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КВАЛІФІКАЦІЙНА РОБОТА МАГІСТРА

на тему

**"ГЕОГРАФІЧНІ ЗАЗНАЧЕННЯ НА ХАРЧОВІ ПРОДУКТИ ТА
АЛКОГОЛЬНІ НАПОЇ У ПРАВОВОМУ МЕХАНІЗМІ ДОСТУПУ
УКРАЇНСЬКИХ ТОВАРІВ ДО АГРАРНИХ РИНКІВ / GEOGRAPHICAL
INDICATIONS FOR FOOD PRODUCTS AND ALCOHOLIC BEVERAGES
IN THE LEGAL MECHANISM OF UKRAINIAN GOODS ACCESS TO
AGRICULTURAL MARKETS"**

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Дозвіл (ліцензія)
на розміщення електронної копії тексту
кваліфікаційної роботи магістра у репозитарії
Київського національного університету імені Тараса Шевченка

Я, Михайліченко Олександр Сергійович, надаю дозвіл (ліцензію) Київському національному університету імені Тараса Шевченка на завантаження електронної копії тексту кваліфікаційної роботи магістра на тему: **"Географічні зазначення на харчові продукти та алкогольні напої у правовому механізмі доступу українських товарів до аграрних ринків / Geographical indications for food products and alcoholic beverages in the legal mechanism of Ukrainian goods access to agricultural markets"** до Інституційного репозитарію (електронного архіву) Київського національного університету імені Тараса Шевченка, а також на інтерактивне надання доступу до електронної копії тексту зазначеної кваліфікаційної роботи в Інституційному репозитарії (електронному архіві) Київського національного університету імені Тараса Шевченка.

" 22 " квітня 2024 року

Михайліченко Олександр Сергійович

REVIEW OF THE SUPERVISOR
on master's diploma **“GEOGRAPHICAL INDICATIONS FOR FOOD
PRODUCTS AND ALCOHOLIC BEVERAGES
IN THE LEGAL MECHANISM OF UKRAINIAN GOODS ACCESS TO
AGRICULTURAL MARKETS”** prepared by **Mykhailichenko Oleksandr
Serhiyovych**, the 2nd year student
of full-time education
of the second (master's) level of higher education
in the specialty 081 «Law» of the selective block «Legal Practice»

The master's work is devoted to the study of the legal mechanism of access of Ukrainian goods to agricultural markets and geographical indications. The chosen by Mykhailichenko Oleksandr topic is definitely on the agenda both among scholars and practical lawyers due to its work applies an interdisciplinary approach within the areas of agrarian law and intellectual property rights, revealing the need for greater attention to geographical indications through the prism of agrarian law in view of their advantages and importance for producers, farmers and representatives of the agricultural sector, in particular state bodies.

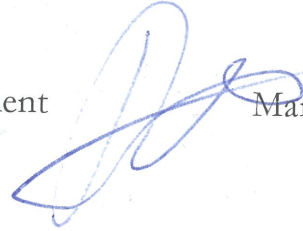
The way of preparing the diploma thesis by the student can be characterized rather independent than under the guidance of supervisor. The topic and its plan have been agreed with the supervisor, but the final version of the Diploma was submitted in deadline. Nevertheless, the project of Diploma thesis was proofread, finalized and structured with the supervisor and the comments mostly were taken into account.

The author working on a topic for diploma thesis used a lot of international scientific sources. This allowed Oleksandr to provide one of the most relevant and new studies in the field of geographical indications, which have undergone significant legislative changes for 2022-2024, when the last significant publications on this topic cover more than 2018-2021. There are practically no other works of this scale in the Ukrainian language lately, which would affect the subject of geographical indications. The percentage of similarity defined by the UNICHEK

system provided by Kyiv Taras Shevchenko university was 16.5 % and met the requirements.

Assistant of

Land and Agricultural Law Department

A handwritten signature in blue ink, consisting of stylized, overlapping loops and curves, positioned over the printed name Mariia KOPYTSIA.

Mariia KOPYTSIA

Review

on the master`s thesis on the topic

***“GEOGRAPHICAL INDICATIONS FOR FOOD PRODUCTS AND
ALCOHOLIC BEVERAGES IN THE LEGAL MECHANISM OF UKRAINIAN
GOODS ACCESS TO AGRICULTURAL MARKETS”***

**prepared by the 2nd year student of the EL “Master”, fulltime studies,
specialisation “Legal Practice”**

OLEKSANDR MYKHAILICHENKO

The formation of the effective legal regulation of the geographical indications (here and after – GIs) system for agricultural products, including food products and alcoholic beverages, is extremely relevant in the context of European integration as GIs provide a powerful tool for the development of rural areas, promote the production of high-quality and safe agricultural products, create new jobs, develop rural tourism, preserve biodiversity and increase the export of agricultural products with high added value. That’s why the topic for master’s thesis chosen by Oleksander Mykhailichenko is undoubtedly relevant.

The structure of the paper, reflecting the scope and the limits of the research, allows performing a successful study. The design of the plan corresponds to the title and the aims that author formulated for scientific research.

The formal requirements to such type of research papers are met.

The student demonstrated a deep knowledge of the topic and appears to be familiar with the provisions of law and relevant legal doctrine. The conclusions made by the author are well structured, reasoned and represent theoretical and practical value.

I would specifically stress on the importance of the comparative research conducted by the author: the Ukrainian and foreign legal regulation of the geographical indications for food products and alcoholic beverages is deeply analyzed.

As an advantage of the prepared master's thesis I would also like to mention that the author fully used and critically analyzed modern Ukrainian and foreign doctrine as well as court practice, including the practice of the European Court of Justice, in the field of chosen topic.

All abovementioned allowed to make deep and highly qualified interdisciplinary analysis of the legal nature and the place of the geographical indications for food products and alcoholic beverages as the object of agrarian law and the IP.

At the same time like every scientific research the diploma project by O. Mykhailichenko has a **few questions to it and disputable moments**.

Firstly, in the research (Section 2, p.23-29) the author provides different definitions of the notion "geographical indications" both in national and international doctrines. It is underlined that existing GI's definition in Ukrainian literature are similar to the legislative one. At the same time all of the mentioned definitions were formulated according to the previous edition of the Law "On protection of Rights to Indication of the Origin of Goods". As far as there is a new edition of this law (2019) – the Law of Ukraine "On the Legal protection of Geographical Indications" - that provides absolutely new approach to definition of geographical indication it would be beneficial for the research to propose the new one doctrinal notion of GI.

Secondly, the author providing the research of legal remedies for geographical indications mentioned the non-jurisdictional form of their protection (p. 49). What remedies of self-defence in these cases are relevant on the authors opinion?

Thirdly, the author ought to pay attention to the amendments to the article 432 of the Civil Code of Ukraine while analyzing the possible measures taken by the courts in GI's protection cases (Section4, p. 46).

The remarks and comments, given above, do not diminish the value of the research conducted by Mr. Mykhailichenko. The paper prepared by him fully

satisfies the requirements established for such type of research and can be marked with the “**excellent**” grade.

Associate professor of

Land and Agricultural Law Department

Tamara Sarkisova

АНОТАЦІЯ

Михайліченко Олександр Сергійович. Географічні зазначення на харчові продукти та алкогольні напої у правовому механізмі доступу українських товарів до аграрних ринків. Кваліфікаційна робота магістра. Київський національний університет імені Тараса Шевченка. Навчально-науковий інститут права, кафедра земельного та аграрного права.

Кваліфікаційна робота магістра присвячена дослідженню і всебічному вивченню географічних зазначень в Україні на харчові продукти та алкогольні напої. Опрацьовано історію розвитку географічних зазначень та їх сучасний стан поширення, механізми допуску товарів з географічними зазначеннями до аграрних ринків та ринків споживачів. Оглянуто оновлене українське законодавство та сучасні тенденції у Європейському Союзі до реформ відповідних знаків. Досліджено засоби захисту прав на географічні зазначення та національна, європейська судова практика. Порівняно українське законодавство з правовими системами Європейського Союзу, Сполучених Штатів Америки та низки інших країн.

Запропоновано висновки для підвищення обізнаності українських підприємців, фермерів та аграріїв щодо потенціалу та переваг географічних зазначень для їх продукції, а також рекомендовано на потребі додатковому дослідженні географічних зазначень у науці аграрного права крізь призму міждисциплінарного підходу між кількома галузями права.

Ключові слова: географічні зазначення, назва місця походження товару, традиційна гарантована особливість, харчові продукти, спиртні напої, специфікація товару, аграрний ринок.

ABSTRACT

Oleksandr Mykhailichenko. Geographical indications for food products and alcoholic beverages in the legal mechanism of Ukrainian goods access to agricultural markets. Master's thesis. Taras Shevchenko National University of Kyiv. Educational and Research Institute of Law, Land and Agricultural Law Department.

The master's thesis is devoted to researching and comprehensively studying geographical indications for food and alcoholic beverages in Ukraine. Their history and the mechanisms for the goods' admission with geographical indications are analysed. The remedies for protecting rights to geographical indications and national and European case law are also reviewed. The Author compares Ukrainian legislation with the legal systems of the European Union, the United States of America and several other countries.

The Author proposes conclusions for raising awareness of Ukrainian entrepreneurs, farmers and agrarians about the potential and benefits of geographical indications for their products and also recommends that additional research on geographical indications in the agrarian law science through an interdisciplinary approach between several branches of law is needed.

Keywords: geographical indication, appellation of origin, traditional speciality guaranteed, food products, alcoholic beverages, product specification, agricultural market.

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LIST OF CONVENTIONAL ABBREVIATIONS

ACCC	– Australian Competition and Consumer Commission
Agricultural Law	– Law of Ukraine "On State Support of Agriculture of Ukraine" dated 24.04.2004 № 1877-IV
AMCU	Antimonopoly Committee of Ukraine
Application	– Application for GI registration
Association Agreement	– Association Agreement between the European Union and its Member States on the one part and Ukraine on the other part of 27.04.2014
AVAs	– American Viticultural Areas
CCU	– Civil Code of Ukraine, dated 16.01.2003 № 435-IV
Commission	– European Commission
ECA	– European Court of Auditors
ECJ	– European Court of Justice
EU	– European Union
EUTM	– EU trademark
FAO	Food and Agriculture Organization of the United Nations
Foodstuff Law	– The Law of Ukraine "On the Peculiarities of the Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Guaranteed Features for Agricultural Products and Foodstuffs" dated 06.09.2022 № 2572-IX
GI, GIs	– Geographical indications
HACCP	– Hazard Analysis and Critical Control Points
IP	– Intellectual property
IP Office	– Ukrainian National Office of Intellectual Property and Innovation

Law on Alcohol	– The Law of Ukraine "On the State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohols, Alcoholic Beverages and Tobacco Products" dated 19.12.1995 № 481/95-BP
Law on Alcoholic GIs	– The Law of Ukraine "On Geographical Indications of Alcoholic Beverages" dated 01.12.2022 № 2800-IX
Law on GIs	– The Law of Ukraine "On the Legal Protection of Geographical Indications" dated 16.06.1999 № 752-XIV
Madrid Agreement	– Madrid Agreement Concerning the International Registration of Marks
Madrid Agreement for False Indications	– Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods
Nice classification	– International Classification of Goods and Services for the Registration of Marks
oriGIn	Organization for an International Geographical Indications Network
Paris Convention	– Paris Convention on the Protection of Intellectual Property
PDO	– protected designation of origin
PGI	– Protected geographical indication
Regulation 2012/1151	– Regulation (EU) No 2012/1151 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
Regulation 2013/1308	– Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007

Regulation 2019/787	– Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008
Regulation 2022/0089	Regulation (EU) No. 2022/0089 of the European Parliament and of the Council on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2017/1001 and (EU) 2019/787 and repealing Regulation (EU) No 1151/2012
Specification	– A document that sets out the main provisions of the product specification
Registry	– Ukrainian Institute of Intellectual Property
TRIPS Agreement	– Trade-Related Aspects of Intellectual Property Rights Agreement
TSG	– Traditional speciality guaranteed
TTAB	– US Trademark Trial and Appeal Board
UCG FEA	– Ukrainian Classification of Goods of Foreign Economic Activity
US	– United States of America
USPTO	– US Patent and Trademark Office
WIPO	– World Intellectual Property Office

INTRODUCTION

Relevance of the chosen topic. The novelty of the chosen topic is justified by the fact that geographical indications are unique signs many countries use to distinguish their goods from others, with a certain geographical origin, properties, reputation, or characteristics determined mainly by this place of origin. Several particular and interdependent circumstances influenced the choice of the topic.

Firstly, geographical indications are an inseparable component of the Ukrainian integration into the European Union by the EU–Ukraine Association Agreement of 21 March 2014. Since then, Ukraine has been amending its legislation closer to European Union one in geographical indications and food safety requirements, ensuring legal protection of European Union contained in Agreement annexes. At the same time, in the context of Ukraine's active integration into world markets, there is a need to present competitive domestic products, which may differ from thousands of standard consumer goods of another countries.

Secondly, geographical indications in Ukraine have been studied within the scope of intellectual property law for a long time. However, they are a somewhat new and unexplored phenomenon for scientists in agrarian law. This is even though their importance is emphasised by farmers, representatives of agrarian businesses, agrarian specialist publications and magazines, and representatives of both Ukrainian and European state bodies. The importance of geographical indications for agricultural sector is particularly emphasised by publications in the agricultural magazine "Grow How", Ukrainian Agricultural website "AgroPortal.ua", Agrarian media holding "Landlord", "Zakarpattia online Beta" website of Carpathian Region, Ukrainian National Office of Intellectual Property and Innovation and many other sources [1;2;3;4;5]. The Ministry of Agrarian Policy and Food of Ukraine examines the applications for specifications and verifies goods compliance with these specifications and geographical indications. Directorate-General for Agriculture and Rural Development of the European Commission regulates the EU geographical indications, with intellectual property authorities fulfilling only the technical role.

Food and Agriculture Organization of the United Nations (hereinafter – "FAO") recommends registering geographical indications for the food and agriculture sector [6]. World Intellectual Property Office (hereinafter – "WIPO") also claims that GI status can be a powerful vehicle for agriculture and food production systems to respond to our time's sustainability challenges and environmental concerns [7].

Hence, geographical indications are pivotal for the study of agrarian law. Their research as an object of intellectual property (hereinafter – "IP") law and agrarian law can be an ideal example of implementing an interdisciplinary approach – when a particular phenomenon is comprehensively analysed through the prism of many branches of law.

However, geographical indications are more than technical signs to protect goods. Consumers are also looking for quality products, the origin of which is controlled and/or certified, "[...] if there is one trend that seems to have emerged stronger from the crisis, it is the "made in France" and proximity trend", notes FranceAgriMer, a national establishment for agriculture and sea products under the French Ministry for Agriculture auspices [8, p. 13]. If such statements are relevant for France and the world, why can they not be relevant to Ukraine? Moreover, these signs help increase the legal protection of virtually the same objects of legal relations for both branches of law: food products, alcoholic beverages and agricultural products.

