

A Pragmatic Approach to the Link to Origin

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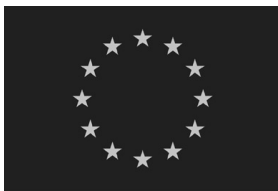
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A Pragmatic Approach to the Link to Origin

EU PDOs and PGIs for Registration,
Innovation and Trade in Origin
Products

Maurizio Crupi

This research has been conducted as part of a European joint doctoral programme within the European IP Institutes Network (EIPIN) Innovation Society. This project has received funding from the European Union's Horizon 2020 Research and Innovation Programme under the Marie Skłodowska-Curie grant agreement No 721733.



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EU PDOs and PGIs for Registration, Innovation and Trade in Origin Products

DISSERTATION

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on the authority of the Rector Magnificus,
Prof. dr. Pamela Habibović
in accordance with the decision of the Board of Deans,
to be defended in public
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by

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A mia madre,

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SUMMARY

The book analyses the difference between the legal requirements for Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs) and the practice of the EU Geographical Indications (GI) Register under the lenses of the link to origin, innovation, and international trade. The reason to consider these three dimensions in the equation is to provide a better understanding of the role of PDOs and PGIs to reflect the elements justifying the link between the quality, characteristics or reputation of a product and its geographical environment for both EU and non-EU GIs registered in the EU.

The ‘pragmatic approach’ refers to the methodology employed, based on a qualitative content analysis of the single documents for EU and non-EU agricultural products and foodstuffs which have been entered in the EU GI Register. The results of the empirical analysis are then examined and complemented with semi-structured open-ended interviews with producer groups that explore why applicants have opted for a specific quality logo, namely PDO or PGI.

The book is divided into five chapters. Chapter 1 begins with an analysis of the legal definition of GIs and their link to origin, starting from the international framework to the current European legislation. The nature of the link to origin and the role of natural, human, and reputational factors is assessed with a qualitative content analysis of the single documents for EU agricultural products and foodstuffs covered by EU Regulation 1151/2012 and made available in the EU GI Register, providing a better understanding of how products are linked to their geographical origin.

Chapter 2 examines the relationship between GIs, culture, and innovation, proving how traditional products have changed during their history. An argument in favour of the adoption of a dynamic notion of tradition as opposed to a static one is included in this book. In addition, Chapter 2 explores the role of PDOs and PGIs as regards innovation of the link to origin. This is examined through an empirical analysis of the amendments for processed meat products concerning, in particular, the geographical area, the raw materials and the method of production.

Chapter 3 provides a wider analysis of GIs protected at an international level through bilateral agreements, considering the role of PDOs and PGIs in the registration of GIs from third countries. Emphasis is put on the creation of GI lists and on the product-by-product approach that results in the exclusion of some GIs from the negotiations. From a third-country perspective, it is considered how foreign GIs (whether or not listed in bilateral agreements) can be entered in the EU Register. Attention is given to the reasons why PGIs are more often chosen by third-country producers to register their products in the EU, whether there is a correlation between the quality scheme chosen, and the legal system of the third country.

After having explored the link to origin for PDOs and PGIs and their amendment, Chapter 4 provides some policy recommendations on how to clearly differentiate between PDOs and PGIs. In particular, recommendations are based on three main objectives: (1) a need for simpler and clearer information on the link to origin that will address the problem of the blurred difference between PDOs and PGIs; (2) the preservation of a strong link to origin potentially hampered by the modification of the single documents (alias innovation); and (3) the fostering of international trade.

Lastly, Chapter 5 provides some recommendations concerning the role of PDOs and PGIs in light of the future adoption of an EU *sui generis* system for non-agricultural products. After having analysed the main issues concerning the link to origin, various options are considered under the objectives already identified for agricultural products. In particular, it is considered whether a twofold link to origin, based on the strength of the link with the territory, might serve as a possible response to the issues of protection of EU non-agricultural GIs and visibility of the EU quality logos.

