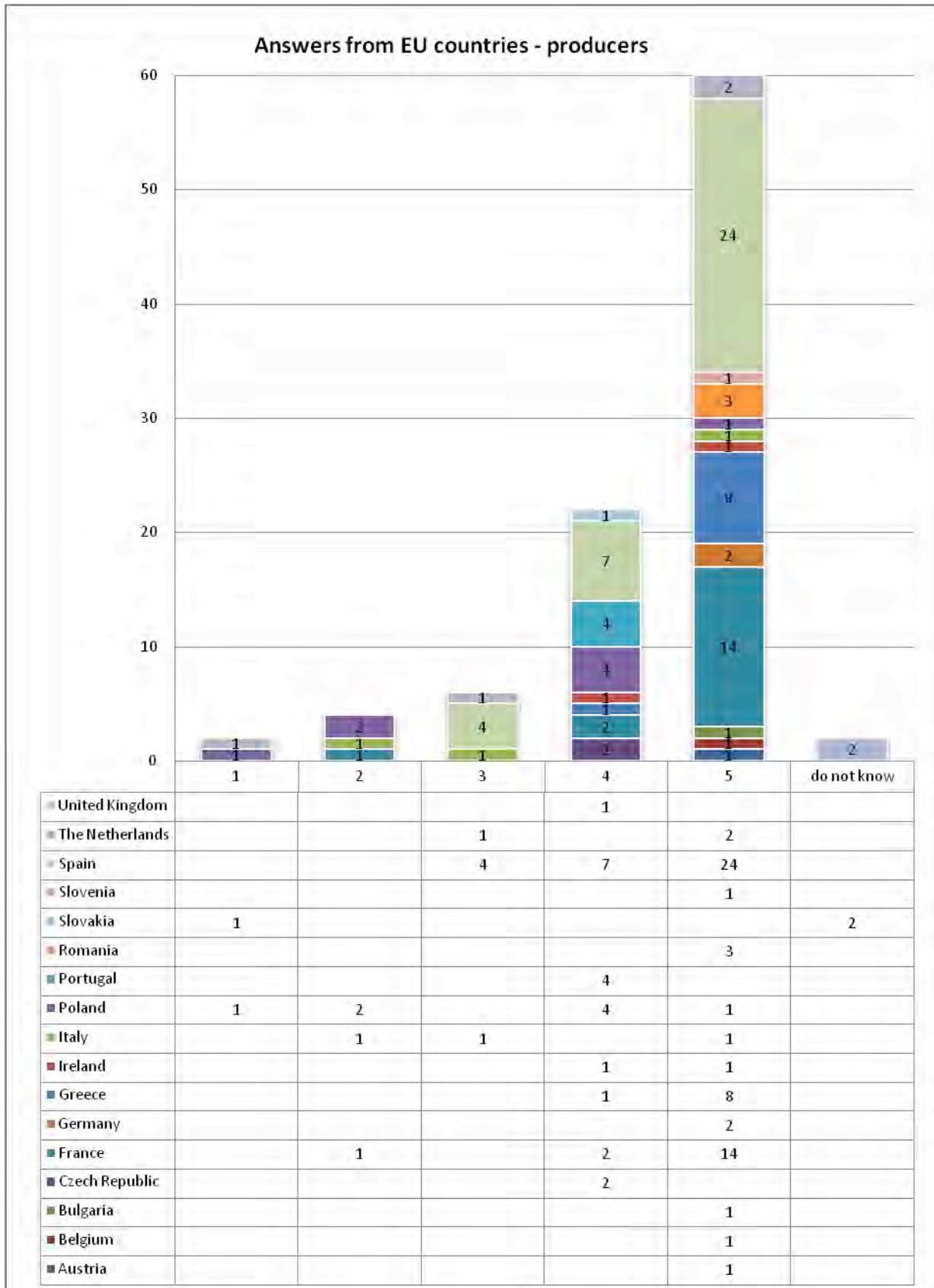
Control of compliance with specific features or characteristics set in the production requirements before registration, including the control of the definition of the boundaries of the geographical area where the product can be made should be one of the competence of public bodies after registration according to respondents from the EU, even without considering the Spanish answers.

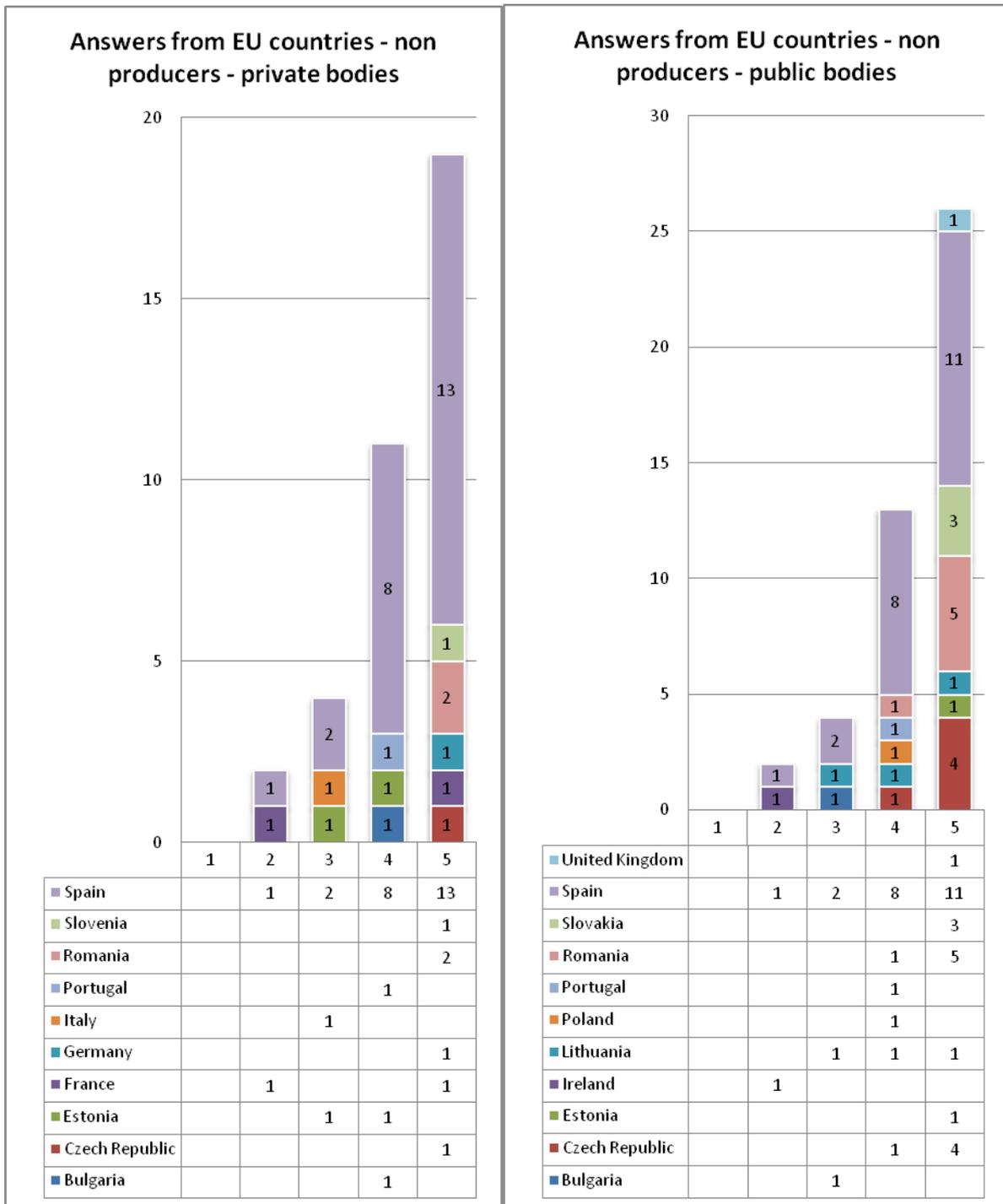
One French producer which rated this proposal “4” added that it should be delegated to an *ad hoc* structure which would act as a control centre. On the contrary, another French producer which rated this proposal “5” said that it should be done by the sector.



Non EU respondents also share this point of view, even if some private bodies tend to disagree.

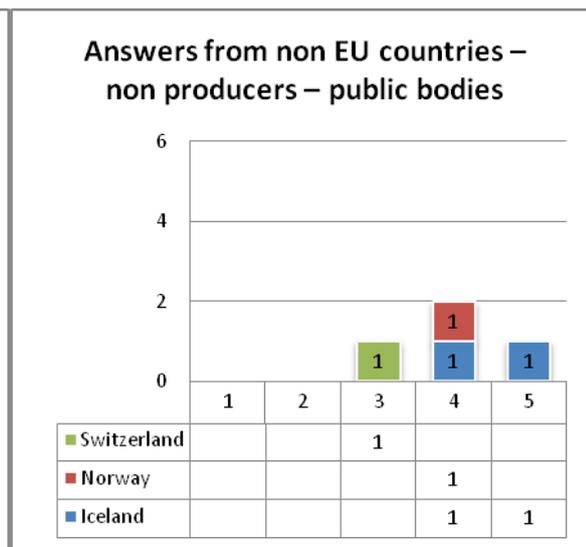
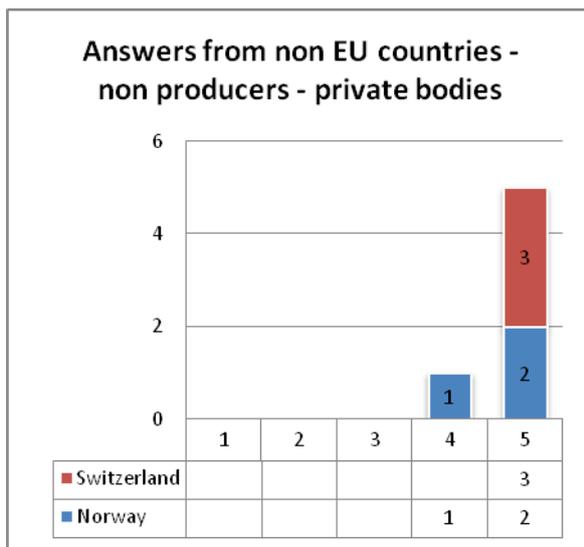
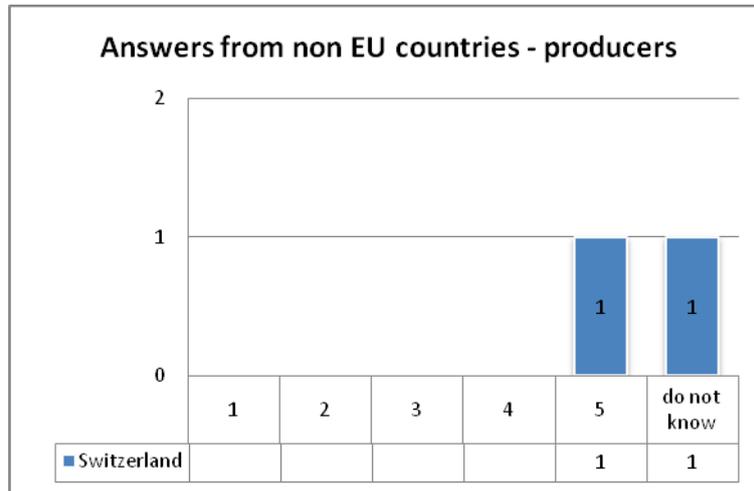
Option n°2: Control of products bearing the protected name of the GI on the market





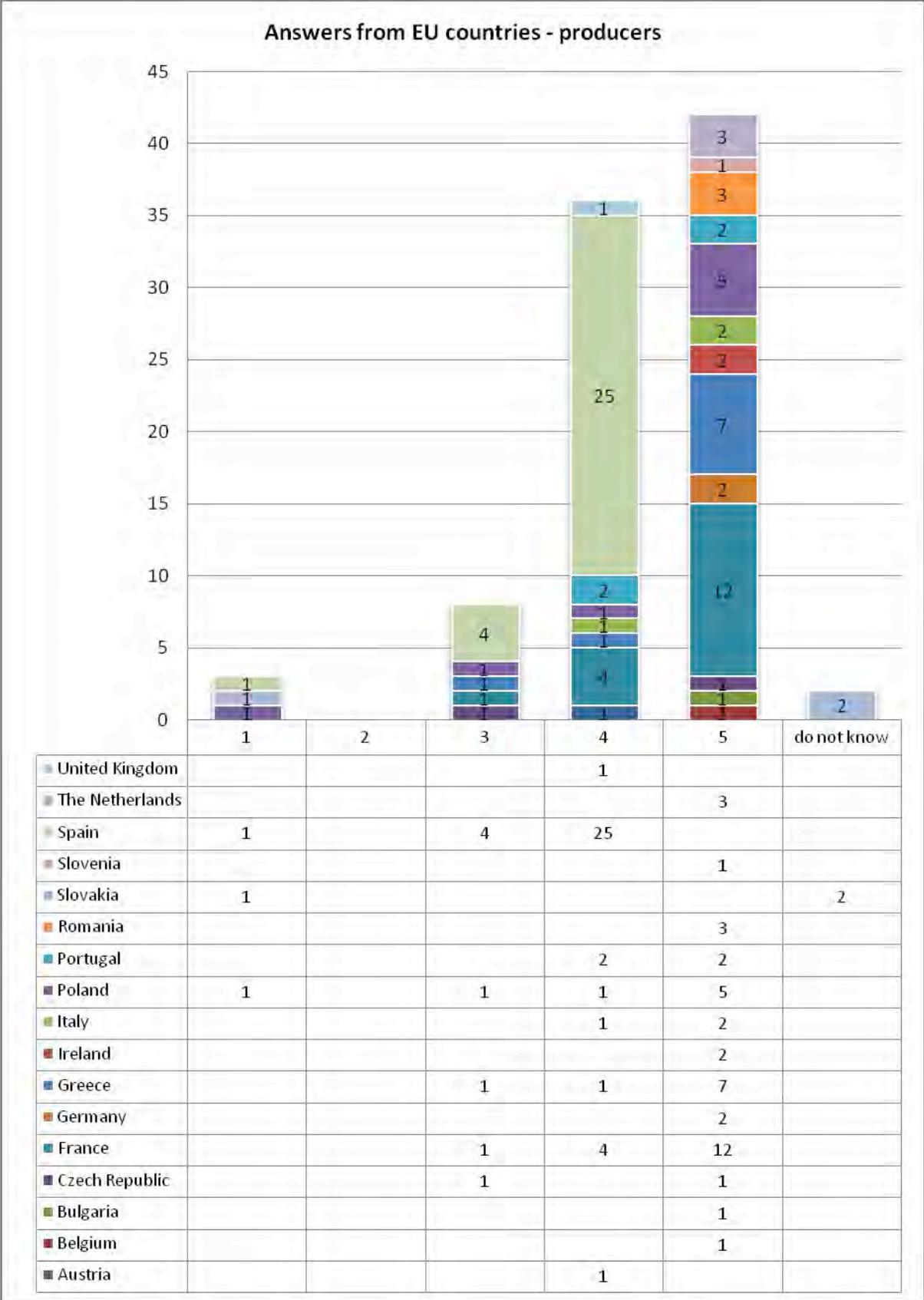
Most EU respondents, even without taking into consideration the Spanish answers, believe that the control of products bearing the protected name of the GI on the market should be the competence of the public body after registration, even if some producers disagree with this.

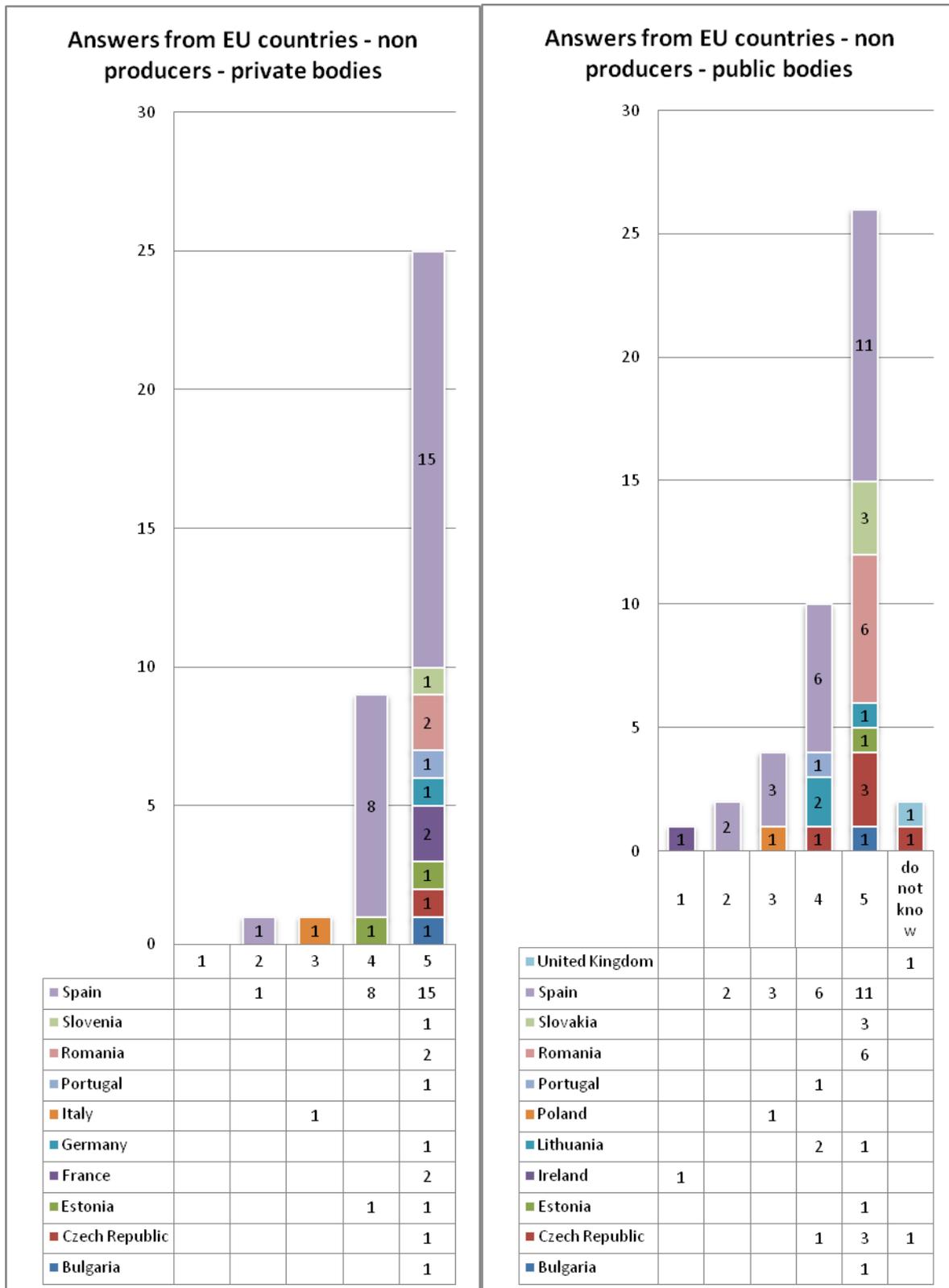
One French producer which rated this proposal “4” added that it should be delegated to an *ad hoc* structure which would act as a control centre. On the contrary, another French producer which rated this proposal “5” said that it should be done by the sector.



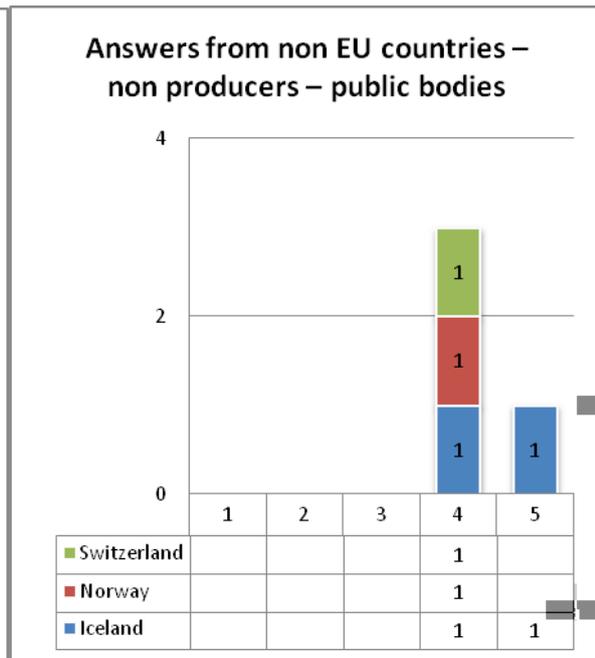
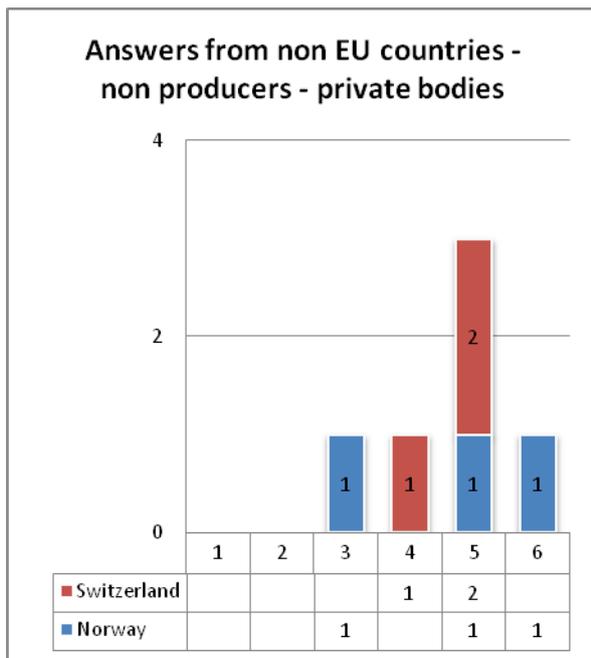
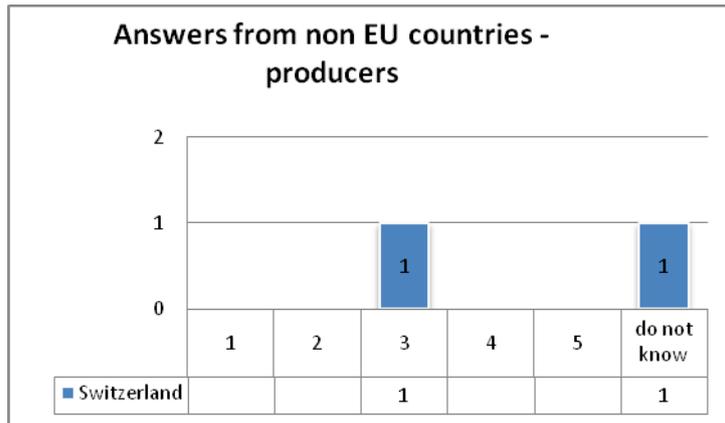
Outside the EU, the respondents all think that the control of products bearing the protected name of the GI on the market should be the competence of the public body after registration.

Option n°3: In case of non-respect of the production requirements, possibility to impose fines or cancel the registration





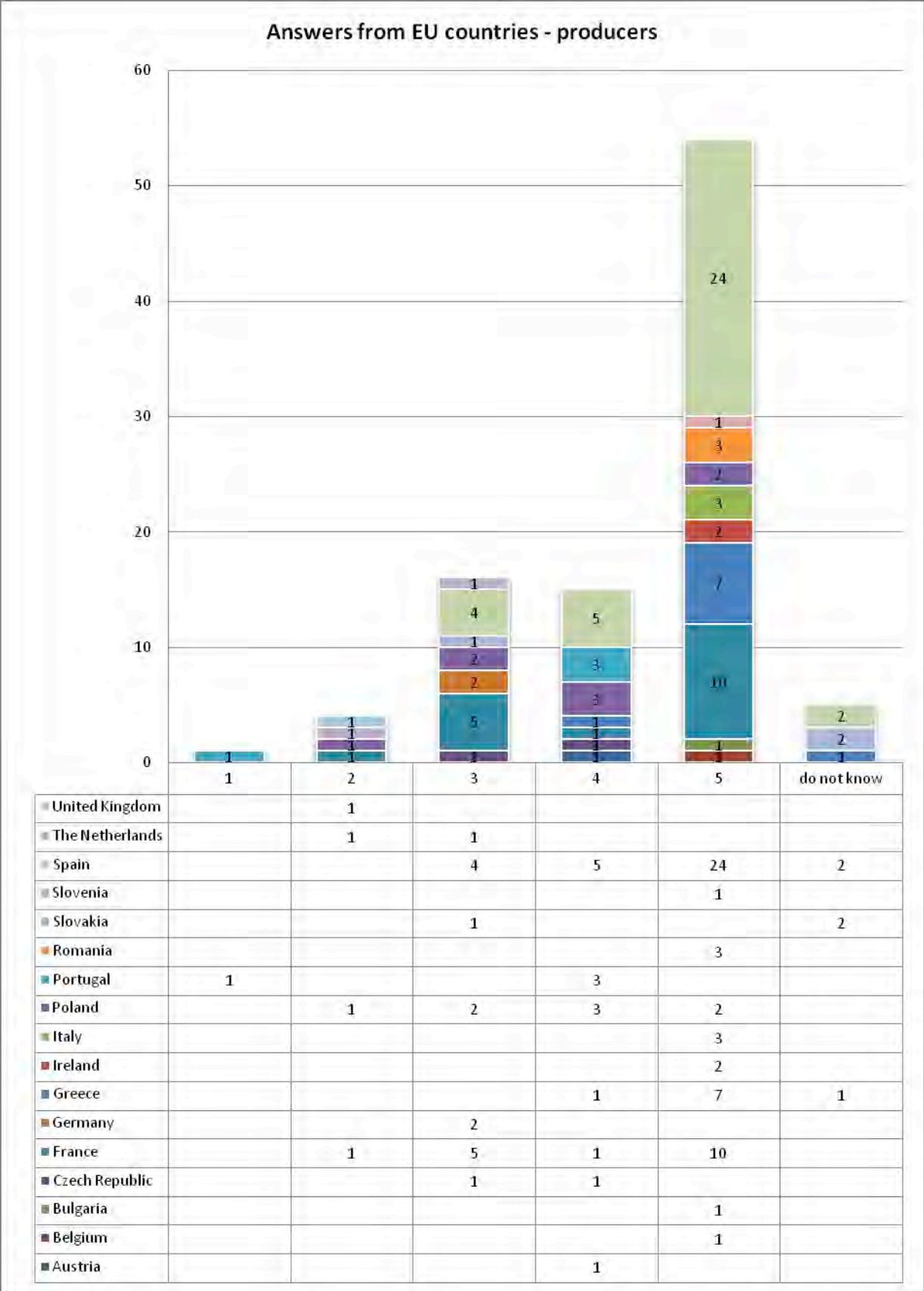
Almost all EU respondents, even without taking into account the Spanish answers, believe that public bodies should be able to act in case of non-respect of the production requirements, the possibility of imposing fines or cancelling the registration should also be envisaged.

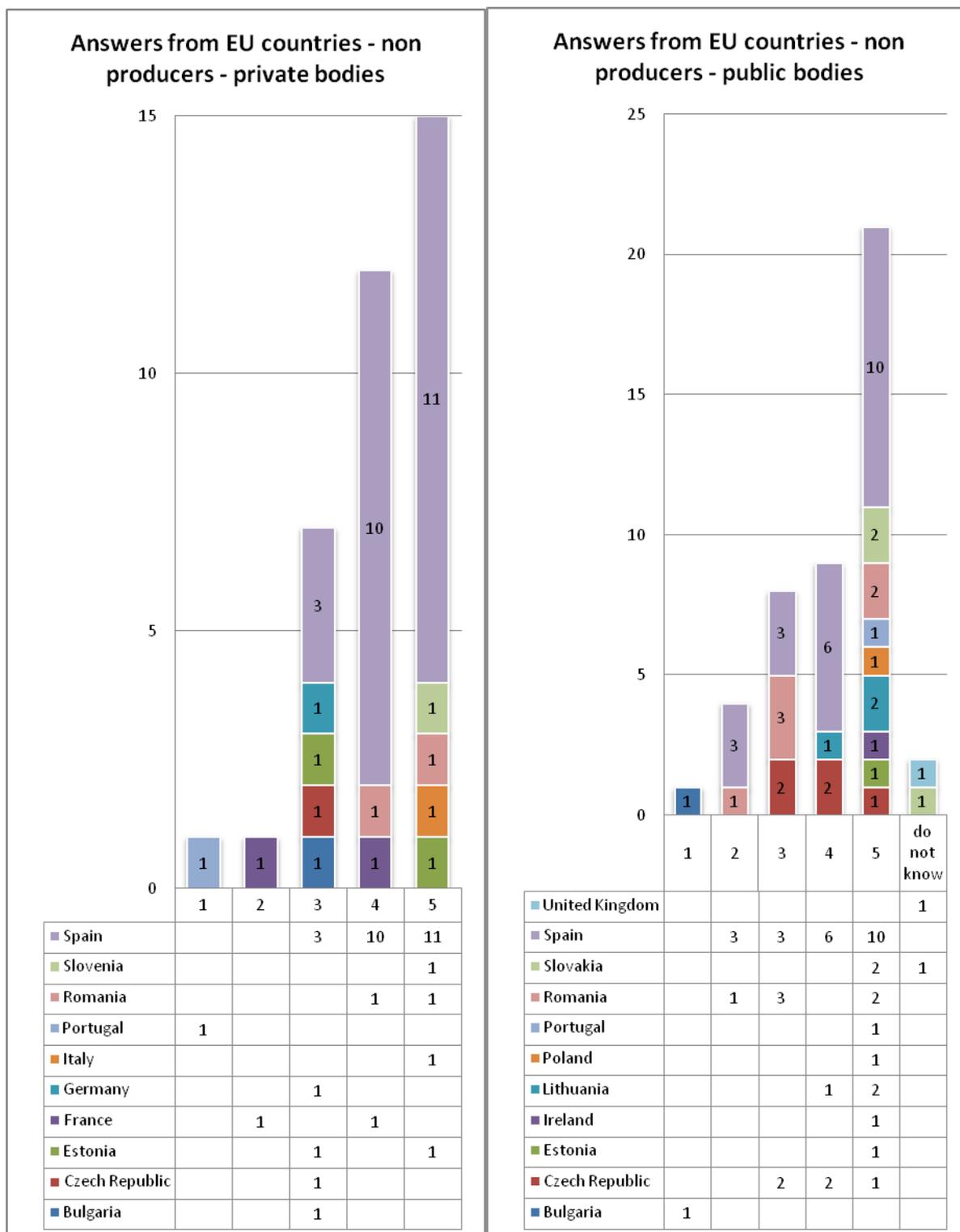


Respondents which are non EU producers from outside the EU agree with the EU respondents that public bodies should be able to act in case of non-respect of the production requirements.