Thirdly, due to several legislative changes for 2022-2024, both in Ukraine and the EU, no large-scale works revealed the updated regulation of geographical indications yet.

Quite a few works were published specifically in agrarian law on GIs. However, some of them still exist. Among them remarkable is the dissertation "Legal Regulation of the Production of Organic Crop Production" by P. Psuturi, who obtained a Doctor of Philosophy degree in Ukraine. It outlines the possibility for producers of plant products to use registered geographical indications and traditional guaranteed features as quality schemes, for which they need to ensure compliance of the product with its specification, undergo mandatory certification – checking the product for compliance with the specification and enter information about the user in a special list of users [9,

p. 85]. Another work through the prism of agrarian law was written by I. Kul'chiiy, who researched international legislation of Ukraine and EU legislation in the field of protection of geographical indications as of 2018 [10, p. 111].

Geographical indications are one of the objects of study in the IP law doctrine. However, geographical indications should also be mentioned in typical manuals and manuals on agrarian law. The work of M. Kovalchuk, "Legal protection and protection of geographical indications in Ukraine, France and Italy (comparative legal aspect)." Moreover, T. Yaroshevska's "Protection of industrial property rights: private law aspect" is important in this regard, as is one of the latest dissertations on geographical indications. Certain aspects of geographical indications on the national level were also considered in the works of such scientists as Y. Boshytskyi, M. Arkhipova, A. Kodynets, O. Taranenko, D. Krysanov., H. Androschuk, A. Afyan, T. Yaroshevs'ka, I. Spasibo-Fateeva, O. Orlyuk, foreign researchers like S. Fournier, D. Giovannucci, T. Dagne, Z. Ilková and S. Stranieri.

Nevertheless, all these works were published either at the beginning of the russian full-scale invasion in 2022 or before, with new information present primarily in the articles of foreign agricultural sector representatives and scholars, alongside commentaries on the new EU legislation.

Recently, the Verkhovna Rada of Ukraine adopted two important laws: The Law of Ukraine "On the Peculiarities of the Legal Protection of Geographical Indications for Agricultural Products and Foodstuffs, Protection of Rights and Application of Quality Schemes, Including Traditional Guaranteed Features for Agricultural Products and Foodstuffs" № 2572-IX (hereinafter – "Foodstuff Law"), dated 06 September 2022 and Law of Ukraine "On Geographical Indications of Alcoholic Beverages 2800-IX (hereinafter – "Law on Alcoholic GIs"), dated 01 December 2022, coming into force on 31 December 2024 [11;12].

These laws require a proper legal evaluation of the adoption consequences and an assessment of Ukrainian manufacturers' readiness to comply with the new legislation.

Because of this, the categorical and conceptual apparatus in the field of geographical indications have changed enough; new laws have been introduced, and

amendments have been made to the old ones, much of the sources have become obsolete: the mass of information accumulated over the past two years requires a repeated comprehensive study, which has not yet been done on the scale of a master's thesis.

Fourthly, with the beginning of the full-scale invasion of the Russian Federation, invasive and systematic encroachments on Ukrainian identity and culture began in literally all material and spiritual aspects of Ukrainian life. Geographical indications help protect certain products from illegal encroachments and make Ukrainian national products more attractive and recognisable in Europe's agricultural and consumer markets. They can become a reliable tool for protecting and promoting Ukrainian food products, such as cheese, milk, mineral water, and alcoholic beverages, including wine. There has also been an increase in small "craft" enterprises that specialise in beer production and can obtain their geographical indications. Therefore, geographical indications help greatly protect Ukrainian culture and its uniqueness in contrast to Russian culture.

For a long time, geographical indications and their protection mechanisms in Ukraine were not sufficiently known not only to consumers but also to the producers themselves, which is why the shelves of national stores are full of counterfeit fake drinks such as "Cognac", "Champagne" and many other products. After numerous legislative reforms and the signing of the EU–Ukraine Association Agreement, the situation has fundamentally changed, needing to be reviewed and properly verified.

Research object and subject. The research object is geographical indications for food products and alcoholic beverages in social relations and legal phenomena. The research subjects are requirements in Ukrainian legislation for quality and admission of food products and alcoholic beverages, general legal regulation of geographical indications in Ukraine, the mechanism of legal access to geographical indications for foodstuff and alcoholic beverages in Ukraine, legal remedies and court practice for geographical indications of protection in Ukraine and foreign legislation.

The research purpose is to promote geographical indications by publishing a work useful both for jurists and lawyers, producers, agrarians, and farmers. The work

will provide insights into how protecting geographical indications can stimulate agricultural development initiatives in Ukraine.

The research objectives are the following:

1. To determine the quality of current Ukrainian legislation on geographical indications with the EU legal system.
2. To develop the presence of geographical indications in the doctrine of agrarian law and provide practical recommendations for their implementation in relevant manuals and during the teaching of disciplines at universities.
3. To provide conclusions on current trends for geographical indications, considering significant legislative changes in recent years and their relevance for scholars, who will further research the topic in upcoming years to respond quickly to legislative and policy changes.
4. To raise the awareness of citizens, producers, agrarians and farmers on registering geographical indications, their benefits and their role in protecting Ukrainian culture.

Research methods. To achieve the set goals, the Author employs various research methods, including general scientific and private scientific methods of cognition, doctrinal analysis, and comparative legal research. By analysing and organising information from various sources, their objective is to reveal the essence of geographical indications and proposed ways to promote them.

A systematic method is used to analyse normative legal acts and court decisions to determine the meaning of the main concepts and distinguish between the forms and types of discrimination. A formal-logical method analyses individual elements of geographical indications in general and separate forms and types depending on the characteristics of these elements. The dialectical method is applied to how geographical indications may be important to reflect a certain country's culture or the necessity for future reforms. The comparative legal method is used to identify differences in the understanding of certain categories in legislation on geographical indications of the EU, the US, and some other countries. As Ukraine aspires to become the EU member, it has already amended some laws and passed some new ones to reflect certain EU

directives, thus ensuring its way to the integration. Therefore, the work references the norms of some of these directives and the practice of the European Court of Justice and the national courts.

The work also uses the historical method, for geographical indications has been quite a longstanding legal concept, having undergone a distinct evolution in international and national legislation. A separate chapter is devoted to the history of geographical indications.

Structure of the master's qualification work. The thesis includes an introduction and five main chapters addressing different aspects of geographical indications. The first section is divided into two parts: one focuses on the historical development of geographical indications as such and in legal systems, whilst the other researches their overall presence and use in the world. There is also a focus on the main international treaties that developed geographical indications. The second section is dedicated to theoretical aspects of the signs, both on national and international levels. The third section analyses the main characteristics of Ukrainian legislation on geographical indications and requirements for products' admission to the agricultural markets. It also outlines the requirements for products that must be met before registration of geographical indications, the mechanism of obtaining geographical indications, the features of specifications, updated procedures and the scope of liability for wrongful infringements. The fourth section is focused on the ways to protect products with geographical indications against unlawful use and some examples from national and European court practices on how they are protected. The last section is dedicated to comparative analyses of many legal systems and their approach to geographical indications.

SECTION 1

DEVELOPMENT AND PRESENCE OF GEOGRAPHICAL INDICATIONS IN THE WORLD AND UKRAINE

1.1. History of geographical indications for food and alcoholic beverages in the world and Ukraine

Geographical indications (hereinafter – "GI", "GIs") are distinctive protection signs with a long history of development and protection, which have been mainly used to safeguard food products and alcoholic drinks from illegal use or distribution.

Referring to a product in terms of its region of origin is an age-old practice dated back to early instances found in the Bible, the ancient states of Greece and Rome. Examples include such designations as Corinthian Bronze and Carrara Marble. Even in ancient Rome, there were indications of regional provenance, i.e. wine amphorae delivered to Emperor Caesar alongside information about their origin. France is also a birthplace for future mechanisms to protect goods from a particular territory [13, p. 137]. France's impact on GI law is so tangible that its "registration rights" model has been widely embraced across Europe and other world regions [14, p. 15]. During the early modern period, there was no specific legislation addressing fraud or GIs in their contemporary meaning.

However, establishing monopolistic "corporations" to oversee specific trade interactions was driven by similar insights that gave an impetus to modern protection measures. Whilst law enforcement institutions of that period were vague, the notion of how monopoly-based GI might have functioned emerges from a well-known anecdote recounting the restaurant's birth as a phenomenon.

According to the story, in the mid-18th century, a Parisian innkeeper named Boulanger created a creamy, white sauce flavoured with calves' feet instead of the typical thin broth-like soup served in his restaurant [15, p. 1360]. This action provoked the ire of Paris's Guild of Traiteurs, who exercised exclusive authority over the mining industry. After extensive litigation in lower courts, the case eventually reached the

Parlement de Paris, France's highest court. Regrettably, Boulanger lost the case on its merits for the innovative cook but emerged victorious in the court of public opinion, being remembered as the pioneer of the modern restaurant.

The decisive initiative to protect GIs emerged in the XIX century with advancements in food preservation technologies enabling increased trade across regions. The initial, unsuccessful attempt to establish liability for fraud pertained to the strict law of 1803 [16, p. 1465].

The second, more significant effort to safeguard GIs was formalised in the law dated 28 July 1824. This statute envisaged criminal penalties for falsely indicating the origin of goods or providing false information about the latter's producer. Notably, there was no mandatory requirement to label products, allowing their producers to remain "anonymous" if deemed desirable. However, if a producer opted to disclose the origin of their product, the information had to be accurate. Whilst this law represented a rudimentary development, it has persisted without being revoked, and its enforcement continued even with the introduction of more sophisticated legal instruments.

For instance, as late as 1930, a law dated 28 July 1824 prohibited labelling Algerian oranges as Spanish. Despite being an initial effort to establish GIs, there was the inaugural step on the long-standing journey toward revitalising this aspect of the law [16, p. 814].

Intriguingly, following World War I, France, likely concerned about possible Germany's intent to market "Champagne" globally after the Champagne region near Reims, which is the origin of Champagne, had suffered significant damage, inserted a corresponding provision in the Treaty of Versailles. This clause stipulated the "respect" for legal, administrative, and judicial decisions about "appellations for wine or spirits" [17].

However, GI received the first tangible development in the Paris Convention on the Protection of Intellectual Property (hereinafter – "Paris Convention") – one of the oldest IP treaties still in force today for 179 countries, including Ukraine [18].

Article 1 of the Paris Convention envisioned such terms as the "indications of source" and "appellations of origin". However, these concepts were undefined, and the

treaty solely outlined measures to address the deceptive use of source indications. Notably, appellations of origin were not further addressed or mentioned in the subsequent provisions of the Convention.

In 1891, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods (hereinafter – "Madrid Agreement for False Indications") was released [19]. It defines the cases and methods of demanding and implementing confiscation, seizure or other similar measures in relation to goods. It forbids signs (including GI) that may mislead consumers about the origin of these goods for sale, display or offer. Thus, the courts of each country party have the right to decide which GIs do not comply with its provisions due to their general nature, except for regional GIs on alcoholic beverages. Although its effect is limited (only 36 countries have signed this Agreement, whilst Ukraine is not among them), the notion of two or more GIs misleading consumers is essential to the European case law and will be researched in forthcoming chapters.

The same year saw the Madrid Agreement Concerning the International Registration of Marks (hereinafter – "Madrid Agreement") [20]. Article 1(1) of the Agreement provides that all goods bearing a false or deceptive indication (including GI) or a place situated therein, directly or indirectly indicated as the country or place of origin, shall be seized on importation into any said country. It did not substantially supplement the protection already afforded by the Paris Convention but introduced safeguards against deceptive and/or false source indications.

Implemented in 1958 and also relatively limited in the number of countries, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration defined appellations of origin as the geographical names of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are exclusively or essentially determined by the geographical environment, particularly natural and human factors [21].

Now, appellations of origin are a special kind of GI, requiring a stronger connection with the territory of production [22]. Only in 1995, Trade-Related Aspects of Intellectual Property Rights (hereinafter – "TRIPS Agreement"), based on consumer

and goodwill protection, gave GIs universal attention and protection [23]. The TRIPS Agreement provides for two standards of protection: a baseline universally applied to all goods whilst being centred on the "non-misleading requirement" and an elevated level of protection specifically designated for wine and spirits. TRIPS Agreement in Article 22(1) defines GIs as "indications which identify a good as originating in the territory of a Member State, 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".

After the European Union (hereinafter – "EU") emerged on the international stage, its legislators implemented many regulations concerning GI, of which the contemporary examples are as follows: Regulation 2013/1308 – Common Organisation of the markets in agricultural products (hereinafter – "Regulation 2013/1308"), Regulation 2012/1151 – Quality schemes for agricultural products and foodstuffs (hereinafter – "Regulation 2012/1151") and Regulation 2019/787 on spirit drinks (hereinafter – "Regulation 2019/787") [24;25;26]. Nevertheless, since 2023, EU lawmakers have sought to establish a unified system for food, spirit drinks and wine [27].

In Ukraine, GIs were first specified in the CCU [28]. Its Article 420 indicates that a GI is one of the IP rights objects. In addition, Chapters 35 and 45 introduced general provisions on the acquisition, exercise and protection of GI rights. Furthermore, in 1999, the Ukrainian parliament enacted the Law of Ukraine "On Protection of Rights to Indication of the Origin of Goods". № 2801-IX, now named "On the Legal Protection of Geographical Indications" (hereinafter – "Law on GIs") [29].

However, due to the legacy of communism and the suppression of individual initiative, Ukraine's understanding of IP objects for a long time was not as well-established as in the Western world. This has resulted in some people referring to any sparkling wine as "champagne" and some producers labelling fresh salted cheese as "feta", even when it is made in Ukraine rather than Greece. Even when Ukraine became a party to the TRIPS, which provides for specific procedures for the GIs protection,

cases of illegal GI use (including through the registration of trademarks) did not come to an end.

Ukraine made the first and most significant step in enshrining GI protection after signing an Association Agreement between the European Union and its Member States on the one part and Ukraine on the other part (hereinafter – "Association Agreement"). The parties dedicated a decent amount of attention to GIs in Chapter 9 – Intellectual Property, Part 1 – General Provisions, Section 3 – Geographical Indications [30]. The Author properly examines its provisions and mechanisms in the following chapters.

The second step, made by the Ukrainian Parliament in 2022-2024, was one of the most significant and most recent attempts to protect the rights of foreign producers and farmers, with two laws being enacted: The Foodstuff Law and the Law on Alcoholic GIs. These laws are of utmost importance, as they are intended to closely align with the previously mentioned EU regulations like Regulation 2013/1308, Regulation 2012/1151 and Regulation 2019/787, making one of the numerous attempts to harmonise Ukrainian legislation with European one.

All these laws will be properly reviewed in the next chapters, alongside the laws on the quality of the goods pending the latter's release on the agricultural markets. Nevertheless, it is one issue to adopt these laws. In contrast, another one is to comply with numerous legislative principles whilst considering the interests of entrepreneurs, agrarians and farmers and providing real mechanisms to protect GIs, especially in wartime. The next part is devoted to the current distribution of these marks in Ukraine and other countries.