LIST OF ABBREVIATIONS

AO	Appellation of Origin / <i>Appellation d'Origine</i>
AOC	<i>Appellation d'Origine Contrôlée</i>
AQSIQ	General Administration of Quality Supervision, Inspection, and Quarantine
CETA	Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
CNAOL	<i>Conseil National des Appellations d'Origine Laitières</i>
EC	European Commission
EU Regulation 1151/2012	Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs
EU Regulation 2081/1992	Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs
EU Regulation 510/2006	Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs
EUIPO	European Union Intellectual Property Office
FAO	Food and Agriculture Organisation of the United Nations
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade
Geneva Act	Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (2015)
GI	Geographical Indication
ICH	Intangible Cultural Heritage
ICTSD	International Centre for Trade and Sustainable Development
INAO	<i>Institut National de l'Origine et de la Qualité</i>
INPI	<i>Institut national de la propriété industrielle</i>
INRA	<i>Institut national de la recherche agronomique</i>
Lisbon Agreement	Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958)
MIPAAF	<i>Ministero delle politiche agricole alimentari e forestali</i>
OEPM	<i>Oficina Española de Patentes y Marcas</i>
Paris Convention	Paris Convention for the Protection of Industrial Property (1883)
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
PPGIP	Provisions on the Protection of Geographical Indication Products
TK	Traditional Knowledge

TRIPs	Agreement on the Trade-Related Aspects of Intellectual Property Rights (1995)
UIBM	<i>Ufficio Italiano Brevetti e Marchi</i>
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Education, Scientific and Cultural Organisation
WIPO	World Intellectual Property Organization
WTO	World Trade Organisation

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LIST OF INTERVIEWS

EU geographical indications

Agneau du Poitou Charentes PGI, interview with Ms Audrey Tesserau, Agricultural engineer, President of the Collective Management Organisation, on 17/07/2019. Email : a.tessereau@agneaupoituochoarentes.com

Association Fromage de Terroirs (Camembert de Normandie), interview with Ms Véronique Richez-Lerouge, Journalist, Founder of Association Fromages de Terroirs, on 06/05/2020. Email : vrl222@orange.fr

Canestrato di Moliterno PGI, interview with Mr Angelo Petrocelli, Agronomist, President of the Collective Management Organisation, on 26/07/2019. Email: N/A

Cordero Manchego PGI, interview with Mr Francisco José Alfaro Ponce, Veterinarian, Technical Secretary of the Collective Management Organisation, on 23/07/2019. Email: alfaro@corderomanchego.org

Genisse Fleur d'Aubrac PGI, interview with Ms Juliette Retif, N/A, on 05/08/2019. Email: fleurdaubrac@groupe-celia.fr

Lenteja de Tierra de Campos PGI, interview with Mr Javier Alonso Ponga, Biologist and Agricultural Engineer, Technical Director of the Collective Management Organisation, on 12/07/2019. Email: igp@lentejadetierradecampos.es

Limone di Siracusa PGI, interview with Mr Gianluca Agati, Degree in International and Diplomatic Sciences and European Studies, President of the Collective Management Organisation, on 16/07/2019. Email: direttore@limonedisiracusa.org

Miel de Galicia PGI, interview with Ms María Esther Ordóñez Dios, Veterinarian and President of the Collective Management Organisation, on 30/07/2019. Email: ester@mieldegalicia.org

Olio di Calabria PGI, interview with Massimino Magliocchi, Agronomist, President of the Collective Management Organisation, on 05/08/2019. Email: N/A

Pimiento Asado del Bierzo PGI, interview with N/A, background and position N/A, on 29/07/2019. Email: N/A

Raclette de Savoie PGI, Emmental de Savoie PGI, Tomme de Savoie PGI, interview with Ms Céline Pignol, Agricultural Engineer, Administrative Manager of the Collective Management Organisation, on 11/07/2019. Email : cpignol@savoicime.fr

Saint-Marcellin PGI, interview with Colombier Marion Sylvie, degree in agriculture and agri-food, Administrative Manager of the Collective Management Organisation, on 23/07/2019. Email: sylvie@fromage-saint-marcellin.fr

Sel de Guérande PGI, interview with Mr Charles Perraud, Economist, Salt producer and former President of the Collective Management Organisation Sel de Guérande PGI, on 25/07/2019. Email: charlesperraud47@gmail.com