However, Swiss producers' answers are neutral on the question.

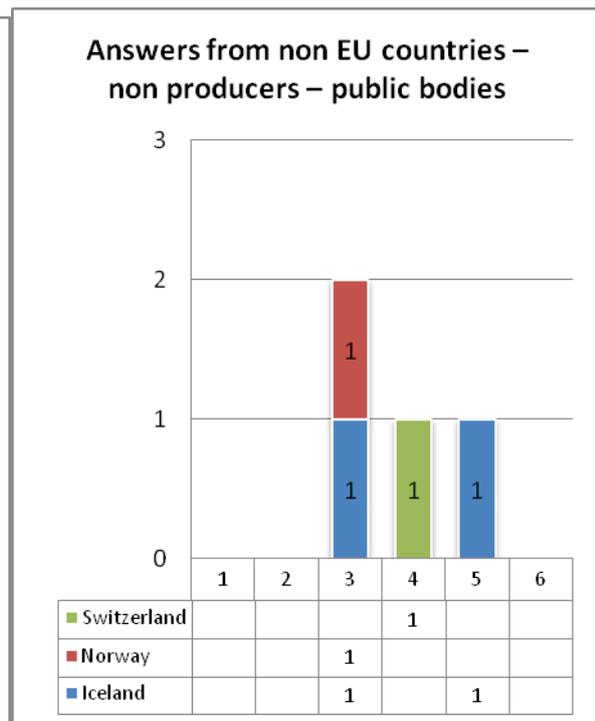
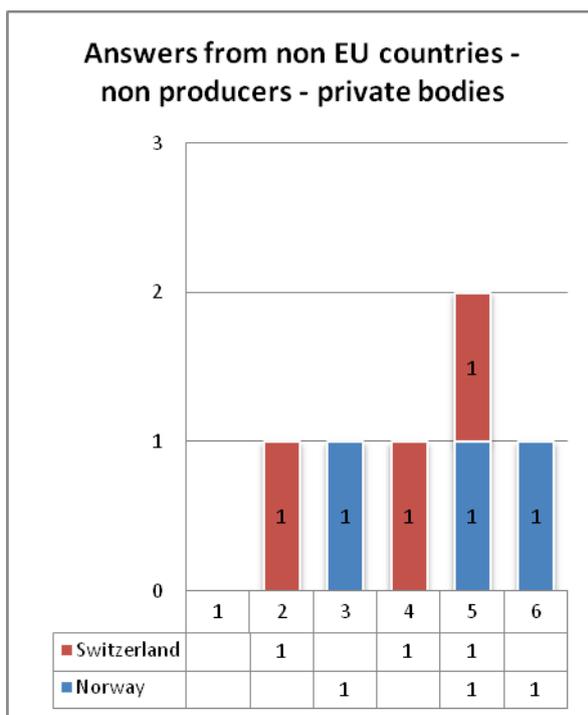
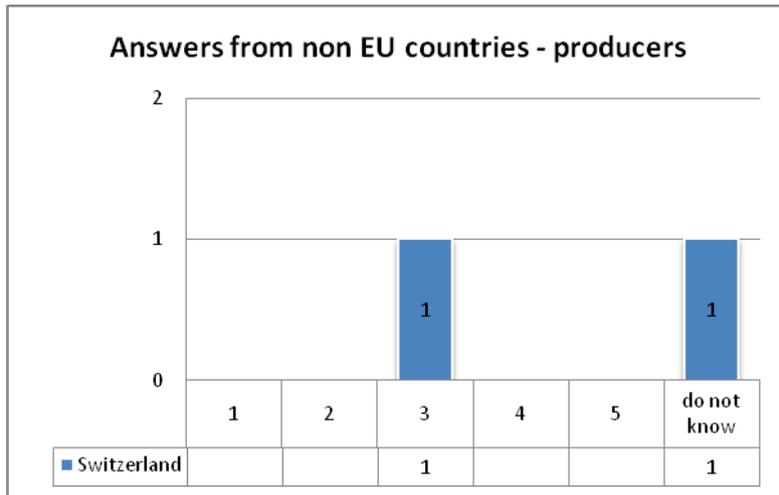
Option n°4: It could inform on the specificities of the new GI scheme and promote it





According to most respondents, even without taking into consideration the Spanish answers, public bodies after registration could also inform on the specificities of the new GI scheme and promote it.

Some public bodies, totally disagree with this, especially in Spain.



All non EU public bodies which answered agree that public bodies after registration could also inform on the specificities of the new GI scheme and promote it, whereas the majority of private bodies agree with it.

However, Swiss producers' answers are neutral on the question.

Option n°5: other (please specify)

The respondents had the possibility to add comments on the role of public bodies after registration if they wanted to. Please note that they also rated their proposal on a scale of “1” to 5, 1 not being important, “5” being extremely important.

Two EU producers added comments:

- Public bodies should be competent to provide funds for promotion (Italian producer - rate: 5).
- Public bodies should make arrangements with authorities of other EU Member States and third countries in order to reduce frauds (Portuguese producer - rate: 5).

Two EU private bodies also added comments:

- The role of public bodies after registration should be the regular update of specifications, the identification of new GIs or the cancellation of GIs which no longer fulfil the quality criteria (one French private body).
- Public bodies should make arrangements with authorities of other EU Member States and third countries in order to reduce frauds (the Portuguese private body - rate: 5).

The UK public body answered that trading standards, as part of the local authority, would be in a position to enforce elements of the protection, but on issues such as quality it would not be and so a third part might be necessary (rate: 3).

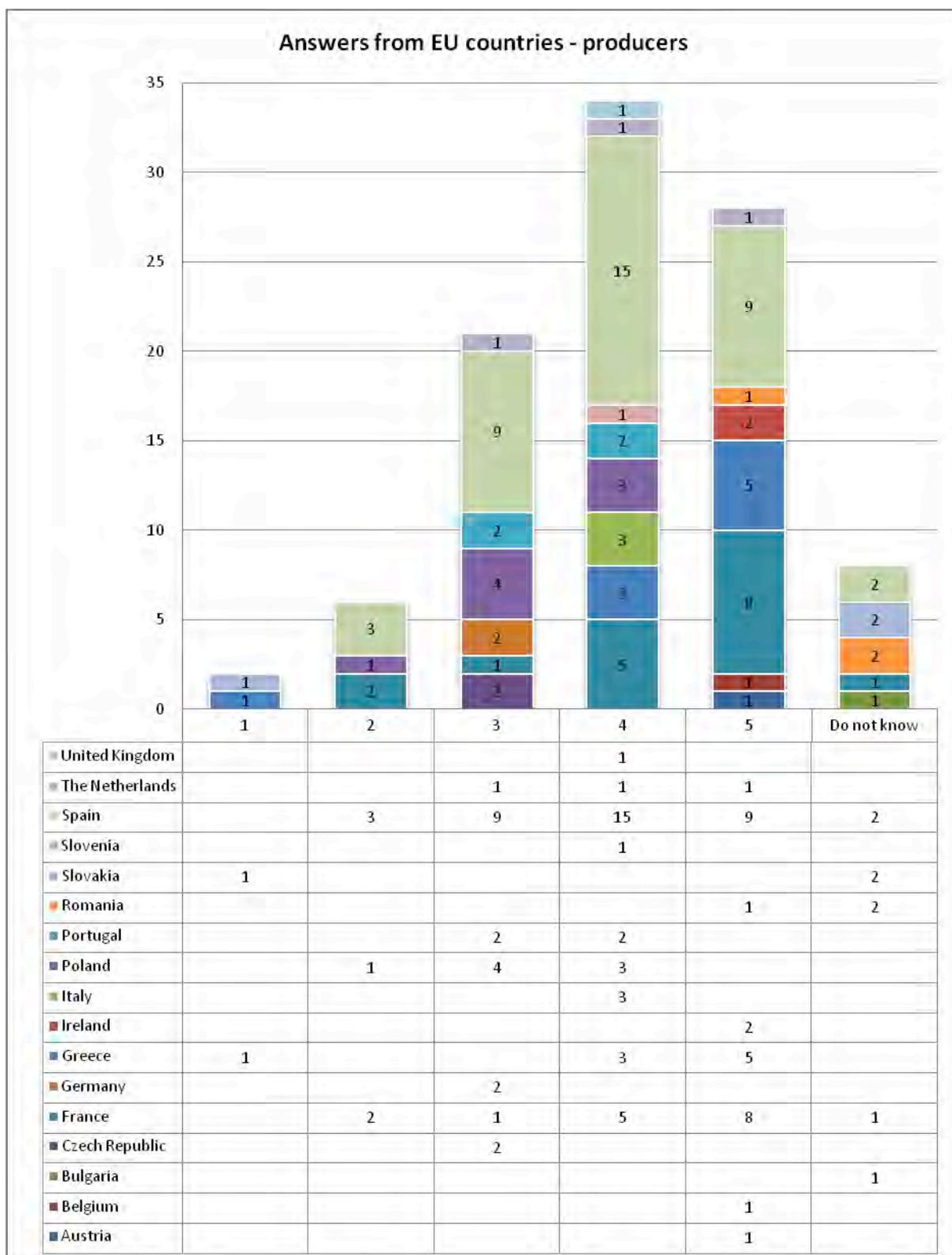
A Swiss private body indicated that one of the competences of public bodies after registration should be to deal with usurpations and counterfeits (rate: 5).

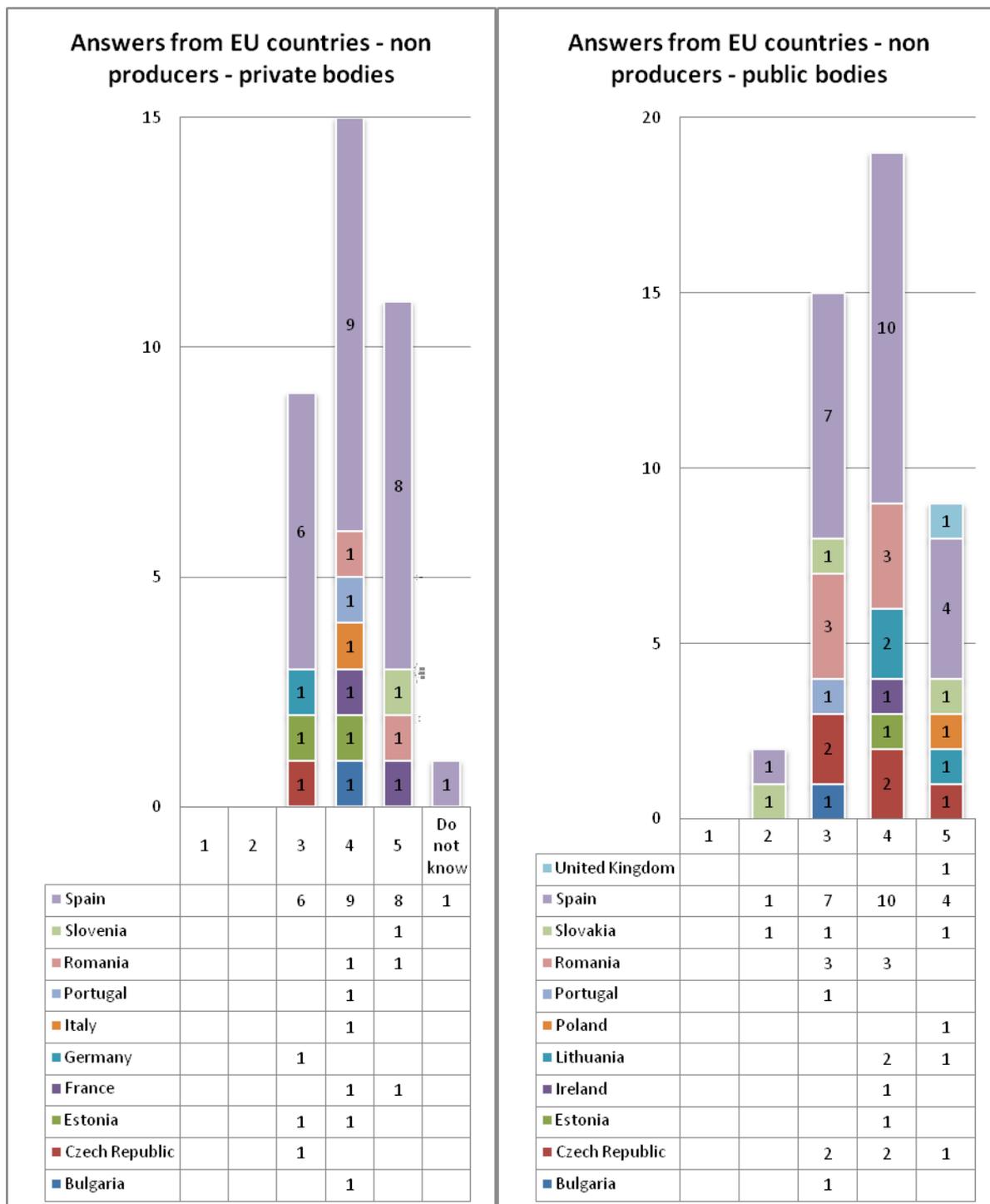
One Icelandic public body indicated that the public body should be allowed to permit amendment of specifications on request of third parties having a legitimate interest in the light of technological progress and cancellation of a GI or designation of origin for a product, in particular if this product ceases to conform to the specification on the basis of which the geographical indication or designation of origin was granted, cf. preamble of the Regulation (EC) No 510/2006 (15) (rate: 5).

Economic effects

What could be the economic effects of the introduction of an EU wide protection of geographical indications for non-agricultural products?

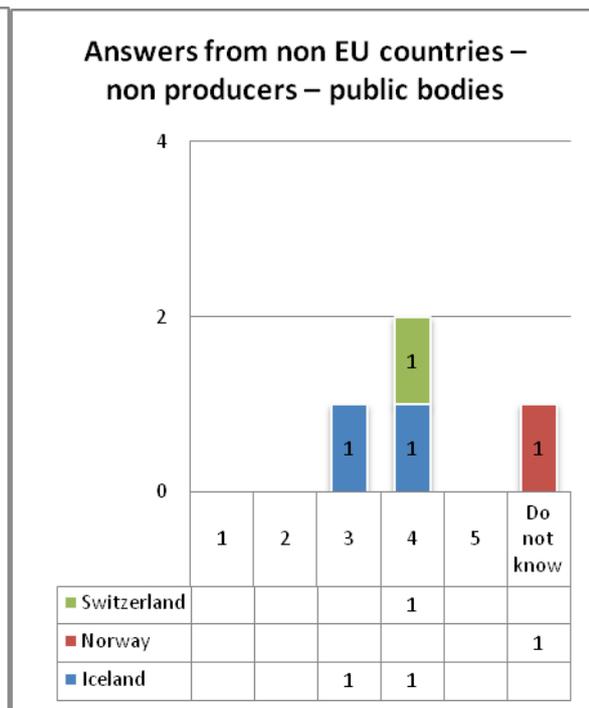
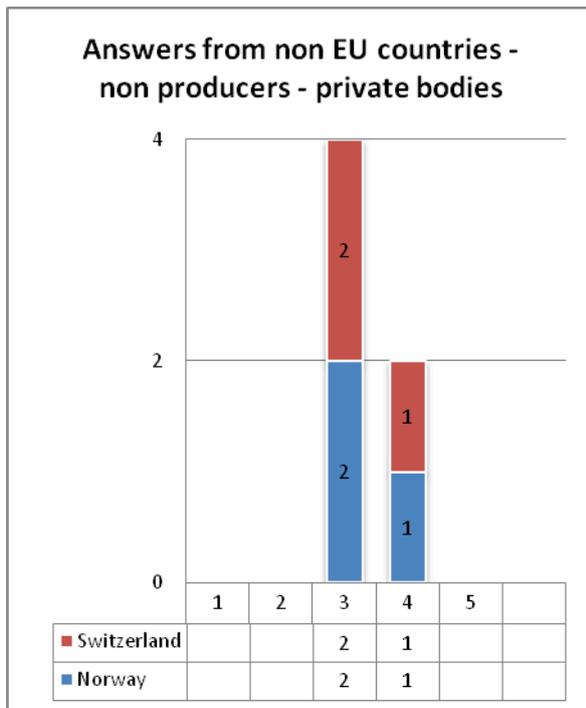
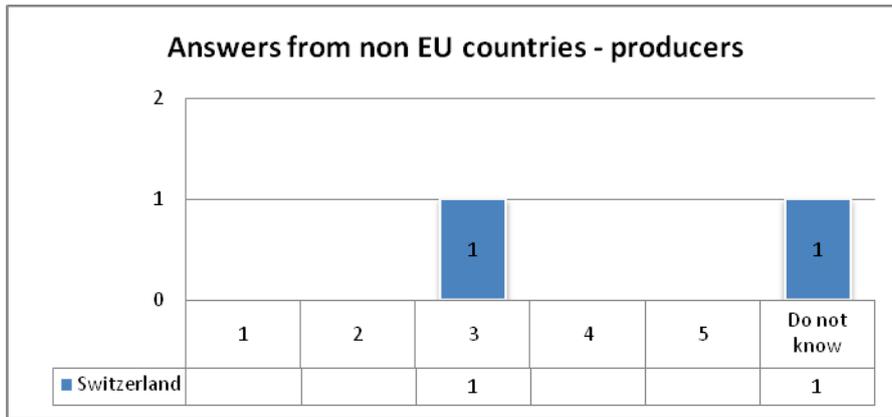
Option n°1: An impact on the sales volume





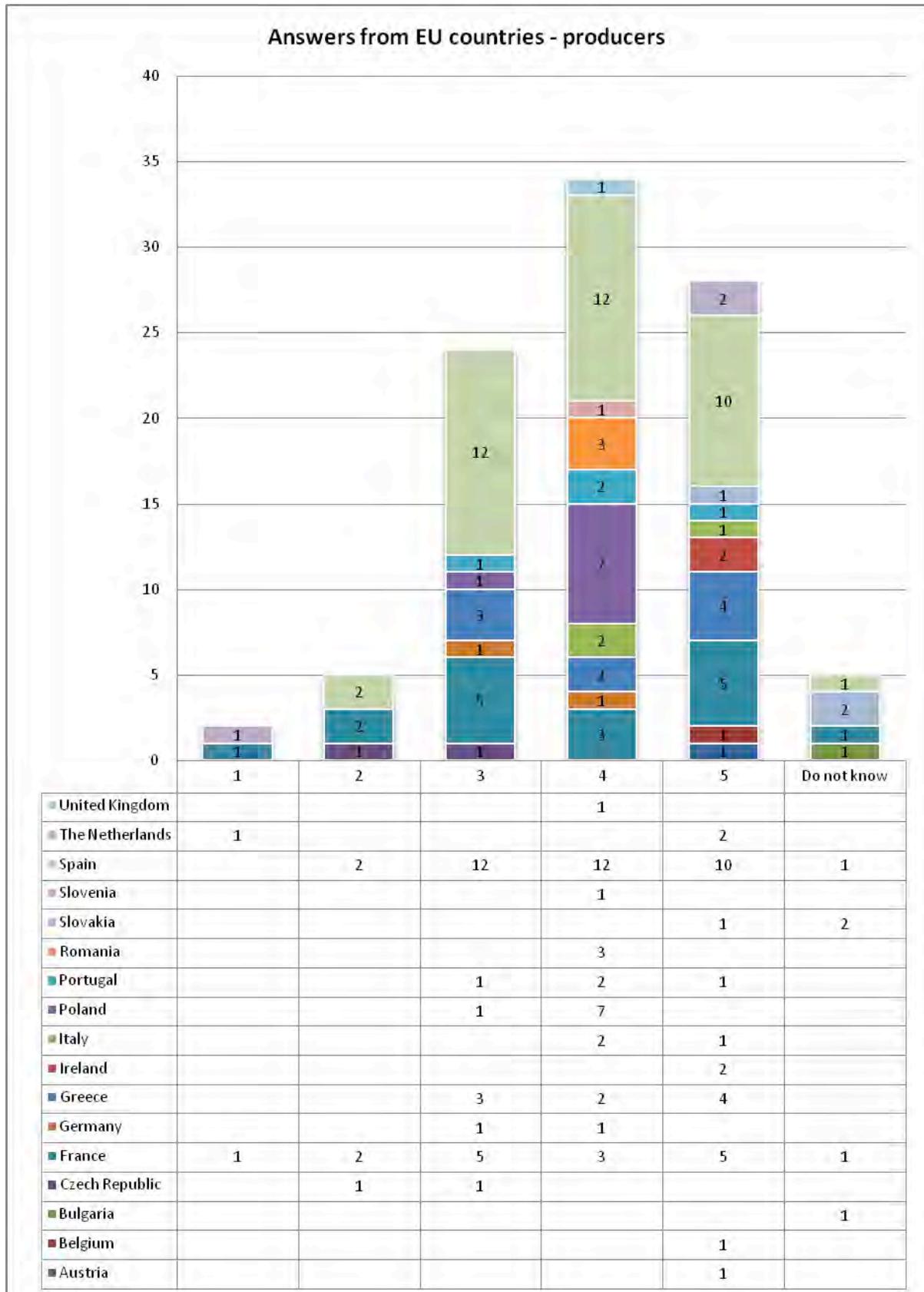
Almost all respondents which are non producers think that one of the economic effects of the introduction of an EU wide protection of geographical indications for non-agricultural products would be an impact on the sales volume. However, if the majority of respondents which are producers agree with this affirmation, some notably in Spain believe it will not have an impact on the sales volume.

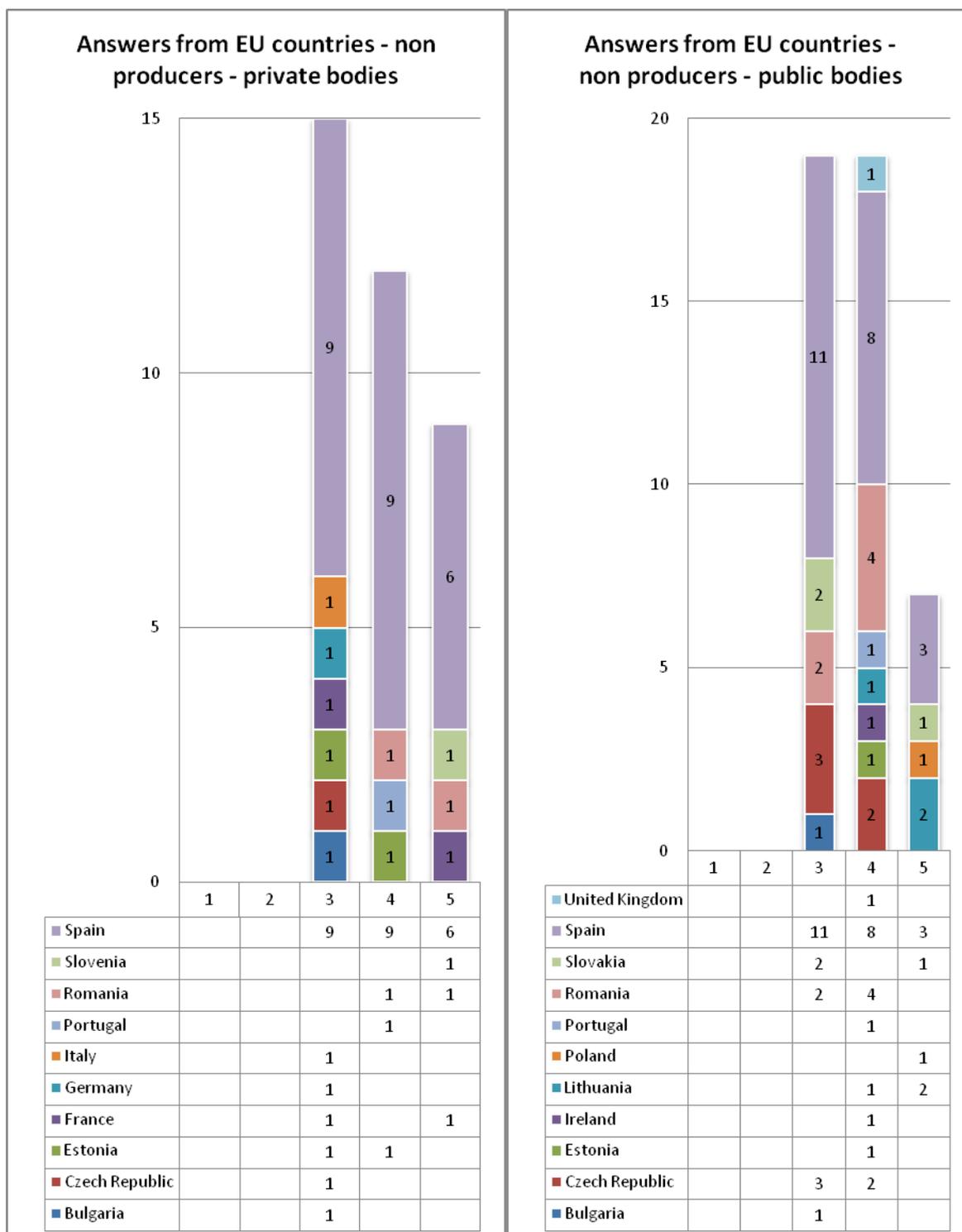
Even without taking into account the Spanish answers, the outcome of the survey on this question is not modified.



Respondents which are producers and private bodies from outside the EU are rather neutral on the subject, whereas respondent which are public bodies believe it would have an impact on the sales volume.

Option n°2: A positive impact on the price of the product from a producer's point of view

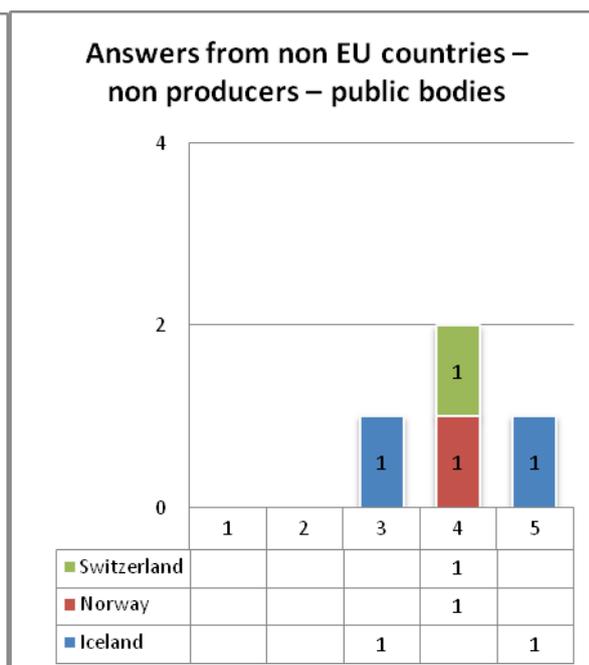
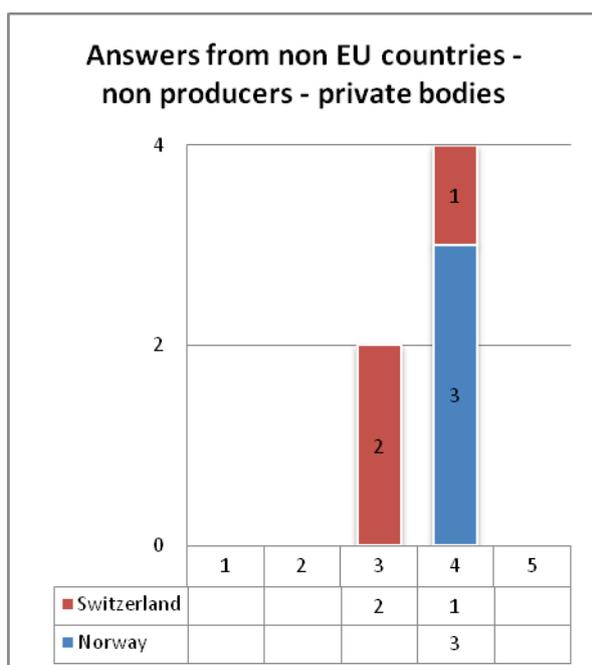
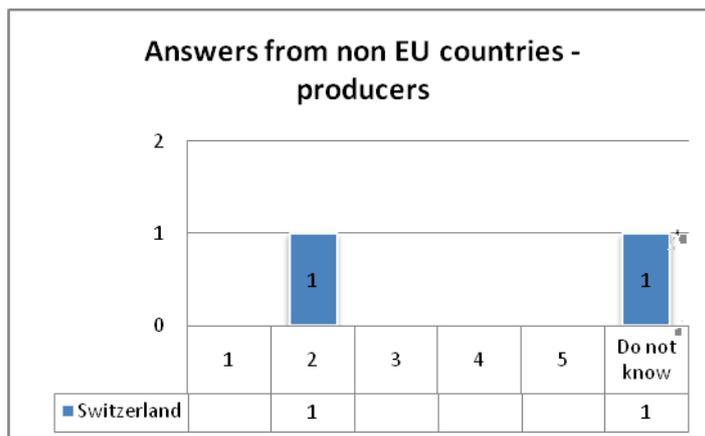




The majority of the respondents, even without considering the Spanish answers, believe that the new scheme would have a positive impact on the price of the product from a producer's point of view.

Without the Spanish answers, the responses of the private bodies are rather neutral as 6 answered "3", 3 chose "4" and 3 answered "5".