1.2. The overview of geographical indications on foodstuff and alcoholic beverages, worldwide statistics of their use

Numerous surveys have shown that GIs are highly valued by producers, farmers, and agrarians worldwide. According to WIPO Global Report on Intellectual Property Indicators 2023, there were approximately 55,800 protected GIs worldwide as of 2022, as reported by 91 national and regional authorities [31, p. 160]. In the report, Europe took the forefront with 53.1% of GIs, trailed by Asia at 36.3%, Latin America and the Caribbean at 4.3%, Oceania at 3.6%, North America at 2.6%, and Africa at 0.1%. China, boasting 9,571 GIs, predominantly safeguarded three-quarters of them via the trademark system.

In the EU, there are approximately more than 3000 GI, most known of which include protection for such products as Bayerisches Bier, Champagne, Cognac, Irish Whiskey, Kalamata olives, Parmigiano Reggiano, Polish Vodka, Queso Manchego, Roquefort and so forth. Given the vitality of GIs, the latter represents a sales value of €74.76 billion, as claimed in the study published by the European Commission (hereinafter – "Commission"), reflecting the wealth and diversity of products the EU agricultural sector offers. The study was based on all 3,207 product names protected across the 28 EU Member States at the end of 2017 (by the end of March 2020, the total number of protected names increased to 3,322), which may be found in the eAmbrosia register – an official EU database for food and agricultural products, wine, spirits and aromatised wine [32].

Wines and spirits dominate the global market, constituting 50.7% of the total GIs in force in 2022. Agricultural products and foodstuffs accounted for 43.1%, underscoring the significance of these sectors in the GI landscape. Thus, foodstuffs and alcoholic beverages cover 93.8% of all worldwide GI, with only 4.2% reserved for non-consumable GI products, i.e. handicrafts and pottery.

Many Europeans deem significant local customs and expertise represented in GIs (ranging from 56% to 97% depending on the nation), as evidenced by the most recent Eurobarometer concerning agriculture [33]. Respondents are inclined to purchase food

items originating from familiar geographic regions. Overall, research indicated that the market value of a product bearing a certified name averaged twice that of a comparable uncertified product. The premium rate for value stood at 2.85 for wines and 2.52 for spirits, whilst accounting for 1.5 for agricultural goods and comestibles.

The Survey stipulates that products with a registered name represent 15.4% of the total EU agri-food exports. Wines remain the most essential product in total sales value (51%) and extra-EU trade (50%). Beyond its borders, the EU takes many steps to protect product authenticity and ensures that European-quality products are recognised worldwide. GI protection helps combat counterfeit products, which threaten the reputation of authentic, local and regional products and the livelihoods of their producers.

The United States of America (hereinafter – "US") also actively protects the GIs, covering such prominent products as Florida oranges, Idaho potatoes, Vidalia onions, Washington State apples, and Napa Valley Wines, having secured 672 marks by 2022 [34, p. 1]. The US protect local foodstuff and alcoholic drinks not as GI but as a particular kind of trademark, which the Author will research in upcoming chapters.

Overall, numerous surveys demonstrate that, by promoting local production methods and inherent attributes on a global scale, **GIs remain a significant policy instrument for the global expansion of agricultural products and the regional exposure of their place of origin [35;36;37].** Indeed, a notable empirical trend among exporters is their higher productivity compared to non-exporters. This phenomenon could be attributed to the importance of directly gaining insights from international markets through relationships between buyers and sellers and indirectly via increased competition because of foreign producers. Furthermore, the Italian lawyers Fabrizio De Filippis, Mara Giua, Luca Salvatici and Cristina Vaquero-Piñeiro at Roma Tre University state that GI exports provide external advantages to enterprises either by transmitting knowledge acquired through trade or by facilitating the entry of domestically focused firms into foreign markets [38, p. 7]

Finally, *Comite Champagne*, the association of champagne producers representing more than 16,000 independent producers and more than 320 champagne

houses, **reported that sales of this drink in 2022 increased to €6 billion**, exceeding the pre-pandemic level. France's exports of 187,500,000 bottles increased by 4.3% over the year. With a larger share of the champagne market, the country's export share has grown from 45% a decade ago to over 57% [39].

In Ukraine, there are 3124 recognised GIs as of 20 March 2024, according to the registry of industrial property objects of state enterprise "Ukrainian Institute of Intellectual Property" (hereinafter – "Registry") [40]. Given that most of these GIs originate from the EU, Ukraine must protect products, namely Feta, Roquefort, Cognac, Madeira, Porto, etc., via bilateral Association Agreements.

Whilst it is not immediately possible to define how many GIs are natively registered in Ukraine, NGO "Geographical Indications of Ukraine" claims there are only 20 Ukrainian GIs, with prominent examples being Truskavetska water ("*Трускавецька*" in Ukrainian), Polyana Kvasova water ("*Поляна Квасова*" in Ukrainian), Hutsul sheep bryndza ("*Гуцульська овеча бриндза*" in Ukrainian), Hutsul cow bryndza ("*Гуцульська коров'яча бриндза*" in Ukrainian) Melitopol cherry ("*Мелітопольська черешня*" in Ukrainian) [41;42;43;44;45]. The Author will analyse these and other Ukrainian GIs in the forthcoming chapters.

Before the enactment of the Foodstuff Law and the Law on Alcoholic GIs, there was a significant issue in Ukraine with unregistered products bearing marks on food and alcohol that imitated European GIs. Many shops and shopping centres in Ukraine used to sell various drinks under the generic name "cognac", some of which were produced in Ukraine. It is important to note that these products were not registered. However, upon closer inspection, cognac is named after the provincial town of the same name located in the Charente department in southwestern France, where it is produced and has unique methods of obtaining the relevant substance. Given this, "cognac" in Ukraine has long deceived consumers about its origin. V. Kucherenko, CEO of Ukrvinprom Corporation (which produces such Ukrainian alcoholic beverages as Tysa, Shustoff, and Inkerman), in 2021 noted that local alcohol producers have a negative attitude toward the ban on the use of geographical names [46].

For example, Artwinery (known for wine trademarks Artemivske, Krym, etc.) now calls its drinks sparkling wine rather than Champagne. Prestige Group (known trademarks are French Boulevard, Odesa, Odesa Prestige, and others; product categories: sparkling wines, cognacs, still wines) has also adapted most of its drinks to meet new requirements.

Ukrainian entrepreneurs have utilised the potential of GIs in a vast number of products since the country restored independence. However, they have mostly abstained from registering their own GIs due to a lack of understanding of how such mechanisms work. This is amidst an overall need for more awareness in Ukraine regarding protecting IP objects. In particular, an important factor is a crisis that arose after the collapse of the Soviet Union, which prompted Ukrainians to finally meet their basic needs and revive the newly established state's economy, whilst little attention was devoted to protecting the interests of European producers.

From the statistics alone, it is clear that GIs are important to land entrepreneurs, farmers and agrarians worldwide. Countries and their respective legal representatives view food and alcoholic beverages with GIs as more attractive to customers and beneficial in terms of increased producer income. However, countries such as France and Italy do not protect these products for purely economic reasons: GIs serve as a shield for national identity.

SECTION 2

NATIONAL AND INTERNATIONAL DOCTRINAL APPROACHES TO UNDERSTANDING GEOGRAPHICAL INDICATIONS

The theoretical aspect of GIs is the master's thesis starting point, which has been extensively studied by jurists from many universities or international organisations that support global agricultural development. GIs have been predominantly viewed via IP law by national and foreign lawyers since the EU's geographical indication protection system was introduced in the early 90s, and the Trade-Related Aspects of Intellectual Property Rights agreement was enacted in 1995. However, in the 2010s, European agricultural representatives began to discuss GIs in the context of legislative changes. This piqued the interest of European agro-cultural institutions, eventually catching the attention of Ukrainian entrepreneurs, farmers, and agrarians, starting GIs development through the prism of agricultural product protection.

Although the correspondent legal system in Ukraine has provided minimal protection for GIs since 1999, it used to be extremely flawed, with almost no real mechanisms to repeal any unlawful interference with a product or covered by a GI. At that time, the initial version of the Law "On Protection of Rights to Indication of the Origin of Goods" № 2801-IX contained the following definition of GIs: "geographical indication of origin (hereinafter referred to as GIO) of goods means the name of a geographical location used as a designation in the name of goods originating from that geographical location and having certain qualities, reputation or other characteristics primarily caused by natural conditions or human factors or a combination of these natural conditions and human factors" [47].

Ukrainian researchers have proposed and are still proposing their own GIs definition, but they are similar to the legislative ones.

V. Kryzhna notes that a geographical indication is the name of a geographical place, which is used to designate a product that originates from this geographical place and has special properties, certain qualities, reputation or other characteristics, exclusively, mainly or mainly caused by characteristics of this geographical location

by natural conditions or a human factor or a combination of these natural conditions with a human factor characteristic of this geographical location [48, p. 435]. O. Taranenko supports this notion but adds that as of 2012, domestic legislation needed defined criteria for establishing the relevant characteristics between the quality of goods and their geographical origin [49, p. 921].

Y. Boshytskyi, Director of the International Centre for Intellectual Property Law at the V.M. Koretsky Institute of State and Law and M. Arkhipova, Research Fellow at the Centre, were among the first Ukrainian jurists to scrutinise the pertinent issues.

They did not provide separate definitions of GIs but revealed that there were no legal provisions in Ukrainian law that would protect GIs for wines, spirits or food [50]. In addition, the Ukrainian legislation did not contain provisions that would determine the criteria for the specification of goods or the procedure for checking the compliance of goods with the requirements of the specification.

In contrast to European legislation, in Ukraine, GIs were protected on general grounds, with no exceptions or privileges regarding such indications. All the EU laws were already based on protecting GIs through the specifications of goods marked by such indications. Even then, Y. Boshytskyi and M. Arkhipova stressed that the government should bring Ukraine's GIs legislation into compliance with the EU one, and it is necessary to start by establishing the specification of goods [50].

A. Kodynets noted as of 2014 that Ukraine's integration into the EU requires codified regulation by amending Book 4 of the Civil Code of Ukraine (hereinafter – "CCU") and updating special legislation on protecting certain IP rights on GIs [51, p. 72].

M. Arkhipova, in her separate work, does not give a scientific definition of GI but emphasises that "since the national system of protection of rights to GIs is a subsystem of the protection of civil rights in general and rights to IP objects in particular, it is characterised by the general features of the Ukrainian system of legal protection", thus recognising GIs importance in the national legal scope [52, p. 13].

In the opinion of D. Krysanov, Doctor of Economics, geographical indication is a term that reflects a direct link between a certain product and a specific place of its

production. He emphasised the need to develop a system of product specifications and harmonise Ukrainian legislation with EU requirements, too. However, he also stressed the need to create a public association (such NGOs exist as of 2024; see NGO "GIs of Ukraine" website) with the participation of local producers, local authorities, and representatives of industry structures, which is able and interested in identifying itself as a candidate for registration of GIs of origin of regional products, as well as to form a working group for this purpose, to encourage Ukrainian producers to register GIs more actively and to help protect their interests [53, p. 14].

H. Androschuk and A. Afyan, as of 2015, established that the path of European integration chosen by Ukraine orders a focus primarily on the European model of protection, which has already been largely reproduced in national legislation. The model primarily aims to protect products from regions with a long and distinct tradition of producing certain products. It is not accepted by some legal systems, such as those in the United States, but provides much more efficient protection than the TRIPS Agreement. It is worth agreeing with their opinion that even now, the implementation of such mechanisms should not be reduced to blind copying of legal norms without experience of their application [54, p. 39].

In 2018, M. Kovalchuk published her dissertation, one of the largest and most relevant works on GIS, published in Ukraine until today [55, p. 13]. According to her position, GIs are any direct or indirect designation of a geographical location (name), which can be expressed verbally or graphically, which reflects the characteristic features, qualification characteristics, reputation or other qualities of goods produced by natural or legal entities, on a certain territory, which outline its features. Geographical indication of the place of origin of goods is a complex civil law phenomenon, characterised by the multidimensionality of approaches to determining the subjects of a given object of IP law and the presence of a certain branching in determining the essence of this civil law category. The presence of two categories that are part of the concept of geographical indication, namely simple and qualified, determines the existence of several difficulties in understanding this object and problems in its legal protection and protection.

Her work is also important because it accurately categorises GIs:

By area size:

- geographical indication of the country; geographical designation of the district/region; geographical indication of the settlement; geographical indication of another area.

By object covered by geographical indication:

- GIs describing special qualities; GIs describing reputation; GIs describe other characteristics.

By product:

- GIs of agricultural products; GIs of food products; GIs of alcoholic beverages; GIs of ceramic dishes; GIs of items of clothing and accessories; GIs of other goods.

According to qualitative characteristics:

- Simple GIs; qualified GIs.

By the scope of legal protection:

- Protected GIs; unprotected GIs.

I. Kul'chiy, as of 2019, derived the GIs definition from the legislation but developed their role further and stated that the formation of the GI system on agricultural products is extremely relevant in the context of European integration as GIs provide a powerful tool for the development of rural areas, promote the production of high-quality and safe agricultural products, create new jobs, develop rural tourism, preserve biodiversity and increase the export of agricultural products with high added value [16, p. 111].

T. Yaroshevka views GIs through the legislation prism but comments that if they potentially mislead consumers regarding the true identification of goods, the geographical place of their origin or the boundaries of such origin, the said indication may be refused the right to protection [56, p. 156].

According to O. Orlyuk's position, a geographical indication is a certain collective brand used to designate products that can be identified by their place of origin and that meet certain criteria of quality, traditionality, etc. The manufacturer of products with a registered geographical indication provides product protection against unfair

competition, competitive advantages in the form of confirmation of the high quality and uniqueness of the product, and the opportunity to increase sales within Ukraine and beyond. For the consumer, products with a geographical indication guarantee the original origin of the product from the area where it was produced. For the region, GIs contribute to preserving local traditions, developing tourism and local business, and additional tax revenues [57].

Over the past few decades, lawyers from various legal systems have extensively researched GIs theoretical aspects. Despite the sheer volume of literature available, multiple approaches have been developed that may help comprehend these signs' theoretical nature. While most of these approaches are based on legislative frameworks outlined in the TRIPS Agreement, other international instruments, and national laws, each opinion underscores the significance of GIs within its respective context.

As a French lawyer, S. Fournier says, in the EU literature, the protection of GIs used to be often restricted to the protection of their collective reputational capital without consideration of the importance of the specific natural and knowledge ecosystems and the role of local communities in first creating and maintaining collective local know-how over time [58, p. 162]. However, throughout the 2010s, this circumstance changed drastically. Now, According to A. Mazé, a researcher at the French National Institute for Agricultural Research, states that GIs are signs that act primarily as a common umbrella branding, defining broad product styles (e.g. in the case of Bordeaux or Burgundy wines) recognised by consumers [59]. This definition includes the idea of shared "collective knowledge" developed by a group of human actors through the specific definition of "terroir", according to the National Institute of Appellations of Origin ("*Institut National des Appellations d'Origine*" – in English), an authority under the French Ministry of Agriculture and Food, *terroir* is "a specific geographical area where production takes its originality directly from the specific nature of its production area. *Terroir* is based on interactions between the physical and biological environment and a set of human factors within a space that a human community has built with collective productive knowledge during its history. There are elements of originality and typicality of the product" [60].