Soumaintrain PGI, interview with Ms Agnès Couturier, Agricultural Engineer, Administrative Manager of the Collective Management Organisation, on 30/07/2019. Email: agnes.couturier@aea-agro.fr

Non-EU geographical indications

Café de Colombia PGI, interview with Mr Luis Samper, position and background, on 01/08/2019. Email: luis.samper@4point0brands.com

Fenalår Fra Norge PGI, interview with Mr Per Berg, Food Scientist, Head of the Board of the Fenalår Fra Norge, on 24/02/2020. Email: per.berg@nortura.no

Kopy Arabika Gayo PGI, interview with Dr Hadiyan Wijaya Ibrahim, Economist, Secretary of Gayo Protection, on 23/07/2019. Email: hadiyan.tmi.itb@gmail.com

Tørrfisk Fra Lofoten PGI, interview with Mr Olaf Johan Pedersen, position background, on 22/02/2020. Email: olaf.pedersen@torrfiskfralofoten.no

LIST OF GI SPECIFICATIONS**GIs and their amendments listed in the EU database**

Aceto balsamico di Modena PGI [2007] OJ C152/18
Aceto balsamico tradizionale di Modena PDO Dossier no. VI/5278/99-EN, 2000
Aceto balsamico tradizionale di Reggio Emilia PDO Dossier no. VI/5279/99-EN, 2000
Agneau du Poitou Charentes PGI [2003] OJ C170/6
Aktinidio Pierias PGI [2002] OJ C76/7
Antep Baklavası PGI [2013] OJ C229/43
Aydın İnciri PDO [2015] OJ C299/29
Bra PDO [2014] OJ C205/15
Breasaola della Valtellina PGI [2010] OJ C321/23
Buxton Blue PDO Dossier no. VI/1552/94-EN, 1996
Café de Colombia PGI [2006] OJ C320/17
Café de Valdesia PDO [2016] OJ C91/15
Camembert de Normandie PDO Dossier n. EN/06/95/84730000.P00, 1996
Canard à Foie Gras du Sud-Ouest PGI [2015] OJ C11/18
Canestrato di Moliterno PGI [2009] OJ C235/28
Capocollo di Calabria PDO [2015] OJ C82/12
Carn d'Andorra PGI [2012] OJ C356/5
Carne de Salamanca PGI [2015] OJ C435/12
Cecina de León PGI [2012] OJ C81/6
Chabichou de Poitou PDO Dossier no. VI/5048/95 – EM, 1996
Coppa Piacentina PDO [2010] OJ C311/24
Coppa Piacentina PDO [2014] OJ C88/20
Cordero Manchego PGI [1998] OJ C172/11
Crudo di Cuneo PDO [2016] OJ C188/54
Culatello di Zibello PDO Dossier no. VI B14RT/01492/, 1994
Darjeeling PGI [2009] OJ C246/12
Dehesa de Extremadura PDO [2016] OJ C207/17
Dongshan Bai Lu Sun PGI [2012] OJ C99/09
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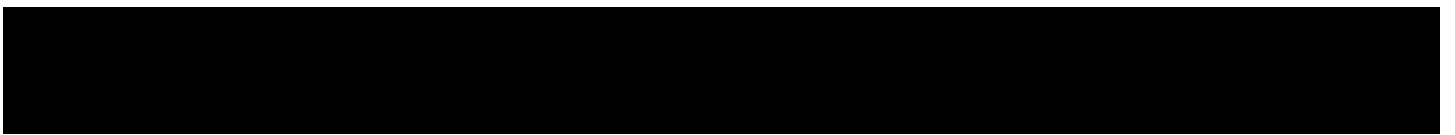
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Introduction



The awareness of food safety as well as a renewed interest in culinary heritage, including the social status connected with the consumption of certain foods, are some of the reasons that have contributed to the creation of a growing demand for and attention to quality products.¹ The recent trend in the food sector has shown that consumers are willing to spend more on origin products, which are produced according to traditional means of production, rather than for mass products.² This trend sheds light on the role played by geographical origin as a strategic tool for differentiation, moving from commodity markets into more lucrative niche sectors.³ However, the success of this strategy mainly depends on whether there are legal and commercial measures in place that guarantee a localisation of the production and a respect of traditional practices, including a certain flexibility, necessary to make the product competitive in the market.