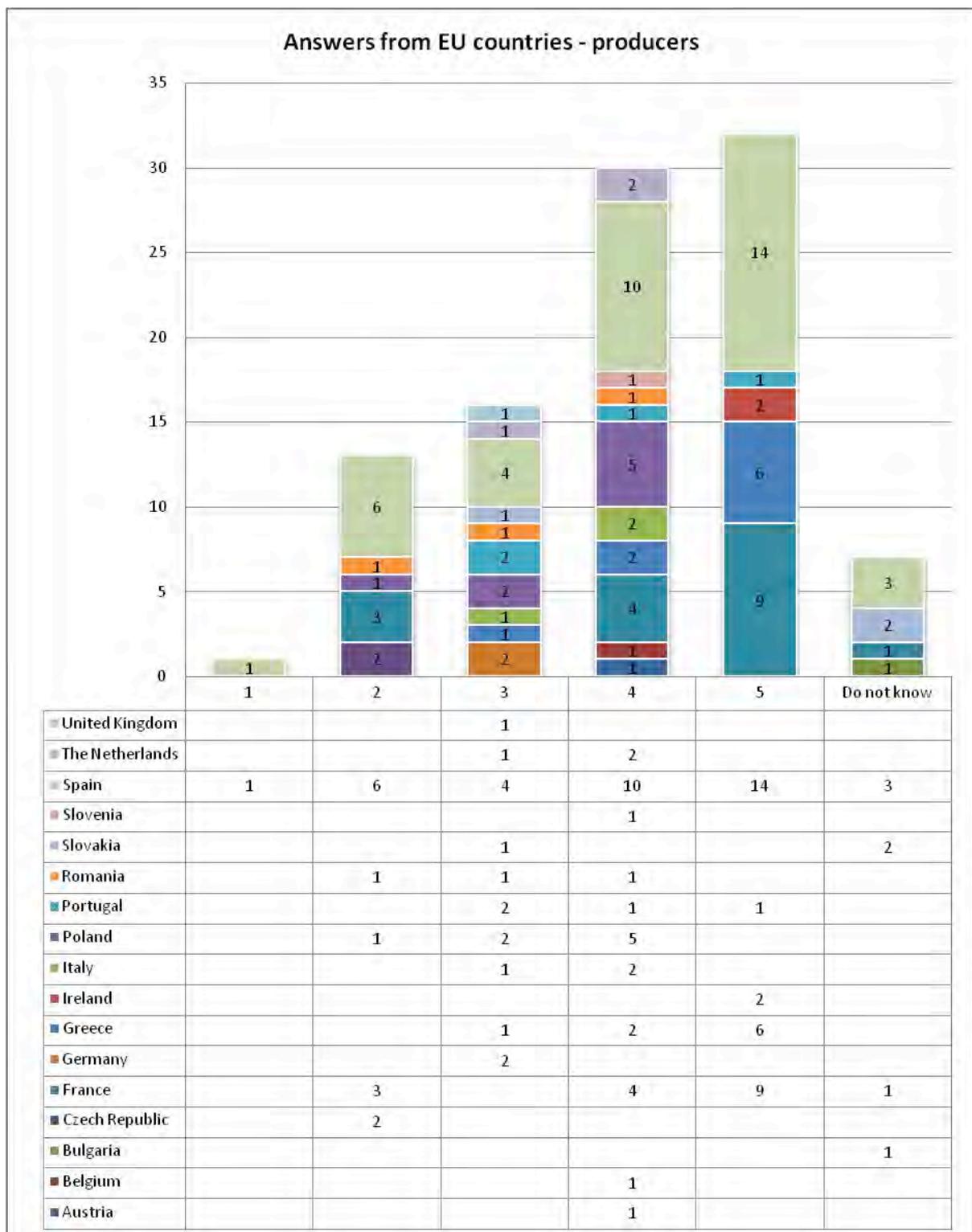
It has to be noted that a large amount of respondents are neutral on the subject: 24 producers answered "3" and 5 "do not know", 15 private bodies answered "3" and 8 "do not know", and 19 public bodies answered "3" and 7 "do not know".



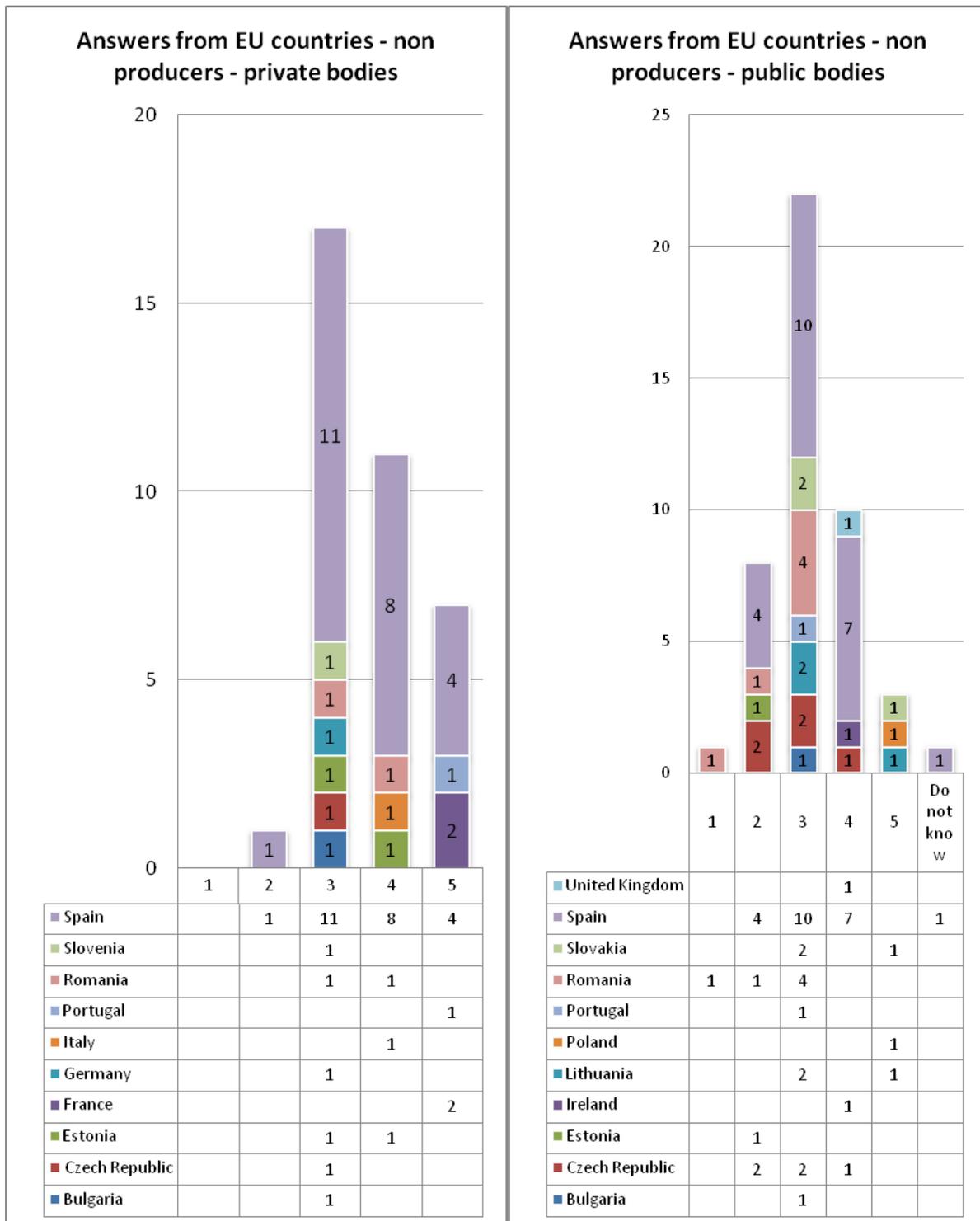
Swiss producers, which answered to the survey, do not think that the new scheme would have a positive impact on the price of the product from a producer's point of view.

On the other hand, respondents which are non producers from outside the EU believe in such a positive impact on the price of the product from a producer's point of view.

Option n°3: An impact on employment



Most respondents which are producers believe that this new scheme would have an impact on employment, but quite a high number of them (14), mostly Spanish, Polish and Czech producers, are not very confident in this (rate “1” or “2”) or are neutral (23 chose “3” or “do not know”). Without taking into consideration the Spanish answers, the answers of the producers show that they believe that this new scheme would have an impact on employment (38 out of 68 chose “4” or “5”).

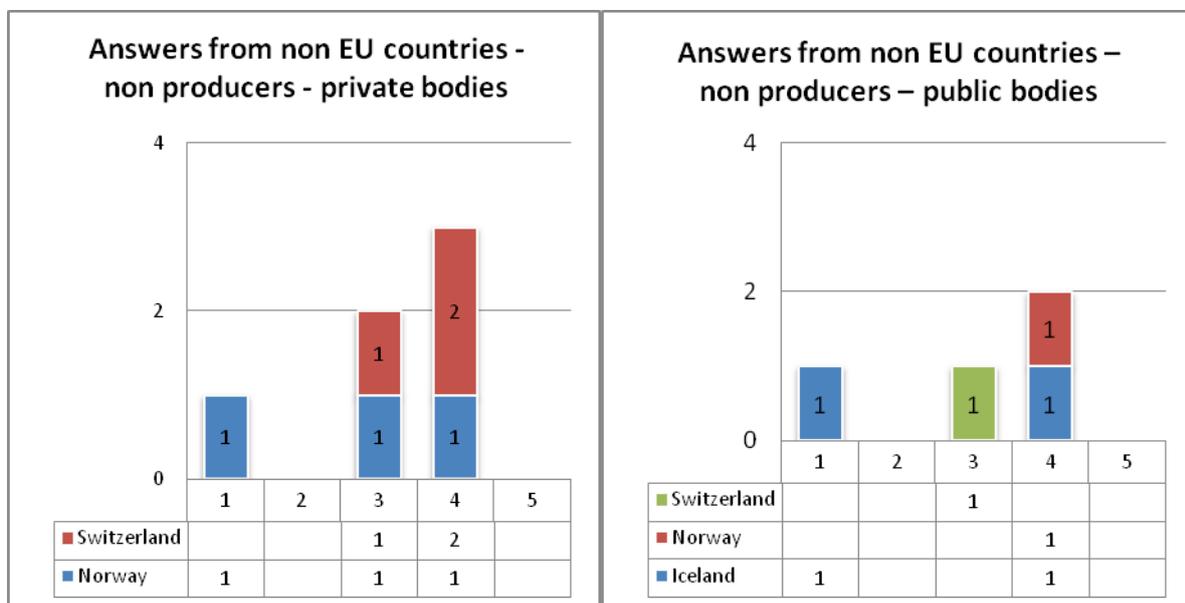
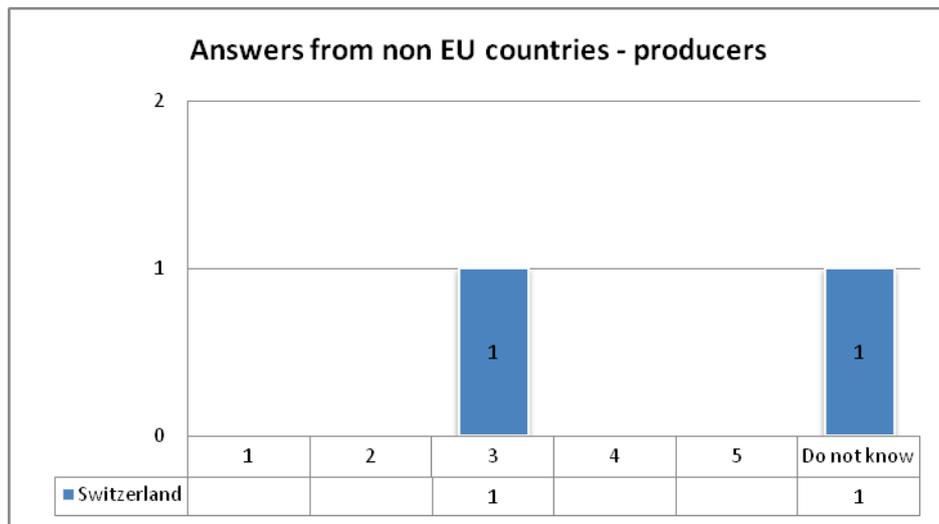


Responses of private bodies show that the majority of them (18) believe it would have a positive impact on employment, and only one of them disagrees with this statement. Once again, the number of private bodies which have a neutral point of view is very high (17).

Without the Spanish answers, the responses of private bodies are neutral on the question as 6 answered “3”, and as many chose “4” or “5” (3 chose “4” and 3 answered “5”).

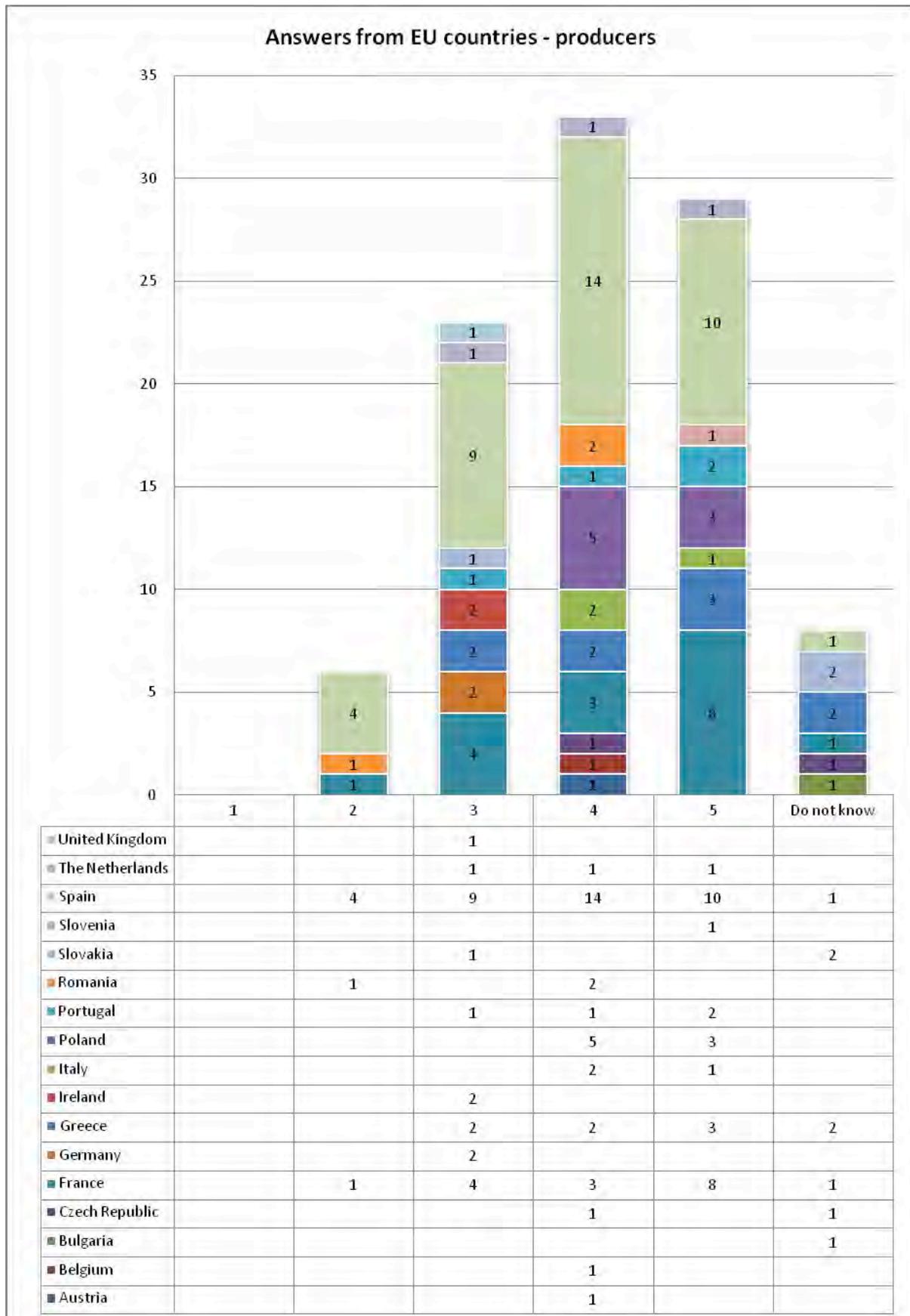
A majority cannot be found in the public bodies’ answers as, even without taking into account the Spanish answers, they mostly seem neutral on the question (22).

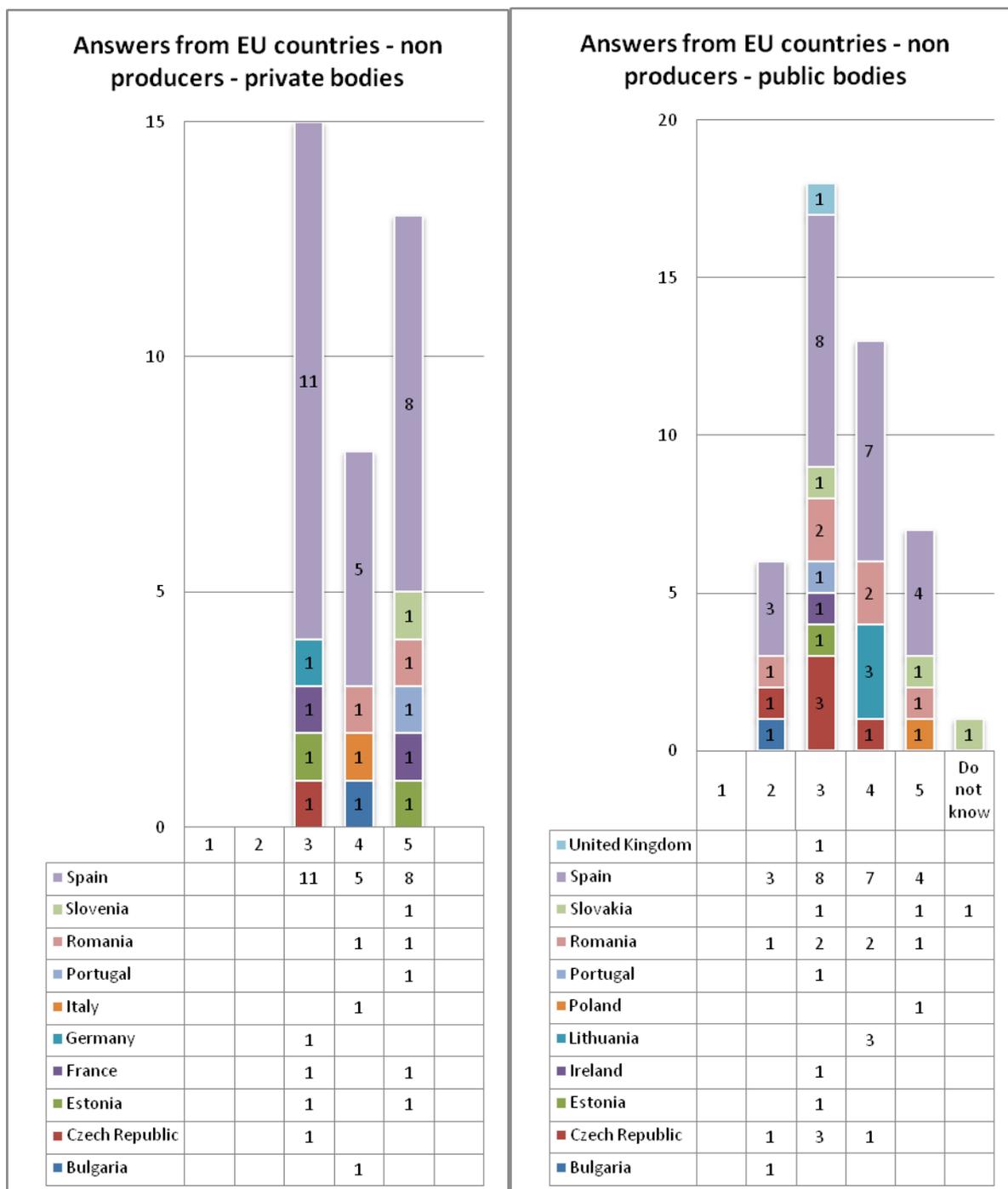
This issue is thus one of the most difficult ones as respondents seem to have an unclear opinion on the question.



There is no majority on this point: 5 non EU respondents are neutral on the matter (“3” of “do not know”) but 5 non producers, which answered, believe it would have a positive impact on employment.

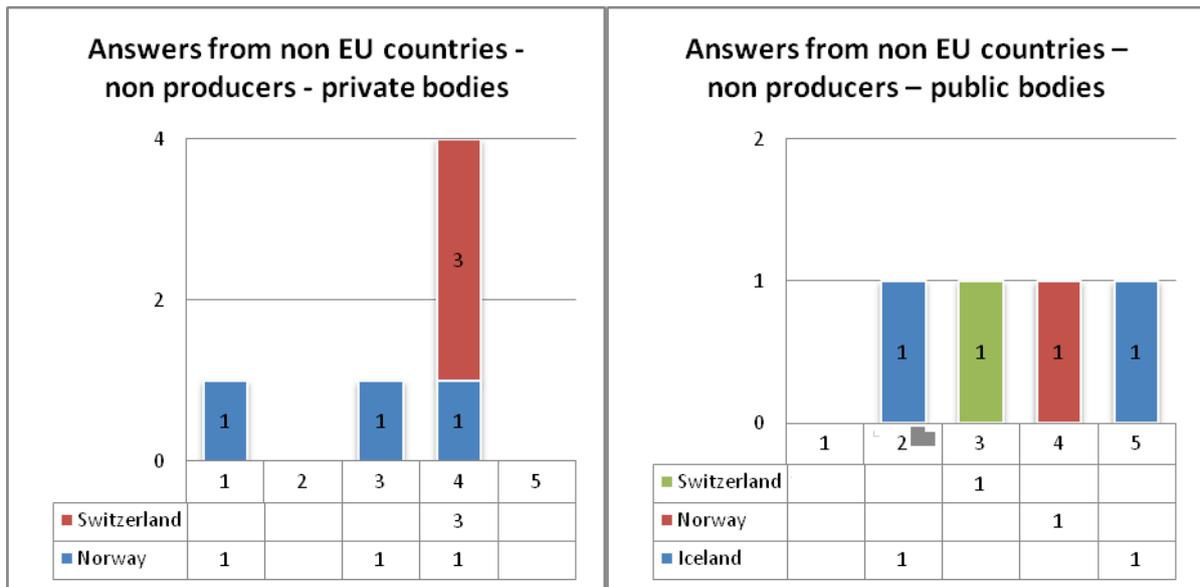
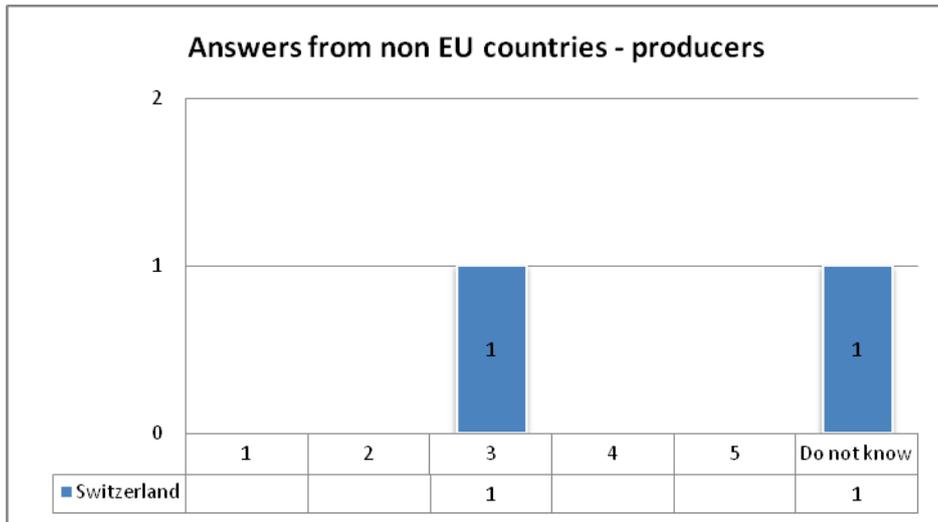
Option n°4: An impact on promotion costs





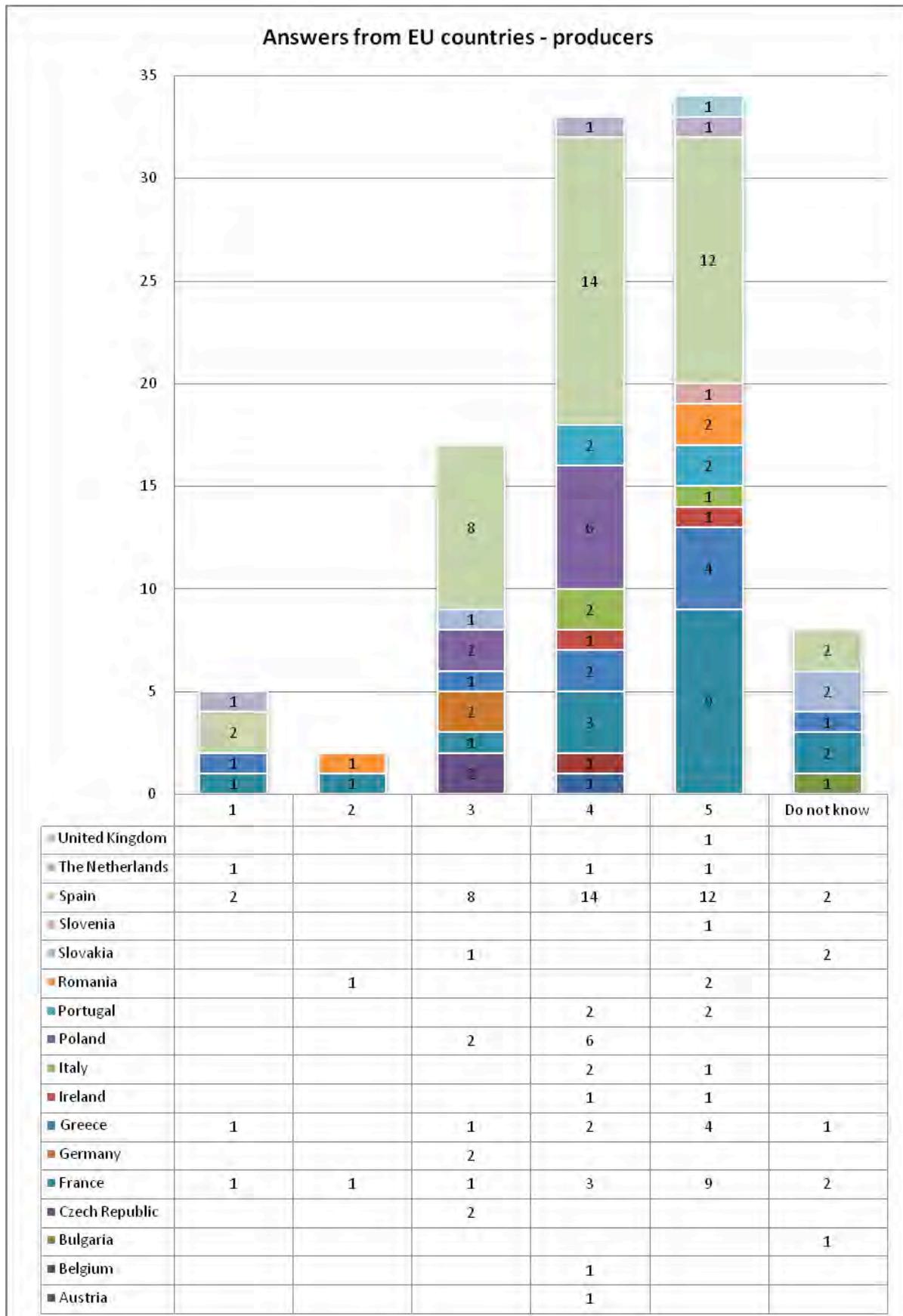
Most EU respondents believe the new scheme will have a positive impact on promotion costs. However, it is interesting to note that, once again, a high number of respondents are neutral on the issue (“3” or “do not know”): 31 producers, 15 private bodies and 19 public bodies.

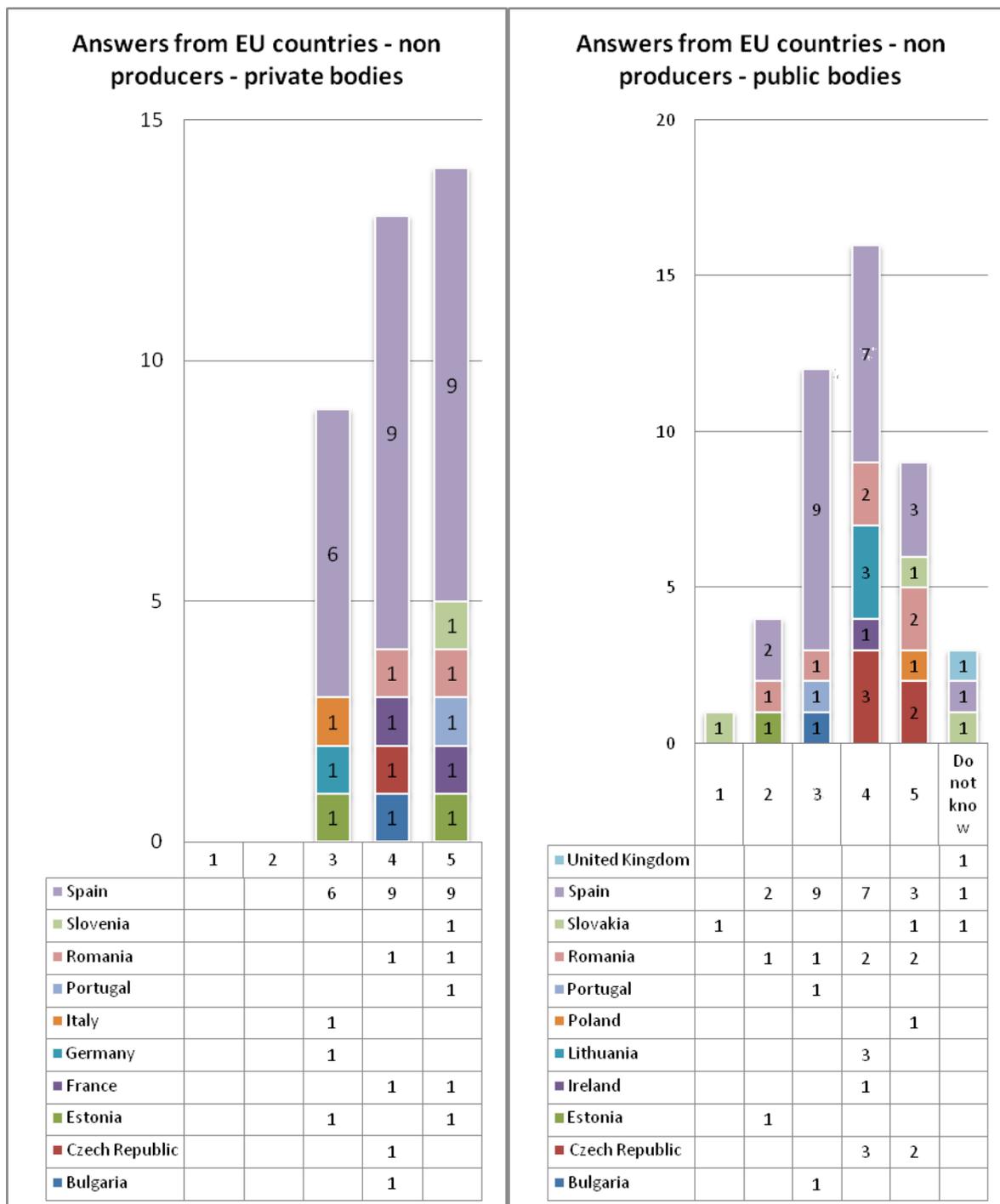
Even without considering the Spanish answers, the results show that most EU respondents believe the new scheme will have a positive impact on promotion costs (e.g. ability to make use of a common logo).