The *terroir* concept shows that GIs are not just legal signs that distinguish a certain product from a certain region – they inseparably reflect the traditions, values and "spirit" of a particular area, people and the efforts they put into production.

D. Giovannucci, head of the international NGO "Committee on Sustainability Assessment", in the large-scale work "Guide to GIs", views GIs as an umbrella term whose overall purpose is to distinguish the identification of a product's origin and its link with particular characteristics related to that origin, which, when legally registered, can take many forms, providing an additional layer of protection for a product [61, p. 16].

He also elaborates on the *terroir* concept – delimited geographic space where a human community has constructed throughout history a collective intellectual or tacit production know-how based on a system of interactions between a physical and biological *milieu* and a set of human factors, in which the socio-technical trajectories put into play, reveal originality, confer typicality, and can engender a reputation, for a product that originates in that *terroir* [61, p. 18].

The work highlights that GIs are not solely commercial or legal instruments but multi-functional. They are an important aspect of rural development that can significantly promote commercial and economic interests while promoting local values like environmental responsibility, culture, and tradition. GIs exist within a broader context that recognises their integral role in advancing rural communities [61, p. 20].

T. Dagne, an English jurist, has identified three primary reasons for using GIs in legal frameworks. The first reason is that GIs are viewed as a means of profitable marketing for agricultural production based on traditional cultivation methods, as seen in countries such as Brazil, Panama, and Peru. The second reason is that GIs protect traditional knowledge, as seen in countries such as Venezuela and Vietnam. The third reason is that GIs respond to the risk of inappropriate appropriation of local geographical names in export markets, as seen in countries such as India and Pakistan. In many cases, the initial use of GIs is a reaction to a series of high-profile instances of inappropriate appropriation by large international corporations through trademark

registration, resulting in a suspicion of the intellectual seizure of local cultural heritage [62, p. 55].

Judging from the work of Z. Ilková, a Slovakian lawyer, it is understood that the nature of Geographical indications as marks for products guarantee the quality, individuality, and uniqueness of the products influenced by their geographical origin, representing important industrial property rights, intangible assets, and significant value of the business property of entrepreneurs [63, p. 59].

S.Stranieri, an associate professor from the University of Milan, and her Italian colleagues have conducted an informative report on the state of GIs worldwide as of 2023 [64]. They agree that it is crucial to assess the effectiveness of GIs in promoting innovation and generating positive effects to ensure a sustainable and competitive food system that can adapt to changing consumer preferences and address the significant global challenges that the food system faces, such as climate change, biodiversity loss, unfair advantages for large companies in global value chains, and the persistent gap between rural and urban regions. Their findings highlight the important role of GIs in spurring innovation, especially in laggard EU regions.

Based on these theoretical aspects, it is deducted that a GI should be perceived as a mark, connected to the name of a geographical location that designates a product originating from that location and possessing specific qualities, reputation, or characteristics mainly caused by natural conditions or a combination of natural conditions and human factors. GIs are vital in promoting the relevant regions, its customs and traditions, making a particular product more recognisable and attractive to consumers. GIs are protected through the specification of goods marked by such indications, and their legal protection requires codified regulation by amending the relevant legislation. With Ukraine's integration into the EU, it is necessary to constantly bring the country's legislation in the protection of GIs into compliance with the EU legal system by establishing the specification of goods and updating special legislation on protecting certain IP rights.

SECTION 3

MAIN CHARACTERISTICS OF UKRAINIAN LEGISLATION ON GEOGRAPHICAL INDICATIONS AND REQUIREMENTS FOR ADMISSION TO THE AGRICULTURAL MARKETS

3.1. Requirements in Ukrainian legislation for quality and admission of food products and alcoholic beverages

In Ukraine, there are established definitions for food and alcoholic products. The Law of Ukraine, "On Basic Principles and Requirements for Food Safety and Quality," № 771/97-BP defines "foodstuff" as a substance or product intended for human consumption, whether unprocessed, partially processed, or processed [65].

Foodstuffs also include agricultural products (*"сільськогосподарська продукція"* in Ukrainian) – goods specified in Ukrainian groups 1-24 of the Ukrainian Classification of Goods for Foreign Economic Activity by the Law of Ukraine "On the Customs Tariff of Ukraine" № 2697-IX, provided that such goods (products) are grown, fattened, caught, collected, manufactured, produced, processed directly by the manufacturer of these goods (products), as well as products of processing and processing of these goods (products) if they were produced at own or leased facilities (areas). This provision is enshrined in the Law of Ukraine "On State Support of Agriculture of Ukraine" № 2801-IX (hereinafter – "Agricultural Law") [66; 67]. Furthermore, in the Law of Ukraine "On the State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohols, Alcoholic Beverages and Tobacco Products" (hereinafter – "Law on Alcohol") № 481/95-BP, the legislator defines alcoholic beverages as products obtained by the alcoholic fermentation of sugar-containing materials or as the ones based on food alcohols with an ethyl alcohol content of more than 0.5 per cent of volume units, which are specified in commodity headings 2203, 2204, 2205, 2206 (except kvass "live" fermentation), 2208 according to the UCG FEA (Ukrainian Classification of Goods of Foreign Economic Activity, hereinafter – "UCG FEA"), as well as products with an ethyl alcohol content of 8.5 per

cent of volume units and more, which are set forth in commodity items 2103 90 30 00, 2106 90 according to the UCG FEA [68].

However, it is essentially difficult to define general requirements for foodstuff and alcoholic beverages. There are more than 40 laws and by-laws in food and alcohol regulation [69]. One must understand the general trends and principles indispensable for producing any product for a GI registration.

Before registering a GI, the manufacturers must ensure that their goods meet the necessary quality standards. Quality is defined as "a property of the product that meets the requirements established for this category of products in regulatory legal acts and the terms of the contract with the consumer" [70]. The means of ensuring the quality of food products can be diverse: standardisation, certification, state registration of sanitary measures objects and others. It is worth noting that legal norms define the obligation and procedure for implementing the means above. Hence, legal norms on food quality ensure compliance with quality requirements both at the technological stages of the food production process and at the stages of transportation, storage and sale of food products [71, p. 225].

The legal aspects of food quality can be identified by analysing the provisions of Article 1 of the Law of Ukraine "On Withdrawal from Circulation, Processing, Utilisation, Destruction or Further Use of Substandard and Hazardous Products" № 1393-XIV [72].

The Law places a substantial responsibility on manufacturers to produce safe products. It requires developing, implementing, and applying permanent procedures based on analysing dangerous factors and control at critical points. (in the English abbreviation, the HACCP system – "Hazard Analysis and Critical Control Points").

The use of food additives, flavourings, auxiliary materials (particularly for processing) and materials in contact with food products not registered in Ukraine is prohibited. Exported food products must meet either the requirements established in bilateral agreements between Ukraine and the importing country, the latter's requirements, or the current legislation of Ukraine. Exporters are prohibited from using

raw materials obtained from the slaughter of animals at facilities that do not have an operational permit.

Additionally, there are hygienic requirements for producing and circulating food products of animal origin [73]. Specifically, producers must ensure special conditions for such products as the meat of domestic ungulates, hares, wild animals, farmed wild animals and other stuff.

The Ukrainian legislature has established distinct requirements for alcohol producers and sellers. To obtain a license for alcoholic beverage production, business entities must own or use premises and equipment that enable the complete technological cycle of alcoholic beverage production. This requirement applies only to a single business entity, including a foreign business entity operating through its registered permanent establishment.

Business entities, laboratories and other structural subdivisions engaged in the production and control of alcoholic beverages, except for small wineries, are subject to mandatory certification for compliance with the requirements established by the current legislative acts of Ukraine on ensuring human life and health, environmental protection, the full technological cycle of production of cognac, alcoholic beverages using cognac technology, and compliance with sanitary, fire, environmental standards and regulations.

The Law on Alcohol imposes fines for violating alcohol production regulations, including failure to submit a report or submitting a report with inaccurate information on the volume of production and/or turnover (including exports) of alcoholic beverages and lack of equipment at the manufacturing address. These violations can have negative consequences for the manufacturer under Article 17 of the Law on Alcohol.

There is an administrative liability for the violation of licensing rules on alcoholic beverages: the fine for carrying out-licensing activities without a licence ranges from 17,000 UAH to 34,000 UAH for the first administrative offence and from 34,000 UAH to 85,000 UAH for a repeated offence within a year. Also, there is a fine of 200% of the value of the received batch of goods, which shall be no less than 17,000 UAH. In addition to the revocation of the licence, the sale of alcoholic beverages to

persons under the age of 18 is subject to a fine of 6,800 UAH. An additional fine of 200% of the value of the products sold through such cash registers (not less than 10,000 UAH) is imposed [74].

In severe cases, criminal liability may be imposed for the illegal production of ethyl alcohol, alcohol distillates, alcoholic beverages, beer, or other excisable goods. The punishment for such offences includes imprisonment for three to five years and the confiscation and destruction of any illegally produced or purchased goods, tools, and raw materials used for their production [75].

The so-called "craft beer" has long been popular among beer connoisseurs – beer produced by a small brewery that uses traditional methods and ingredients to produce beer sold locally. Recently, the Ukrainian state has eased the conditions for producing craft spirits and alcohol distillates of such producers. On 18 August 2023, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Some Laws of Ukraine Regarding the Simplification of Conditions for the Production of Distillates by Small Business Entities." № 3193-IX [76].

The Law defines small distillate producers and outlines their material and technical requirements. It also allows them to submit quarterly reports on their production and sales volumes instead of monthly reports. Additionally, the fine for failure to submit or submit incorrect reports has been reduced from 17,500 UAH to 1,020 UAH. Additionally, the cost of a license for wholesale trade of alcoholic beverages for small distillate producers has been reduced from 500,000 UAH to 30,000 UAH. The law allows all alcoholic distillates produced from agricultural products to produce alcoholic beverages. It removes the outdated provision regarding mandatory certification of alcohol, distillates, bioethanol, and alcoholic beverages.

The Deputy Minister of Agrarian Policy and Food of Ukraine, T. Vysotskyi, believes this law will stimulate development and help legalise small businesses producing and selling craft spirits and spirit distillates [77]. This Law, together with the Law on Alcoholic GIs, should indeed help solve several tasks at once, in particular, to agree on the issue of licensing the production and sale of alcohol distillates and

alcoholic beverages, creating additional opportunities for processing agricultural products.

This Law exemplifies the significance of GI for agrarian business and the state. It also highlights how GI can differentiate Ukrainian domestic products in domestic and foreign agricultural markets. However, before proceeding with GI registration in Ukraine, the manufacturers must comply with extensive legal frameworks governing production, labelling, and safety. Further reforms are already planned to unify terms, establish support mechanisms, and enhance regulatory oversight in viticulture and winemaking, there are still many requirements for producers to get their product at the agricultural markets.

3.2. General legal regulation of geographical indications in Ukraine

In Ukrainian legislation GIs are a specific IP object. As per the Law on GIs, a GI is a place name that identifies a product originating from a particular geographical location with special quality, reputation, or other characteristics primarily due to that location. At least one production stage (manufacturing (extraction) and/or processing and/or preparation) must be carried out in a specific geographical area.

GIs and trademarks are different ways of identifying a product. A trademark helps distinguish a product from one manufacturer and a product from another, which may be similar or identical. A GI confirms the authenticity of a product and the connection of its properties (taste, nutritional value, etc.) with the unique geographical environment of a particular region [78].

The ownership rights to a trademark and a GI also differ significantly. For example, a trademark always has a specific owner, the only one with the right to use it. On the other hand, a geographical indication is owned by many producers, and they own no one in particular at the same time. All product producers from a particular region can use a GI if they comply with the specifications and are certified.

Several main provisions on GIs are contained in the CCU, though it is difficult to determine their full nature solely from the Code. Under Article 501 of the CCU, the IP right to a GI arises from the state registration date of this right unless otherwise provided by law. They have a particular place in Ukrainian legislation, being covered by such legal acts as the Law on GIs, the Foodstuff Law and the Law on Alcohol. Such a mark protects goods with quality, reputation or other characteristics associated with a particular geographical region.

The right to state registration of a GI is granted to the goods producers, associations of producers, and other persons specified by law. The Commercial Code of Ukraine establishes the obligation to register GIs to get the necessary protection in Ukraine [79].

A GI in Ukraine can only be registered by a natural person or legal entity, provided that:

1) It is the only producer that creates goods and/or extracts and/or processes raw materials for the goods in this geographical location and wishes to apply for registration of a GI.

2) The geographical territory where the goods are produced (extracted), and/or processed and/or prepared has characteristics that differ significantly from the adjacent territories, or the characteristics of the goods differ from those produced in the adjacent territories.

At the same time, the Law on GIs singles out appellation of origin term (or protected designation of origin, hereinafter – "PDO"). It is a type of GI, which means a name that identifies a product originating from a specific geographical place and having unique qualities or properties, **exclusively or mainly determined by one particular geographical environment** with its inherent natural and human factors and all stages of production of which (production (extraction) and/or processing, and/or preparation) are carried out in a defined geographical area.

The IP rights to a GI include: 1) the right to recognise the designation of a good (service) as a GI, 2) the right to use a GI, and 3) the right to prevent the unlawful use of a GI, including the prohibition of such use.

However, as noted by a well-known civil law scholar, I. Spasibo-Fateeva, Article 503 does not specify what rights are assigned to a person (personal property or non-property like). These rights to the GI object specified therein are also not exclusive due to the GIs nature and the absence of the term "exclusive" and do not include the right to authorise the use typical of other IP objects [80, p. 534].

Unlike trademark owners, the Law on GIs states that persons entitled to use a GI are not eligible for issuing a license to use a GI. Any producer in a specific isolated region may use such a GI, provided the production is conducted correctly, and the climate is considered.

The right to GI use is not detailed in Article 503 of the CCU, as the latter does not contain a list of actions considered to be the use of a GI. Instead, the following is set forth in the Law on GIs: (1) putting a GI on a product or a label, (2) placing it on the

packaging of goods, using it in advertising, and (3) recording on forms, invoices and other documents accompanying the goods.

However, persons entitled to use a registered GI shall not have the right to prohibit other persons from:

- 1) Using the GI for goods placed on the market with such indication by the person entitled to use the registered GI.

- 2) Fair use of their names or addresses.

- 3) Fair use of the name of a plant variety or animal breed.

- 4) Use of an unregistered homonymous GI.

Article 504 stipulates that the IP right to a GI is valid from the date following the state registration date and is protected indefinitely, provided that the characteristics of the goods (services) indicated by this indication are preserved.

Persons entitled to use a registered GI may not:

- a) Issue a licence for its use.

- b) Prohibit (prevent) specially authorised bodies from exercising control over the presence of special qualities and other characteristics in the goods based on which the GI is registered.