The protection of origin products is based on the economic theories of information and reputation, which solve market distortions in case of asymmetry of information between producers and consumers, averting negative consequences in terms of their final quality.⁴ In this scenario, by addressing information asymmetries and protecting reputation as an intangible asset,⁵ geographical indications (GIs) can benefit both consumers and producers.

To better understand the role of GIs in the relationship between producers and consumers, it is essential to consider the dynamics among the three following elements: producer's choice of product quality, firm's reputation and consumer's learning,⁶ each of which will be briefly addressed in turn.

Assuming that various products of different quality populate the market, there is a knowledge gap between consumers and professionals both in terms of price and, above all, quality. On the one hand, only producers know the quality of their products in advance, while consumers usually take the risk of buying low quality products. This information asymmetry could create negative consequences for the overall quality of the products exchanged in the market given that goods having different quality

¹ For an overview on these reasons see Brian Ilberry and Moya Kneafsey, 'Registering regional specialty food and drink products in the United Kingdom: the case of PDOs and PGIs' (2000) 32 *The Royal Geographical Society (with the Institute of British Geographers)* 317. For the purpose of this book, the terms "goods" and "products" will be understood as synonyms, excluding services.

² The higher price that consumers are willing to pay for GIs (so-called premium price) has been quantified 2.23 times higher than the price for equivalent non-GI products. See Tanguy Chever and others, 'Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI)' (2012) Tender n. AGRI-2011-EVAL-04 4 <<https://op.europa.eu/en/publication-detail/-/publication/32b62342-b151-4bf3-8ba8-18568f37f43b>> (accessed 31 January 2022). A recent study quantifies the average premium price for GIs in the EU28 at 2.07 the price for non-GI products. A comparison of different products shows that GIs for wines (2.85) and spirit drinks (2.52) received higher prices than agricultural products and foodstuffs (1.50) when compared to non-GI products. See AND-International, 'Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialities guaranteed (TSGs)' (2020) 102.

³ The growing interest in origin products and the preference for traditional over mass food production methods have been explored by the literature, among others see International Research Associates (INRA) 'Les labels de qualité' (1996) Eurobarometer 44.1 36. This survey conducted in 16 EU countries on a population of 16000 consumers shows that 76% of the interviewees often consume products produced with traditional methods.

⁴ For a detailed analysis of the information theory and the theory of reputation see Annex I of OECD, 'Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and Legal Implications', (2000) Working Party on Agricultural Policies and Markets of the Committee for Agriculture Joint Working Party of the Committee for Agriculture and the Trade Committee 32.

⁵ *ibid* 8.

⁶ Carl Shapiro, 'Consumer Information, Product Quality, and Seller Reputation' (1982) 13 *The Bell Journal of Economics* 20, 22.

may be sold at the same price, lowering the average quality and excluding higher-quality products from the market.⁷

On the other hand, reputation, understood as quality expected from a consumer's standpoint, can be used as a tool to overcome the market failure associated with the asymmetry of information.⁸ In this scenario, reputation depends on the previous efforts of that firm to produce goods with a given quality. When these efforts are successful, the firm can provide good quality products; when these efforts are unsuccessful, the firm will put bad quality products on the market.

To adequately satisfy their needs, consumers have to make repeated purchases, allowing them to distinguish between products of different quality. When quality cannot be observed in advance, consumers tend to use as an indicator of future levels of satisfaction the quality of other products offered by the same producer which they had the chance to test.⁹ This aspect is particularly important because the reputation of the firm is not stable in time but changes every time a consumer purchases the products. Meaning that if producers cheat by lowering the quality of their products or selling them at higher prices, over the time consumers will realise the difference in quality and will react by boycotting the products of bad firms. The fear of losing consumers works as an incentive for firms to maintain good quality and, consequently, a good reputation.