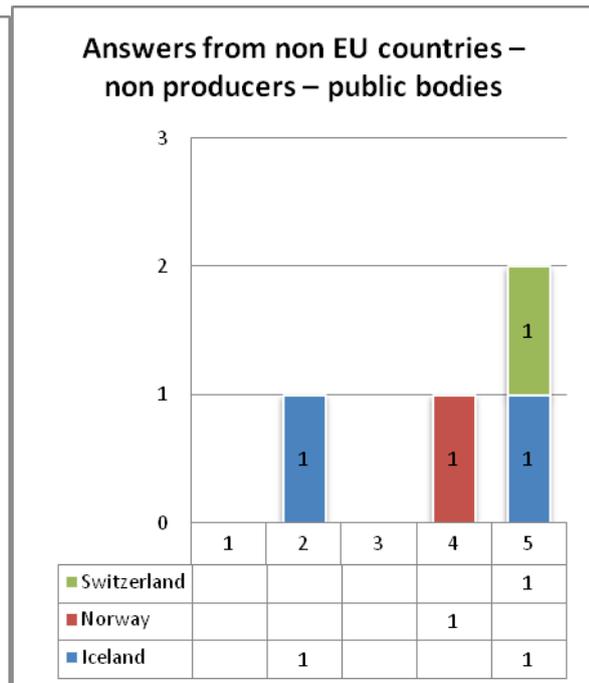
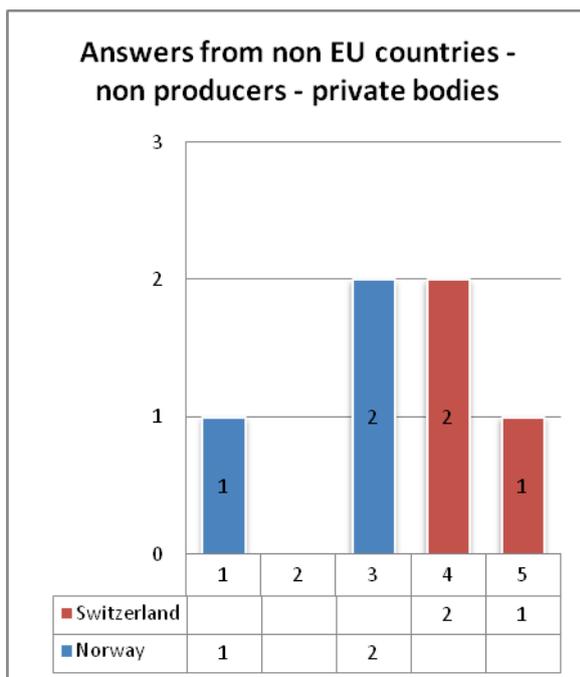
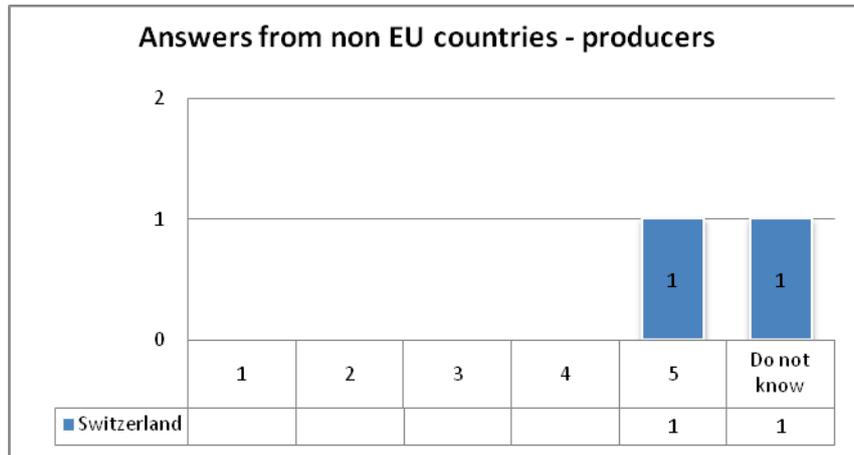
The analysis of the answers received to this question shows that a majority of non producers believe it will have a positive impact on promotion costs, while Swiss producers are neutral on the question.

Option n°5: An impact on protection costs





Most respondents, even without taking into account the Spanish answers, believe a new scheme would have an impact on protection costs (i.e. that it could reduce the costs for protection as it would be done under a “collective banner”).



Most non EU respondents believe a new scheme would have an impact on protection costs.

Option n°6: other (please specify)

The respondents had the possibility to add comments on the economic effects if they wanted to. Please note that they also rated their proposal on a scale of 1 to 5, 1 not being important, 5 being extremely important.

Two EU producers added further comments:

- It will have an impact on the survival of the EU cultural patrimony and heritage (Portuguese producer - rate: 4).
- It will have an impact on the protection of the products heritage (Irish producer - rate: 5).
- It will have an impact on quality and protection of European know-how (French producer - rate: 5).

EU private bodies also provided other comments:

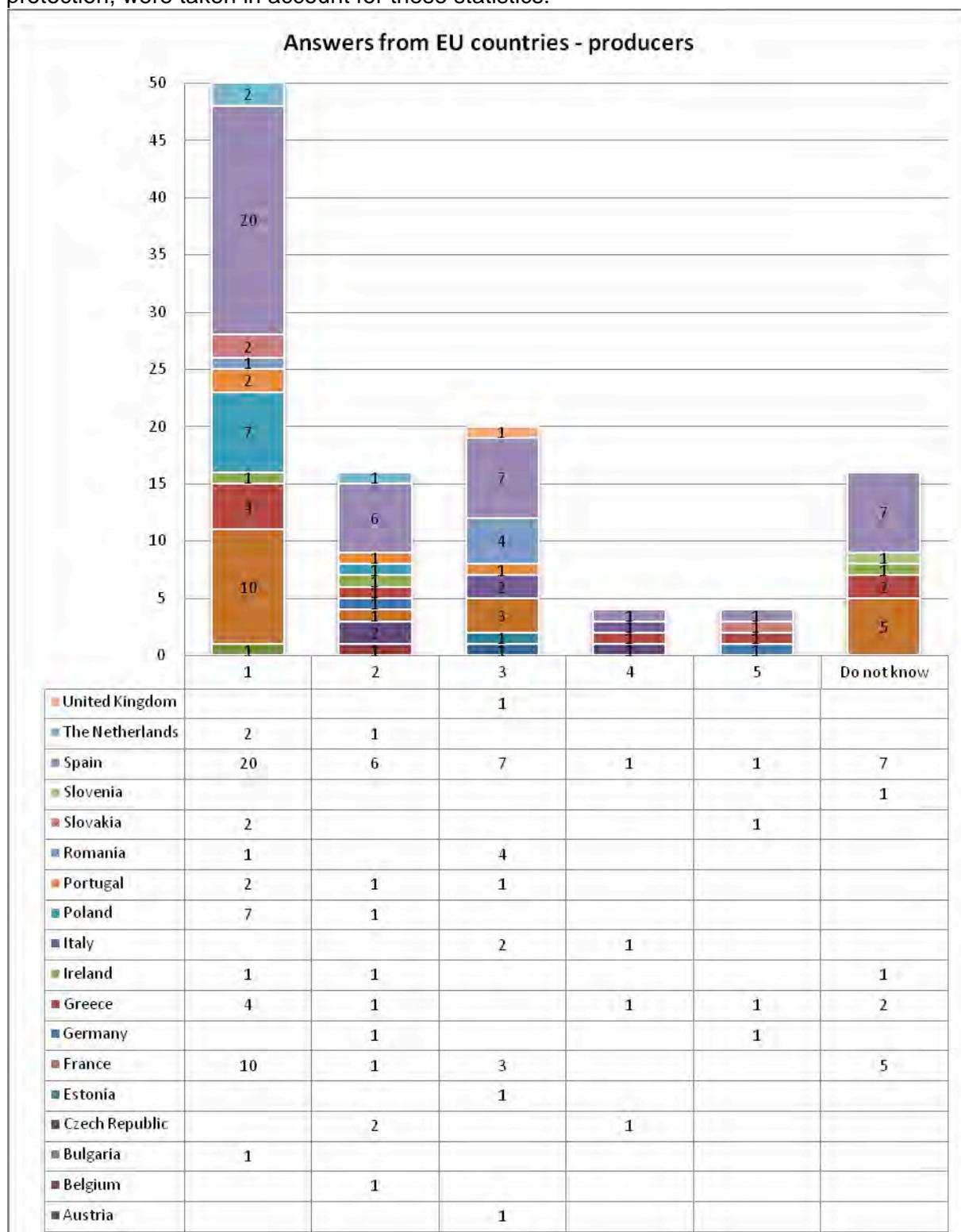
- One of the economic effects could be a better access to funds for producers, a higher attractiveness for investors and it could also have an impact on distribution channels in some sectors (French private body - rate: 5).
- It will have an impact on the survival of the EU cultural patrimony and heritage (Portuguese private body - rate: 4).
- It will have a positive impact on the differentiation of products (Spanish private body - rate: 5).

The Polish public body added that one of the economic effects could be negative impact on the price of the product from a consumers' point of view (rate: 5).

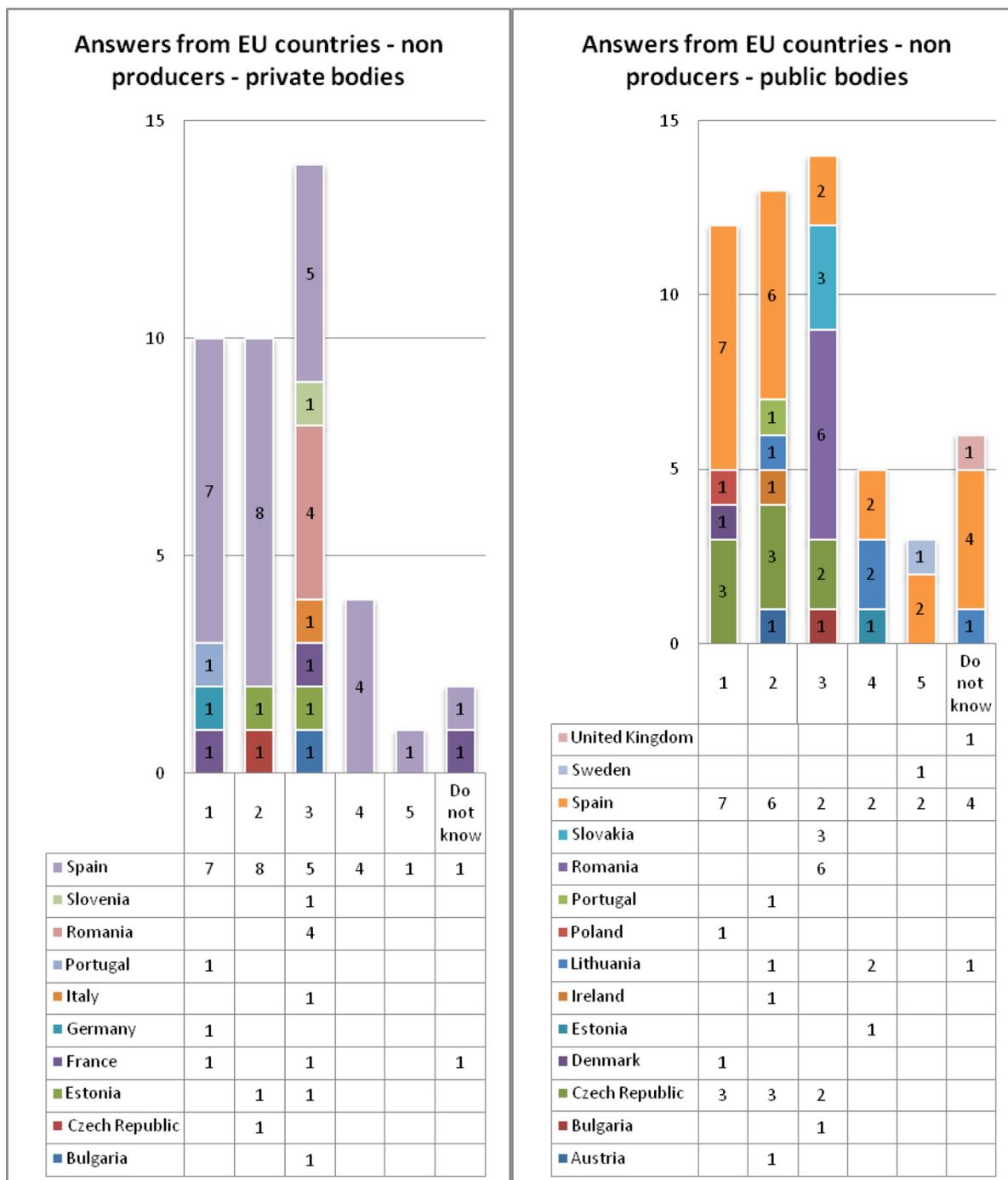
International legal protection

On a scale of 1 to 5, how would you rate the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the International level (i.e. beyond the EU borders)?

The answers of all respondents, irrespective of their will to have or not a new system of protection, were taken in account for these statistics.



The answers to this question show that most EU producers, even without considering the Spanish answers, are dissatisfied with the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the International level.



The answers to this question show that most non producers are rather dissatisfied of the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the International level. However, a high number of non producers are neutral on the issue (14 private bodies and 14 public bodies).

Without the Spanish answers, non producers' answers show that they are neutral on the question (answer "3" or "do not know"): 10 private bodies out of 15 and 14 public bodies out of 30. The other answers from these non producers show that they are rather dissatisfied.

Respondents had the possibility to explain this evaluation, in particular the strengths and weaknesses of the existing means of protection.

You will find below an overview of these comments classified by subjects. Comments are divided into two groups: comments from producers coming from EU Member States which have a *sui generis* GI legislation (Belgium, Bulgaria, the Czech Republic, Estonia, France, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain) and the others.

Comments of respondent EU producers from Member States with a *sui generis* legislation:

Main comments:

- Strengths: the reinforcement of the protection at the European level would allow the protection and the promotion of know-how in the European Union (one French producer).
- Weaknesses:
 - The fact that producers have no knowledge about programs which would protect non-agricultural products (two French producers, five Polish producers, all five Romanian producers & one Slovenian producer).
 - There is currently no protection at the international level (one French producer & three Polish producers).
 - The main problem is the low awareness of protection at the international level. Its advantages are not so evident. More resources should be invested in raising awareness, the system should not be too expensive and enforcement should be possible (one Estonian producer).
 - The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO) provides few constraining mechanisms. At the national level, legal frameworks have been created without heterogeneity which makes it difficult to enforce the protection (one French producer).
 - There are too many counterfeits which make it difficult to assert that there really is a protection system at the international level (one French producer).
 - There is a need for a better protection against misuses from third countries (one German producer).
 - At the international level, protection, if provided, is different from country to country. Registration requires different documents, depending on the law of each country. Furthermore, it is almost impossible to register a GI in all countries and promotion costs are very high (one Portuguese producer).

Comments were made on the *sui generis* protection at the international level, that is to say the protection under the Lisbon Agreement:

- Strengths: the possibility of protection by one single application in several countries (one Slovakian producer).
- Weaknesses:
 - The limited number of Contracting Parties (one Slovakian producer).
 - Producers feel that the Lisbon agreement does not constitute an efficient means of protection against abuses (one Portuguese producer).

Comments were made on the use of the trade mark regimes at the international level:

- Strengths:
 - The protection by the trade mark prevents potential competitors to use the same mark in Europe, where there were some attempts by Chinese companies (one Czech producer).

- There is the possibility to register an EU collective trade mark (one French producer).
- Weaknesses:
 - The EU collective trade mark is today the only way to protect a local production in a collective manner. When traditional products become notorious, they are subject to numerous counterfeits, which threaten the consumers and local employment (one French producer).
 - Collective marks protect a name or a designation but do not give a strong legal protection (one French producer).
 - Producers must register their GI as a trademark or as a collective trademark and this is very expensive as it must be done country by country (one Portuguese producer).

Comments of respondent EU producers from Member States with no *sui generis* legislation:

Main comments:

- Weaknesses:
 - There is a very limited list of products which are protected worldwide (one Irish producer).
 - The fact that producers have no knowledge about programs which would protect non-agricultural products (four Greek producers).

Comments were made on the trade mark regimes:

- Strengths: at the moment, the only system available to protect names of non-agricultural products comprising a geographical indication or a potential geographical indication at the international level is the trademark regime. Producers can apply for an international trademark registration at the World Intellectual Property Organization (WIPO), by filing a single application and indicating countries in which they seek protection (“Madrid System”). Another option (much more costly) is the trade mark registration at IP offices of countries of interest (two Italian producers).
- Weaknesses: the same problems as the ones existing with the national and community trade mark systems (registration costs, renewal and opposition, lack of a public role in the enforcement) are present at international level (two Italian producers).

Comments from respondent EU private bodies from Member States with a *sui generis* legislation:

Main comments:

- Strengths: the possibility exists, under WTO law, to protect non-agricultural products (one French private body).
- Weaknesses:
 - The fact that the respondent does not know the existing levels of protection at the international level (one French private body & all the four Romanian private bodies).
 - There is currently no protection at the international level (one Estonian private body).
 - The international protection is fragmented and insufficient. For entrepreneurs it is very complicated to claim their rights and to take part in legal proceedings (Czech private body).
 - The system is complicated (one French private body).
 - Protection, if provided, is different from country to country. Registration requires different documents, depending on the law of each country.

Furthermore, it is almost impossible to register a GI in all countries and promotion costs are very high (Portuguese private body).

Comments on the sui generis protection at the international level, that is to say the protection under the Lisbon Agreement:

- Strengths: it facilitates the protection of a GI by means of their registration with WIPO through a single procedure: minimum formalities and expenses (one Bulgarian producer).
- Weaknesses: there is a limited number of Contracting Parties (one Bulgarian producer)

Comments from respondent EU public bodies from Member States with a sui generis legislation:

Main comments:

- Strengths: there is a wide choice of protection systems (one Polish public body).
- Weaknesses:
 - The fact that the respondent does not know the existing levels of protection at the international level (six Romanian public bodies).
 - The difficulty to understand the existing level of protection (one Slovakian public body).
 - Information is not available in Czech or is difficult to find, and should be better accessible (one Czech public body).
 - There is still space to improve existing systems of protection (one Czech public body).
 - The existence of multiple protection systems and the difficulties in determining the correlation between different systems of protection for non-agricultural GI products (one Polish public body & one Czech public body).

Comments on the sui generis protection at the international level, that is to say the protection under the Lisbon Agreement:

- Strengths:
 - Appellations of Origin can be effectively protected against any appropriation in a certain number of countries, other than the country of origin. Moreover, the Agreement facilitates the protection of a GI through a single registration at WIPO: minimum formalities and expenses (one Bulgarian public body).
 - The single registration procedure (one Estonian public body⁹⁰).
 - It provides a relatively high level of protection (one Czech public body).
- Weaknesses:
 - The limited number of Contracting Parties (one Bulgarian public body & one Czech public body), and the fact that only 7 Member States of the EU are parties to it (one Czech public body).
 - It does not answer the needs of existing and potential GI users (one Bulgarian public body).

Comments were made on the trade mark regimes:

- Strengths: the name of non-agricultural products can be protected under the Madrid agreement as a collective trademarks and/or certification marks (one Estonian public body⁹¹).
- Weaknesses: it is quite complicated, costly or even impossible to gain the protection for GIs in countries which are not contracting parties to the Lisbon Agreement. Many Countries do not have a national system of registration of GIs and the protection is

⁹⁰ This is not an official answer from the Estonian public body.
⁹¹ Idem.

possible only through the trademark registration or through the application of the legislation on the protection against unfair competition (one Czech public body).

Comments from respondent EU public bodies from Member States with no *sui generis* legislation:

Main comments:

- In general, Sweden opposes unnecessary regulations or administratively time-consuming regulatory processes (one Swedish public body).
- The inconvenient of existing international protection is that they are protracted application process (one Irish public body).

Comments on the *sui generis* protection at the international level, that is to say the protection under the Lisbon Agreement:

- Weaknesses:
 - Beyond TRIPS Agreement, they only know of the Lisbon Agreement, to which Austria is not a member (one Austrian public body).
 - The level of protection, what is protected, and where it is protected is completely not transparent, just as it is not transparent how non-EU GIs are protected within the EU. A number of bilateral agreements have been concluded with non-EU countries, and they all seem to describe different levels of protection for the GIs covered by the agreements. Furthermore, it is not transparent on what basis protection in the EU of new non-EU GIs is accepted and by whom (one Danish public body).
 - No real benefits are envisaged from the introduction of a system of protection of non-agricultural GIs (one Irish public body).

Comments were made on the trade mark regimes:

- Strengths: trade mark protection is much more effective, cost efficient and known than protection of non-agricultural GIs (one Irish public body).

General conclusions of the EU responses:

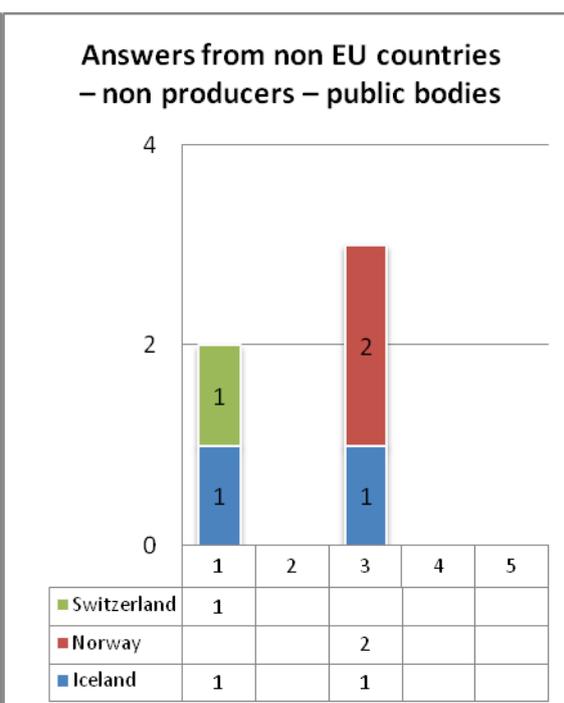
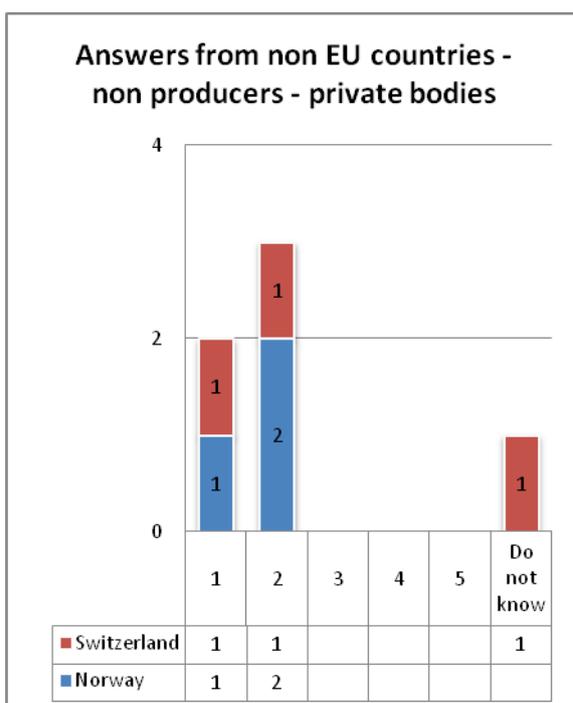
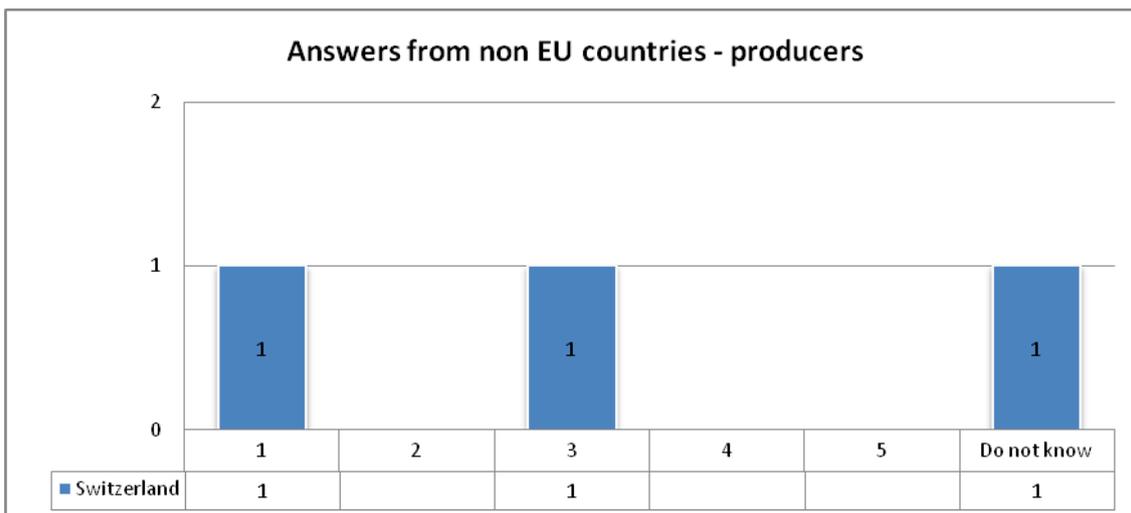
We can see that EU producers lack knowledge when it comes to the international level of protection, as many of them said that there is no international protection or that they had no information on it. One EU producer even highlighted that it is not possible to register GIs in some third countries. Those who know the Madrid Agreement or the TRIPS Agreement are dissatisfied by their scope of protection. They assess the trade mark protection as costly, time consuming and not efficient, as public authorities do not intervene in the enforcement of the right. The WTO protection is seen as not very constraining. The weaknesses of the Lisbon Agreement are that it does not protect the products well enough and that its' membership is limited; while its' advantage is that one application provides for the registration in all the Contracting Parties states.

EU private bodies assessed the international protection as fragmented and/or insufficient, even inexistent. One of them highlighted that it is not possible to register GIs in some third countries. The Lisbon Agreement is said to facilitate the protection of a GI by means of their registration through a single procedure, for minimum formalities and expenses. However, private bodies also regret the limited number of Contracting Parties. The TRIPS Agreement is praised for its possibility to protect non-agricultural products.

EU public bodies are aware of the existence of the TRIPS Agreement, the Madrid Agreement and the Lisbon Agreement, but deplore the lack of homogeneity of the level of protection. The limited number of Contracting Parties of the Lisbon Agreement was also mentioned several times; one public body said that out of the 27 members of the Agreement only 7 are EU Member States. One respondent even explained that it does not answer the needs of existing and potential GI users. For them, the advantages of the Lisbon Agreement are to facilitate the protection of a GI by means of their registration through a single procedure, for minimum of formalities and expenses and to provide a relatively high level of protection. In the countries which are not parties of the Lisbon Agreement, the system appears quite complicated, costly or even unable to provide protection for GIs. A public body stated that the inconvenient of existing international protection is that they contain protracted application processes.

The international level of protection was qualified as "non transparent" by one public body, which highlighted that a number of bilateral agreements have been concluded between the EU non-EU countries which contain different levels of protection for the GIs. One respondent also highlighted that the trade mark protection is much more effective, cost efficient and known than the *sui generis* protection of non-agricultural GI. It also said that no real benefits are envisaged from the introduction of such a system. This point of view was shared by another public body.

In the EU, there seems to be a consensus on the need to improve the systems of protection of GIs at the international level.



Non EU respondents are either dissatisfied of the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the International level or are neutral on the issue (“3” or “do not know”).

Comments of producers:

A Swiss producer explained that problems exist especially in the USA and in Asia. The obligation for right holders to use the certification trademark scheme is not adequate (costly and time-consuming). The burden lies only on the right holders and the defence costs are important. Swiss GIs are often abused by foreign producers and companies and it is impossible for the right holders or their representatives to handle every single case.

Comments of private bodies:

A Norwegian private body said that it is, with partners from the tourism sector, at present in dialogue with the Norwegian Industrial Property Office about the need for better IPR

solutions for this area. It is an emerging need to manage and protect experience-concepts (not tangible), owned not by a single partner, but a group of companies within the tourism sector. Today solutions are not sufficient or suited for these needs. For example, it is not possible to claim the ownership of "the Atlantic coast", since many countries and continents can claim it. It is necessary to make combined protections: geography + slogan + design + patent + TM + name etc. This chain of protection is necessary to control and build viable, international brands, to secure investments and prevent plagiarism. It is not given that a geographical indication or a potential geographical indication is the way to solve the above need. A combination of improved IPR possibilities and geographical indication might be an alternative. The results should be tailored to the user's needs and be easy to understand and use. This is a critical factor for successful results. A second Norwegian private body answered that there is no international protection at the moment.

A Swiss private body wrote that problems exist especially in the USA and in Asia. The obligation for right holders to use the certification trade mark scheme is not adequate (costly and time-consuming). The burden lies only on the right holders and the defence costs are important. Swiss GIs, especially in the watch sector, are often abused by foreign producers and companies and it is impossible for the right holders or their representatives to handle every single case.

Comments of public bodies:

An Icelandic public body stated that the only protection provided at International level is under the WTO/TRIPS Agreement, which covers all kinds of products and does not distinguish agricultural products from non-agricultural products. The protection depends on the countries which are parties to the WTO and which have ratified the TRIPS Agreement and alterations thereto. Furthermore, trade marks have to be registered in each and every country for a protection to apply. The effects of protection under the TRIPS Agreement are therefore not as clear as they seem.

Another Icelandic public body said that it is clear that due to lack of legislation in this area it is not possible to indicate that a certain product is "original". An example in Iceland is handmade wool sweaters of Iceland that are being "copied" and produced in China. This has given rise to critics and is considered an unfair competition.

A Norwegian public body explained that the situation in Norway is that GIs are not one of the focused points of interest in our trade policy. However it notes that, in a number of international bilateral trade agreements, TRIPS-plus rules (i.e. rules that go beyond the level of protection afforded by the WTO TRIPS-agreement) concerning protection of indications of origin have been agreed. These sometimes include products other than agricultural products.

A Swiss public body said that there is no single regime for GIs at the international level and that the Lisbon system has a too limited membership.

