



# Strengthening GIs (Responsibly)

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*Strengthening GIs, Nov 2020*

# As a form of IP: Then...

- Protection for simple indications of source ('Made in...')
- Territorial limitation
- Prohibition of
  - False indication of source
  - **AND** used with fraudulent intention
  - **AND** used with fictitious commercial name

CONVENTION DE PARIS  
POUR LA PROTECTION DE LA PROPRIÉTÉ INDUSTRIELLE  
DU 20 MARS 1883

ART. 10.

Les dispositions de l'article précédent seront applicables à tout produit portant faussement, comme indication de provenance, le nom d'une localité déterminée, lorsque cette indication sera jointe à un nom commercial fictif ou emprunté dans une intention frauduleuse.

Est réputé partie intéressée tout fabricant ou commerçant engagé dans la fabrication ou le commerce de ce produit, et établi dans la localité faussement indiquée comme provenance.

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# ... And Now

- Registration based protection, as IP
- Recognition of a range of public policies
  - 'cultural, gastronomic and local heritage' authenticated
  - Farm to Fork strategy
- Better informational resources
- Stronger legal standards of protection
  - Broad range of misleading uses
  - Evocation, preventing any free riding
  - No generic use once registered
- *Ex officio* enforcement
  - Enforcement online (platforms and marketplaces)
  - IP enforcement portal
- Bilaterals and FTAs
- EU joins the Lisbon International Registration system



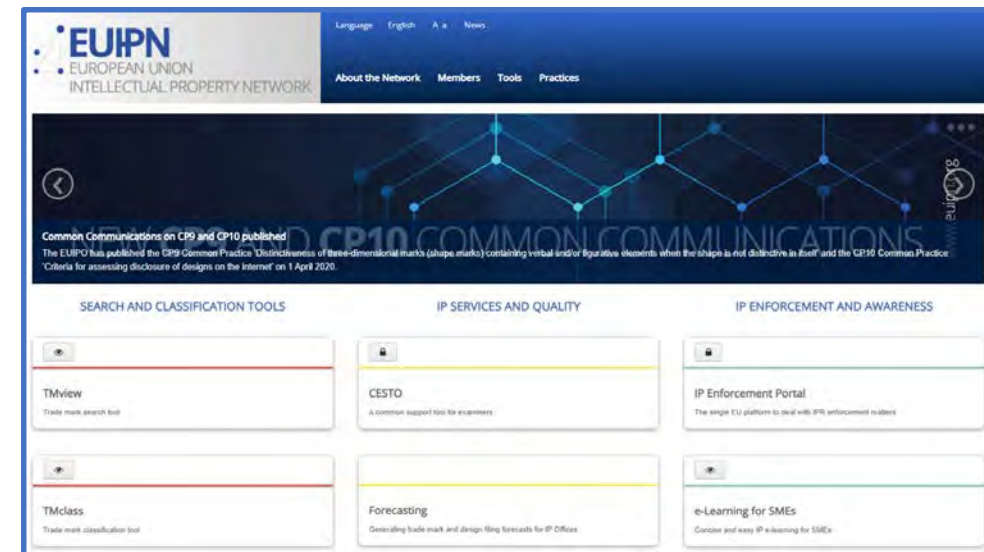
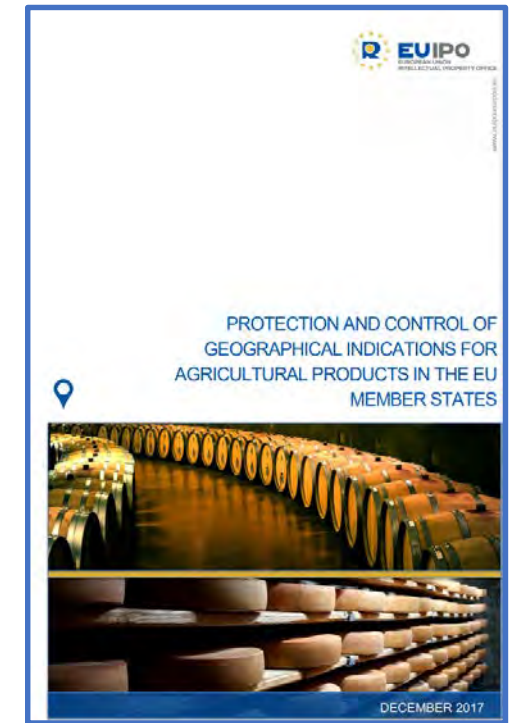


Outstanding achievements...

But outstanding tasks?

# Diversity within a harmonised system?

- **Enforcement** diversity
  - National legislation varies
    - e.g. Regulation 1151/2012 → unfair competition or consumer protection or trade mark law or *sui generis* GI legislation
    - Different standards of proof, remedies
  - Different degrees of *ex officio* enforcement
- **Control systems** diversity
  - Frequency of checks, inspections
- **Registrar** diversity
  - Network for knowledge exchange?
  - Important: substantive examination at the national level



GI users have  
rights...  
But others have  
rights too...



# 1. The register as an information resource?

- One use of e-Ambrosia, GIView → inform third parties of scope of registered rights

*C-108/01 Consorzio del Prosciutto di Parma v Asda*

- Regulation No 2081/92 states... that to enjoy protection in every Member State designations of origin must be registered at Community level, with entry in a register also providing information to those involved in trade and to consumers. [90]

Regulation 1151/2012, Recital 26

- Entry in the register of [PDOs & PGIs] should also provide information to consumers and to those involved in trade.