Within this scenario, GIs become particularly relevant for information that cannot be verified through repeated consumption. While search and experience attributes define the qualities of a product that consumers can ascertain before purchase or learn by 'experience', such as the colour of an apple or its taste, credence attributes describe those qualities that cannot be easily verified.¹⁰ An example is the method of production of a specific wine, whether using an organic or classic method. It will be practically impossible for a consumer to verify such characteristic by consumption.

The problem of credence attributes can be solved by giving additional information to consumers. Producers can improve their communication and advertisement strategy with self-declared claims proven by specific investments that can be checked by consumers. For example, a firm that claims to be sustainable should substantiate this statement by showing the investments made in the field. On top of that, a third-party certification system managed by a reputable agent, such as the GI certification system, may solve specific credence attributes, such as the fact that a product is produced in a given place. This attribute could be certified by public actors through the establishment of quality signs and labelling policies.¹¹

The State and other institutions contribute to restoring the efficiency of the market by institutionalising the relationship between the product and the place, preventing information asymmetry and free-riding on reputation through a process called 'institutionalisation of

⁷ George Akerlof, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism' (1970) 84 *Quarterly Journal of Economics* 488, 489.

⁸ Carl Shapiro, 'Premiums for High Quality Products as a Return to Reputations' (1983) 97 *The Quarterly Journal of Economics* 659.

⁹ Stuart Landon and Constance Smith, 'The Use of Quality and Reputation Indicators by Consumers: The Case of Bordeaux Wine' (1997) 20 *Journal of Consumer Policy* 289, 313. The analysis, conducted by the authors on the Bordeaux wine industry, shows that consumers base their purchase decisions more on the long-term reputation rather than on recent quality improvements.

¹⁰ On the way in which consumers may obtain information by way of experience or search see Phillip Nelson, 'Information and Consumer Behavior' (1970) 78 *Journal of Political Economy* 311, 312.

¹¹ OECD (n 4) 7.

reputation'.¹² This goal is achieved through a recognition process and a control over product specifications ensuring origin, in particular over the link of the product to the geographical area of production, the respect of the traditional method of production, and the traceability of the product,¹³ certified by the use of specific quality logos.

A problem often debated is that EU quality logos are mostly unknown to the average EU consumer. A survey conducted in 2000 in the UK shows that the EU quality logos are not recognised by consumers and do not make a difference in sales. From the producers' side, surprisingly, EU logos appear to be one of the least important quality indicators.¹⁴ From the consumers' side, a more recent study confirms that the overall awareness of EU food logos is low and the higher percentages of lack of knowledge come from consumers residing in those Member States having a longer established GI tradition.¹⁵

The results of these studies convinced the EU to launch consultations with stakeholders aimed at rethinking the definitions and use of the quality logos, namely protected denominations of origin (PDOs) and protected geographical indications (PGIs), as well as increasing their visibility.¹⁶ Today, in light of a reform of the EU GI Regulations, there is a need for a pragmatic approach to the problem, shedding new light on the relationship between GIs and their link to origin. Starting from the notions of PDOs and PGIs, this book assesses whether the theoretical difference between the legal definitions of PDOs and PGIs is reflected in the content of the single documents registered in the EU GI database. In other words, the analysis aims to understand if the link to origin of EU and non-EU registered PDOs and PGIs is in line with their legal definitions or if, in practice, their difference has somehow been blurred.

Within this framework, the book attempts to provide an answer to the following main research question: "Is the difference between the EU legal definitions of PDOs and PGIs reflected in the EU Register?". The analysis is conducted under the lenses of the link to origin, innovation, and international trade. The reason to consider these three dimensions in the equation is to provide a better understanding of the role of PDOs and PGIs to reflect the link between the quality, the characteristics or reputation of a product and its geographical environment for EU and non-EU products.

¹² Belletti describes the effects of institutionalisation, as the limitation of the possibility to benefit from the name and the reputation quality premium. See Giovanni Belletti, 'Origin labelled products, reputation and heterogeneity of firms' in Bertil Sylvander, Dominique Barjolle, Filippo Arfini (eds.) *The Socio-Economics of Origin Labelled Products: Spatial, Institutional and Co-ordination Aspects* (INRA 2000) 240, 247.