General conclusions of the non-EU responses:

A Swiss producer explained that problems exist especially in the USA and in Asia, where the obligation to use the certification trade mark scheme is not adequate, as it is costly and time-consuming and the burden lies only on the right holders and the defence costs are important.

Private bodies either did not know of the international level of protection or found it dissatisfying. The same criticisms than the one given by the Swiss producer were formulated.

Public bodies noted that no uniform regime for GIs at the international level exists. They know of the TRIPS Agreement and the Lisbon system. They also think that the latter has a

too limited membership. The former covers agricultural products as well as non-agricultural products but the level of protection depends on the contracting parties. Some only propose trade marks. Finally one of them noted that, in a number of international bilateral trade agreements, TRIPs-plus rules have been agreed and sometimes cover products other than agricultural products.

We can thus conclude that the non EU respondents also feel that the international level of protection could be enhanced to better protect non-agricultural GIs.

General conclusions on the international protection:

Both in the EU and in the non EU countries covered by this survey, there is a consensus amongst the respondents on the need to improve the protection of GIs at the international level.

Other comments

The respondents had the possibility to add comments at the end of the survey. These comments are summarised below and classified by subjects.

Comments from EU producers:

General comments on the protection of non-agricultural GI products:

- The system of protection of GIs is not well understood. The awareness on the subject is low (one Estonian producer & one Dutch producer).
- Although he is in favour of an EU level of protection he is afraid that it will become bureaucratic and expensive for smaller companies. This is why he would prefer that the same cost apply in all EU countries (one Dutch producer).
- Some form of protection is imperative to maintain and grow the potential GI (one Irish producer).

Comments on *sui generis* protection systems:

- Strengths:
 - Over the last years the sector of artistic and traditional ceramics has been facing a big crisis, which caused a reduction in production volumes, number of companies, turnover and employment. There is a strong need for the re-launch the competitiveness of the sector and for the establishment of an effective system of protection to face unfair competition which is not typical only of the Italian context. In fact, for years, the respondent has been working closely with its homologous in France, Romania and Spain to try to face the problems affecting the sector and identify the elements which could contribute to its re-launch. In this context, the adoption of an EU regulation on the protection of GI for non-agricultural products is desirable not only to obtain a harmonised and effective protection but also to support the restructuring of a sector in which companies are not well organised (one Italian producer).
 - The future protection system for non food GI at the EU level should allow protection of third countries names, as it is the case for agricultural GIs under Regulation (EC) No 510/2006, because mutual benefits and more respect of intellectual property rights can be reached this way (one Portuguese producer).
- Weaknesses:
 - As too much paper work is required, the outcome is questionable (one Estonian producer).

Comments on the trade mark systems:

- Strengths:
 - The national protection exists since 1980s. In former East Germany, there was the possibility of the registration of geographical indications of origin and after the reunification they could be converted into collective marks (one German producer).
- Weaknesses:
 - Based on his experience, the current system of protection (collective mark) is too expensive and does not provide any support to producers. In fact, one of the major problems we encountered, seeking protection abroad, was the lack of assistance by any entity or institution because of which, in some cases, the collective mark registration procedure became particularly expensive and long. Furthermore, the trademark system does not provide any financial support for promotion of the origin products (one Italian producer).

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Comments from EU private bodies:

Comments on the *sui generis* protection systems:

- Strengths:
 - The future protection system for non food GIs at the EU level should allow protection of third countries names, as it is the case for agricultural GIs under Regulation (EC) No 510/2006, because mutual benefits and more respect of intellectual property rights can be reached this way (one Portuguese private body).
 - For the new system to be successful, it must be set up as a tool to help develop the competitiveness of enterprises. The protection of geographical names should be considered as the enhancement of a high-value product in the whole Europe. The aim should be to use an under-used heritage. There are many geographical names associated to a high quality product benefiting from an international notoriety in Europe. The project should aim at reinforcing them in order to strengthen and develop them to generate a significant industrial and handicraft activity in all countries. In France, after 5 years of inventory, the label “Entreprise du Patrimoine Vivant” (“enterprise of the living heritage”) covers around 1000 enterprises, which represents more than 40.000 jobs and creates a turnover of more than €10 billion. Conceived at first to support the innovation principally in the “métiers d’art”, this scheme followed an evolution, which was not foreseen, and attracted a significant number of innovative industrial enterprises operating in unsuspected specialties as robotic. The “métiers d’art” represents today only 45% of the label. This national experience contains an important potential of development. However, if the ambition is to create favourable conditions for the development of the activities of the enterprises, this national system has serious limitations. The creation of a European level of protection would have a decisive impact for the enhancement of the sector (one French private body).
- Weaknesses:
 - Contrary to the PDO, PGI and TSG systems for agricultural products, the current system of protection are too much focused on the protection of consumer rights or the intellectual property (one French private body).
 - There is the need to define precisely the concept of geographical indication, as many non-agricultural products bearing a geographical name consist of components which are produced in different countries and only assembled in the region of which they bear the name (one German private body).

Comments from EU public bodies:

Comments on the existing sui generis protection systems:

- Strengths:
 - In negotiations of international agreements on intellectual property right protection, many foreign countries, especially India or African states, insist that an adequate protection for non-agricultural products is a precondition for concessions in other intellectual property right fields (one Austrian public body).
- Weaknesses:
 - The importance of an EU protection for non-agricultural products is not as high as in relation to agricultural products and wines/spirits, especially from the consumers' point of view. A system comparable with the one of regulation (EC) No 510/2006 causes a lot of legal problems, control costs and controlling difficulties. Most European countries will have to create special control-bodies (one Austrian public body).

Comments on the creation of a special sui generis protection system for non-agricultural products:

- Strengths:
 - A new Regulation legislation on GI should be standardised in order to protect locally produced products which have evolved over a significant period of time (one Irish public body).
 - The focus in the EU is still mainly on the protection of agricultural products (one Czech public body). As for non-agricultural products, if protection is to be envisaged at the EU level, it will be important to take into account the large diversity of products that could benefit from it, but also the fact that they can bring higher value than agricultural GI products. Unlike a patent, utility model, trade mark and other similar tools to protect a specific product or manufacturer, in the case of GI protection it may be a kind of collective protection of producers from a particular geographic area in a given sector/industry or (species) of product of one or more manufacturers from a specific geographic area, where the use of a specific factor of production is geographically bounded. According to the respondent, it is necessary to define all aspects of non-agricultural production, which may ultimately cause these differences between the original production of geographical locations / areas and its imitations (even if compliance with the same production / process technology), so that these definitions allow producers to benefit from a sufficiently extensive, effective and enforceable quick protection of their unique products and provide customers with the same protection, especially against any imitations. This system should be based on an assessment of geographically link of each product to its geographical origin, including:
 - a) technical parameters (chemical and material composition, material properties) provable by exact measurements / tests / analysis;
 - b) technological parameters (i.e. manufacturing process including the definition of raw materials) can be described numerically and verbally;
 - c) visual / design parameters (colour, shape, size, etc.) can be described numerically and verbally;
 - d) the price parameters (in this respect more or less as an insight into the degree of uniqueness or geographically linked product parameters affecting the final price of the product);
 - e) a special feature is the usability, which is essentially a defined relationship of the price to the technical, but also so-called "soft" (i.e. subjectively perceived by the customer) parameters of the product.
- Weaknesses:

- Protection of non-agricultural GIs in the EU should not be introduced. The experience with the existing protection scheme for GIs in the EU shows that the level of protection given to GIs is disproportionate and ill conceived, just as it is highly questionable whether GIs are protected equally and in a harmonised manner in the EU. Furthermore, the way in which GI protection is obtained at present is highly questionable – especially when the geographical extend of protection (all of the EU), the level of protection afforded GIs and the lack of a requirement of use is taken into account. It is also unsatisfactory that trade marks and other types of intellectual property rights in signs are not offered a better protection against the registration of GIs. Thus, according to Regulation (EC) No 1234/2007, Article 118k(2), “A name shall not be protected as a designation of origin or geographical indication where, in the light of a trademark’s reputation and renown, protection is liable to mislead the consumer as to the true identity of the wine.” Consequently, according to this provision trade marks are only protected against the registration of GIs when the trade mark has a “reputation” or is “renowned”, and in so far the GI “is liable to mislead the consumer”. This is clearly an unbalanced and unjustified relationship between trade marks and GIs.

Furthermore, it is highly questionable whether Article 118k(2) in Regulation (EC) No 1234/2007 is in line with Article 5 of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (the Trademark Directive), which stipulates:

“Article 5 - Rights conferred by a trade mark:

1. The registered trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark.”

The wording “any sign” clearly covers signs in the form of GIs. In this respect neither Article 118k(2) of Regulation (EC) No 1234/2007 nor Article 5 of the Trademark Directive can claim the title of *lex specialis* in relation to the other. Furthermore, due to the history of the Regulation and the Trademark Directive it does not seem appropriate to apply the principle of *lex posterior derogat legipriori*. Clearly, there are plenty of problems with the existing GI protection scheme in relation to GIs for agricultural products, and it is not desirable to enhance the problems by introducing a new type of GIs in the form of non-agriculture GIs. In any cases, this Danish public authority thinks that if a new system is introduced, it is very important that it provide adequate procedure to allow third parties to take position on the registration of a name. It is also important that trademarks and other signs are provided a better protection than the protection offered such signs in relation GIs at present procedure (one Danish public body).

General conclusions on this part:

The respondents, which used the opportunity to add further comments, took the opportunity to describe the characteristics of the new scheme which could be introduced. Several highlighted the need to help traditional sectors to beef-up in order to tackle the challenges they are facing. Some said that promotion of the scheme is necessary as many stakeholders do not know the existing levels of protection.

It is clear that some of the respondents are against the introduction of a new scheme for the protection of non-agricultural GIs. Some think that the trade mark system is enough. Another respondent indicated that the establishment of the new scheme will suppose a reorganisation of the authorities and the setting-up of control bodies, which could be demanding.

However, the trade mark system is generally described as being too expensive. One of the reproaches is that producers do not receive support from the public authority under this scheme. The new scheme of protection of non-agricultural GIs, if created, should nonetheless be well defined to ensure that the products asking for the registration are genuine local products.

In general, the adoption of an EU regulation on the protection of GI for non-agricultural products is seen as a way to obtain a harmonised and effective protection which would help to strengthen traditional products.

General conclusion

Even if stakeholders were consulted in all the countries covered by the study, answers were not received from some countries. As this survey was based on voluntary answers, organisations which were consulted had the choice to answer or not. Stakeholders in some countries seem to have a higher interest in the issue, which may be due to historical or cultural reasons. This is why many answers were received from France and Spain. The studied sample cannot be considered as representative and should therefore be treated only as case studies.

We managed to collect answers from the 110 EU producers, 54 EU public bodies, 41 EU private bodies, 3 Swiss producers, 5 non EU public bodies, and 6 non EU private bodies were studied in this document.

Many answers were received from Spain: 42 out of 110 for producers and 49 out of 95 for non producers. These answers thus represent 38.2% of the answers of producers and 51.6% of the answers of non producers. For most of the questions, the answer for each question by Spanish respondents' answer corresponds to the answers given by the majority of respondents from other countries (see the details below). The Spanish answers thus do not change the outcome of the survey.

This analysis is based on the answers received from respondent stakeholders and thus covers a sample of the non-agricultural GI sector. It is important to underline that the result of the analysis cannot be generalised to all the stakeholders involved in the non-agricultural GI sector.

The findings of the survey can be summarised as follow:

- A majority of respondents know what a GI is.
- Less than half of the respondents have protected the name of their products (53 out of 113):
 - All the products are protected by unfair competition law.
 - 39 of the protected EU products are protected through the trade mark scheme and 14 through is a *sui generis* law on the protection of GI. 5 are protected by a specific Decree or law protecting the product, 2 by case laws and one as intangible heritage of the UNESCO.
 - Two Swiss producers protected the name of their product under the *sui generis* geographical indication law and the trade mark law. Only one of the two protected it under a special decree protecting the product.

The majority of respondents judged the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the national, European and international dissatisfying.

However, if we take out the Spanish answers, there are specificities:

- On the question on the satisfaction on the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the national level:
 - A clear majority cannot be found, amongst the EU private bodies which answered; they seem to be rather neutral on the question.
 - The majority of EU public bodies is satisfied by their national system.
- On the question on the satisfaction on the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the European level, the EU private bodies and public bodies' answers are neutral on the question.

- On the question on the satisfaction on the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the international level, EU non producers' answers show that the majority of them are neutral on the question.

The answers on a broader protection indicate that:

- Almost all the producers said that they wished for a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level.
- The majority of the producers said that they wished for a uniform GI protection for non-agricultural products at the EU level.
- A large majority of producers and non producers think a uniform legal protection of the name of non-agricultural products comprising a GI at EU level is needed.
- A majority could not be found in the EU in favour of "Appellation of origin or "Geographical Indication". Outside the EU, GI seems to be preferred

According to a large majority of respondent stakeholders, the benefits of such legal protection would be that:

- The name of the non-agricultural product comprising a GI would benefit from an EU-wide protection,
- It would help producers to communicate on the product, and
- All the producers will have to fulfil the same criteria to use the name of the non-agricultural product comprising a GI.

However, there is only a small majority of respondents which thinks that one of the benefits of such legal protection would be that it would have a positive impact on the price of the product from a producer's point of view.

Regarding the question on the benefits for consumers, a majority of respondent stakeholders thinks that:

- They will be better informed on the specific features or characteristics of the product,
- They will be sure the product comes from a specific area, and
- They will be better informed on the specificities of the GI scheme.

Before and during registration, according to a majority of respondents, the roles of public bodies should be to:

- Verify the link to the specific area,
- Assess the specific features or characteristics of the product,
- Control the compliance with the definition of the boundaries of the geographical area where the product can be produced, and
- Provide adequate procedure to allow third parties to take position on registration procedure (opposition).

After registration, according to a majority of respondent stakeholders, the role of public bodies should be to:

- Control of compliance with specific features or characteristics set in the production requirements before registration, including the control of the definition of the boundaries of the geographical area where the product can be made,
- Control of products bearing the protected name of the GI on the market,
- In case of non-respect of the production requirements, possibility to impose fines or cancel the registration, and
- It could inform on the specificities of the new GI scheme and promote it.

A majority of respondents thinks that the economic effects of the introduction of an EU wide protection of geographical indications for non-agricultural products could be:

- An impact on the sales volume,

- A positive impact on the price of the product from a producer's point of view⁹²,
- An impact on employment, but respondents seem not to have a clear opinion on the question as many are neutral on the issue⁹³,
- An impact on promotion costs, and
- An impact on protection costs.

For most of these questions, the outcome of the results are only slightly modified as without taking into consideration the Spanish answers, the respondents seem to be neutral, except in the case of the majority of EU public bodies which are satisfied by their national level of protection.

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Without the Spanish answers, the responses of the private bodies are neutral on this question.
Idem.

PART V - Possible options for the creation of a uniform system for the protection of GIs for non-agricultural products in the EU

One of the main objectives of this study, according to the terms of reference, is to provide the European Commission with options for the possible creation of a unitary system for the protection of geographical indications for non-agricultural products across the EU.

In this section, we assess the feasibility of creating such a system. This examination is based on the legal and economic analysis, as well as on the outcome of the stakeholders' survey (as set out in the previous sections of the report). The assessment also takes into account the experience of the EU in general and the Consortium experts in particular with regard to the protection of agricultural GI products and the wider international context.

In order to fine tune the regulatory options available, a workshop was organised with a number of the Consortium's experts representing a balance of the variety of the different legal traditions in the countries covered by the study. Specific attention was given to balancing the results of the economic analysis and the stakeholder survey against the legal options available under EU law. The Consortium experts covered the following countries: Bulgaria, Estonia, France, Italy, Poland, Spain, Sweden/Norway/Iceland, Switzerland/Austria, Belgium/Cyprus/Malta and Denmark/Ireland/the Netherlands. Ahead of the meeting, participants received a series of draft documents including the economic study, the results of the stakeholder survey and a regulatory discussion paper setting out the different options for a unitary measure. Representatives of the European Commission (DG Internal Market, DG Agriculture and Rural Development, DG Trade) and of the Office for Harmonization in the Internal Market were invited to, and did, attend this internal workshop as observers.

This section therefore contains a description of the main features of a unitary system which could facilitate the protection of non-agricultural GI products at the EU level. The description underlines the advantages and disadvantages of the different options on the basis of the work undertaken within the study and in particular the existing national and international legal framework, the economic analysis and the stakeholder survey. Under each item, we choose to highlight what would be, according to us, the preferred option.

Question 1: Is there a need for a uniform system of GI protection for non-agricultural products in the EU?

In answering to this question, it is important to recall that the European Commission works on the basis of a smart regulation agenda which implies designing and delivering regulations that respect two key principles: subsidiarity and proportionality. This means that in order for the Commission to propose new legislative measures, it must be justified, it has to meet the expectations of EU citizens, companies operating in the internal market and national governments and there must be an EU added value compared to regulating the issue at the national level.

Bearing these principles in mind and based on the main findings of our study, we look below into the different policy options that are available.

1. Option 1: no policy change

The European Commission could decide not to take any action. This would mean that the European Commission is satisfied with the existing legal tools and considers they provide for a sufficient protection of non-agricultural GI products at the EU level.

Experience with agricultural GIs shows that about one third of the registered products are not sold outside their member state of origin⁹⁴ and thus Community wide protection might not be considered worthwhile. In the economic part of the study, we have found out that for an average of 100 products for which data is available, 63.4% of sales are made on domestic markets, 18.4% on European markets (incl. Iceland, Lichtenstein, Norway and Switzerland), and 18.3% on international markets (outside Europe). The relative limited trade across the internal market could be an argument to justify the maintenance of the *status quo*.

As explained in Part I of this study, non-agricultural GI products enjoy a basic protection under consumer protection and unfair competition laws. However, this protection is not easy to enforce and, as a result, is not much used by producers to protect their rights on the geographical name. Its effectiveness with regard to providing legal certainty to both producers and consumers when it comes to non-agricultural GI products is therefore limited. This has been highlighted in Part II of the study which provides information on infringements and imitations problems that these producers face.

Under this scenario, stakeholders would be able to rely on the only intellectual property tool available at the European level, i.e. the Community trade mark (CTM) system. Although, 62 out of the 89 protected products analysed in detail are protected through trade marks, only 19 are protected through 35 community trade marks (some of these products are protected through several CTMs see table 19).

It is worth underlying the fact that 12 out of the 19 products mentioned above are protected through an individual CTM⁹⁵. Only 7 of these products are protected through a collective community trade mark (CCTM) and even less, that is two, are protected through a word

⁹⁴ See European Commission Impact Assessment accompanying the recent legislative proposal on agricultural policy quality schemes, page 14: "When considering the total value of the PDO/PGI production, 82% is marketed in the country of origin, 13,4% in the EU (different Member States than originating) and 5% is due to exports to third countries."

http://ec.europa.eu/agriculture/quality/policy/quality-package-2010/ia-gi_en.pdf

⁹⁵ This is interesting to note as, under trade mark rules, the protection of a geographical name as a trade mark is prohibited except if it has become distinctive in relation to a good or a service.

CCTM. This figure is surprising as the natural route for the protection of a geographical name should be through a word CCTM⁹⁶. Indeed, the interest for a producer or a group of producer would be to secure exclusive rights on the geographical name, sign or indication. A word (or verbal) mark contains letters and/or numbers, while figurative marks consist of pictures, designs, logos, etc. The registration of a figurative mark provides its holder with exclusive rights on the picture, design or logo which can include a geographical name, sign or indication but it does not provide the holder with exclusive right on a geographical name, sign or indication. For example, the Italian region of Veneto has registered the following figurative Community collective trade mark:



This means that only producers meeting the regulations governing its use are able to protect their rights on the logo containing the geographical name Murano but they are not able to prevent others from using the geographical name Murano which can be used by other producers. This is an important limitation. In addition, from a general perspective, the low take on the (word) CCTM could arguably be a source of concern.

The limited use of word CCTM could be explained by the difficulties that arise when an application for such a mark is made. Under trade mark rules, the registration of a geographical name as a trade mark is prohibited except if it has become distinctive in relation to a good or a service. In the context of the study, we found only 2 products, Solingen and Harris Tweed, which are protected through a collective Community word mark. The other products have registered collective community figurative marks.

Furthermore, as explained and illustrated in Part II of this study relating to counterfeiting and in Part IV that includes the stakeholders' survey, many producers have signalled that costs associated with the protection and, more importantly, with the enforcement of the rights secured through the trade mark regime are often too high for them. This is true in particular for SMEs which constitute a large majority of the stakeholders involved.

Moreover, in the absence of EU policy intervention, producers would be able to continue to rely on a patchwork of IP tools at the national level, including *sui generis* laws. Out of the 27 Member States, only 14 currently have a *sui generis* law which can be used for the protection of all (or of some products in the case of "sectoral" laws) non-agricultural GI products. Some are regional laws, some are product specific laws and some are national horizontal laws. These regulatory frameworks differ quite significantly in terms of scope, effect and cost of protection. Some do not provide intellectual property protection as such but rather a recognition which allows for collective promotion strategies to be implemented. Furthermore, there are many disparities between the *sui generis* laws of the Member States with regard to basic provisions when it comes to GI protection, i.e.: the GI definition, the registration requirements, the registration procedure and the relationship with other IP rights (for further information, see Part I of the study).

The existence of different national laws might be interpreted as a barrier to the creation of a single EU legal framework. However, from another perspective, this fragmented legal

⁹⁶ The OHIM has registered 1157 CCTMs (compared to more than a million CTM). Only 287 were collective community word mark (859 were figurative, 9 were 3D, 1 was a sound and 1 was a colour).

framework in the EU arguably creates obstacles for producers trying to protect and sell their GI name across the whole the internal market.

From a consumer perspective, a low level of protection of these GI products means that the risk of confusion and deception is high. In addition, the lack of harmonisation could be problematic as imitation products would certainly be more difficult to take out of the market.

Furthermore, according to the survey we conducted, a majority of EU producer and non producer respondents claimed to be dissatisfied with the existing means of protection of non-agricultural GI products at the European level. Public bodies tend to be more neutral on the question. Producers and non producers in non EU countries also rated poorly the current European legal framework available for the protection of these products. All of them largely support the proposal to have a broader choice of legal instruments to protect non-agricultural GI products and the need for a uniform legal protection system at the EU level.

Finally, the study underlines the fact that all International treaties providing for the protection of geographical indications cover both agricultural and non-agricultural products. Moreover, it is a well-known fact that the EU is engaged in trade negotiations with countries which have *sui generis* law for the protection of all GI products. These countries, such as Brazil, India and Thailand for instance, have offensive interest when it comes to the protection of their non-agricultural GI products at the EU level. They would probably not be satisfied with having to use the community trade mark system. The lack of EU *sui generis* legal framework to protect non-agricultural GI products would hamper the ability of the EU to secure protection of EU agricultural GI products in these countries.

In our view, without an EU policy intervention, it is doubtful that non-agricultural GI products will seek better IP protection. Under such *status quo* scenario, the conditions will not be improved for the economic development of these products and for the protection of consumers against deception. This option should be disregarded.

2. Option 2: soft law approach

The European Commission could consider non-legislative options such as recommendations, communications and guidelines to encourage Member States to provide a better protection of non-agricultural GI products.

Such instruments allow for more flexibility and limit regulatory and administrative burdens on both the EU institutions and Member States. However, would such approach help to mitigate the problems mentioned under option a?

A communication or recommendations would have legal and practical limitations in particular as they are not binding on public entities. As a result, Member States could decide not to act. Even if some of them decided to follow-up on some suggestions made by the Commission, there would be no guarantee that progress would be made towards a harmonized system of protection.

Under this scenario, a better protection of non-agricultural GI products in the EU would be unlikely. Producers would have to rely on the CTM system and on existing different legal frameworks at the national level. Considering the limited use of the CTM system and the absence of registration of non national GI products in the Member States with a *sui generis* GI system, it is doubtful that the use of a soft law approach would improve the situation. Consequently, the fight against consumer deception would not be facilitated. On these grounds, it would appear that a communication or a recommendation would not achieve the objective pursued which is to provide legal certainty to both producers and consumers.

As a result, in our view, this option should be also disregarded.

3. Option 3: adoption of a new EU legal framework for the protection of non-agricultural GI products

The European Commission could consider that the *status quo* option or the soft law approach are not satisfactory and propose the establishment of a new EU legal framework for protection of non-agricultural GI products. Such decision should be based on the analysis of a number of factors mentioned below.

A patchwork of *sui generis* laws at the national level

Out of the 27 Member States, only 14 currently have a *sui generis* law which can be used for the protection of all (or of some products in the case of “sectoral” laws) non-agricultural GI products. Some are regional laws, some are product specific laws and some are national horizontal laws. These regulatory frameworks differ quite significantly in terms of scope, effect and cost of protection. Some do not provide intellectual property protection as such but rather a recognition which allows for collective promotion strategies to be implemented. Furthermore, on the one hand, there are many disparities between the *sui generis* laws of the Member States with regard to basic provisions when it comes to GI protection, i.e.: the GI definition, the registration requirements, the registration procedure and the relationship with other IP rights. On the other hand, we identified a certain degree of coherence between these laws when it comes to the key role played by IP offices, the need to register the name, the payment of a registration fee, an extensive protection with administrative enforcement often available and exceptions linked to the genericity of the name or prior rights.

The existence of different national laws might be interpreted as a barrier to the creation of a single EU legal framework. However, from another perspective, this fragmented legal framework in the EU arguably creates obstacles for producers trying to protect and sell their GI name across the whole of the internal market.

Existing legal tools available for the protection of non-agricultural GI products at the EU level

As explained in Part I of this study and above, non-agricultural GI products enjoy a basic protection under consumer protection and unfair competition laws. However, this protection is not easy to enforce and, as a result, is not used by producers to protect their rights on the geographical name.

Furthermore, only 19 out of the 89 protected products analysed in detail are protected through a Community trade mark (CTM) and only two products are protected through a word collective Community trade mark (CCTM); the others are figurative CCTM. This figure is surprising as the natural route for the protection of a geographical name should be through a word CCTM. The interest for a producer or a group of producer should be to secure exclusive rights on the geographical name, sign or indication. Indeed, the registration of a figurative mark provides its holder with exclusive rights on the picture, design or logo which can include a geographical name, sign or indication but it does not provide the holder with exclusive right on a geographical name, sign or indication.

As explained above, a deeper analysis of the CTM law underlines the fact that there are a number of principles and factors which make it difficult to register a geographical name as a

trade mark. Arguably, the main difficulty relates to protection of the name as a word trade mark. Under trade mark rules, the registration of a geographical name as a trade mark is prohibited except if it has become distinctive in relation to a good or a service

As a result, producers need to rely on figurative or semi-figurative trade marks to protect the name of non-agricultural products bearing a geographical indication. Such protection is limited as it does not allow for a reservation of the geographical name to the trade mark holder(s). Only 2 word collective Community trade marks have been identified in the context of this study. Finally, producers have signalled that costs associated with the protection and more importantly related to the enforcement of the rights secured through the trade mark regime are often too high for SMEs which constitute a large majority of the stakeholders involved. This has been explained and illustrated in Part II of this study relating to counterfeiting and in Part IV that includes the stakeholders' survey,

Table 46: Comparative table on strengths and weaknesses of *sui generis* and trade mark systems

Issue	Trade mark regime	<i>Sui generis</i> GI system
Existing legal framework(s)	Existing harmonised legal framework at the EU level: the Community trade mark regime.	Patchwork of national or regional laws in 14 Member States.
Ability to register and secure rights on a geographical name or indication	<p>May certify the origin of the product.</p> <p>Producers have often been forced to seek a limited protection for a figurative trade mark rather than a word mark.</p> <p>The registration of a geographical name as a trade mark is prohibited except if it has become distinctive in relation to a good or a service.</p> <p>GI names are often protected via a collective or a certification mark when such legal concepts exist.</p>	<p>Must certify the origin of the product.</p> <p>By essence, a <i>sui generis</i> geographical indication protection system aims at identifying the geographical origin of the good and at protecting the GI name.</p>
Collective or individual approach	<p>Both individual and collective marks can be registered with OHIM at the EU level although the former is much more in demand than the latter.</p> <p>A collective mark does not mean that it belongs to several persons but rather to one entity that allows its members to use the mark.</p>	<p>As a principle, application is submitted by a group. Individual applications can be accepted under certain conditions.</p> <p>In general, there is a collective approach behind a GI as the registered name is available to any producers located in the designated area which meets the requirements set out in the GI specification.</p>
Licensing	Trade marks can be licensed to third parties	GIs cannot be licensed to third parties

Specific application requirements	An applicant for a collective mark is requested to submit regulations governing its use.	An application for a GI registration is requested to submit a GI specification that normally describes the production requirements and the link between the quality or characteristics of the product and its origin. Control systems are often required.
Link to the geographical origin	The production is not attached to a specific place although, as a principle, consumers should not be misled as to the origin of a product. As an example, Mont Blanc pen are not produced in the Mont Blanc region in France.	The production is rooted in the defined geographical area , it cannot be delocalised to another area. As an example, Scotch Whisky can only be produced in Scotland.
Scope of protection	Trade mark registration provides its proprietor with an exclusive right to use the trade mark and to prohibit anyone from using it without consent for identical or similar goods (or services) as those protected by the trade mark, i.e. in the classes where it has been registered. Nothing can prevent a third party to use the name of the trade mark in accordance with honest practices	<i>Sui generis</i> GI system often provides for a comprehensive protection against: <ul style="list-style-type: none"> ○ Direct or indirect commercial use of a registered name for products not covered by the registration ○ Misuse, imitation or evocation of the name on a non registered product. This often 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 used in translation. ○ False or misleading information about the origin, nature or qualities of products on packaging that might give a false impression as to their origin.
Genericity	There is no guarantee against 'genericity' . If the trademark owner does not assert his rights, the name can become generic.	Once registered, the GI name cannot become generic.
Enforcement of the intellectual property rights	Enforcement of trade mark rights is entirely private: it is up to a trade mark owner to defend its rights. Trade mark owners must continue to assert their rights. They need to carry out a regular monitoring of the markets where	Enforcement of the rights on the GI name relies mostly on private actions from the right holder. However, several sui generis GI laws also provide that public authorities can take action on their own initiative to

	<p>the trade mark is protected. They need to be ready to launch legal actions (opposition to trade mark registration for instance) to protect their intellectual property right. Failure to do so would significantly undermine the right.</p> <p>Such protection is called <i>ex parte</i>.</p> <p>Enforcement costs can be significant.</p>	<p>protect a registered GI, i.e. the state or public authorities can be responsible for policing and ensuring GI protection.</p> <p>Such protection is called <i>ex officio</i>.</p> <p>Enforcement costs can be limited when <i>ex officio</i> is available.</p>
Cancellation	<p>A CTM must be put to genuine use in the European Union in the five years following its registration and use must not be interrupted for over five years. Failure to use the trade mark can lead to cancellation.</p>	<p>Under most <i>sui generis</i> GI laws, a GI registration can be cancelled if the conditions prescribed for the GI registration have ceased to exist.</p>
Controls	<p>Although an application for a collective mark must include regulations governing its use, it does not have to include controls.</p>	<p>Under most <i>sui generis</i> GI laws, controls must be in place and carried out by competent private or public authorities to verify that the product meets the GI specification.</p>
Costs of registration	<p>For the registration of a Community trade mark, there is a unique fee to be paid: 900 € to file online (e-filing) or 1050 € if you use the paper form.</p>	<p>Under <i>sui generis</i> GI laws, registration costs vary from zero (in 7 of the 14 Member States with such a law) to 400 € in Romania.</p>
Duration of protection	<p>Protection is granted for ten years, renewable every ten years thereafter.</p>	<p>With the exception of Romania where the protection is given for 10 years, renewable, all other existing <i>sui generis</i> GI laws grant protection for an indefinite period of time as long as the GI exists.</p>

Source: Insight Consulting

This table shows that there are a number of key features under *sui generis* GI laws that can be attractive to producers interested in securing a better protection for their products. Others can raise concerns, such as costs associated to the system.