## However

Reg. 1151/2012, Art 13(1)(b)

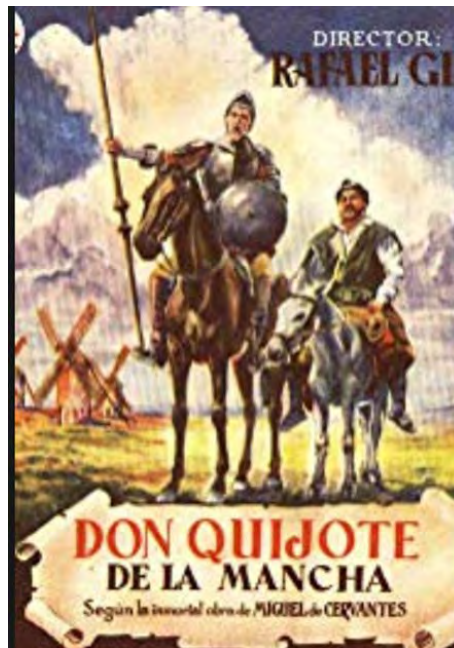
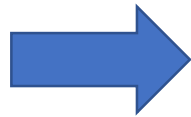
Registered names shall be protected against... any misuse, imitation **or evocation**, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar, including when those products are used as an ingredient;



# Indirect evocation? Yes!

C-614/17 *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (2019)

- Image & dissimilar words → literary concept → region of origin → PDO name
- Q: is 'image triggered directly' that of PDO?



Queso Manchego

Product Type

Food

File number

PDO-ES-0087

## 2. GIs as Ingredients

C-393/16 *Comité Interprofessionnel du Vin de Champagne v Aldi*  
CIVC initiated proceedings v. Aldi (12% Champagne in sorbet)

- Ingredients signalling may be infringing under Art 13
- May be exploitation/advantage → but is it *undue or unfair*?
- Q: is the essential characteristic of the product a taste primarily attributable to (genuine) Champagne
  - Quantity of Champagne in sorbet is significant but not sufficient factor
  - Claiming a taste quality connected to a product does not count as misuse, imitation or evocation, without more
- **Unresolved issue: Burden of proof?**
- **Update Commission Communication (2010) guidelines?**



### 3. Preventing products from being imitated?

- A GI is not a patent!

C-490/19 *Syndicat interprofessionnel de défense du fromage Morbier*

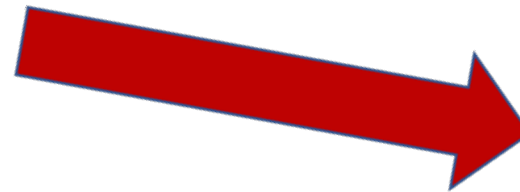
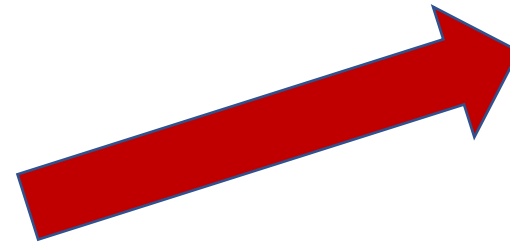
‘Throughout each slice the cheese has a continuous, joined, horizontal, central black mark.’

Vegetable ash applied to cheese to increase pH, prevent in from absorbing moisture overnight → spoiling

- Can cheesemaker outside the syndicate use this ash line?
- Or does imitation of visual appearance of the product, without using Morbier or PDO logo, infringe?

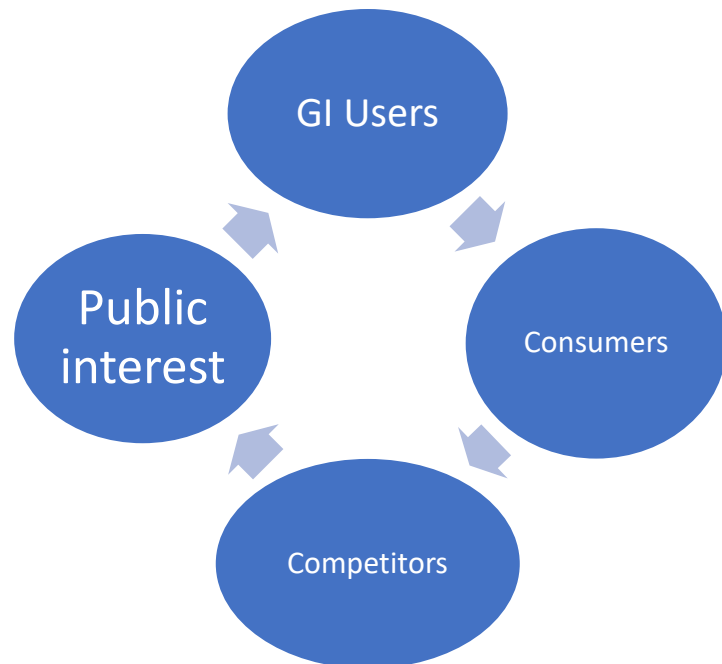


If this argument succeeds?



# Conclusion: Strengthening responsibly

- Improving information
- Preventing counterfeits
- Ex officio assistance with enforcement
- International protection



- Protecting 'brand image' against unfair advantage through (unpredictable) evocation?
- Presuming consumers ignore other labelling signals