¹³ For a comparative analysis of the institutional functioning for PDOs in France, Italy and Spain see Dominique Barjolle and others, 'Protected designation of origin and institutions (France, Spain and Italy)' in *Typical and Traditional Products: Rural Effect and Agro-Industrial Problems* (52nd EAAE seminar proceedings 1997) 483, 494.

¹⁴ Brian Ilberry and Moya Kneafsey (n 1) 322. The survey was conducted on a population of 13 UK companies. Only one company declared that the EU quality scheme was recognised by customers, making a difference in terms of sales.

London Economics, ADAS and Ecologic 'Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)' (2008) Tender n. AGRI/2007-G4-04 81 <<https://londoneconomics.co.uk/blog/publication/evaluation-of-the-cap-policy-on-protected-designations-of-origin-pdo-and-protected-geographical-indications-pgi/>> (accessed 31 January 2022).

¹⁵ TNS Opinion & Social, 'Europeans' Attitudes Towards Food Security, Food Quality and the Countryside' (2012) Special Eurobarometer 389, 27. PGIs and PDOs are recognised on average by 15% of the population (26,593 respondents). France, Spain and Italy show the highest percentage per country.

¹⁶ Discussed in detail under section 1.5 of Chapter 1 and section 4.2 of Chapter 4.

In particular, the analysis of the difference between the requirements for PDOs and PGIs set in Art. 5 Regulation (EU) 1151/2012, and whether this is reflected in the EU GI Register, has been assessed through the analysis of the link to origin of EU PDOs and PGIs entered in the EU GI Register (Chapter 1), the amendment of that link (Chapter 2), and the analysis of the link to origin of products from third countries listed in the GI chapters of bilateral agreements and/or are entered in the EU Register by way of a direct application (Chapter 3).

The ‘pragmatic approach’, mentioned in the title of this book, refers to the methodology employed, based on a qualitative content analysis of the single documents for EU and non-EU agricultural products and foodstuffs registered in the EU. The results of the empirical analysis are then examined and complemented with semi-structured open-ended interviews to producer groups that explore why applicants have opted for a specific quality logo, namely PDO or PGI.

More in detail, the book is divided into five chapters. Chapter 1 begins with an analysis of the legal definition of GIs and their link to origin, starting from the international framework to the current European legislation. The nature of the link to origin and the role of natural, human, and reputational factors is assessed with a qualitative content analysis of the single documents for EU agricultural products and foodstuffs covered by EU Regulation 1151/2012 and made available in the EU GI Register, providing a better understanding of how products are linked to their geographical origin.

Chapter 2 deals with the relationship between GIs, culture, and innovation, proving how traditional products have changed during their history. An argument in favour of the adoption of a dynamic notion of tradition as opposed to a static one is included in this book. In addition, the chapter explores the role of PDOs and PGIs when it comes to innovation of the link to origin. This is examined through an empirical analysis of the amendments for processed meat products concerning, in particular, the geographical area, the raw materials and the method of production. The results of the analysis allow a better understanding of the difference (if any) between the two EU quality schemes and whether there is a correlation between the specific quality scheme and the nature of the amendment: whether PDOs and/or PGIs tend to adopt more flexible amendments, providing a wider range of options to producers, or whether PDOs and/or PGIs adopt stricter amendments, reducing the range of options available to producers.

Chapter 3 provides a wider analysis of GIs protected at international level through bilateral agreements, considering the role of PDOs and PGIs in the registration of GIs from third countries. Emphasis is put on the creation of GI lists and on the product-by-product approach that results in the exclusion of some GIs from the negotiations. From an EU perspective, it is considered whether the difference between PDOs and PGIs has an impact on the creation of the lists of products, namely a preference for PDO products. This might clarify the EU approach and help producers in opting for a specific quality scheme. From a third-country perspective, it is considered how foreign GIs (listed or not in bilateral agreements) can enter the EU Register. The chapter continues with an analysis of the reasons for the limited number of foreign GIs entered in the EU Register by way of a direct application made by the applicant or through the competent authority of the third country.