The problem of counterfeited products

We secured information on infringements for 94 products. Out of these 94 products, infringements were reported as a major problem for 57.4% of them.

Out of the 57 products for which data is available on the loss of revenues, the majority (60%) reports a small loss of revenues due to infringements, that is to say no loss at all or a loss which is inferior to 5% of the turnover: 16% said that the loss is null and 44% said it is below 5% of the turnover. For 40% of the sample, losses are above 5%. For 21% of the sample

losses represent between 5 and 30%, while for 12% of the sample losses represent between 30 and 50%. These products are in the Ceramics/Pottery, Jewellery, Knives, and Tapestry products categories. Losses represent more than 50% of the turnover for 4 products (7% of the sample). These products are in the Ceramics/Pottery, Glass, Stone/Marble, and Traditional Clay Nativity categories.

In most cases, counterfeiting has an impact on the turnover as the loss of market shares has a direct effect on volumes of sales and employment. Infringements have important impacts on enterprises economic and social wealth and stability. In addition, as far as the entire market is strongly impacted by this parallel activity, counterfeiting is a barrier to export. Infringements also have a considerable impact on enterprises' innovation and investment activities, which slow down due to losses in turnover and the loss of financial means for investments in research activities and developing new products or technologies. In addition, the fact that the timeframe for copying new products becomes increasingly shorter (less than 2 years after the product appears on the market (according to a study carried out in France in 2010), the motivation for innovation is also reduced.

Based on the above, the interest of producers, consumers and policy-makers for a new EU framework that would improve the protection of non-agricultural GI products is likely to vary. In the countries where producers currently face competition and pressures from imitations or counterfeited products, they will probably be supportive. For other countries, where the problem is less acute, there could be more reluctance, as the establishment of such a system will generate costs (especially for public authorities if there is an obligation to implement the European regulation, but also to producers and possibly to consumers as costs could be included in the final price of the product). Some might argue that these costs could exceed the potential benefit of a new EU GI system.

The International context

The study underlines the fact that all International treaties providing for the protection of geographical indications cover both agricultural and non-agricultural products. Bilateral agreements have been used by several Member States of the EU to protect their non-agricultural GI products in other EU Member States in the 1960s and 1970s mainly. Since then, only Switzerland has recently negotiated an agreement with the Russian federation that provides for such protection. Interestingly, the EU seems open to non-agricultural GI products protection through bilateral agreements as it recently offered to do so in a bilateral agreement signed with Colombia and Peru in June 2012.

Moreover, it is a well-known fact that the EU is engaged in trade negotiations with countries which have *sui generis* law for the protection of all GI products. These countries, such as Brazil, India and Thailand, have offensive interest when it comes to the protection of their non-agricultural GI products at the EU level beyond the community trade mark system. The lack of such legal framework could hamper the ability of the EU to secure protection of EU agricultural GI products in these countries.

The economic considerations

The global turnover of analysed non-agricultural GIs found represents Euros 4.17 billions. This figure relates to 72 products that were studied in detail out of some 834 products which were identified (NB. they do not represent an exhaustive list but a sample). It is important to note that the producers are mostly SMEs.

There would be economic advantages and disadvantages in setting up a uniform EU system for non-agricultural GIs.

Looking at the economic positive aspects, we can underline the following:

- Out of the economic part of the study, we have determined that for an average of 100 products for which data is available, 43% sale more than 80% of their production on their domestic markets. However, 80% make sales on the European (incl. Iceland, Lichtenstein, Norway and Switzerland) and international markets (outside Europe). This means that these products need protection outside of their country of origin. An EU legislative framework which would improve the protection of non-agricultural GI products would arguably facilitate their trade in the internal market.
- A better tool of protection such as a sui generis system of registration for the geographical names of these products would benefit micro- and small-sized enterprises which constitute a very large proportion of the companies identified in the context of the study. 80% of the products are made by micro or small-sized enterprises. As these companies are small, they often lack resources to use the existing tools to protect their IPRs, notably when it comes to enforcing them.
- From the companies' economic self-interest perspective, a better protection of products' names could have a positive impact on the revenue. Should it provide for an efficient way to fight against imitation and counterfeiting, it could reduce the budget allocated to the protection of the name. It could also contribute positively to the turnover especially for the companies that are facing serious unfair competition on the market as it could kick the fake products out of the market, hence expanding the market share for the GI product. In turn, it could increase these companies' competitiveness.
- Although the impact on employment is not very high at European level, it is significant for certain regions where it represents a very high portion of the local employment. A better protection of non-agricultural GI products at the EU level like any improvement on the protection of IP rights could bring more jobs. If the enterprises' products enjoy a better protection, the increase of economic wealth could lead to more security for the employment, especially in remote areas where the employment relies strongly on the existence of the production of these products to survive economically. This is the case for 55.7% of the products studied (data available for n=99 products) where the product represents more than 5% of the local jobs, and even more, as for 7% of these 99 products, the product represents more than 31% of the total jobs in the delimited geographical area of production. This is a solid argument in favour of the introduction of a new tool for the protection of non-agricultural products with a geographical name, given the fact that this protection aims at strengthening the local anchorage of the production on the long-term.
- A unitary system of protection at the EU level could contribute to a sales' increase thanks to a better branding and promotion strategies. A GI approach could encourage producers to work together as GIs are collective rights by nature. In order to obtain the registration under a new regime of protection, companies/producers would have to enhance the collective organisation around the product. This effort on the protection side could also facilitate the definition and implementation of a collective promotion strategy for the GI product. For most of the products, this would be very helpful. In fact, 47% of the products examined in the study for which we have data on that issue (n=49) spend no money to promote their product. Indeed, the protection of the name of the product is one of the key conditions for developing an active and efficient branding collective strategy. Moreover, the possible introduction of a a

common label could be interesting for some products which are not able to develop either individual or collective strong branding strategies because of a lack in awareness and/or funds. As shown by Tihomir Vranešević and Ranko Stancec (2003) (in: "The effect of the brand on perceived quality of food products", British Food Journal, Vol. 105 Iss: 11, pp.811 – 825, "consumers do not value products based exclusively on their physical characteristics and that in the process of making a purchasing decision when choosing an alternative, consumers will first perceive the brand as "a sign of quality" and then other evaluation criteria (physical appearance and packaging, price, the reputation of the retail network).“ Therefore, introducing common brand for all non-agricultural GI will play the parallel role as a collective brand, acting as real "credible quality sign" for the set of products, and improving the visibility of the specific feature of the link between the product and its geographical origin, as highlighted by Belletti et al. (Belletti G., Burgassi T., Manco E., Marescotti A., Pacciani A., Scaramuzzi S., The impact of geographical indications (PDO and PGI) on the internationalisation process of agro-food products, Contributed Paper prepared for presentation at the 105th EAAE Seminar 'International Marketing and International Trade of Quality Food Products', Bologna, Italy, March 8-10, 2007).

- From a broader social and cultural perspective, the existence of these traditional products originating from a specific geographical area is a key element of local culture. Producers of 97.4% of the studied products have declared a strong link with cultural events). Cultural events are festivals, contests and competitions, shows, exhibitions, open-air special markets, special exhibitions in local museums, etc. For 85.3% of the studied products (n=68), the social links created thanks to the existence of the product, are very important. Moreover, the impact on landscape is often mentioned by stakeholders as an important factor (64.6% on a sample of n=65 products having answered the question) while 96.1% on n=102 have mentioned a link between the product and the touristic attractiveness.
- A better protection could protect consumers against deception.

Looking at the negative economic aspects, we can list the following:

- The establishment of a new GI system at the EU level could prove too complicated if registration requirements and the procedure are too detailed or too strict. It could also prove too costly for un-organised micro-sized enterprises which represent a large part of the companies identified in the context of the study: 38% of the 118 products for which we have obtained information on the size of enterprises involved in the production are produced by micro-enterprises under 10 employees.
- Additional certification or control costs related to the protection as a GI might not be covered by better prices on the markets. 80.1% of the enterprises studied are micro or small-sized enterprises under 50 employees (average made out of 118 products for which we have an answer on the size of the enterprises). Additional costs would arguably be proportionally higher and more difficult to recover on the market for these micro- and small-enterprises.
- A new *sui generis* GI system could face strong opposition from producers of GIs who are enjoying a *de facto* monopoly on the geographical name today. In the context of the study, we have identified a number of products that are produced by a single enterprise: 33 out of 127 products studied. Should the name of the product they produced be registered as a GI, this would mean that they would have to accept the possibility that other producers might start using the name if they meet the specifications' requirements.

- Collective-quality promotion could have drawbacks, notably as the labels' proliferation can lead to consumers' confusion which limits the efficiency of such a collective system for signalling quality. Furthermore, collective programs are not in compatible with the development of private brands (see: Marette S., 2005, The Collective-Quality Promotion in the Agribusiness Sector: An Overview, Working Paper 05-WP 406, Center for Agricultural and Rural Development Iowa State University, Ames, Iowa 50011-1070).
- Good faith competitors who already use the geographical name could also be affected by a registration of the name of a GI. For instance, producers could be faced with the impossibility to continue to use the name if they do not meet the defined GI specifications, e.g. if they are located outside of the defined geographical area.
- As far as public authorities are concerned, a new *sui generis GI* system would impose an economic burden on Member States, as well as on the EU institutions. Some Member States would have to set up a new system while others will have to modify their laws. In addition, Member States will have to mobilise resources to manage the system both in terms of registration and possibly in terms of controls, especially if *ex officio* protection is made available.
- Consumers could be faced with higher prices as producers will have to include control and/or certification costs in the price of their products and pass it on to consumers.

Stakeholders' interest for the establishment of a uniform legal protection system at the EU level

As explained in part IV of this study, we conducted a survey towards relevant stakeholders. Our experts sent the questionnaires to over 700 stakeholders, including producers' organisations, as well as private body (e.g. chambers of commerce) and public bodies (e.g. IP offices). Even if stakeholders were consulted in all the countries covered by the study, answers were not received from some countries. As this survey was based on voluntary answers, organisations which were consulted had the choice to answer or not. Stakeholders in some countries seem to have a higher interest in the issue, which may be due to historical or cultural reasons. This is why many answers were received from France and Spain. 219 answers were received as of end of October. NB: the studied sample cannot be considered as representative and should be treated only

Based on this sample of respondents, it would appear that there is both a need and a wish for the establishment of a new EU legal framework to protect non-agricultural GI products.

Stakeholders were asked to rate the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the national level. A vast majority of European producers surveyed are dissatisfied. Both EU private and public bodies tend to be dissatisfied (but less so than the producers) with the current level of protection at the national level.

In addition, when asked to rate the existing means of protection of names of non-agricultural products comprising a GI or potential GI at the European level, a majority of the EU producers claimed to be dissatisfied with the system while non producers of the EU are also not satisfied with the current system, even if public bodies tend to be more neutral on the question. The producers and non producers in non EU countries also rated poorly the European system.

In the stakeholders' survey, the producers were asked two specific questions. The first one: whether they wanted "*to have a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level*". Almost all EU producers (104 out of 110) and two out of the three Swiss producers which answered replied that they wish to have a broader choice of legal instruments relating to the protection of the GI name for non-agricultural products at the EU level.

If they answered yes to the first question, they were asked to indicate which type of protection they would like to enjoy between a uniform GI protection for non-agricultural products at the EU level and national *sui generis* systems of GI productions for non-agricultural products. The majority of the EU producers (73 out of 104 who answered yes to the previous question) who answered to the survey said that they would prefer a uniform GI protection for non-agricultural products at the EU level. 13 preferred a national *sui generis* system of GI protection for non-agricultural products: 1 Czech, 3 French, 3 Greek, 1 Polish, 1 Portuguese, 3 Spanish and 1 Dutch. However, Czech Republic, Poland, Portugal and Spain have regional or national laws providing for the protection of for non-agricultural products bearing a GI name. It shows that some producers do not even know they can register the name of their product at the national level. On the other hand, France has sectoral decrees. However, the two producers who said they would like to see a national *sui generis* system of GI protection for non-agricultural products produce products which cannot be protected under these decrees. It is also interesting to note that if even the option "both" was not proposed as an answer, some respondents from France, Ireland and Poland chose it. A Swiss producer indicated that he would like to have both level of protection: at the national level and at the EU level.

Stakeholders were then asked whether they thought "*a uniform legal protection of the name of non-agricultural products comprising a GI at European Union level is needed*". The answers were clear. A large majority of EU producers answered yes to this question. A large majority of non producers in the EU also wish to have such a uniform legal protection at the European Union level, although negative answers came from public bodies in the Czech Republic, Denmark, Ireland, Spain and Sweden. Producers and non producers from non EU countries answered that they would like a system of protection at the EU level, except one Swiss producer and one Norwegian public body.

Respondents, who said they thought a uniform legal protection of the name of non-agricultural products comprising a GI at European Union level was needed, were then asked about their preference with regard the type of protection. The answers "Appellation of Origin", "Geographical Indication" and "other" were proposed. 38 EU producers answered "Appellation of origin" (AO) and 35 "Geographical Indication" (GI). It is not possible to detect a clear majority in favour of one option or the other. A geographical distribution in favour of one or another option cannot be found either, as AO are favour by a majority of respondents in Belgium, Czech Republic, Greece, Romania and Spain, whereas GI are favour by a majority of respondents in Austria, France, Germany, Ireland, Italy, Poland and the Netherlands. This may be due to the lack of knowledge on the specificities of these two concepts. It is interesting to note that even if the possibility to answer "both type of protection" was not proposed in the survey, some producers from France, Greece, Italy, Poland and Spain affirmed that this is the type of protection they would prefer (total:19).

A majority could not be found in the answers of the private bodies which answered: 10 favoured GI and 13 AO. Once again, the option "both type of protection" was chosen by 9 respondents, even if it was not proposed in the survey. One French private body answered "other" and explained that the new system should emphasise a concept like the "Traditional Speciality Guaranteed", which exists for agricultural products, but without keeping the "traditional" term as it would not be pertinent for non-agricultural products. On the other hand, public bodies favoured GI (23) against AO (15), but the option "both type of protection" was

again chosen by 5 respondents. Outside the EU, GI seems to be preferred by both private and public bodies, and producers.

Conclusion on Question 1

On the basis of the above mentioned findings, we consider that there is a case for harmonisation and for the creation of a new unitary title of protection for non-agricultural geographical indications' products across the EU.

Question 2: Which EU legal instrument would be the most cost effective to protect non-agricultural GI products?

Based on assumption explained above that an EU-wide system is needed to provide a harmonised and effective protection across the 27 Member States, it is interesting to look at the different legal options that are available to the EU.

As a general principle, any new legal framework should bring an added value to producers but also to other stakeholders, including consumers. Based on the outcome of our survey among relevant stakeholders, the system should try to meet the following requirements: be simple to use, limit red tape and be cost-efficient for producers and credible for all stakeholders, notably consumers.

When exploring the possibility to set up an EU-wide *sui generis* legal system to protect non-agricultural GI products, it is important to take into account three elements: the existing *sui generis* systems available in some of the countries covered by this study, the experience of the EU in setting up *sui generis* GI systems for agricultural products and the international legal context and the history.

Options available

1. Approximation of Member States laws or full harmonization (Directive or Regulation)

The issue: based on our conclusion on question 1 that a legislative action would be the best approach, it is important to choose the most appropriate EU legal instrument to facilitate the protection of non-agricultural GI products. Two questions need to be addressed: Are there sufficient national rules offering adequate protection so as to negate the need for an EU measure? To the extent that there are national rules would they be a barrier to the creation of a harmonised system at the EU level?

These questions are addressed first in our options examination as they go directly to the issue of subsidiarity and proportionality.

Facts:

- 14 Member States currently have a *sui generis* law which provides for the protection of non-agricultural GI products but their provisions differ significantly.
- Under EU law, two instruments can be used to establish legal rules:
 - Full harmonisation through a regulation which is directly applicable in the Member States and has binding legal force throughout every Member State; and
 - Approximation of national laws through a directive which is addressed to national authorities which must then take action to incorporate it into their national law.
- Agricultural GI products are currently all protected in the EU through regulations.

Option 1: EU Directive

Advantages

The Directive approach would offer more flexibility to Member States notably to those that already have a *sui generis* GI protection system. They could adapt their laws without having to change them completely. Producers could find this approach more user-friendly if there are no major changes to the system they know which is applicable at the national level.

Disadvantages

Should the directive route be chosen, Member States which have no existing *sui generis* laws, 13 out of 27, would have to adopt national laws. The other 14 would have to modify their existing legislation. In Member States where the regional authorities are competent to legislate or to implement a law such as in Spain or Belgium, the transposition will have to apply across the country, i.e in all the regions. As a result, the regions will have to adapt their procedures to the new system, and all Member States will have to put in place specific procedures to scrutinise the application of the system. It could increase the risk of discrepancy in the implementation of the law. Producers as well as consumers could question the lack of harmonisation and specificities that might remain at the national level. This could undermine fair competition among EU producers as well as undermine consumer confidence in the system.

Option 2: EU Regulation

Advantages

Considering the very diverse legal frameworks available for the protection of non-agricultural GI products in some of the Member States, the adoption of an EU regulation would guarantee a coherent and uniform GI protection system in the EU. Given the wide variety of the scope and content of the *sui generis* laws in the 14 Member States and the fact that some do not even consider the IP aspects of the GIs, it seems better to have a single EU measure in the form of a Regulation that would align non-agricultural GIs with the existing GI rules. Full harmonisation through a regulation directly applicable in the Member States would help create a fair playing field to the benefit of both producers and consumers.

Disadvantages

A Regulation would force all Member States to adopt the same provisions. This would oblige Member States that already have *sui generis* GI laws to replace or modify them. Stakeholders would also have to get used to a new legal framework.

Preferred option: an EU regulation

2. Exclusive or non exclusive nature of a EU *sui generis* legal framework

The issue: decide whether any Community provisions for the protection of non-agricultural products as a geographical indication should allow Member States to provide for a parallel protection of non-agricultural GI products at the national level or create a unitary supranational system of protection of an exclusive nature.

Facts:

- Most EU regulations on the protection of intellectual property rights provide for coexistence between national or regional systems and an EU system. This is the case for instance for trade marks, patents and for designs
- Regulation (EC) No 110/2008 relating to the protection of GI spirits also provides for coexistence between national and EU GI protection.
- Regulation (EC) No 1234/2007 which provides for the protection of GI wines is not clear when it comes to the unitary nature of the system. Article 118j.2 states for instance that “Paragraph 1 shall apply *mutatis mutandis* if a name, for which an application is lodged, is wholly or partially homonymous with a geographical indication protected as such under the legislation of Member States.”
- Regulations (EC) No 510/2006 on agricultural products and foodstuffs GIs is exclusive in nature. This interpretation has been confirmed by the European Court of Justice in several rulings.
- In the stakeholders’ survey, producers were asked if they wanted “*to have a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level*”. If they answered yes, they were asked to indicate which type of protection they would like to enjoy: a uniform GI protection for non-agricultural products at the EU level or national *sui generis* systems of GI productions for non-agricultural products. The majority of EU producers (73 out of 104 which answered yes to the previous question) who answered to the survey said that they wish for a uniform GI protection for non-agricultural products at the EU level. 13 preferred a national *sui generis* system of GI protection for non-agricultural products: 1 Czech, 3 French, 3 Greek, 1 Polish, 1 Portuguese, 3 Spanish and 1 Dutch. However, Czech Republic, Poland, Portugal and Spain have regional or national laws providing for the protection of for non-agricultural products bearing a GI name. It shows that some producers do not even know they can register the name of their product at the national level. On the other hand, France does have sectoral decrees. However, the two producers who said they wish for a national *sui generis* system of GI protection for non-agricultural products produce products which cannot be protected under these decrees. It is also interesting to note that if even the option “both” was not proposed as an answer, some respondents from France Ireland and Poland chose it.

There are arguments in favour of both an exclusive and non exclusive EU legal framework.

Option 1: non exclusive EU legal framework

Advantages

The interest for a co-existence between an EU and national systems has to be examined taking into account the geographical scope of the market: is the market for each product regional, national, European or international? For products which are present only on national markets, the national protection is arguably sufficient. It could be faster, less complicated and less costly to use national laws for producers. From a legal perspective, one could argue that the coexistence between national GI protection systems and an EU legal

framework would provide more flexibility with regard to existing non-agricultural GI products protected at the national level. Those interested in a protection at the EU level could apply for it and secure it if they meet the requirements set out. They could also decide to stick with the national protection. Consumers who are nationals from that Member States would arguably be well served by a good protection at the national level. Furthermore, from a public authorities' perspective, the implementation of a European regulation on top of national laws could be seen as a technical burden and costly.

Disadvantages

A co-existence between the existing national *sui generis* systems and a new European one could increase costs of protection and could make the procedures more complex if stakeholders have to deal with different procedures. Moreover, under such scenario, possible conflicts could arise on the internal market. For example, names considered as generic in certain Member States could be protected in others.

Option 2: exclusive EU legal framework

Advantages

An exclusive unitary system of protection at the EU level would oblige products protected at the national level to go through a screening process at the EU level. This would ensure that all non-agricultural GIs registered at the EU level meet the same requirements. This is a strong argument in making the system credible notably vis-à-vis consumers, but also third countries. Moreover, the exclusive nature of an EU *sui generis* legal framework could prove beneficial as 84% of the products identified (n=100) are present on the European or even international markets. As there is an increasing trend towards the globalisation of trade, these European and international markets will certainly be more and more relevant. For that reason, a better protection at a European level through a unified system could prove cost effective.

Disadvantages

Should producers decide not to apply for the protection at the EU level, they would lose all protection at the national level. This could have a negative impact on some products as well as on consumers used to certain labels or indications. From a public authorities' perspective, the implementation of a European regulation could be seen as problematic in some Member States where there is a *sui generis* GI system in place.

Considering the fact that only a limited number of Member States have a sui generis system in place it could be relatively easy to set up an exclusive unitary system at the EU level.

Preferred option: exclusive nature of an EU sui generis legal framework

3. Sectoral protection or horizontal approach

The issue: decide whether it would be useful to establish a new GI protection regulatory framework which would apply to all non-agricultural products or whether sector or product specific laws could be adopted.

Facts:

- In the agricultural sector, there are sector specific GI regulations: one for spirits, one for wines, one for aromatised wines and one single regulation for all the other agricultural products and foodstuffs (but with significant exceptions). This is due to historical reasons as some Member States had well established legal frameworks to protect some of these products, such as wines, before the creation of the EU system of protection. The protection of GI wines is itself only part of a more general horizontal text, the single common market organisation, Regulation (EC) No 1234/2007. However, it is interesting to note that the content of these EU regulations on the protection of agricultural GI products is slowly being harmonised.
- The study shows that stakeholders from several sectors have expressed interest for a uniform system of protection.
- The economic study shows that a potential economic interest for the protection is the same across all sectors. There are very few sectors, which face no infringement, and in the sectors (8 out of 23) where it is the case, the number of products that we have been able to study is very low (1 to 3). It is therefore impossible to draw definitive conclusions on the risk or the actual reality of infringements encountered by the producers of these sectors.
- At the present time, Member States do not pursue a sector specific approach when it comes to the protection of non-agricultural GI products. On the contrary, a large majority of the existing *sui generis* legal instruments allow for a protection of all non-agricultural products.

Option 1: sectoral approach

Advantages

A sectoral approach would allow for a definition of non-agricultural GIs to be much more specific. This is an important consideration as there is a large difference between products which are produced with raw material from the defined area, such as stones and marbles, and other products which source their raw material outside of the area, such as lace or textile products. It could be easier for producers to make use of a sector specific regulation that would fit the specificities of their product. It could also be easier for consumers to understand the specificity of each sector. Furthermore, under this scenario, some products could be excluded from the scope of the regulation in accordance with some criteria such as question of public order or morality. Cigarettes and cigars are for instance excluded from the scope of EU Regulation (EC) No 510/2006 relating to the protection of agricultural products and foodstuffs. Sectoral regulations could also make it easier to exclude some products, such as some firearms, products that were identified in the context of this study.

Disadvantages

Should a sectoral approach be chosen, it would fragment further the already quite complex legal framework relating to the protection of GIs in the EU. Moreover, it could be more difficult to deal with politically sensitive issues such as how to choose the products which could benefit from it. This is a key issue. Should all products which are not agricultural ones be eligible for GI protection under this new legal framework? Moreover, provided that several sectors would be interested in benefiting from a GI protection system at an EU level, the

adoption of several EU regulations would be burdensome for both the EU institutions and Member States. It could also create confusion with both producers and consumers if there are differences within each sector. Finally, it could be difficult to explain to third countries' stakeholders that only some of their products could be registered but not all of them..

Option 2: horizontal approach

Advantages

A horizontal approach would meet important objectives: the principle of good governance (adoption of one legal instrument rather than several ones), flexibility (possibility for any non agricultural GI product to be registered and/or specific provisions for specific products) and transparency (clarity for users who are mainly SMEs). If it is considered that one or two product sectors should be excluded then these should be specified. Entitlement to protection should be the rule with exceptions, as in the foodstuffs GIs, limited. This approach could also be easier to explain to producers, consumers and third countries' stakeholders.

Disadvantages

A horizontal approach would not allow for the specificities of the different sectors to be taken into account. It would force the EU to adopt a legal framework with provisions that could apply across several sectors, i.e. provisions that would be less precise. As a result, producers and consumers could arguably claim for a lack of clarity.

Preferred option: one single horizontal legal instrument which would allow for the protection of all types of non-agricultural products bearing a GI name.

4. Protection of products and services?

The issue: decide whether an EU legal framework for the protection of non-agricultural GIs should include services as well as products.

Facts:

- The study's terms of reference did not include services in its scope.
- The WTO TRIPs agreement, in its Article 22.1 appears to limit the scope of the GI definition to products: *"Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin"*. However, article 24.4 and 24.6 of TRIPs refer to services.
- The WIPO Lisbon Agreement for the Protection of Appellations of Origin and their International Registration also limit the scope of the Appellation of Origin definition to products (article 2.1) *"appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors"*
- Some countries protect names of services as GIs: Peru, Morocco and Korea, but also three countries covered by this study Latvia, Liechtenstein and Switzerland.
- Some services, such as health services or traditional healing methods could arguably qualify as GIs although we did not identify any in the context of this study.
- From the economic perspective, there is no element in the present study to draw a conclusion on the need to extend the scope of protection to services. Nevertheless, from a theoretical point of view, the assessment of the link between a service and a specific origin will be more difficult than for a product for which a natural factor can be found as vector explaining its specific quality.

Option 1: the inclusion of services in the scope of a regulation

Advantages

As some Member States and several third countries including Switzerland provide for the protection of GI services, its inclusion in the scope could prove useful if such services are being developed. It could add value to these services and provide companies that deliver them as well as consumers with additional guarantee as to the specificities of these services.

Disadvantages

It appears difficult to define precisely what type of services could benefit from this protection.

Option 2: the exclusion of services

Advantages

The application of the GI concept in the services sector would need further analysis, notably with regard to the establishment of clear criteria for the definition of a GI service. Today, based on our study, there are no services from the Member States which are protected as GIs. As a result, the cost related to the inclusion of services in the scope of a new EU regulation would arguably be high with regard to its potential impact on the market.

Disadvantages

The non inclusion of services could prevent GI services providers benefiting from a useful protection and promotion tool. This could also penalise consumers who could welcome

guarantees that could be associated to GI services. Finally, it could raise concerns in bilateral trade negotiations with some third countries.

Preferred option: the exclusion of services at this stage.

Conclusion with regard to the type of EU legislation which could be set up to protect non-agricultural GI names, our preferred option would be the adoption of a EU regulation with an exclusive nature which would apply in a horizontal manner to all types of non-agricultural GI products and which would exclude services at this early stage.

Possible content of a new EU regulation on the protection of non-agricultural GI products

We analysed the content of existing *sui generis* systems of protection in the countries covered by this study, as well as the EU regulations protecting GIs for wines, spirits and foods products, in order to look at the content options of a new regulation which would protect non-agricultural GI products' name. You will find below a discussion on the pros and cons of the different options available under each required provision should a new unitary legal framework of protection for non agricultural products be established.

1. Definitions: designation of origin (DO) and/or geographical indication (GI)

The issue: decide what GI definition(s) should be used.

Facts:

- 119 products out of 127 (93%) studied have a delimited geographical area. Some of the products are originating from a municipality and are produced by less than 10 micro-enterprises. Some others are coming from large regions and made from big international companies. The nature of the link between the products and their geographical area is different for each product, like for the agricultural products. Out of 127 products studied, 46 non-agricultural GI products do not source exclusively their raw materials in the defined geographical area.
- The study shows that existing *sui generis* laws include different GI definitions which recoup different concepts: indication of source in Bulgaria, and/or geographical indication and appellation of origin in the other countries. Some Member States use several definitions. We have identified 12 products protected as indication of source, 18 as appellations of origin and 5 as geographical indications
- EU Stakeholders who have taken part in our survey have expressed mixed views when it comes to choosing a definition. 38 producers, 13 private bodies, 15 public bodies have expressed a preference for the designations of origin⁹⁷ definition while 35 producers, 10 private bodies, 21 public bodies would prefer the use of the geographical indication's concept. Interestingly, a number of respondents in all categories (19 producers, 9 private bodies and 5 public bodies) indicated that would like both DO and GIs to be included although this was not an option given by the survey.
- In the EU, spirits can be registered as GIs, while the other agricultural products can be protected as GIs or DO.
- The difference between DO and GIs relates to the strength of the link between the product and its geographical origin. Not many identified products would meet the DO requirements.
- DO and GI enjoy the same level of protection at the EU level.
- At the international level, both concepts are used, notably GI in the WTO TRIPs Agreement and Appellations of Origin in the Lisbon Agreement.