- c) Prohibit other persons specified in Article 9 of the Law on GIs from exercising the rights of GIs;

The main provisions of the GIs regulation are contained in the Law on GIs, which defines the principles of legal protection of GIs in Ukraine and regulates relations arising in connection with their registration, use and protection.

The goods for which this indication is claimed must comply with the specifications approved by a specially authorised body – the Ukrainian National Office of Intellectual Property and Innovation (hereinafter – "IP Office") to register a GI.

The IP Office can refuse to grant legal protection for GIs on the following grounds:

- 1) Non-compliance of the GI with the conditions for granting a GI in Article 7 of the Law on GIs.

- 2) The GI is a name that has become a generic name.

3) The GI includes or reproduces the name of a variety of plants or animal breeds, which may mislead consumers about the true origin of the goods.

This provision shall not, however, have effect where:

3.1) The product contains or originates from the relevant plant variety or animal breed.

3.2) Consumers are not misled.

3.3) The name of the plant variety or animal breed is bona fide.

3.4.) The production and sale of the goods have spread beyond their geographical place of origin before the date of filing the application for GI registration.

4) The GI is identical or similar to the extent that it can be confused with a trademark, the rights to which are recognised in Ukraine if, given the reputation, fame and duration of use of this trademark, such legal protection may mislead consumers as to the authenticity of the goods.

Besides, legal protection is not granted to a GI associated with a location in a foreign country if the rights to this indication or another designation that corresponds to the concept of a GI by its content are not protected in the relevant foreign state under Article 8(2) of the Law on GIs.

A homonymous indication of the goods origin is similar to GIs identifying goods from different places of origin. The existence of such GIs may be subject to certain conditions aimed at preventing misleading consumers. A homonymous GI may be registered if there is a difference between this indication and a previously registered GI when used without giving preference to one of the producers of the goods and provided that the possibility of misleading consumers is avoided. However, one cannot register a homonymous indication that correctly indicates the geographical location of the goods production; instead, it creates a false impression among consumers that the goods are produced in another geographical location.

In order to register a GI in Ukraine, a person and/or entity must submit to the IP Office a special Application for the GI registration (hereinafter – "Application") in written or electronic form by the applicant's choice.

Under Article 10 of the Law on GIs, the Application consists of the following documents: **application form for the registration of a GI, A document that sets out the main provisions of the product specification** (hereinafter – "Specification"), the main provisions of the product specification, a description of the relationship between the goods and the geographical environment or geographical place of origin of the goods, **documents confirming the legal protection of the claimed GI in the relevant foreign state**, documents confirming the payment of relevant fees.

Upon submission of all relevant documents to the IP Office, the organisation will proceed to analyse the application.

During the expertise, the IP Office reviews:

- 1) Date of GI application.
- 2) Compliance with the formal requirements: whether the person is entitled to register his or her GI and has submitted the documents required by Article 10 of the Law on GIs.
- 3) Whether the applicant paid the fee.
- 4) Whether the applicant complied with the conditions for granting legal protection

Suppose the GIs meet the conditions outlined in Articles 7 and 8 of the Law on GIs, and there are no objections. In that case, the IP Office will approve the application registration based on the examination report. Anyone can access the GI registration information until it is submitted to the Register. Simultaneously with the state registration of a GI, the Bulletin shall publish information on the state registration of a GI concerning the publication of the product specification or information from the document provided. However, this procedure only covers the main provisions of GI registration in Ukraine. Separate algorithms exist for GIs on foodstuffs and alcoholic beverages. If these rules differ from those in the Law on GIs, special procedures and legislation must be employed in addition to those mentioned above.

3.3. The legal access mechanism to geographical indications for foodstuff and alcoholic beverages in Ukraine

The general provisions of the Law on GIs govern the registration of GIs for foodstuff (including agricultural products). But there is a brand new Foodstuff Law, which shares the same GI registration procedure with the Law on GIs, but adds the following details:

1. The Foodstuff Law implements special conditions for GIs and the registration of foodstuff. It defines the concept of a quality scheme, which consists of the principles of recognition, legal protection, and application of GIs, appellations of origin, traditional speciality guaranteed, and other special quality indicators.

Under Articles 6(2) and 9(1) of the Foodstuff Law, for a foodstuff GI to be registered, it must originate from a particular geographical location, such as a part of a country, locality, area, etc., or in exceptional cases, a country. An association of persons, the majority of which are producers or processors of goods, has the right to prepare and draw up a specification for applying a GI, in particular, if half or more of the persons from such an association produce goods in the specified geographical location, which special quality, reputation or other characteristics are attributed to the specified geographical location.

Similarly to the main GI registration procedure, actions undertaken to prepare for the application for a Foodstuff GI include drafting an application for the GI registration, a specification or a document replacing the former (for foreign applicants), a single document, and approval of the specification.

The completeness, validity and compliance of the product specification with the conditions of the quality scheme are assessed by the expert commission of the Ministry of Agrarian Policy and Food of Ukraine.

2. The Foodstuff Law implements traditional speciality guaranteed marks for foodstuff ("*традиційна гарантована особливість*" in Ukrainian, traditional speciality guaranteed or traditional guaranteed feature, hereinafter – "TSG"). Unlike GIs, which identify goods whose special qualities are due to their geographical origin,

TSGs are not related to a specific geographical origin and identify exclusively food products (or agricultural products) produced according to recipes using traditional methods.

3. The Foodstuff Law allows entrepreneurs, agrarians and farmers to apply for special quality indicator – a characteristic of one or more categories of goods or a feature of agricultural production or processing applied in certain areas, except for 1) characteristics and/or qualities of the goods and/or criteria for their composition outlined in the mandatory requirements for the respective goods and 2) terms intended to ensure that consumers (users) are properly informed about the characteristics and/or qualities of the goods and/or criteria for their composition. Specific quality indicators are used to facilitate the dissemination by market operators within the domestic market of information about the characteristics and features of agricultural products that form the product's added value compared to products of an akin type.

The market operator intending to use it should apply to the Ministry of Agrarian Policy and Food of Ukraine. Such application should be forwarded in electronic or paper form in Ukrainian and contain comprehensive information on the special quality indicator to be used, the relevant product, and the justification of the product's compliance with the criteria for applying the special quality indicator. The Ministry has developed special requirements to ensure a proper procedure for preparing and submitting an application for a special quality indicator [81].

In addition to the general indicators, the Law explicitly provides for the quality indicator named "mountain product", which applies to livestock products produced and processed in mountainous areas, or to livestock products from animals that have been reared in such mountainous areas for at least two-thirds of their lives, if the products have been processed in such areas, or to livestock products obtained from animals on pasture that have been kept on pasture in mountainous areas for at least a quarter of their lives under Article 30 of the Foodstuff Law.

4. The Foodstuff Law defines the use of GIs and TSGs. Every market operator that is a producer of goods or is deemed to be such and wishes to start using the quality scheme for agricultural products and foodstuffs, the GI, PDO, or TSG for which is

entered in the Register or the Register of Traditional Guaranteed Features, shall be included in the list of users.

5. The Foodstuff Law renders the GI or TSG invalid if it does not meet the criteria of its quality scheme. In this case, the validity term of a GI or TSG shall be terminated by a court:

1) If the specially authorised body establishes that, due to a change or loss of special natural and/or human factors characteristic of the designated geographical area, producing goods that meet the product specification is no longer possible.

2) If the GI or TSG is not used within seven years from the publication date of information on the registration of the GI or from another termination date of use after such publication. Such termination shall be carried out at the request of any interested person.

3) According to an international agreement, Ukraine is a party under Article 40 of the Foodstuff Law.

The GI or TSG for foodstuff and agriculture products may also be subject to product certification. The certification process involves two types of verification: initial and periodic. The initial verification is conducted before the market operator-producer of the product joins the quality scheme, whilst periodic verification is carried out periodically under Article 46 of the Foodstuff Law.

There is a liability for violating rights from registering a GI or a TSG. Any infringement of these rights entails liability, and the violator must compensate for the damage caused. The plaintiff received the financial compensation of 10 to 500 minimum wages, depending on the nature of the violation.

A person entitled to use a GI or a TSG can demand that goods, packages, and labels containing the name which is protected according to the quality scheme and/or containing the national symbol or warning marking provided for by the Law on GIs without proper legal grounds, be removed from circulation and destroyed thereafter.

Article 51 of the Foodstuff Law entails liability for violating legislation in quality schemes. Market operators who sell goods marked with a GI or a TSG or put into civilian circulation using a GI or a TSG are subject to certain offences. These offences

include putting into circulation or sale of goods for which a certificate certifying the conformity of the goods with the requirements of the specification has not been obtained, use of a national symbol or warning marking provided for by the Law on GIs with an unregistered GI, TSG, or application of a special quality indicator without acquiring the right to such application, among others.

Liability is also provided for non-fulfilment, untimely fulfilment, or inaccurate provision of information about goods put into circulation using the quality scheme. Legal entities and natural persons, including entrepreneurs, may face fines ranging from three to ten minimum wages depending on the nature of the offence.

At present, the protection of GI for alcoholic beverages is carried out via the current national legislation. However, the Verkhovna Rada of Ukraine has already adopted several laws that have already entered or will enter force in 2024. In particular, the Law on Alcoholic GIs, which is set to enter into force on 29 December 2024, should become the fundamental act in regulating the issue. According to Article 1(1)(7) of the Law on Alcoholic GIs, a GI of an alcoholic beverage is a name that identifies a beverage originating in a particular country or region as part of a country, settlement, or area in that territory, if the special quality, reputation or other characteristics of the alcoholic beverage are mainly due to this geographical place of origin.

Generally, registering a GI will be close to the procedure. However, there are some distinct features to consider:

1. The Law establishes various definitions of alcoholic beverages. Some examples include Rum, Whisky or Whiskey, Brandy or Weinbrand and numerous other types of alcoholic beverages with a detailed description of their production and flavour specifics. This should help producers, farmers, and agrarians avoid possible duplication of existing brands. In general, the Law is very extensive in detailing the relevant categories, including the leading American, French, other European and global beverages, whilst covering a significant majority of typical products on the consumer and agricultural markets.

2. The law defines the specifics for preparing GI registration of alcoholic beverages. The right is granted to a producer or association of producers who produce

alcoholic beverages in a specific geographical location whose special quality, reputation or other characteristics are mainly attributed to this location. Alternatively, the right is granted to the state, represented by an authorised state authority, in cases established by Article 3(1) of the Law on Alcoholic GIs.

A single producer may register a GI if they are the only producer of alcoholic beverages in a particular geographical location and wish to apply for registration. Additionally, the geographical territory where the alcoholic beverage is produced must have characteristics that differ significantly from adjacent territories, or the alcoholic beverage must have qualities that differ from those produced in adjacent territories. Producers can register GIs exclusively for the alcoholic beverages they produce.

Finally, the authorised body may register a GI if an association of producers cannot do so due to the number of producers, their geographical location, or the peculiarities of the production process mentioned in the application for registration of a geographical indication of an alcoholic beverage.

3. The Law establishes special requirements for specifications of alcoholic beverages with GIs and procedures for their approval. Like in procedures for foodstuff GIs, the package of documents should include: 1) an application for registration, 2) the specification, and 3) a single document that sets out the main provisions of the alcoholic beverage specification. The Law is much more demanding in detailing the specification, requiring the producer to adhere to the following provisions:

After registration, the GIs for alcoholic beverages are exclusive to the persons who registered them. It is prohibited to use registered GIs for any beverages not covered by their registration. A registered GI of an alcoholic beverage is recognised when put on the product or label, applied on the packaging of alcoholic beverages, used in advertising, or recorded on forms, invoices, and other documents accompanying the alcoholic beverage.

Market operators can be fined for various offences related to the use of registered GI of alcoholic beverages. These offences include the commercial use of a registered GI of a spirit drink that is not covered by the registration of a GI for any drink similar

to a spirit drink for which a GI is registered. It also includes the improper use, imitation or other embodiment of a registered GI of an alcoholic beverage, putting into circulation an alcoholic beverage with a registered GI without obtaining a certificate from a relevant authority confirming the product's compliance with the requirements of the specification, and the use of registered alcoholic beverages GIs in compound terms when describing, presenting, and labelling alcoholic beverages. Offences can result in fines for legal entities and natural persons-entrepreneurs ranging from five to fifteen minimum wages under Article 25 of the Law on Alcoholic GIs.

Thus, the Law on Alcoholic GIs defines the different categories of alcoholic beverages, establishing special requirements for their specifications and procedures for their approval. Additionally, the Law grants the right to register a GI to a producer or association of producers who produce alcoholic beverages in a specific geographical location and whose special quality, reputation, or other characteristics are mainly attributed to this location. Overall, the Law on Alcoholic GIs aims to protect and promote the unique qualities and characteristics of Ukrainian alcoholic beverages, ensuring fair competition and consumer protection. The Law on Alcoholic GIs implements the EU Regulation 2019/787 into national legislation and establishes the appropriate legal foundation for the development of a modern legal framework in Ukraine in terms of defining the specifics of preparation for registration, use, protection and control of GIs, as well as establishes legal protection of alcoholic beverages GIs.

SECTION 4

LEGAL REMEDIES AND COURT PRACTICE FOR GEOGRAPHICAL INDICATIONS PROTECTION IN UKRAINE

As GIs are a part of industrial property law, individuals or legal entities can protect their rights related to a GI through the main provisions of IP legislation and unique mechanisms implemented for GIs. **The legislation distinguishes between two primary forms of GI protection rights: jurisdictional and non-jurisdictional.**

The jurisdictional form appears when applicants address the state authorities, which can review claims and make binding decisions on entities violating the corresponding legislation. This type of protection may involve either administrative or judicial procedures. Administrative procedures are usually considered a unique form applied as an exception, as they are not the primary means of protection in most cases.

The methods of GI protection are usually distinguished depending on the jurisdictional bodies that provide security and the branch of law that gives it, namely, civil, criminal, and administrative protection. The ways of protecting the rights and legitimate interests of authors and patent holders considered in court (in general jurisdiction, commercial courts, and arbitration courts) are divided into civil and criminal law. Unlike real and personal non-property rights, in the field of protection, there are vast opportunities for using non-prohibited by-law means of counteraction by the person himself within the framework of IP rights. In particular, individualisation provides that the nature of the rights significantly limits such activity upon which the offence is committed or intended [82, p. 14].

The main means of judicial protection of rights to GIs are:

- recognition of the right on GIs.
- restoration of the status quo that had existed before the violation.
- declaring a legal act of a public authority unlawful.
- compensation for non-pecuniary damage.

Article 432 of CCU also sets out various measures to be taken by courts, to wit:

- Prompt action to prevent IP rights infringement and preserve relevant evidence.

- Suspension of the goods passage across Ukraine's customs border if their import or export violates IP rights.
- Removal from civilian distribution and subsequent destruction of goods produced or circulated in violation of IP rights from civilian distribution.
- Removal from civilian circulation and subsequent destruction of materials and tools primarily used for producing goods that violate IP rights.
- Imposition of a one-time monetary penalty instead of compensation for the damage induced by unlawful use of an IP right. The penalty amount is determined by law, considering the individual responsibility and other material circumstances.
- Publishing information about IP rights infringement and the court decision on such infringement, including removal from civil circulation of goods produced in violation of IP rights, tools and materials used for their manufacture, or imposition of a one-time monetary penalty, etc.