⁹⁷

We will use in this section the concept of designation of origin rather than the appellation of origin one as the two concepts are identical but the EU uses in the agricultural sector the protected designation of origin one.

Option 1: Designation of origin

As far as DO are concerned, the link with the geographical area must be strong, with the quality and characteristics deriving directly from it (notably raw material originating from the area) and all the production, processing and preparation steps taking place in the area.

Advantages

Generally speaking, a strict DO approach would guarantee a solid credibility to the system. The choice of a single definition for designation of origin would make it clear that all products benefiting from the system have a strong and direct link with their defined geographical origin. Arguably, the DO approach would allow for a better remuneration of raw materials' producers located in the region of origin of the product as in order to benefit from this protection producers would have to source their raw material within the region/area. It could therefore have a bigger positive economic impact for the region of production: the number of direct jobs linked to the product would be higher, not only due to the enterprises producing the final product itself, but also through enterprises that are up-stream in the supply chain. This could optimise the potential positive economic impact of the protection on the local economies. Moreover, one should take into account the relative higher value of the DO over the GI concept in some countries especially in countries with long lasting GI wine traditions. In some Member States where the DO concept is well known through agricultural products, producers and consumers value more designations of origin than geographical indications because the link between the product and its origin is stronger. As a result, the DO has acquired a higher added-value potential in terms of communication with consumers.

Disadvantages

Should an EU-wide *sui generis* legal system to protect non-agricultural GI products refer only to the denomination of origin definition, it would not be available to products which do not source their raw material and/or which are not fully produced, processed or prepared in the geographical area. In practice, as shown in the context of this study, such an approach would exclude numerous products identified. In practice, it would be beneficial mostly to non processed products such as stones and marbles. Moreover, some products such as the Italian ceramics enjoy recognition as appellations of origin at the moment under a specific law despite the fact that they do not meet the strict requirements usually associated with DO (see paragraph above). Furthermore, it is important to note that only one Member State, Slovenia, makes it compulsory to have raw material originating from the area to qualify for GI registration. From a public authorities' perspective, it is arguably doubtful that it would meet the principle of good governance as the adoption of such an EU legal instrument would have a very limited impact. Another element to take into account is the fact that the EU has signed the WTO TRIPs agreement that provides for a wide definition of a GI. Should the DO definition be chosen, it would not be compatible with TRIPs and would *de facto* exclude many existing foreign non-agricultural GIs.

Option 2: Geographical Indication

As for GIs, raw material do not have to come from the area, the reputation is sufficient to secure protection and only one of the production, processing or preparation steps can take place in the area.

Advantages

The use of such a definition would allow a large number of non-agricultural GI products to be protected provided that the requirements are met: an indication which identifies the product as originating from the area and quality, reputation or other characteristics of which are essentially attributable to its geographical origin. One must understand that it would be difficult if not impossible in many cases to source raw material from the defined area for

many non-agricultural GI products that we identified in the context of the study. This is the case for example for knives, porcelain, jewellery and watches or clocks products. The GI definition would allow these GI products to benefit from an improved protection at the EU level and for consumers to get guarantees on their specificities. From a public authorities' perspective, this approach would be easier to justify as it would have a wider impact within the EU. Furthermore, the GI definition would be compatible with TRIPs.

Disadvantages

The choice of the GI definition would not bring as much added value to the defined area as the DO approach as GI products would be protected irrespective of the fact that the raw material comes from the defined area. This means that producers would be able (to continue) to source raw material from outside of the region. With regard to consumers, this could potentially raise issues with regard to the credibility of the system as they could assume that a protected GI means that the product is entirely produced in the defined area. One way to deal with this issue would be to add a provision inspired by the Protected Geographical Indication definition for agricultural products which requires that at least one step, i.e. production, processing or preparation, takes place in the geographical area. This would ensure stronger economic and social benefits to the area.

Option 3: use of both definitions

Advantages

Both DO and GI definitions could also be included in the provisions of an EU-wide *sui generis* legal instrument as it is already the case in the agricultural sector. This could make it easier to "integrate" the different approaches which exist today in the Member States where there are *sui generis* GI laws.

Disadvantages

From a legal point of view, a double definition approach could pose problems in its implementation. For instance, the body which will be in charge of managing the system would have to verify the strength of the link between the product and its geographical area to define whether it can be registered as an DO or a GI. This process is not an easy one, notably when it comes to examining third countries' applications. It also would beg the question as to who is in charge of defining the geographical area. In some countries this is done by public authorities on their own, in others by producers and public authorities or case-law. The use of the two definitions can also create confusion towards consumers and other stakeholders, including producers, who are not always aware of the differences that exist between the two concepts. Finally, it could also be a challenge to explain why two definitions have been chosen to third countries' stakeholders. Should this approach be followed, specific awareness and promotion campaigns will certainly have to be envisaged.

Preferred option: taking into account the above, the use of the GI definition only would appear to be the most sensible option.

2. Protection with or without registration?

The issue: decide whether a *sui generis* GI protection legal framework for non-agricultural product should make registration mandatory to secure protection.

Facts:

- The study shows that existing *sui generis* laws provide for the registration of GI. Except in Switzerland, there is no protection without registration.

- In order to secure intellectual property rights protection in the EU, registration is required.

Option 1: protection without registration

Advantages

The lack of registration would make it easier to administer a regime as there would be no need to go through a registration process and no need to set up a register. From a public authorities' perspective, it would be very positive. Arguably, some EU and third countries' producers could also be satisfied with such an approach which is already implemented in Switzerland. Indeed, the protection would automatic, would not require any recognition or registration procedure and neither would there any procedural fee.

Disadvantages

The lack of registration would create too great an element of uncertainty when it comes to the protection of intellectual property rights. This is true in particular when looking at the EU as a whole where an EU wide protection can already be difficult to implement when an EU register exists. This legal uncertainty would eventually not benefit producers and consumers. It could make it difficult for the EU to explain to third countries' stakeholders why there is a registration system for agricultural GIs and a non-registration system for non-agricultural GIs.

Option 2: protection with registration

Advantages

All IP rights in the EU are acquired through registration and it would certainly be useful to maintain a level of consistency on this matter. A registration process would bring notable benefits in terms of clarity and legal certainty with the ability to establish a GI register at the EU level. A clear legal framework and procedure would facilitate its understanding by all stakeholders and third countries. Such register could be useful to ensure an effective protection of the registered names and prevent conflicts between different types of IP throughout the EU.

Disadvantages

From the economic perspective, the *sui generis* system with registration would certainly be more complicated and time consuming. It would require producers to put together the relevant documentation. It would also oblige public authorities to conduct examination process, offer opposition procedure, create and manage a GI register at the EU level. Fees could be asked to cover these expenses. As a result, it could be less attractive to small companies which represent an important part of our sample. 45 products out of 118 for which data are available are exclusively produced by micro-sized enterprises and 51.6% of the enterprises identified in the context of the survey are micro-sized (n=118).

Preferred option: mandatory registration of a GI name and establishment of an EU register for non-agricultural GI products.

3. Application for protection: requirements

a. Applicant

The issue: decide who should be able to apply for registration.

Facts:

- The study underlines the fact that the nature of the applicant under existing *sui generis* GI system varies depending on the country. It can be a producer or a group or association of producers, local or national authorities and even in some Member States associations of consumers. However, a large majority of Member States have the same approach which gives a leading role to producers.
- For 46% of the studied products (n=117) a collective organisation exists, mainly in the form of an association (50%), and a professional union (20%).
- With regard to the protection of the name of non-agricultural products bearing a geographical indication through the trade mark route, the application has been made by different stakeholders depending on the nature of the mark.
- The provisions of the EU regulation relating to the protection of GI spirits are quite vague as they refer only to the need to have the name and contact address of the applicant and that the application is made by the Member State of origin of the spirits. The wine GI regulation refers specifically to groups of producers. The general regulation on foodstuffs and agricultural products gives a central role to groups of producers and or processors. Under these last two regulations, one single producer can also apply and other interested parties can join the application. Special provisions are also previewed for situation when a name designates a trans-border geographical area or a traditional name connected to a trans-border geographical area. In such a case, a joint application may be lodged.

Option 1: a group of producers

Advantages

There is often more than one producer of the GI. As a result, it is important that as many producers as possible contribute to the definition of the content of the GI specification as well as controls which should be performed to guarantee that the product meets the production requirements. The collective approach allows for requirements to be set out in a fair manner and prevents a single producer from imposing rules on other. A collective approach could also bring benefits beyond the protection aspects as it could encourage producers to make economies of scale and to get better organised in terms of collective promotion for instance.

Disadvantages

A group of producers would have to agree on the GI specifications. This would certainly be more difficult than if it was up to one single producer. The collective approach means that it would take more time to secure protection. Furthermore, in some cases where no collective organisation exists, the requirement that the registration should be done by a group of producers may be an obstacle to an application for registration. Setting up a collective group represents an important investment in human and financial resources. The functioning of a collective organisation may be a non-sense for the products which are produced by 1 single enterprise. It could be costly and complicated for the products which are produced by few micro-sized enterprises (38% of the 118 studied products with data, among them 33 are produced by 1 single enterprise). Furthermore, in some countries, we have not found any collective organisation, e.g. in Bulgaria, in Czech Republic, in Estonia, in Finland, in Hungary,

in Ireland, in Lithuania, in the Netherlands, in Poland and in the Slovak Republic. This can be partly explained by a cultural element as in some countries the collective approach is not the preferred option. For that reason, some flexibility should be foreseen in the conditions posed for registration.

Option 2: a single producer

Advantages

In the context of the study, we have found several cases where the GI product is produced by one single producer. It would therefore be important to offer the possibility for these producers to benefit from a new EU *sui generis* GI system. Moreover, it would be easier for a single producer to prepare an application for GI registration.

Disadvantages

Should one producer be entitled to apply under certain conditions, he/she would secure strong rights on a GI name or indication. He/she would be able to define the content of the GI specifications and, as a result, impose these requirements on any other producer interested in producing the GI product in the future. However, he/she will have to take into account GI law principles which prohibit monopoly on a registered GI: any other producer located in the defined area and meeting the requirements set out in the GI specification shall be free to use the GI. As a result, it is doubtful that many single producers would be interested in choosing the GI route if they already have managed to secure rights on the name, even if not exclusive rights, such as through a figurative mark. Indeed, this would force them to share the use of a geographical name or indication. This is why some producers could perceive negatively the establishment of a new EU legal framework that would provide for the protection of non agricultural GIs.

Option 3: other stakeholders

In the context of this study, we have discovered that In Slovenia, chambers, larger local communities or State authorities can apply for a GI registration. In Estonia, under the *sui generis* GI system, an association of consumers, or a competent authority of the country of origin of the good or service (a list of such authorities shall be approved but the Estonian Government)⁹⁸.

Advantages

This option would open up the system and could make it more attractive (and successful). It could facilitate the involvement and help justify the investment made by public authorities if they can be a direct actor in the registration of a GI. Furthermore, as producers can find it difficult to mobilise resources to prepare an application and/or to agree on the content of the application, other stakeholders could help table applications more easily.

Disadvantages

As producers are the ones that have to meet the GI requirements and who often know best the history and traditional production process, it is difficult to imagine that they could be imposed rules without having been consulted and having taken the lead in defining the scope of the GI specifications. Should that be done, it is likely that producers could simply not make use of a registered GIs if they consider that it does not meet their interest. As a result, it could eventually undermine the economic and social interest for the establishment of such

⁹⁸ Reminder: Estonia does not recognize the association of producers as legitimate applicant for GIs. Producers can apply.

system. Furthermore, such an approach would be totally different from the EU's one relating to agricultural products. Again, it could make it more difficult for the EU to explain to third countries why there are different rules for different GI products.

Preferred option: the applicant should be a group of producers or, as an exception and under certain circumstances e.g. when there is only one producer left, one single producer.

b. Registrable indications (geographical names, traditional names, name used, genericity issue)

The issue: which indications could be registered? Should only geographical names (indications of geographical places) be eligible for protection? Could it be possible to register traditional names or expressions, geographical or figurative representations suggesting the geographical origin of the product? Can generic names, i.e. names that are used commonly by people to describe an entire category or class of products, be protected?

Facts:

- In the context of the study, we have discovered that existing *sui generis* GI protection systems provide for the protection of geographical names, but also other indications or signs, as well as traditional denominations (e.g. Kantele in Finland).
- Most of the identified products bear a geographical name, traditional denominations are an exception.
- In the agricultural sector, some geographical names do not always match the geographical origin as, under the EU legislation, the name which is registered is the one traditionally used in trade. For example, the Italian cheese Pecorino Romano comes from Sardinia and it is forbidden to produce Stilton in Stilton!
- Contrary to the trade mark law, existing *sui generis* GI systems do not require the name to be actually used in trade to obtain or maintain protection.
- Generic names are not registrable under the existing different legal systems at the national level.

Option 1: protection of geographical names

Advantages

By essence, a GI relates to a geographical origin of a product and often bears a geographical name. From a consumer point of view it is important to keep this link to ensure that consumers are not misled as to the link between the product and its geographical origin.

Disadvantages

Not all GIs bear a geographical name. As stated above, the Finnish product Kantele has no link with a specific area of Finland, but is a traditional name that is used to refer to traditional products from Finland.

Option 2: protection of traditional names

Advantages

As stated above, should only geographical names be eligible for registration, some GIs would be excluded from the scope of the EU regulation. For the sake of clarity, provisions could be inserted to guarantee a direct link between the geographical name and the product.

Disadvantages

Consumers might find it difficult to understand that a product is protected as a GI although it does not bear a geographical name.

Option 3: protection of generic names

Advantages

None as the protection of generic names would go against IP law principles which prevent the registration of terms that have become generic.

Disadvantages

In accordance with general IP law principles, generic names should not be registered. At the present time, a precise definition of what a generic term might be is not often provided under existing national legal instruments. The three EU regulations on the protection of agricultural GI products state that: *“a name that has become generic means the name of an agricultural product or foodstuff / a wine / a spirit drink which, although it relates to the place or region where this product was originally produced or placed on the market, has become the common name of an agricultural product or foodstuff / a wine / a spirit drink in the Community”*. Regulations (EC) No 1234/2007 for wines and (EC) No 510/2006 for agricultural product or foodstuffs include criteria: *“To establish whether or not a name has become generic, account shall be taken of all factors, in particular: (a) the existing situation in the Member States and in areas of consumption; (b) the relevant national or Community laws”*. The European Commission conducts a first assessment of the generic character of a name but its decision can be challenged before the European Court of Justice⁹⁹. A similar approach could be envisaged under a new EU legal framework for the protection of non-agricultural GI products.

Preferred option: geographical names but also other traditional denominations which might not have a geographical name, used or not, should be registrable. However, generic names should not.

⁹⁹ See for example the ruling of the European Court of Justice in the so-called Feta case <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=44488&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3008175>

c. Content of the GI product application

The issue: what could be the main requirements with regard to the content of the GI application?

Facts:

- The study shows that the main elements which are required systematically under existing national *sui generis* legal systems are a product specification and a link to a defined area.
- Other elements are sometimes compulsory and can be extremely detailed. This is the case in Slovenia for instance where a description of the good including the raw materials and principal physical, chemical, microbiological, organoleptic or other characteristics of the good, a description of the method of obtaining the good and, if necessary, the authentic and unvarying local methods; details of inspection structures and labelling details are notably requested.
- The stakeholders' survey included a question on the benefits of a legal system of protection at the EU level. The stakeholders were asked to rate several options. One of them was "*all the producers will have to fulfil the same criteria to use the name of the non-agricultural product comprising a GI*". A large majority of respondents from EU Member States strongly believe that one of the benefits of such legal protection would be that all the producers would have to fulfil the same criteria to use the name of the non-agricultural GI product. Producers and non producers from non EU countries mostly share this view, even if a Norwegian private body and an Icelandic public one disagree with this option.

The main issues related to the content of the GI application are to be discussed with regards to their impact on fair competition and the economic potential benefits for companies and the general economic welfare (local development and consumer point of view), as well as consumer interest and legal certainty.

i. Type of requirements

Option 1: no specific requirements

Advantages

It would be extremely easy to register GI names under this option. Furthermore, it would also allow producers to modify their production process as they wish and would not require any controls as points to be controlled would not be defined.

Disadvantages

The lack of requirements would undermine seriously the credibility of the system, notably *vis-à-vis* consumers as there would be no guarantee on the production process and on the link to the territory. It could also be negatively perceived by other stakeholders, in particular competitors who might feel that the system does not provide a fair playing field.

Option 2: detailed requirements

Advantages

Minimum common practices and unique definition of the final product have a good impact on the consumer ability to recognise the product. It increases the consumer trust in the product and reduces uncertainty as to its quality. It guarantees fair practice among the enterprises producing the same product on the basis of the same requirements. It also increases the

image of the products with consumers. This is an important issue as the credibility of any GI system depends largely on the content of the product application. It has to be sufficiently detailed and clear to guarantee that there is a link between the specific characteristics of the products and its geographical origin. It would also be important in the international context and debate on GIs to counter arguments raised by some countries against such systems.

Disadvantages

Putting too high constraints in the specifications and asking afterwards to make costly controls can lead to a loss of competitiveness through the increase as this would increase production costs. This can have an impact on the price of the final product, hence on consumer prices.

Preferred option: Detailed requirements that have to find a balance between the cost effectiveness for producers and the guarantees granted to consumers

ii. Possible requirements

Specific attention should be paid to two main points: the definition of the geographical area and the link between the product and the area.

- ***Definition of the geographical area***

With regard to the definition of the area, our legal analysis shows that current *sui generis* GI laws tackle it in different ways. It is sometimes defined by producers themselves, but more often by administrative bodies at the local or regional level.

Option 1: definition by public authorities

Advantages

This ensures a better control on this element as these bodies are best placed to delimit or agree on the area of origin. It would also ensure that public interest, i.e. not only the producers' interest, is taken into account. This would also allow the public authorities to do a control of the definition of the geographic area and prevent abuses by producers.

Disadvantages

However, this means that Member States and/or at the local or regional authorities have to provide a procedure to define the area. This could be perceived as an unnecessary burden by some authorities and by producers. This could also lengthen the procedure as it would add another step to the preparation of the registration request.

Option 2: definition left to producers

Advantages

This would not impose a burden on public authorities as it would be a private matter. If there is an agreement between producers, this could arguably speed up the registration process as there would be no need for a decision to be taken by public authorities.

Disadvantages

This would likely trigger disputes as to the limits of the geographical area as producers could feel that they are unduly excluded from the area and, therefore, would be unable to use the GI name. Such disputes to be solved eventually by the courts could delay the registration process. They could also undermine the credibility of the system towards consumers and other stakeholders, in particular competitors who might feel that the system does not provide a fair playing field.

Preferred option: the definition of the geographical area should be done by producers but verified by public authorities.

- ***Link between the product and the geographical area***

As for the link between the product and the geographical area, the key point remains how this link can be demonstrated. In the case of an designation of origin, it is clear to establish the link between the product and its geographical area it derives from the origin of the raw material, i.e. coming from the defined area, and a combination of human and natural factors existing in that area. In the case of a geographical indication, the link with the territory is weaker (e.g. raw material does not have to come from the delimited area). EU GI regulations relating to agricultural GIs differ on that point. For a wine to be a PGI, at least 85% of the grapes used must come exclusively from the geographical area. The other two regulations are much looser on this as only the details bearing out the link with the geographical area and the specific quality, reputation or other characteristics has to be provided. The choice of definition(s), as discussed under point 1 above will largely determine the conditions that will have to be set out in that regard.

Option 1: strong link to be established

Advantages

This would reinforce the credibility of the system and provide strong guarantee to consumers as to the specific characteristics of the GI product. It would also force producers to keep a true link to the geographical area. In return, this would ensure local and social benefits to that area.

Disadvantages

The necessity to prove a strong link to the geographical area could prove challenging to some producers or for some products. This could limit the interest for a European GI system from the producers' point of view. It could also impose a bigger burden on public authorities should they be involved in the definition and/or control of the geographical area requirements as they would have to closely check this link.

Option 2: weak link to be established

Advantages

It would be much simpler not to have to have to establish a strong link between the characteristics of the product and its origin. This would make the registration procedure faster. It would impose fewer burdens on the Member States.

Disadvantages

This could undermine the credibility of the system towards consumers and other stakeholders, in particular competitors who might feel that the system does not provide a fair playing field.

Preferred option: A clear strong link should be established

Possible content of the application

Based on our analysis of the current requirements at the Member States level in the *sui generis* systems (see part I of this study) and on our recommendation to use only one definition, that is the geographical indication one, we would argue that the application for the registration could include the following elements:

- i. The name and address of the applicant

- ii. The geographical name (or denomination) and the product
- iii. A description of the product
- iv. A definition of the geographical area
- v. A description of the production method / steps
- vi. A justification of the link of the product with the geographical area
- vii. Control requirements, if any
- viii. Specific labelling or packaging or presentation requirements, if any.

d. Control requirements

The issue: should there be control requirements established by an EU-wide *sui generis* legal instrument? If yes, what kind of controls can be foreseen?

Facts:

- Existing *sui generis* legal frameworks do not often provide for compulsory controls of the compliance of the products with the GI specifications.
- Control requirements can increase consumer's trust in a GI system as they enhance the reliability of the claims put on the products provided that controls are made by an independent body in order to be considered as neutral and valid.
- Controls also represent additional burdens and costs for enterprises. When the price obtained on the market is not sufficient to cover these additional expenses, it may hinder the competitiveness of the companies.
- The stakeholders' survey included questions on the roles of public bodies before and during registration. The answers show that:
 - One of the roles of public bodies before and during registration should be to verify the link of the product to the specific area according to a majority of respondents.
 - Public bodies should be in charge assessing the specific features or characteristics of the product according to non producers from the EU and from outside the EU. The majority of producers (even if a high number of them are neutral on the question) are also in favour of this option but Swiss producers remained neutral.
 - Public bodies should be in charge of controlling the compliance with the definition of the boundaries of the geographical area where the product can be produced according to most respondents.
- Under the trade mark regime, marks do not provide for systematic controls, as such, except certification marks which, by definition, certify compliance with defined standards do provide for controls. Some collective marks can, however, be subject to such controls.
- The EU *sui generis* GI regulations relating to agricultural products all provide for controls performed by independent bodies, which can be public or private (accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65), which verify compliance with the specification.
- Many third country *sui generis* GI systems do not make this element compulsory.

There are two types of controls. First, controls of the GI producers to make sure that they meet the requirements set out in the GI specification. Second, controls on the market to detect possible frauds counterfeiting or misuses of the GI name.

i. Controls of GI producers

Option 1: auto-controls

Advantages

Defining a system of controls and implementing the controls internally would be easier to set up and to manage from a producer's point of view. It would not impose any burden on other authorities and would, arguably, not be very costly. This means that it would not have a strong impact on consumer price. Third country producers could find this approach user-friendly.

Disadvantages

The credibility of such controls could be put into question and could undermine the credibility of the whole GI protection system. There would be no means to impose a minimum control on third countries' application for GI registration in the EU.

Option 2: third party controls

Advantages

The credibility of any EU-wide system would benefit from the ability to verify the compliance with the GI requirements by independent public or private bodies¹⁰⁰. Group certification allows a reduction of some certification costs because of the generation of economies of scale (e.g. reduced inspection and overhead costs). It could allow producers to ask for higher price for their GI product as they are able to certify its characteristics. Costs would vary depending on the certification system and the certification body. If controls are to be performed by public authorities their costs could be more limited (or even non-existent if the public authorities decides to do them for free) than through a private body. Consumers would also be ensured that the product complies with its specification.

Disadvantages

Controls by independent third parties bring costs which are often included in the price of the final products. As a result, this option could have a negative impact on prices for consumers. Furthermore, the establishment of such control systems raises a number of questions: who should control; what should be controlled and who should pay for the controls. This study shows that a large number of non-agricultural GI producers and small enterprises have limited financial means. A mandatory certification system could prove to be costly. This could have a deterrent effect on producers who might consider that it would not be economically interesting to ask for GI registration at the European level. Moreover, as many products identified in the context of the study are considered as GIs thanks to human factors mainly (local *savoir-faire*), it would be important to define, possibly within each specification which elements should be controlled. One of them is clearly the fact that the defined production process is respected.

As far as economic dimension is concerned, controls must therefore be enforced in a balanced way. At best, costs should not exceed what their advantages can be estimated. In our view, simplified control systems could be allowed for very small products being made by very few producers.

Preferred option: a combination of auto-controls and private or public third party controls should be envisaged.

¹⁰⁰ See for example: "In organic schemes, producers get a price premium directly linked to the certification. In the Czech Republic for instance, it has been observed that some farmers can receive up to 200 percent of the conventional price for their organic vegetables (Václavík, 2007)". <http://www.fao.org/docrep/016/k9849e/k9849e.pdf> page 32.

ii. Controls of the GI on the market

Controls on the market to detect possible frauds, counterfeiting or misuses of the GI name are necessary to protect consumers against deception and to enforce relevant IP rights. They could be performed by private and/or public bodies. This question also relates to point 6 below.

Option 1: private controls

Advantages

Controls on the market could be performed by producers themselves. This would be cost free for public authorities and could leave a lot of freedom to producers to act.

Disadvantages

Private controls are expensive and difficult to perform on a wide territory such as the EU. It would therefore be extremely difficult for small producers to conduct such controls. As a result, the fight against counterfeiting would be limited and consumers would not be well protected. Furthermore, private control bodies would have to meet certain criteria to demonstrate their independence and technical capabilities on the matter. This would also increase costs.

Option 2: public controls

Advantages

Controls by public authorities could be more efficient as they often have more resources available than producers. They could also add great value to an EU system as it could raise the attractiveness of the protection towards producers and offer further guarantees to consumers.

Disadvantages

Such an administrative protection could be burdensome for Member States and difficult to implement.

Preferred option: a public control system could be envisaged to improve IP protection and offer higher guarantees to consumers

4. Application for protection: procedure

The issue: should there be a first step procedure at the Member State's level to secure registration of non-agricultural GI products at the EU level or should a one step procedure at the EU level be sufficient? In both cases, which should be the key steps of any registration procedure?

Facts:

- The protection of trade marks at the EU level is available through Community trade mark registration directly with the Office for the Harmonisation of the Internal Market (OHIM).
- Procedures applicable under the EU regulations relating to the protection of agricultural GI products are different. They include an examination of the request first at the national level and then at the EU level by the European Commission. They also provide for publications of the application and relevant opposition procedures at the national and European levels. The European Commission has the final say as to the registration of the GI name.
- Our study shows that human and financial resources in the GIs identified are often limited: 80.1% of the enterprises are micro and small-sized enterprises having less than 50 employees on a sample of 118 products for which data is available.
- At the moment, only 14 Member States have established a *sui generis* GI protection system for non-agricultural GI products, many of which have not been used for a long time.
- In the stakeholders' survey, the producers were asked if they wanted "to have a broader choice of legal instruments relating to the protection of the name of non-agricultural products comprising a GI or potential GI at the EU level". If they answered yes, they were asked to indicate which type of protection they would like to enjoy between a uniform GI protection for non-agricultural products at the EU level and national *sui generis* systems of GI productions for non-agricultural products. A majority of EU producers (73 out of 104 who answered yes to the previous question) who took part in the survey said that they wished for a uniform GI protection for non-agricultural products at the EU level. 13 preferred a national *sui generis* system of GI protection for non-agricultural products: 1 Czech, 3 French, 3 Greek, 1 Polish, 1 Portuguese, 3 Spanish and 1 Dutch. However, Czech Republic, Poland, Portugal and Spain have regional or national laws providing for the protection of for non-agricultural products bearing a GI name. It shows that some producers do not even know they can register the name of their product at the national level. On the other hand, France does have sectoral decrees. However, the two producers who said they would prefer a national *sui generis* system of GI protection for non-agricultural products produce products which cannot be protected under these decrees. It is also interesting to note that if even the option "both" was not proposed as an answer, some respondents from France, Ireland and Poland chose it.

a. A one-step or a two-step registration procedure

Option 1: registration directly at the EU level

The issue: could it be possible to register a GI directly at the EU level and, if yes, what should be the main elements of that procedure?

Advantages

A procedure that would provide the possibility to register a non-agricultural GI directly with an EU body could bring a number of benefits. First, it would limit the role and possible burden on the Member States as there will be a procedure only at a European level. Second, it would bring consistency across the EU when it comes to how a request can be tabled, how it is dealt with and where relevant information is published and registered. This would mean a fair playing field and more clarity to producers and other stakeholders, including competitors and consumers, notably as it could offer one single opposition procedure at the EU level. Third, it would limit the timeframe necessary to secure registration. It could arguably also be less costly.

Disadvantages

A case can be made against a one step procedure at the European level. First, Member States are normally much better equipped than a European body to deal with certain technical aspects of any GI application, such as the delimitation of the area, the verification of the specifications detailed requirements. These elements have to be properly checked in order to preserve the credibility of the GI system *vis-à-vis* all stakeholders. One could question how an EU body would be able to verify detailed information that would be sent to them in one of the official languages of the EU. This will require significant resources and expertise. It could have a negative impact on the timeframe for registration. Second, it could undermine the existing *sui generis* GI protection systems that exist in some Member States.

Option 2: a two-steps procedure with a national procedure before registration at the EU level

The issue: should there be a two step procedure to register non-agricultural GIs at the EU level with a first examination at the national level.

Advantages

National authorities have better means than EU authorities to verify compliance with GI definitions and the content of the specification (notably defined area, production process, controls, etc.). Arguably, the fact that national oppositions could be dealt with at the Member States level would certainly reduce the oppositions which will have to be managed by the EU body in charge of the system. The EU practice on agricultural GIs is that national oppositions deal with technical aspects of the request, for instance delimitation of the area, production or labelling requirements, etc. while oppositions at the EU level deals with wider principles, e.g. verification that the key requirements are present, link to the territory, independent controls, etc. The ability to look at technical oppositions at the national level could allow for a quick examination and registration process at the EU level. Familiarity with local procedures, the language and the geographical proximity of Courts and legal remedies are favourable elements for the preservation of local producers' rights.