Given that a GI is also considered an object of IP rights, the former is subject to all the aforementioned remedies. Additionally, according to law, courts can resolve disputes within their jurisdiction related to the legitimacy of registering such marks, determining the use of a GI's qualified indication, violation of owners' rights of the registration certificate for the right to use a qualified indication of the origin of goods and compensation for any induced damage.

A GI may be declared invalid by Ukrainian courts if:

- a) It is established that, due to the change or loss of unique natural and/or human factors and/or characteristics of the geographical territory, it has become impossible to produce goods that meet the product specification or document provided for.
- b) The GI is not used within seven years from the publication date of information on the registration of the GI or from another date following such publication. Such termination shall be carried out upon the request of any interested person.

Ukrainian legislation also provides for criminal liability for specific infringements of these rights. Criminal liability means that the infringer is liable to the state, not directly to the author or owner of the industrial property rights. According to Article 229 of the Criminal Code of Ukraine, "illegal use of a qualified indication of the origin

of goods, or other intentional violation of the right to this object, if it caused material damage in a significant amount, shall be punishable by a fine of 1000 to 2000 tax-free minimum incomes, with confiscation and destruction of the relevant products and tools and materials especially used for their manufacture".

The Association Agreement states that the registration of GIs protected under this Agreement can be terminated by the party from which such products originate. The TRIPS agreement also has an identical provision, which means there are no obligations to protect GIs that do not have protection in the country of origin, whose protection has been terminated or which are no longer used in that country.

On 16 September 2014, Ukraine, the EU, the European Atomic Energy Community and their Member States ratified the Association Agreement, broadening the scope of GI protection. It covers various issues, including recognising and protecting GIs in Ukraine and the EU. It establishes standards that supplement and clarify the parties' rights and obligations under the TRIPS and other international treaties related to IP, including GIs. The EU also undertakes to respect Ukrainian GIs under Article 23(2) of the TRIPS Agreement.

Under Article 204(1) of the Association Agreement, the GIs listed in Annexes XXII-C and XXII-D to this Agreement shall be protected from:

- any direct or indirect commercial use of the protected name for similar products that do not meet the specification of the product under the protected name or when such use abuses the reputation of the GI.

- any unlawful use, imitation or embodiment, even if the true origin of the product is indicated or if the protected name is translated, transcribed or transliterated or accompanied by such expressions as "style", "type", "method", "produced in", "imitation", "taste", "similar", and other such words.

- any other false or misleading indication of the source, origin, nature or essential features of the product on the internal or external packaging, advertising materials or documents relating to the product, as well as the packaging of the product in a container that may cause a false impression of its origin.

On 1 January 2016, the EU GIs subject to protection in Ukraine under the Association Agreement were registered in the State Register of Ukraine of Appellations of Origin and Geographical Indications of the Origin of Goods and Rights to Use Registered Qualified Indications of the Origin of Goods. At the same time, each GI is protected not by itself but by a specific product or group (alcoholic beverages, wine, cheese, meat, oil, etc.) [83]. Thus, Ukraine has refused to register trademarks and service marks that are identical or alike to the extent that they can be confused with EU GIs. Exceptions apply solely to Cahors – French red dry wine from the region and products with the names "medok" ("*медок*" in Ukrainian) and "cava" ("*кава*" in Ukrainian) due to their homonymy with typical drinks.

The rights and interests of authors and patent holders may also be protected in a non-jurisdictional form. These are independent actions taken by individuals and legal entities to protect their infringed rights to industrial property objects without seeking assistance from the state or other competent authorities. In this case, the offence is terminated by the persons concerned.

Thus, the scope for protecting personal and non-property rights through lawful means of self-defence is considerably broader when compared to GI rights. The latter rights are inherently restrictive, limiting the scope of activities that can be carried out in response to offences or encroachments committed against such rights [51, p. 72].

There is limited court and state practice in Ukraine regarding GIs, especially in relation to the invalidation of GI rights and their associated practical issues. The reason for this is the low number of registered national GIs, which was only 42 signs prior to the implementation of the Association Agreement [80, p. 539]. Nevertheless, some decisions of Ukrainian courts still deserve attention.

In the case № 826/7767/13-a, the Higher Administrative Court of Ukraine (now known as the Administrative Court of Cassation of the Supreme Court) reviewed a lawsuit filed by the Distribution Company Ellada LLC against the State Intellectual Property Service of Ukraine (now known as the Ministry of Economy of Ukraine) and Zolota Balka LLC, which was located in the now-occupied Sevastopol. The applicant sought the invalidation of a qualified indication of the goods' origin as the appellation

of origin "BALAKLAVA" ("БАЛAKЛAВA" in Ukrainian) for items such as wine and sparkling wine under application № i200900003 of 08 July 2009 [84]. The Court has cancelled the decisions of lower instances on the claims that they have not established whether the production address is related to the geographical location "BALAKLAVA" and whether the goods denoted by this name are extracted and processed within the specified area, with the case later dropped due to applicant's failure to attend court's sessions.

However, when sending the case for a new trial, the Court drew attention to some aspects deserving of attention:

- Whether the extraction and processing of the goods denoted by this name are carried out within the specified geographical location.
- Whether the certificate of Ukraine № 51168 for the "BALAKLAVA" mark belonged to the plaintiff was valid at the time of the examination № i200900003, which, in turn, is the basis for refusing to grant legal protection to the qualified indication of the origin of goods.

In the case № 910/4085/23, the Commercial Court of Kyiv City reviewed the application Aqua-Eco LLC and Firm T.S.B. LLC have filed a lawsuit against Vodoley S.P. LLC [85]. They sought to prohibit Vodoley S.P. LLC from using the "Truskavetska" trademark, recognised as well-known about their company and firm, for any goods related to mineral waters, table waters, drinking water and other related goods. They claimed that using close designations, such as "Truskavetska Classic", could lead to confusion in the market. However, the defendant has denied these claims because "Truskavetska" is a commonly used designation for certain goods like minerals and drinking water. The defendant argues that it is impossible to monopolise this name for use in relation to goods of a particular manufacturer or a specific type of goods. The defendant cited the definition of a GI and appellation of origin under the Law on GIs to support their argument.

Yet, the Commercial Court of Kyiv City denied the defendant's position because Aqua-Eco LLC was the only company that had ever applied to use GIs on "Truskavetska" water, whilst Vodoley S.P. LLC did not go through such a procedure.

These provisions established by the courts are essential in the practical aspect of compliance when registering rights related to a GI. When applying to the IP Office, the applicant should understand that the examination procedure is limited to documentary verification and cannot examine the actual circumstances of the extraction or processing of goods. However, in a court proceeding, the exact circumstances of the case and the validity of the parties' claims are to be investigated and verified.

There is more practice on GI protection from other state authorities. The Antimonopoly Committee of Ukraine has imposed a fine of 1,000,000 UAH for the illegal use of the Prosecco name by Odesa-based wine producer Tairovo Winery LLC ("*ТАІРОВО БАЙЇНЕРІ*" in Ukrainian). The complaint against the Odesa-based producer was filed by members of the Italian consortium of Prosecco wine producers – the only ones with the official right to use this name. They export products to Ukraine, and the Odesa producer used the name without permission. The Antimonopoly Committee of Ukraine (hereinafter – "AMCU") recognised Tairovo Winery LLC actions as a violation of Article 4 of the Law of Ukraine "On Protection Against Unfair Competition" № 236/96-BP. It imposed a fine of 946,909 UAH on the defendant.

In the Committee's opinion, such actions could lead to confusion about Tairovo Winery LLC's activities with those of the consortium and provide undue competitive advantage by using the business reputation of such members [86].

In its decision dated 2 April 2019, the Appeals Chamber of the Ministry of Economic Development and Trade of Ukraine registered the mark "OYSTERS CAVA BAR, figurative" under application № m201610096 [87]. The case is quite peculiar because Consejo Regulador del Cava opposed the registration of a mark for all claimed goods in class 33 of the International Classification of Goods and Services for the Registration of Marks (hereinafter – "Nice classification"). Nonetheless, the appellant dropped class 33 in its application and reduced the list to services of class 43 of the Nice Classification. This eliminated the grounds for opposition, and the appellant used their mark in a way that did not create the so-called "evocation" concept among consumers.

Initially, the Ministry decided not to approve the registration of the "OYSTERS CAVA BAR, fig." mark. This decision was based on the fact that the requested name is descriptive of goods in class 29 (inanimate oysters) and class 33 (alcoholic beverages, specifically sparkling wines), as mentioned in the list of goods of the Nice classification. The name was also considered misleading for other goods in classes 29 and 33 and some of the services under class 43, such as "provision of temporary accommodation" and "booking places in boarding houses". This was due to the word "BAR", which implies a buffet, small restaurant, snack bar, or bar. Furthermore, the name "CAVA" is a qualified indication of the origin of goods registered in Spain and protected in Ukraine according to the law.

However, the Ministry ultimately decided to register the mark because the appellant supplies "CAVA" wine through agreements concluded with registered producers of this beverage in Spain. The appellant also informs consumers about the true origin of alcoholic beverages offered in its chain of restaurants, "Oysters Cava Bar", promotes CAVA sparkling wines, and provides information about the history of the beverage, technology, and regions of its production in the media and Internet. Accordingly, no questions shall arise as per the use of the mark, whereas the GI of sparkling wine "CAVA" is used in good faith.

One of the criteria that determine the legal protection extent for GIs and appellations of origin is the concept of "evocation", closely intertwined with the notions of "misuse" and "imitation".

Even when the true origin of the goods is acknowledged, any "evocation" of a registered name is prohibited. Given that this criterion is a unique phenomenon originating from the EU, a brief examination of the European Court of Justice's (hereinafter – "ECJ") case law can help one comprehend the meaning of "Evocation".

According to Article 103(2)(b) of Regulation 2013/1308, a PDO and a protected GI, as well as the wine using that protected name in conformity with the product specifications, is protected against any misuse, imitation or Evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as "style", "type",

"method", "as produced in", "imitation", "flavour", "like" or similar. This norm is also represented in Ukrainian laws, like in Article 204(1)(b) of the Agreement and Article 17(4)(b) of the Foodstuff Law, with almost no relevant national court practice yet.

[88, p. 467].

In case C-87/97, the ECJ provided its first interpretation in response to a German court's request to investigate a claim made by the German Cambozola cheese maker against the Gorgonzola Cheese Producers Association [89, § 43].

The ECJ defined "evocation" as an instance in which the term used to indicate a product comprises a portion of the name so that the customer has an impression of the product protected by such a name. The ECJ used possible visual and linguistic similarities – categories taken from the activity of comparing – when contrasting two designations. The ECJ also found that the Evocation concept could exist even without a confusing likeness. In case C-44/17, the ECJ invited the domestic court to conduct a "conceptual similarity" test after acknowledging that evocation could occur without visual or phonetic similarity. The use of the name "Glen" by the German manufacturer of alcoholic beverages, in the opinion of the association of Scotch whiskey manufacturers, directed the consumer to their product (from the Scottish, "glen" is translated as "valley") [90, § 56].

The starting point for establishing Evocation is the "average consumer, reasonably well informed and reasonably observant and critical", already known to the trademark legislation [91, § 25, 28]. In the C-783/19 case, the ECJ stated that the Evocation is established where the use of a name creates, in the mind of an average European consumer who is reasonably well informed and reasonably observant and circumspect, a sufficiently clear and direct link between that name and the protected designation of origin. The existence of such a link can result from several aspects, in particular, the partial incorporation of the protected designation, the phonetic and visual relationship between the two names and the similarity resulting from it, and even in the absence of those aspects, from the conceptual similarity between the PDO and the name at issue or from a parallel between the products covered by that PDO and the products or services covered by that name [92, § 66].

Therefore, it is the responsibility of the Ukrainian court to determine whether a consumer associates the evocation with the protected GI when deciding if it is prohibited by law. Though it is not sufficient that the designation is liable to be evoked, in the consumer concerned, some association of ideas with the protected indication or the relevant geographical area and any visual and linguistic similarities may constitute a violation.

The protection of GIs can be jurisdictional or non-jurisdictional. Judicial protection of GI rights can be achieved through various means, such as recognition of the right, restoration of the situation that existed before the violation, declaring a legal act of a public authority as unlawful, and compensation for damages and non-pecuniary losses. The courts can take various measures, including prompt action to prevent IP rights infringement, suspension of the passage of goods across Ukraine's customs border, removal from civilian circulation of goods produced or circulated in violation of IP rights, etc. The scientific analysis of the laws and regulations related to the protection of GIs in Ukraine provides valuable insights into the legal framework of their protection in Ukraine.

SECTION 5

COMPARATIVE CHARACTERISTICS OF THE UKRAINIAN LEGISLATION ON GEOGRAPHICAL INDICATIONS WITH OTHER LEGAL SYSTEMS

5.1. Overview of the European Union legislation regarding geographical indications on food and alcoholic beverages

Improving foodstuff quality has been a longstanding goal of EU agricultural policy, with initiatives dating back to the 1980s. During these times, the EU launched a system aimed at safeguarding and promoting traditional and regional food products via GIs, taking inspiration from established national systems like the French AOC (Appellation d'Origine Contrôlée) and the Italian DOC (Denominazione d'Origine Controllata) schemes. Under the EU legal system on GIs protection, the Directorate-General for Agriculture and Rural Development – a department of the European Commission defines the mechanisms for such four marks [93]:

image 1



PDO – protected designation of origin (food and wine);

Product names registered as PDO have the strongest links to the place of their production.

- **Products:** food, agricultural products and wines.
- **Specifications:** Every part of the production, processing and preparation process must originate from a specific region. For wines, this means that the grapes have to come exclusively from the geographical area where the wine is made.

- **Example:** Kalamata olive oil PDO is produced entirely in the region of Kalamata in Greece using olive varieties from that area.
- **Label:** mandatory for food and agricultural products, optional for wine.



image 2

Protected geographical indication (PGI)

PGI emphasises the relationship between the specific geographic region and the product name, where a particular quality, reputation or other characteristic is attributable to its geographical origin.

- **Products:** food, agricultural products, and wines.
- **Specifications:** For most products, at least one of the stages of production, processing or preparation takes place in the region. In the case of wine, this means that at least 85% of the grapes used must come exclusively from the geographical area where the wine is made.
- For example, Westfälischer Knochenschinken PGI ham is produced in Westphalia using age-old techniques. However, the meat used does not exclusively come from animals born and reared in that specific region of Germany.
- **Label:** mandatory for food and agricultural products, optional for wine.



image 3

Geographical indication of spirit drinks (GI)

The GI protects the name of a spirit drink originating in a country, region, or locality where the product's particular quality, reputation or other characteristic is attributable to its geographical origin.

- **Products:** spirit drinks.
- **Specifications:** For most products, at least one of the stages of distillation or preparation takes place in the region. However, raw products can come from somewhere other than the region.
- **Example:** Irish Whiskey GI has been brewed, distilled, and matured in Ireland since the 6th century, though the raw materials do not come exclusively from Ireland.
- **Label:** optional for all products.



image 4

Traditional speciality guaranteed (also mentioned as TSG) highlights the traditional aspects, such as how the product is made or its composition, without being linked to a specific geographical area — the name of a product being registered as a TSG protects it against falsification and misuse.

- **Products:** food and agricultural products.
- **Example:** Gueuze TSG is a traditional beer obtained by spontaneous fermentation. It is generally produced in and around Brussels, Belgium. Nonetheless, as a TSG, its production method is protected but could be produced elsewhere.
- **Label:** mandatory for all products.

As mentioned in subsection 1.1 of the thesis, there are three principal EU regulations which define the abovementioned PDO, GI and TSG protection:

- **Regulation 2013/1308** – establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No

234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (on the common organisation of the markets in agricultural products).

- **Regulation 2012/1151** – on quality schemes for agricultural products and foodstuffs.

- **Regulation 2019/787** – on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (on spirit drinks).

Regulation 2013/1308 has several aims. Firstly, it aims to provide a safety net to agricultural markets to stabilise the latter and prevent market crises from escalating. The regulation achieves this through market intervention tools, such as public intervention, private storage aid, and exceptional measures. Secondly, such an instrument of law aims to promote market transparency measures, enabling agricultural producers to make informed decisions regarding their production and investment, given market developments.

Another objective of the regulation is to improve productivity and quality at the production level, boost demand, and help EU agricultural sectors adapt to market changes and increase their competitiveness. The law does this by aiding specific industries, mainly fruit, vegetables and wine. The regulation also encourages cooperation within the food supply chain through producer and interbranch organisations. These organisations represent the food supply chain actors involved in producing, trading, and processing products in specific sectors.

Furthermore, the regulation lays down minimal quality requirements, marketing standards, rules, and conditions to ensure the quality of the production process and the products. It specifies the rules for using optional reserved terms for value-adding product features or production processes for several products. The regulation also sets out rules on trade in agricultural products and specific regulations on competition.

Detailed rules cover various aspects of the EU's agricultural market, divided into parts that address specific areas. Firstly, the regulation lays out market intervention

rules for products in various fields. It also defines rules on public intervention, where EU governments or their respective agencies purchase and store products up until disposal. The regulation also sets out rules on import and export licences, import duties, tariff quotas, safeguards and export refunds, competition rules, and exceptional measures against market disturbance.

Regulation 2012/1151 aims to enhance Europe's quality policy for agricultural products and increase the coherence of various quality schemes whilst supporting agricultural and processing activities in line with EU rural development policy objectives. However, it does not apply to spirit drinks, aromatised wines, or grapevine products.

The regulation groups rules for registering products as PDO, PSG and TSG. The regulation also strengthens and simplifies the PDO, PGI, and TSG schemes whilst reinforcing and clarifying the level of protection of registered names and the common EU symbols. The regulation shortens and simplifies the procedure to register names (PDO, PGI, and TSG) and requires EU products registered and marketed as PDO, PGI, or TSG to have labels showing the EU symbol and the product's name.

Additionally, this instrument of law introduces a framework to develop optional quality terms, including the new term mountain product, providing consumers with extra information.

Spirit drinks fall under the scope of EU regulation 2019/787. The regulation aims to establish the main provisions regarding the production and labelling of spirits, including GIs, within the EU. The legislation outlines the requirements for each spirit category, such as brandy, rum, gin, etc., specifying their respective raw materials and production methods. This may include regulations for maximum distillation strength, maturation requirements, minimum alcohol strength for consumer sale, and minimum sugar levels for liqueurs. The regulation also lists all spirits with a GI registered in the EU.

All raw materials for spirits production must come from an agricultural source to ensure their quality. To protect the reputation of EU spirits on the global market, distilled spirits exported from the EU must also comply with EU regulations.

The regulation has several positive and innovative elements, such as new rules on GI terms translation, the use of sweetening substances, and the origin of ingredients. These rules are welcome as they enable the seizure of fake GI spirits in transit within the EU. Furthermore, the definitions of specific vodka or London Gin have been refined and improved.

The rules and procedures for applying for registration of GIs and their approval are similar for all three groups of products. However, some specificities are considered for each group of products. A group of wine producers and "mainly producers or processors" can only apply for agricultural products and spirit drinks.

For all products, the application for a GI must contain the product specification, which includes the product description with raw materials and product characteristics, the method of production, the definition of the geographical area where the product is produced, and the link between the geographical area and the quality, reputation, or other characteristics of the product.

In addition to these requirements, an application for wine GIs must include maximum yields per hectare and an indication of the wine grape variety or varieties. In contrast, an application for spirit drinks GIs must consist of the product's specific characteristics compared to other spirits in the same category.

For TSGs, the product specification includes its primary characteristics, showing the product's specific character, the production method, and the key elements establishing its traditional character.

Once submitted, national authorities will review the application to ensure it is justified and meets the requirements. The application process is subject to specific rules and deadlines established by Member States.

The national authorities then open a national objection procedure that allows natural or legal persons with a legitimate interest and established or residing in the Member State to submit an objection to the application. The objection procedure must be open for a "reasonable period" for agricultural products and spirit drinks. The procedure for wines includes two months for "objections".

If the national authorities determine that the application meets the requirements, they appeal to the European Commission, launching the EU procedure. The Commission considers the applications for all three types of products. This process can last six months with the possibility of a three-month extension.

If the Commission's evaluation is positive, it adopts and publishes an implementing act, initiating a three-month EU-level objection procedure. For wines, this is called the "objection procedure". The objection procedure can entail consultations between those objecting to the registration and the applicant group or authority. The consultations must conclude within three months but can be extended by another three months. Ultimately, the Commission decides whether the product name is eligible for registration.

These regulations for GIs include several rules regarding generic names. Firstly, generic terms cannot be registered as GIs. Secondly, once a name is registered as a GI, it cannot become generic. In addition, registration of names homonymous with a name already protected as a GI is also prohibited unless the usage and presentation of the products are sufficiently distinct to avoid consumer confusion. Furthermore, if an application for a GI registration using a particular name has already been submitted for a product of the same type, registering a trademark with the same name is not allowed.

In December 2021, the European Commission published an Evaluation of GIS and TSGs protected in the EU [94]. Overall, it showed that the existing EU framework is practical. However, the Commission identified certain limits with the GI and TSG legislation, such as complex legal structures, lengthy registration procedures, producers' position in the value chain, and law enforcement. It also highlighted that environmental sustainability and animal welfare could be further integrated.

In 2022, the European Court of Auditors (hereinafter – "ECA") suggested improving the EU GI system in its special report. It criticised the lengthy approval process, which creates unnecessary obstacles for producers wanting to register. The ECA discovered that Member States seldom followed their deadlines for national

scrutiny, which lasted up to 60 months, whilst the Union procedure saw delays of up to 48 months [95, p. 29].

These factors prompted the EU authorities to merge systems from all three regulations into the only one. On 26 March 2024, the European Council formally adopted Regulation of the European Parliament and of the Council on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2017/1001 and (EU) 2019/787 and repealing Regulation (EU) No 1151/2012 (hereinafter – "Regulation 2022/0089") [96]. It includes the following main elements:

- **A single GI system for wine, spirit drinks and agricultural products.**

- **An expanded role for the European Union Intellectual Property Office** – the EUIPO would be tasked with establishing and managing a domain name information and alert system, which would provide the applicant, upon submission of an application, with information about the availability of the GI as a domain name.

- **Sustainability undertakings** – a producer group could add social, environmental or economic sustainability requirements to a product specification.

- **Increased online protection** – the new legislation would increase the protection of GIs online. Country-code top-level domain name registries established in the EU would have an option, on request, to revoke or transfer a domain name registered to a recognised producer group.

- **Member states would be required to designate one or more enforcement authorities responsible for controls and enforcement of the GIs** and to mutually assist each other and exchange information. Producers would be responsible for internal controls on compliance before the product is placed on the market, and third-party verification could be carried out by the competent authorities or certification bodies [97].

The rules will also provide that a processed product can only be named or advertised using a GI if the GI ingredient is used sufficiently to give a unique characteristic to the product and no other similar ingredient is used. The product label should mention the ingredient percentage utilised, and manufacturers must inform the

relevant producer group about the ingredient. The producer group can offer guidance on the appropriate use of the GI.

Thus, the EU legal system on GI protection defines four marks: PDO, PGI, GI, and TSG. PDO and PGI protect the name of a product that has a solid link to the place in which it is made. In contrast, GI protects the name of a spirit drink originating in a country, region, or locality where the product's particular quality, reputation, or other characteristic is attributable to its geographical origin. TSG highlights the traditional aspects, such as how the product is made or its composition, without being linked to a specific geographical area. Three main EU regulations define the abovementioned PDO, GI, and TSG protection. Therefore, the general structure of the EU's GI in the context of three directives and a new directive to optimise the existing GI protection mechanisms in the EU have been properly analysed.

5.2. Overview of the United States legislation regarding geographical indications on food and alcoholic beverages

In the US, GIs are treated as trademarks and administered by the US Patent and Trademark Office (hereinafter – "USPTO"); there is no single list of GIs. Here, trademarks serve the same functions for GIs because they are both: 1) source identifiers, 2) guarantees of quality, and 3) valuable business interests [98, p. 1].

The most efficient method of GI protection here is the certification mark. A certification mark is a particular type of trademark under US federal law regarding trademarks (Lanham Act) [99, §1127]. More specifically, it is a mark "used by a person other than its owner ... to certify regional or another origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that members of a union or other organisation performed the work or labour on the goods or services" [99, §1127].

A certification mark cannot be used by its owner because the owner does not produce the goods or perform the services associated with the mark. The mark can only be used by authorised entities other than the owner. The owner of the certification mark has control over its use by others on the certified goods or services. This control ensures that the mark is applied only to goods or services that meet specific requirements that the certifier or owner has established or adopted for certification. This means that the certification mark owner is responsible for ensuring that the mark is only used on goods or services that contain or display the necessary characteristics.

Other options for GI protection are available in the US, namely traditional trademarks and collective marks. Traditional trademarks are designed to indicate a single commercial source, which is usually not applicable to geographically distinctive products with multiple producers. Trademarks containing a descriptive geographic term for the product's origin are initially registered on the Supplemental Register.

Thus, the Lanham Act distinguishes certification marks from trademarks based on two characteristics. Firstly, the certification mark owner does not use it. Secondly, a certification mark does not indicate commercial sources or distinguish one person's

goods or services from another. Any entity that meets the certifying standards is entitled to use the certification mark. However, certification marks are source-identifying in that they identify the nature and quality of the goods and affirm that they have met specific defined standards. The distinction between types of collective marks is explained by the US Trademark Trial and Appeal Board (hereinafter – "TTAB"), a USPTO administrative tribunal, as follows:

A collective trademark or service mark is a mark adopted by an association, union or another organised collective group for exclusive use by its members, who, in turn, use the mark to identify their goods or services and distinguish them from those of non-members. The "collective" neither sells goods nor performs services under a collective trademark or service mark. However, the collective may advertise or otherwise promote the goods or services sold or rendered by its members under the mark [98, p. 4].

A sui generis system is available for appellations identifying American products in the wine sector. It includes American Viticultural Areas (hereinafter – "AVAs") and the so-called political appellations, which are the names of the countries, states, and counties. Such a system is managed by the Alcohol and Tobacco Tax and Trade Bureau, which is part of the US Treasury Department.

The process of establishing AVAs involves public rulemaking, which requires the submission of a petition containing the following elements:

1. Proof of local and/or national recognition of the AVA's name as referring to the area stated in the application.
2. Evidence, whether historical or current, that the AVA's boundaries are as specified in the application.
3. Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the viticultural features of the proposed AVA from surrounding areas.
4. Definition of the AVA's boundaries, based on features found on US Geological Survey maps of the largest applicable scale.

USPTO examines all applications for federal registration of certification marks, just like trademarks and collective marks. It reviews the accompanying specimens of use and evidence in the record to determine whether the geographical sign is being used as a certification mark to indicate the geographical origin of the goods or services on which it is used. Registration will be refused if the evidence indicates that the specific sign in question has its principal meaning as a generic term denoting a type of goods or services.

As the Organisation for an International Geographical Indications Network (hereinafter – "oriGIn") correctly notes in its report, The US GI protection system is vastly different from the EU one, with some remarkable cases being:

- No administrative protection is provided for trademarks in the US, which forces interests in GI groups to constantly monitor the market against potentially infringing GIs use and subsequent requests of trademark registrations, which might conflict with the GIs. For instance, PDO Parmigiano Reggiano in 2013 spent 20,000 USD for monitoring activities on GIs protection in the US [100, p. 22].

- USPTO's passive approach to preventing the registration of marks that would be confusingly similar, including the ones concerning geographically distinctive names.

- High litigation and enforcement expenses, especially as the TTAB Rules of Procedure prohibit awards of attorneys' fees. This eventually could make the US system on certification marks (and hence the benefits from GIs) available only to the well-financed or those with enough political and economic clout to have their local or state government control the certification mark for them [100, p. 20-21; 101].

The US legislation on GIs cannot serve as a suitable model for Ukraine due to differences in legal systems and approaches to understanding geographical indications because today, there is a certain contradiction between the legal systems of the EU and the US regarding the legal nature of geographical indications [102, p. 151].

The EU countries have a long-standing tradition of protecting products from certain regions. In contrast, in the US, traditional products were formed in the context of migration, fusion of many cultures and colonial development. They had a shorter

production history than in the case of the EU. The US believes that the protection of GIs in the EU is an unnecessary market restriction and limits liberal trade [103, p. 87].

Moreover, the US considers the sui generis system unjustified result of strong European protectionism. On the other hand, the EU argues that GIs provide a strong added value to the products originating in its Member States. Hence, the EU, representing the "Old World" where most GIs and traditional manufacturing procedures originated, claims that high-level protection of GIs is necessary and well-justified [104].

Given the current socioeconomic circumstances and the focus on EU accession, it is inadvisable for Ukrainian lawmakers to "enter" into the aforementioned "struggle". However, understanding the US system is crucial for the international community's comprehension of TRIPS regulations on GIs and the possible sale of Ukrainian GI-protected food and alcohol products in the US.

5.3. Overview of other countries' legislation regarding geographical indications on food and alcoholic beverages

GIs are not limited to the legal frameworks of the EU and the US: currently, 164 countries are the WTO members, all of them are TRIPS members, correspondingly obliged to provide minimal GI protection mechanisms [105]. The 2015 United Nations Conference on Trade and Development report confirms that many countries are aware of the potential for developing their agricultural markets. According to the report, GIs can be considered as an opportunity to accomplish the following tasks even for developing countries:

- Protection of local species serving raw material (e.g., ingredients) for potential GI products.
- Joint elaboration of Code of Practice/Book of Specifications/Product Specifications aims to enhance product quality and design rules to build local awareness about environmental protection in these areas.
- Boost of local cohesion among potential GI users and consumers [106, p.6].