Disadvantages

A first examination at the national level would impose a burden on Member States, especially on those that do not have any such system in place at the moment. Furthermore, due to the fact that many countries have no experience in this matter, there is a risk for the harmonisation of the system, as the practices could differ from Member State to another. As applications would be examined twice, it could slow down the registration process, especially as a national opposition phase would have to be established to deal with challenges relating to the request for registration. It could also have an impact on the costs for registration as the procedure would be longer and would require more resources.

Preferred option: no national step but a comprehensive and transparent procedure at the EU level which would provide for opposition to be made.

b. Which procedural requirements?

Any new *sui generis* legal framework should be based on procedures which offer all the necessary guarantees of transparency and legal certainty in order for the system to be credible.

As a result, a case can be made in support of a procedure that would include the following elements:

- Registration request & file made available to interested stakeholders
- Examination of the request by the relevant EU body
- Publication for eventual opposition
- Opposition procedure available to any natural or legal person having a legitimate interest, with possibility for the interested parties to hold consultations with a view to iron out differences. People dealing with the registration request and those in charge of deciding on the opposition should not be the same ones
- Timelines for all aspects of the procedure (and in particular opposition) should be short
- Decision of the relevant EU authority to register or to reject and publication of the decision
- If accepted, inclusion on an EU register of non-agricultural GI products

c. Specific procedure for established GIs

The issue: should there be a specific procedure applicable for existing and protected GIs at the national level?

Facts:

- In the context of this study, we have identified a number of products which are registered and/or protected in the Member States through *sui generis* GI systems and/or trade mark systems. Some products are protected through the Community trade mark system.
- Specifically protected GIs constitute a very limited number of products, as only 26,1% benefit from a *sui generis* protection and 11,6% through specific laws at the national level.
- As far as agricultural products are concerned, the EU has always provided for a simplified procedure for the registration of existing GIs when the EU Regulation was adopted.

Advantages

As some products are already protected as a GI at the national level through *sui generis* GI laws, one could consider that they meet the basic requirements for GI registration at the EU level and could therefore be registered through a simplified procedure. For instance, they could go through a fast-track procedure with no examination at the EU level, only publication for opposition. This approach would allow for a quick registration of existing GIs. It could also enhance the attractiveness of a new EU legal framework and help promote it towards stakeholders quickly as it is easier to raise the profile of a new legal scheme if products to which consumers and other stakeholders can relate to, especially if those have a good reputation.

Disadvantages

Specific and simplified rules to facilitate the protection of already protected GIs have raised concerns in the past with regard to the coherence of EU GI systems. Many agricultural products were registered through these simplified procedures, hence by-passing important

checks as to their compatibility with EU rules. Further to a WTO Panel decision which condemned this procedure on the ground that it unduly allowed for a preferential treatment of existing GIs, EU regulations on agricultural GIs have been modified. They either do not contain any simplified procedure (e.g. Regulation (EC) No 510/2006) or provide for a specific procedure for the registration of existing wines and spirits GIs that guarantee a minimum scrutiny at the EU level. Furthermore, considering the limited number of products already protected at the national level through *sui generis* laws, the advantages of introducing a simplified procedure are limited from the economic perspective. Moreover, not all existing GIs would automatically meet all the proposed EU requirements. For example when no control system is in place, it would have to be set up and explained in the GI specification in order for the product to be eligible for protection at the EU level. While the wine and the spirits sectors had an important number of protected GIs at the national level which had to be examined within a short timeframe by the EU competent authority, we believe that the situation would be different for non-agricultural GI products. Consequently, there is *a priori* no reason why derogations to the general conditions set out in a new EU regulation should be provided to products already-registered at the national level. This would contribute to the overall credibility of the system.

Preferred option: there should be no specific simplified procedure for the registration of existing non-agricultural GIs.

d. Application procedure for third country GIs

The issue: should the procedure for the registration of third country GIs be different from the one available for European GI non-agricultural products?

Facts:

- Under international law, the national treatment principle supposes that local and foreign products are treated equally.
- In accordance with the EU's international commitments, in particular with regard to the WTO TRIPs Agreement provisions, any new regulatory framework should comply with the national treatment principle which provides that any country should give to the nationals of other countries the same treatment as to its own nationals.
- The current law for the protection of agricultural GIs allows for the protection through registration of third country GIs. More flexibility is given to third countries applicants and to oppositions coming from them as they can send them directly to the European Commission without having to go through their national authorities.
- Third countries' GI products can also be protected in the EU on the basis of signed bilateral agreements without having to go through the normal application procedure. The European Commission conducts a number of checks as to the GI requirements that have to be met and publishes lists of third countries' GIs for opposition before taking a final decision on concluding the bilateral agreement.
- The protection of geographical names for non-agricultural products is important in most of the developing countries. This is due to the fact that many products are still produced based on local resources and local and traditional knowledge. At the same time, not all products are able or willing to secure export markets such as the EU one.

Advantages of one procedure for all

A similar registration procedure for EU and non EU GIs would bring clarity to the system. This is important for all stakeholders, producers, consumers and public authorities. It would also be fully compatible with the EU WTO's commitments under the TRIPs providing national treatment to all applicants.

Disadvantages of a one procedure for all

The above mentioned procedure could pose problems to some third countries' stakeholders. For instance, in some countries GIs are registered by local authorities rather than producers or groups of producers. As a result, the procedure described above which would provide for a group of producers or a producer to apply could create obstacles for third countries.

Preferred option: similar procedure as for the registration of EU GIs.

e. Procedure to deal with changes to GI specifications

Issue: what should be the procedure when changes are being made to the specification of the GI product? Should any amendments be subject to full examination procedure or only some of them? In such a case which ones?

Facts:

- GI specifications are often not set in stone and need to be modified to take into account new requirements which can touch upon several aspects such as the area, the production process, labelling issues, health and safety etc.
- Some amendments are of a minor character (e.g. a new step in the production process), some are major changes that have an impact on the production or trade (e.g. a new defined area, a change in the use of raw materials, new labelling rules, etc.).
- Under existing EU regulations on the protection of agricultural GIs, provisions have been established to deal with modifications to the specification.

Advantages

From an economic perspective, it is very important to have the possibility to modify the specifications after registration. The first reason is that the technologies may change, and these technical improvements should be taken into account to increase the productivity of the companies. The second reason is that exceptional circumstances or force majeure cases that requires the specification to be temporarily altered (it was the case recently for some agricultural GI products further to the earthquakes that took place in Italy). Third, it is important to guarantee sufficient transparency and efficient means of opposition to request for changes to the GI specification file. Fourth, this is also important to guarantee the credibility of the system towards consumers.

Disadvantages

It would mean that the EU body in charge of the GI register would have more to do. It would have to establish procedures to deal with such requests. It will have to be able to define whether the requested amendment is minor or major. The EU body could request that information is transmitted when a change is made to the GI specification. It will then decide whether to publish a revised version of the specification for opposition if any (that is in case of a major amendment) or simply publish a new version of the GI specification (when the amendment is minor).

Preferred option: the procedure provided for the registration should apply mutatis mutandis to modification requests that are major amendments to the GI specifications.

f. Cancellation procedure

Issue: should it be possible to cancel a non-agricultural GI registration? If yes, who should be able to request it, who should be responsible for taking the decision and what procedure should be put in place to deal with cancellation of an EU registered GI?

Facts:

- As underlined in our study, some non-agricultural GI products are no longer produced and some are facing economic difficulties.
- The stakeholders' survey included questions on the roles of public bodies after registration. With regard to the non-respect of the production requirements, the possibility to impose fines or cancel the registration, the answers of the stakeholders showed that almost all the EU respondents and non producers from outside the EU believe that the public bodies should be able to act in cases of non-respect of the production requirements, possibility to the point of imposing fines or cancelling the registration. However, Swiss producers are neutral on the question.
- Except for spirits, EU regulations on the protection of agricultural GIs contain provisions to cancel a GI registration. The European Commission has been granted the power to initiate a procedure to cancel a GI registration if compliance with the conditions of the specification for an agricultural product or foodstuff covered by a protected name is no longer ensured. Any natural or legal person having a legitimate interest can also request cancellation of the registration, giving reasons for the request. The wine regulation makes it clear that it can also be done thanks to a duly substantiated request of a Member State, or of a third country.

Advantages

The cancellation procedure provides for another layer of control on GIs and contributes to enhancing the credibility of the system. There is therefore a case to be made for including provisions which would allow the European body in charge of the GI registration and other interested party, notably Member States or a third country, to call for a cancellation. The procedure should provide an examination of the reasons raised for the cancellation of the GI with guarantees offered to GI producers or other interested party to be heard to defend their position. It should be possible to appeal the decision.

Disadvantages

A cancellation procedure could leave some uncertainty with regard to the ability for producers to enjoy GI protection. It could also bring more costs on the EU body in charge of the system.

Preferred option: a cancellation procedure should be provided for and procedure applicable to the registration of GIs should apply mutatis mutandis to cancellation requests.

g. EU register of non-agricultural GI products

Issue: Should there be a register of non-agricultural GI products protected in the EU? If yes, who should administer the register?

Facts:

- In the context of the study we have not found any register of non-agricultural GI products at the national level. The absence of a register does not facilitate the protection of these GIs, notably when it comes to preventing conflict with other IP rights.

- Today, there are three registers of GIs in the EU: one for wines, one for spirits and one for other agricultural products and foodstuffs that are covered by regulation 510/2006. These registers are managed by the European Commission at the Directorate General for Agriculture which has competence over agricultural products and which has developed specific expertise when it comes to the registration of GIs.
- Non-agricultural products identified in the context of this study cover a wide range of products. Competence for non-agricultural products is scattered over several departments within the European Commission. However, competence for IP protection lies with DG Internal Market.
- All intellectual property rights registration in the EU, except agricultural GIs, are not managed by a Commission department but either by the European Patent Office, the Office for the Harmonisation of the Internal Market or the Community Plant Variety Office. All these offices are self-financing bodies.
- The study's terms of reference asks the Consortium to make suggestions *inter alia* regarding a possible role with regard to supervision, operation and administration of such a system by the Office for Harmonization in the Internal Market (OHIM).

Advantages of a register

From the economic perspective, the existence of an official register of protected names could facilitate the functioning of the European market, as information on the existence of protected designations, the types of product, the nature and the description of the products themselves would be easily accessible to all, GI producers, competitors, consumers, and public authorities. This would provide legal certainty to GI producers but also all other stakeholders hence helping to prevent or solve IPR conflicts. Furthermore, it could facilitate transparency towards consumers. With regard to third countries, a register could also help to explain the system and to promote the registered GI products as they would be clearly identified.

Disadvantages of a register

It is difficult to identify any, except possibly the costs that could be associated to the establishment and management of such a register.

Who should manage the register?

With regard to the question relating to the management of the system, we are of the view that it would probably be difficult for a department of the European Commission, such as DG Internal Market to do it. Indeed, it would require to have new human and financial resources something that can be difficult to secure. An office could be better positioned to manage it and, as one of the main EU intellectual property offices, OHIM could be considered as a suitable candidate in that respect.

Advantages of OHIM

OHIM has a lot of experience with the management of different IP registers. It also enjoys legal, administrative and financial independence, an important point to bear in mind as the establishment of a new system at the EU level will not be free of costs (see below). Moreover, as conflicts or potential conflicts between GIs and other IP rights often involved trade marks, there could be an interest in having the trade mark register and the GI register managed by the same office. If well managed, this could prevent or help solve problems more efficiently.

Disadvantages of OHIM

OHIM lacks specific expertise when it comes to geographical indications, which is arguably a very different system from the Community trade mark and Community designs which it manages today. It has developed knowledge of GIs through international projects, but lacks concrete experience when it comes to the registration of GIs. Should OHIM be given this role, it will certainly be important to invest in trainings on GIs. In addition, in case of conflicts

between a GI and a trade mark, potential prejudice in favour of trade marks would have to be addressed. A separation of departments could be a first step in addressing this problem followed by the creation of an adjudication board to deal with conflicts which cannot be solved otherwise.

Preferred option: the establishment of a European GI register for non-agricultural GI products which could be managed by OHIM.

5. Cost of registration, opposition, modification and cancellation

The issue: should the registration, opposition, modification and cancellation of a non-agricultural GI product be free of charge?

Facts:

- Most of the *sui generis* legal instruments available for the protection of non-agricultural GI products identified in the context of this study at the national and international levels provide for registration fees to be paid and/or other related costs.
- Under the Community trade mark system, many fees have to be paid, for instance to submit an application to register a mark, to table an opposition and to apply for revocation or for a declaration of invalidity.
- Contrary to trade marks, GI registration is valid for an indefinite period of time and does not have to be renewed.
- As far as agricultural products are concerned, the registration at the EU level is free of charge although Member States have the possibility impose the payment of a fee at the national level to cover their costs of registration for all GIs except spirits (not previewed in regulation (EC) No 110/2008).
- In the context of the study, the cost of IP protection has been identified as one of the main reasons for the limited use of existing IP tools by producers.

Advantages

Although the payment of fees could act as a deterrent to GI registration for some producers, we believe that the payment of a one-off fee for the registration and for the modification of the specification of a registered GI should be acceptable provided that its amount is reasonably priced. Such a fee would commit applicants in the procedure and cover costs of the office in charge of the registration. Other fees such as cancellation or opposition fees should be punitive so as to hinder frivolous oppositions.

Disadvantages

No doubt, a free procedure would be greatly appreciated by a large majority of the products (based on the survey, 38% of the products for which data are available on this question n=118 are only produced by micro-enterprises), because costs are not only linked to the administrative costs, but also to the establishment of a collective organisation which most of the time does not exist (only 54 studied products out of 127 have declared that such an organisation exists) and to the controls. These costs could also have an impact on the cost of the GI product, although these are on-off costs and should not have a lasting effect on the producers' budget. So, in theory, there should be no impact on consumer price. From an economic perspective, the costs of registration should not exceed the expected benefits of such protection.

Preferred option: to make mandatory the payment of registration, opposition, modification and cancellation fees.

6. Extent of the legal protection to be provided

The issue: what should be the extent of the protection granted to non-agricultural GI products under an EU *sui generis* system?

Facts:

- This study has demonstrated that one of the key features of *sui generis* non-agricultural GI protection systems at the national level is an extensive protection that goes beyond the exclusive right granted to the name through trade mark right. It sometimes includes an *ex officio* protection which provides that the state or public authorities are responsible for policing and ensuring GI protection on the market, without a complaint from the right owner. This means that GI right holders can rely on the support of public authorities to protect the GI and do not have to rely only on their own action.
- The EU legal instruments available for the protection of agricultural GI products all provide for an extensive level of protection, which includes an *ex officio* protection.
- In the context of the survey conducted towards stakeholders, a large majority of respondents strongly believe that one of the benefits of any new *sui generis* EU GI system would be the fact that the non-agricultural GI product would benefit from an EU-wide protection.

Option 1: same protection as for trade marks in the EU

The European Commission could propose to provide GI holders with similar rights as the ones granted to trade mark holders: exclusive right on the use of the indication or name for the first one to register the GI.

Advantages

This would provide for the same principles to be applied for both GIs and trade marks. This could facilitate the resolution of disputes between GIs and trade marks. The life of IP practitioners and authorities could be made simple.

Disadvantages

This option would not bring as much benefits to producers as some of the options below (see in particular options 3 and 4). The protection would not be as far-reaching and could therefore not be as effective to protect consumers. From a wider perspective, the EU has been providing a much wider protection to agricultural GI producers and might therefore have problems to justify a different treatment of non-agricultural products. This could also have an impact on the EU strategy to secure a higher level of protection for EU GIs in third countries.

Option 2: Basic TRIPs level of protection

The European Commission could propose to grant a basic level of protection to non-agricultural GI products. This should be based on the protection granted under the WTO TRIPs agreement, article 22. As a result, geographical indications would be protected in order to avoid misleading the public and to prevent unfair competition. Moreover, the exceptions included in the TRIPs agreement would apply. In particular, the GI would not be protected when the name or indication has become a generic (or common) term and when a term has already been registered as a trade mark or has been used in good faith for a certain period of time (see article 24.4 TRIPs).

Advantages

This basic protection would meet the EU's WTO commitments under TRIPs and provide a minimum level of protection in case of consumer deception or unfair competition. It would not impose any major burden on public authorities.

Disadvantages

Such a protection would arguably not be of great value to producers and consumers. They would have to take actions before courts in case of consumer deception or unfair competition. Moreover, the EU has been providing a much wider protection to agricultural GI producers and might therefore have problems to justify a different treatment of non-agricultural products. This could also have an impact on the EU strategy to secure a higher level of protection for EU GIs in third countries.

Option 3: Additional protection granted under the TRIPs

Article 23 of TRIPs provides a higher level of protection for geographical indications for wines and spirits. It includes the provision of the legal means for interested parties to prevent the use of a GI identifying wines and spirits, not originating in the place indicated by the GI even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like. It also provides for the possibility to refuse or invalidate, *ex officio* if a Member's legislation so permits or at the request of an interested party, the registration of a trade mark for wines or spirits which contains or consists of a GI identifying wines or spirits at the request of an interested party. Furthermore, GIs for wines are to be protected in the case of homonymous indications. As a result, they have to be protected even if misuse would not cause the public to be misled bearing in mind the exceptions mentioned above relating to genericity and prior trade marks registration.

Advantages

This enhanced protection would certainly bring important benefits to GI producers who would be able to rely on extensive IP protection provisions that do not require demonstrating that the public is misled or that the use constitutes an act of unfair competition. They would also benefit from the protection of the name used in translation in all the languages of the EU or accompanied by expressions. It could provide better guarantees to consumers.

Disadvantages

This option would impose a bigger burden on public authorities than the previous ones as they will have to provide some guarantees and *ex officio* procedures to protect GIs. It would potentially increase the risk of disputes between producers as there could be conflicts not only with regard to the use of the GI name or indication, but also in relation to the use of the name in translation and with expression. This option could raise concerns with competitors as it would create a greater "monopolisation" of the GI by some producers.

Option 4: Extensive protection as provided for agricultural GI products in the EU

The EU legislation provides for an extensive protection of GIs with an exclusive right to use the registered name for their products. More specifically, is prohibited:

- any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

- any misuse, imitation or evocation, even if the true origin of the product (or service for GI wines) is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'flavour', 'like', 'imitation' or similar;
- any other false or misleading indication as to the provenance, origin, nature or essential qualities - on the description, presentation or labelling of the product for spirits - on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container, for other GI products - liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product.

Furthermore, the EU has established provisions that provide for the coexistence between an earlier trade mark and a GI (see point 7 below).

As far as enforcement of the rights is concerned, the EU has established an administrative enforcement protection (or *ex officio*) – i.e. a system by which the State or public authorities are responsible for policing and ensuring GI protection. As a result, the Member States are obliged to set up the necessary control bodies and procedures. Products that do not meet the requirements of the registered GI specification must be removed from the market. In the context of the study we identified several *sui generis* non-agricultural GI protection systems at the national level that includes an *ex officio*.

Advantages

This extensive protection would make the system very attractive for producers and offer further guarantees to consumers. These provisions have proved efficient in providing an extensive protection for names of registered agricultural GI products in the EU. National Courts as well as the European Court of Justice have interpreted the EU regulations on GIs in an extensive manner, in particular with regard to the concept of evocation¹⁰¹. Member States which make this “investment” can expect something in return, i.e. the fact that producers who enjoy that protection will always produce their products in that region and will not re-localise outside the country of origin thus losing out on the right to use the name. Moreover, we believe that there is a case to be made in favour of maintaining a high degree of coherence between the provisions of all EU regulations on GIs. From a users' perspective, it would be difficult to understand why there would be different levels of protection depending on whether the GI is an agricultural or a non-agricultural product. This would be probably true not only for EU producers but also for third countries' producers. Moreover, a similar protection for all GI products at the EU level would be coherent with the approach taken by the EU in the context of the ongoing WTO negotiations on geographical indications, as the EU has been calling for a higher level of protection for all GIs and not only for wines and spirits GIs.

Disadvantages

This option could raise concerns, notably with other producers, with regard to the impact on other IP rights which could be undermined by such an approach. Moreover, *ex officio* protection supposes a more constant effort of public officers in charge of market surveillance in the Member States. At a period of time when the economic crisis leads to the reduction of the public expenses, Member States should evaluate the costs of this *ex officio* protection on their budget.

Comment: Under any option, we believe that it is important to take into account the development of the Internet and of online activities, notably with regard to the possibility to secure rights on a domain name. As a result, it would be useful to include provisions aiming

¹⁰¹ See for instance :
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=72367&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1635933>

at protecting GIs when disputes arise on the registration of Internet domain names. Such provision is actually present in the draft EU-India free trade agreement which is under negotiation. However, any new EU *sui generis* legal instrument should include a clear reference to the impossibility to register a generic name, based on the elements outlined above under point 3.b.

Preferred option: an extensive ex officio legal protection that would prohibit the use of the registered GI name by non right-holders, even when the name is translated, accompanied by an expression or a delocalizer and in domain names should be provided to non-agricultural GIs.

7. Relationship with other IP rights

The issue: how to manage the relationship between non-agricultural GIs and other rights, notably trade marks, in relation to conflicting (or potentially conflicting) names?

Facts:

- Many products identified in the context of this study have secured protection through means other than the *sui generis* route at the national and/or European level, mostly through trade mark registration.
- The creation of a *sui generis* GI system at the EU level and the registration of geographical names for non-agricultural products could have an impact on existing rights.
- Most of the existing national *sui generis* regulatory frameworks protect prior rights such as already registered trade marks.
- All the EU regulations relating to the protection of agricultural GI products include provisions to deal with trade marks.

The creation of a *sui generis* EU GI system for the protection of non-agricultural products bearing a geographical name would allow for a name to be reserved. As a result, this will create rights and produce legal effects that could impact other intellectual property rights relating to conflicting or potentially conflicting names. This could also cause prejudice to producers or groups of producers and create confusion on the market, hence having a negative impact on consumers too. In order to provide a necessary legal certainty to all stakeholders, it is essential to define precisely the relationship between GIs and other IP rights, in particular trade marks.

Option 1: Application of trade mark principles

The European Commission could propose to apply the IP principles used under the trade mark regime, notably the principle of priority: it is possible to register a mark with validity throughout the European Community to the extent that it does not impinge on others' rights (first in time, first in right).

Advantages

The application of the same principles for both GIs and trade marks could facilitate the resolution of disputes between GIs and trade marks, as well as the life of IP practitioners and authorities in charge of IP protection.

Disadvantages

This option would not offer the same level of protection to non-agricultural GI products as the one given for agricultural GIs in the EU. This double level of protection could undermine the

EU's effort to secure the same level of protection for agricultural GIs in third countries and in the context of the WTO legal framework.

Option 2: Application of the GI principles used for agricultural GIs in the EU

Advantages

The EU has established specific and clear provisions to deal with this issue under the three EU Regulations adopted for the protection of agricultural GIs. They are as follows:

- A prior trade mark's reputation may prevent the registration of a GI if the registration of the GI may mislead consumers as to the true identity of the product.
- Any trade mark which does not fall under this situation and which has been applied for, registered or established by use in good faith before the date of application of a registered GI at the EU level should coexist with the registered GI.
- Registration of a GI should prevent registration of a trade mark which was applied for after the application for the GI. In this case, national or European trade mark offices should refuse *ex officio* the registration of a trade mark.

The relationship between trade marks and geographical indications was one of the aspects addressed in a WTO panel ruling on the provisions of EU Regulation EC No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs adopted on 25 April 2005¹⁰². Further to the interpretation of this WTO panel, the EU regulation on agricultural GI protection was amended to ensure full compatibility with the WTO TRIPs Agreement.

This option would ensure consistency between the different EU laws on GIs and with WTO law. This could provide more clarity to stakeholders.

Disadvantages

Under this option, prior (trade mark) right holders could raise serious concerns with regard to the impact of a GI registration on their IP rights. In a coexistence scenario consumers could also be misled as a name could potentially be protected and used as a GI or as a trade mark.

Preferred option: clear provisions on the relationship between trade marks and GIs based on the existing rules included in the EU regulations on agricultural GI protection.

8. Homonymous geographical indications

The issue: how to deal with conflict between homonymous GI names, i.e. geographical names, which are spelled and pronounced alike?

Fact: All the EU regulations for the protection of agricultural GI products include provisions to deal with homonymous GI names.

Option 1: no specific provisions on homonymous GIs

Advantages

This option could allow the authorities in charge of IP to deal with such conflicts based solely on the priority principle, first in time, first in right. It could exclude all homonymous GIs from the market, hence limiting consumer deception.

Disadvantages

¹⁰² http://docsonline.wto.org/GEN_viewerwindow.asp?http://docsonline.wto.org:80/DDFDocuments/t/WT/DS/174R.doc

Any dispute would have to be dealt with by judges who would not be able to rely on any EU guidelines or provisions on the matter. This could lead to different interpretations and would certainly increase legal uncertainty. In certain circumstances it could unfairly penalise producers who make good faith use of a GI name that is homonymous to another one.

Option 2: provisions on homonymous GIs

The EU has established the following provisions on the matter applicable to agricultural GI products:

- A homonymous geographical indication meeting the requirements of this Regulation shall be registered with due regard for local and traditional usage and the actual risk of confusion
- A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the products in question is concerned.
- The use of a registered homonymous name shall be subject to there being a sufficient distinction in practice between the homonym registered subsequently and the name already on the register, having regard to the need to treat the producers concerned in an equitable manner and not to mislead the consumer.
- Should there be a decision to allow Member States to maintain a national system for the recognition and protection of GIs on their territory, the above provisions would have to apply *mutatis mutandis* if a name, for which an application is lodged, is wholly or partially homonymous with a geographical indication protected as such under the legislation of Member States. Member States should not register non-identical geographical indications for protection under their respective legislation on geographical indications if a designation of origin or geographical indication is protected in the Community by virtue of the Community law relevant to designations of origin and geographical indications.

Advantages

This would increase legal certainty for producers. It would also ensure consistency of EU GI regulations.

Disadvantages

Under this option, IP authorities will have to define specific guidelines to deal with such situation. This would make the work of the officials in charge of examining GI registration requests more difficult. Homonymous products can confuse consumers.

Preferred option: clear provisions on the homonymous GIs based on the existing rules included in the EU Regulations on agricultural GI protection.

9. Advantages and disadvantages of developing a logo to identify non-agricultural GI products

The issue: should the EU create a common logo to promote registered non-agricultural GI products?

Facts:

- Logos can prove useful to communicate information and values to consumers.
- Some of the non-agricultural GI products identified in the context of the study have their own collective logo and some laws, such as the Italian law on ceramics provide for a collective logo to all registered non-agricultural GI products.
- The EU has adopted logos to promote agricultural GI products which are optional for EU GI wines but mandatory for GI products falling under the scope of regulation (EC) No 510/2006. The mandatory use of the logos is a recent development and is based on the need to promote the recognition of the logos and raise the awareness of the concepts by consumers.

Option 1: creation of a European logo for non-agricultural GI products

Advantages

The creation of a common EU logo for registered non-agricultural products could bring benefits to producers and consumers. It would allow the former to benefit from a branding tool which could help them increase their visibility and possibly their profitability. This would be especially beneficial to small producers, as they are often not able to develop their own communication and promotion campaign due to a lack of resources. It could also help create a sense of community as different products would be put together under a same European banner. As to the latter, the logo would help identify products with specific and guaranteed origin and characteristics, something that consumers are increasingly looking for. From a more global view, such logo could help raise awareness for the existence of the system towards all stakeholders, especially consumers. It could also allow the EU to position itself as a promoter of specific EU products.

Disadvantages

Contrary to agricultural GI products, non-agricultural GI products identified in the context of this study are extremely diverse. It could therefore be more difficult to promote them in a similar manner under a single banner. Furthermore, it is important to underline that only a small minority of EU consumers are aware of the agricultural GI logos, although there is a trend towards a higher recognition. In a March 2012 consumer survey published by Eurobarometer¹⁰³, 14% recognise the 'Protected designation of origin' and 'Protected geographical indication' logos. Moreover, the creation of a logo could be costly for the EU, especially as a budget would have to be allocated first to design it, then to protect it and, more importantly, to promote it towards consumers and other stakeholders. Indeed, a logo is useful and brings an added-value only if it is known.

Option 2: no European logo for non-agricultural GI products

Advantages

EU public authorities will not have to spend any money on promoting the logo.

Disadvantages

Without a logo, it could be more difficult for the EU to promote its new legal scheme and its specificities towards all stakeholders, producers, consumers and other private and public organisations. It could also make the scheme less attractive towards producers and consumers. As a result, eventually less non-agricultural products could be registered as a European GI.

¹⁰³ See Eurobarometer March 2012 report: http://ec.europa.eu/agriculture/survey/2012/389_en.pdf

Preferred option: the establishment of an EU logo. It could be left optional.

Conclusion on the possible content of an EU Regulation on the protection of non-agricultural GIs

Having analysed in detail the existing legal framework existing at the EU and the national levels, the economic value of the sectors concerned, the finding of a stakeholders' survey and after taking into account the broader picture of GI protection at the EU and international levels, as well as the discussions during the workshop, the authors believe that there is a case to be made for the creation of a unitary *sui generis* system for the protection of non-agricultural GIs at the EU level.

In defining a new EU legal instruments for the protection of non-agricultural GIs, the EU decision-makers will have to make difficult choices which will have an impact on the attractiveness, credibility and efficiency of the system, but also on the burden which will be put on the authorities which will have to manage the system and the producers who will have to live within it. More precise rules would entail more burdens on the different stakeholders but bring more credibility to the system. More flexibility can facilitate a rapid development of a system the value of which could be questionable if the provisions are too vague.

There are strong arguments to establish a system that provides for:

- A single definition for a geographical designation,
- A protection available to geographical indications but also to traditional denominations,
- A necessary registration to secure protection,
- A one step procedure at the European level,
- A key role given to groups of producers when it comes to making the application,
- A well defined specification file,
- A compulsory independent public or private control system,
- Clear and transparent registration, modification and cancellation procedures at the EU level providing legal guarantees to stakeholders and open to third country's stakeholders,
- A one-off small registration fee,
- An EU register of non-agricultural GI names,
- An extensive protection of registered GI names in the EU,
- Clear provisions on the relationship between trade marks and GIs and between homonymous GIs,
- The management of the system to be given to an office (the OHIM would be a good candidate in that regard).

Furthermore, should such a legal instrument be established, there will be a strong need for awareness building towards all types of stakeholders as there is a general lack of understanding of the importance of IP protection and of the GI concepts. Specific training will be required for the officials who will be in charge of the day-to-day management of the system and promotion campaigns of the new schemes will be crucial in making it a success.