The number of genuinely unique geographical indications is hard to imagine. However, for the sake of understanding, a few leading economies from around the world are reviewed. They are known to Ukrainian consumers both culturally and in the context of their products.

Georgia: Georgia is known for its winemaking traditions and, like Ukraine, is trying to integrate into the EU and its markets. Here, the National Food Agency and the National Wine Agency control and grant the right to use. The Government has paid utmost importance to GIs; the National Wine Agency was the applicant for their registration in many cases [107, p. 1].

64 geographical indications and appellations of origin are registered here: Wine – 29, Mineral water – 8, Cheese – 13, Agricultural product – 12, Spirits – 1, Non-agricultural product – 1 [107, p. 2]. The legal framework for protecting appellations of origin and geographical indications includes the Law of Georgia "On Appellations of Origin and Geographical Indications of Goods [109]. Although its national legislation

is much smaller than the Ukrainian one, Georgia likewise has a special agreement with the EU, similar to the Association Agreement for Ukraine [110].

Moldova: Moldova is an agro-industrial landlocked country with a favourable climate, fertile soil, and a multicultural society. Because of that, there is a vast legislative base on GIs, namely the filing procedure, examination and registration of geographical indications, appellations of origin and traditional specialities guaranteed and many others [111, p. 1-2]. Despite such a developed legislative base, according to the joint FAO & oriGIn report it has many flaws like low priority of the GI system at the level of the Government (lack of a clear policy or strategy), lack of an operational certification and control system for agri-food, no certification bodies for agri-food products, low level of GI knowledge and GI consumption culture, complexity/high cost of the GI system for producers and many others – despite the presence of Association Agreement between the EU and Moldova, similar to the Ukrainian one [112].

Mexico: GIs have been in use in Mexico for almost 40 years, making it an established form of IP right in the country. The legal form used is called "Denomination de Origen" or "appellation of origin", adopted in 1964, deriving from the Lisbon Agreement. The first GI protection granted in Mexico was the one for Tequila. It was published in the "Federation Official Journal" in 1977 under the Law on Inventions and Trademarks of 1976 [113]. Despite the success of Tequila and Mezcal, other GIs in Mexico have had little to no impact. Various factors have contributed to the current situation of GIs in Mexico: the need for producer organisation, low investment for promotion, bad agricultural policies, and absence of perceived value from the market. However, some recent works suggest that the legal framework is also partly responsible for the poor situation of GIs in Mexico. This is because the legal framework does not promote sustainable development or any related policy [113].

Japan: The GI system here is similar to Italy's DOP (Denominazione d'Origine Protetta), which was first introduced in 1963 and overhauled in 1992 to match the EU laws. With the help of the GI system, Japan preserves and promotes its distinctive food culture in the world whilst safeguarding the interests of local producers and consumers. Japanese GI system operates through a series of steps, registering products with solid

ties to region-specific factors, including their origins and distinguishing characteristics by the Minister of Agriculture, Forestry and Fisheries [114]. Members of producer organisations who meet the production area and method criteria can then apply for and, if rewarded, use GI labels. This governmental mechanism goes beyond branding by actively combatting any infringement of GIs, with strict punishment for fraudulent declarations of GI, including jail time and fines of up to 300,000,000 JPY (around 2,000,000 USD). Law enforcement agencies can remove counterfeits without a lawsuit burden, making the protection fast-acting [114]. This way, Japan's GI protection system ensures that local producers and consumers are protected from fraudulent activities whilst promoting Japan's unique culinary heritage to a global audience.

Indonesia: known for its vast agricultural and maritime resources, has earned its reputation as a coffee production foothold. Indonesia has emerged as the world's 4th largest coffee producer after Brazil, Vietnam, and Columbia, making it a vital player in the global coffee industry. Indonesian coffee's unique and distinct characteristics have earned the country a significant position in the world market and are recognised as a GI. Indonesia introduced the concept of GI in 1997 through Law № 14 concerning Marks. Law № 15/2001 on trademarks from 2001 included some regulations on GIs. Government regulation № 52/2007 further developed the GI system, making it enforceable and applicable in the country. In 2016, new Law № 20/2016 on Trademark and Geographical Indication was introduced, strengthening the GI system in Indonesia. More than 54 well-known Indonesian products have followed the GI route and been officially registered as GIs in Indonesia, according to the WIPO report [115, p. 3].

Australia's IP system is similar to the US one, with certification trademarks, which can function as a GI to protect any goods [116]. Each application for a certification trademark must be accompanied by a set of rules that define the geographical location GIs cover and other requirements for production or quality standards that must be met for someone to use the GI. Australian IP Office provides these rules to the Australian Competition and Consumer Commission (hereinafter – "ACCC"), which regulates competition and protects consumers. The ACCC then assesses the rules to ensure they meet the legal requirements, will not cause harm to

the public, and will not break the law on competition and consumer rights. The Register has over 100 Australian and 2,000 European wine GIs [116].

Thus, the international presence of GIs directly emanates from negotiations at the World Trade Organization. GIs are becoming more prevalent worldwide and are an irreversible trend. The arguments for conserving, protecting, promoting and informing the unique qualities of products are so strong that it is inevitable that more rural products will become GIs. As pointed out by L. Guerra, "In a sense, the rural products GI-fiction tendency is unavoidable, not only because of the exponential growth of their use during the past decade but also because of the strength of underpinning arguments (conserve, protect, promote and inform)" [117, p. 17-18].

As the notion of GIs becomes more widely recognised internationally, there is a risk of opportunistic behaviour since not all GIs will have the same "institutional quality". It is necessary to recognise that the economic potential of adequately protected GIs should take precedence over simply counting the number of GIs per country. Whilst this potential may currently be low due to limited recognition at both national and international levels, it is likely to increase as producers become more aware of the marketing potential of GIs. By improving their protection at the international level, it is possible to unlock this potential and provide more significant benefits to producers and consumers alike. GIs are going global to better reflect the diversity of economic, political, and social systems.

CONCLUSIONS

Geographical indications have been reviewed *per se*, as well as their position in several legal systems researched the main characteristics of Ukrainian legislation on geographical indications and requirements for products' admission to the agricultural markets, ways to protect products with geographical indications against unlawful use and several examples from national and European court practices on how GIs are protected. Attention has been dedicated to comparative analyses of numerous legal systems and their approach to geographical indications. Such conclusions have been drawn following the research findings:

GIs are indeed a unique kind of object with a diverse history. They are signs used on products with a specific geographical origin and possess qualities or a reputation due to that origin. A sign must identify a product originating in a given place to function as a GI. GIs should be considered a part of intellectual property law and agricultural law since they cover the same objects, namely food (including agricultural products) and alcoholic beverages. The production of these goods is often tied to the specifics of land plots and agricultural development. This makes GIs particularly interesting for lawyers who counsel large agricultural enterprises, farmers and other entrepreneurs. Due to their multidisciplinary nature, GIs can be revised by jurists with qualifications in IP and agricultural law. These are some key definitions of GIs found:

- GI are signs that differentiate one good from another, which make them seem similar to trademarks, as both serve the same functions as the latter: 1) source-identifiers, 2) quality guarantees, and 3) valuable business interests.
- GI are signs that establish links between the product's quality and production place.
- GI links the product and its territory, geographical environment, or any economic, political, or cultural aspect.
- GI may provide an economic advantage to producers as, on average, the sale value of a GI product is higher than that of a product without certification.

1. Regarding the quality of current Ukrainian legislation on geographical indications with the EU legal system, it is in line with the current EU directives and the Association Agreement. Although a tendency at the EU level to unify regulations on geographical indications arises, there is no need to propose unjustified changes. The updated conceptual and categorical apparatus for geographical indications, traditional guaranteed characteristics, and procedures for their registration and invalidation are sufficient. Another question is whether the Ukrainian legislator will be technically able to comply with these norms under martial law to make relevant changes to the State Register of Appellations of Origin and Geographical Indications of the Origin of Goods and the rights to use registered qualified indications of the origin of goods. However, apart from minor outdated provisions such as Article 229 of the Criminal Code of Ukraine, it is recommended that a special focus be placed on practical observation of how the adapted European rules will work in the Ukrainian context. Only after the updated legislation has been "tested" in practice will it be necessary to consider further changes.

At present, it is difficult to identify the shortcomings and problems of Ukrainian legislation on GIs, as in recent years, the Verkhovna Rada of Ukraine has been shaping the existing rules, making them similar to the ones in the EU regulations on GIs. The current legislation has yet to be tested regarding its actual application, as producers are not actively registering GIs, and the judiciary system hardly reviews such decisions. There is a more effective position for the AMCU, which has been making decisions over the past year to prevent the GIs misuse. More effort is needed to conclude that dramatic legislative changes are needed. Nevertheless, there are potential changes to Ukrainian legislation on GIS. Firstly, they may be based on Regulation 2022/0089, such as:

- A single legal framework and a shortened, simplified registration procedure for foodstuff, alcoholic beverages and wine.
- The possibility of designating producer groups as "recognised producer groups" with exclusive rights to be exercised on behalf of all producers of the product designated by a GI.

- Greater protection of geographical indications, including online, in domain names that contain geographical indications via geo-blocking.
- Greater protection of a geographical indication's name should designate an ingredient when used in the name of a related processed food; in those cases, recognised producer groups will have to be notified, and the ingredient percentage must be indicated.

Unfortunately, due to martial law, the Ukrainian government prioritises spending on defence and social security for vulnerable citizens. However, if it wants to strengthen the recognition of Ukrainian culture abroad further and promote the interests of national producers in other countries, further changes to GIs and TSGs are extremely critical and necessary.

Secondly, the IP Office and Ministry of Agrarian Policy and Food of Ukraine could create methodological recommendations on certain issues of GIs and TSG. Similar methodological recommendations of the State Enterprise "Ukrainian Industrial Property Institute" № 91 dated 07.04.2014 already exist for trademarks. Such a similar document on GIs would explain in a simple and understandable form the procedure for registering GIs from creating a product to entering information about the relevant mark into the state registers.

2. Regarding the increased presence of geographical indications in the doctrine of agrarian law and providing practical recommendations for their implementation in relevant manuals and during the teaching of disciplines at universities, it is advised that relevant scientists and departments of land and agrarian law in higher education institutions take into account geographical indications, as these marks are inextricably intertwined with the objects of agrarian law research and can be extremely useful for entrepreneurs, producers and farmers. It is recommended that a section on geographical indications be included in the methodological guidelines and manuals for students; if not in general courses of agrarian law, then at least for advanced ones. Since better consumer recognition and economic benefits are likely to result from using geographical indications, potential clients will also make inquiries

centred around the agricultural sector rather than in the context of intellectual property law.

3. Regarding current trends and significant legislative changes in geographical indications in recent years and their relevance for scholars who will further research the topic in upcoming years to respond quickly to legislative and policy changes, it is hoped the work will be extremely useful for legal scholars and practitioners, as the thesis is focused on the research on the layer of new legislation in Ukraine, as well as providing some insights into current trends at the level of European legislation. There are still many research opportunities within the scope of geographical indications (like extended methodological justification of the importance of geographical indications for the science of agrarian law, fully explored new legislative mechanisms of GIs registration in Ukraine, a detailed description of the difference between trademarks and GIs, GIs economic benefits for consumers, ways to encourage the agricultural sector to register geographical indications more actively, GIs for non-consumable products, *terroir* concept etc.), which were not fully explored in this paper due to space limitations and the necessity to concentrate on the present issues.

4. Regarding raising the awareness of citizens, producers, agrarians and farmers about registering geographical indications, their benefits and their role in protecting Ukrainian culture, there is a need to promote the idea of geographical indications among ordinary consumers and the agricultural sector. Although the latter is already actively discussing these signs, it is necessary to recognise the insufficient number of goods with geographical indications and, even more so, their presence on the shelves of European supermarkets and agricultural markets.

If the world knows that champagne comes from the corresponding French region and the French are proud of it, Italy is known for its cheese and wine, so why can Ukrainians not, for example, be proud of the local products? In this context, geographical indications can be useful for entrepreneurs and farmers. They have tremendous potential to make Ukrainian identity and culture more recognisable, especially since they are associated with the territory.

Moreover, in the context of the devastation of Ukrainian national lands by the Russian Federation, the awareness spread among foreign consumers about Ukrainian products and their origin territory may have an indirect effect on the perception of the need to support Ukraine in the struggle for its own independent identity, culture and independence, since everyone will know about the huge fertility and potential of Ukrainian lands when they are not under the occupation of invaders.

On a more practical level, it is recommended for the Ukrainian government to take the following steps:

1. State authorities should ensure adequate mechanisms for registration and protection of GIs at the level of laws and in timely compliance with the procedure they devised themselves and unlawful encroachments, provided they are indeed interested in promoting Ukrainian culture and traditions worldwide.

2. State authorities should more actively conduct information campaigns for ordinary citizens, entrepreneurs, agrarians and farmers regarding the privileges and bonuses that geographical indications can provide.

3. State authorities should negotiate on more grants from leading European institutions and NGOs to stimulate the registration of national geographical indications, reducing the number of counterfeit and low-quality products. FAO and the EU have been practising grant support programs for Ukrainian producers for over a year. These strategic initiatives aim to support the recovery of Ukrainian farmers facing challenges complicated by the war's impact on agribusiness. The EU-funded grant program may help agricultural producers integrate into sustainable value-added chains, improve their livelihoods, and increase employment and rural development. In addition to financial support, it would be desirable to involve leading European lawyers and representatives of agricultural businesses to review Ukrainian legislation and provide information assistance in disseminating relevant marks and overall comprehensive support.

4. State authorities should prepare instructions and clarifications on registering geographical indications in the IP Office and traditional guaranteed features in the Ministry of Agrarian Policy and Food of Ukraine. Such documents may contain step-

by-step recommendations, from implementing the idea of product production to entering information about geographical indications in state registers.

5. State bodies should strengthen cooperation with foreign agricultural and public organisations, such as the NGO "Geographical Indications of Ukraine", oriGIn and many others, to monitor the need for changes in geographical indications and traditional specialities guaranteed for the real implementation of all norms in the relevant legislative acts.

6. State authorities should constantly monitor legislative changes for GIs and TSGs in the EU and the world. The experience of European institutions and organisations should be considered foremost. Other legal systems (especially the US) can be perused to obtain useful insights. However, they should not replace the European one, given Ukraine's integration into the EU legal system and the high demands of European producers to protect their local products. Many reforms are happening just now, which may prompt the government to be ready to amend the laws on GIs again, especially because Regulation (EU) No. 2022/0089 was only accepted in March 2024. Even newer changes can overturn new changes, so a permanent monitoring system by the Ukrainian Government should help to identify long-lasting and stable norms. State authorities already have relevant monitoring powers; their implementation mostly depends on proper funding and the legislators' will. However, the risk cannot be denied that the legislator will only rush rules for formal requirements rather than carefully take the best parts from the EU system, which should be the most appropriate action, as H. Androschuk and A. Afyan properly note.

But should all these steps be taken, Ukraine can support rural development, preserve traditional agricultural practices and promote the economic viability of rural communities, making its culture and cuisine much more recognisable, secure and popular globally.

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