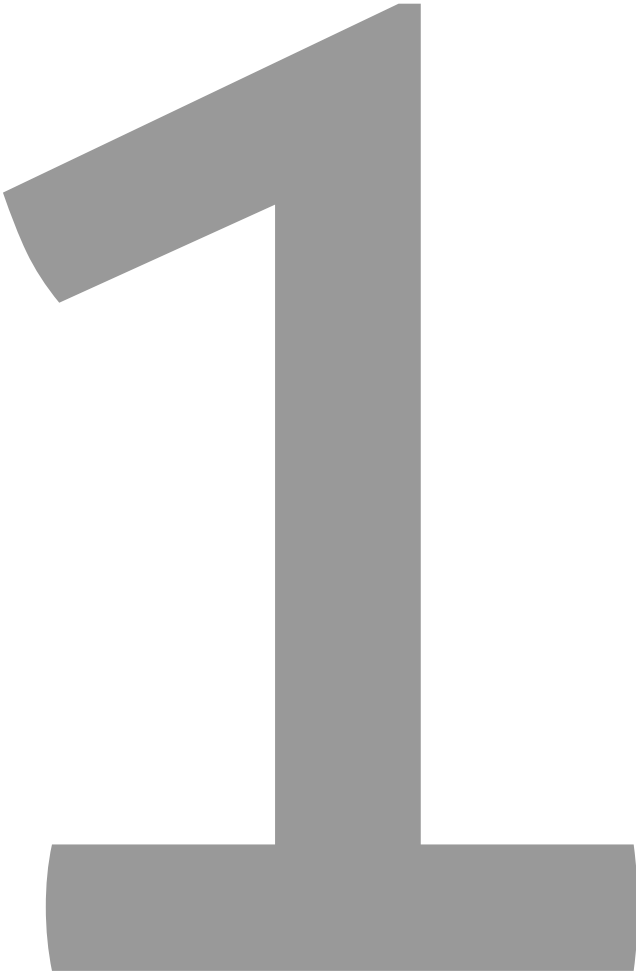
In line with the methodological approach adopted in Chapter 1, the literature review is complemented by a qualitative content analysis of the link to origin of foreign PDOs and PGIs that are entered in the EU Register. Attention is given to the reasons why PGIs are more often chosen by third-country producers to register their products in the EU, whether there is a correlation between the quality scheme chosen, and the legal system of the third country. The aim is understanding whether there is

a difference regarding the quality sign chosen when the application is made directly by the applicant or via the appropriate competent authority of the third country.

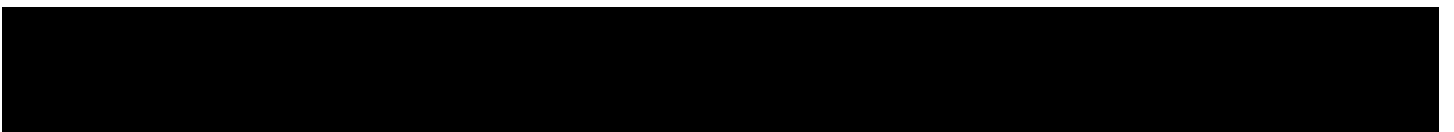
After having explored the link to origin for EU and non-EU PDOs and PGIs and their amendment, the pragmatic approach adopted in this book attempts to develop a more coherent picture of the existing legal and factual framework, providing the basis for the recommendations to further improve the GI system, in light of the ongoing EU GI reform. In particular, Chapter 4 provides some policy recommendations on how to clearly differentiate between PDOs and PGIs. In particular, recommendations are based on three main objectives: (1) a need for simpler and clearer information on the link to origin that will address the problem of the blurred difference between PDOs and PGIs; (2) the preservation of a strong link to origin potentially hampered by the modification of the single documents (alias innovation); and (3) the fostering of international trade.

Lastly, Chapter 5 provides some recommendations concerning the role of PDOs and PGIs in light of the future adoption of an EU *sui generis* system for non-agricultural products. After having analysed the main issues concerning the link to origin, various options are considered under the objectives already identified for agricultural products. In particular, it is considered whether a twofold link to origin, based on the strength of the link with the territory, might serve as a possible response to the issues of protection of EU non-agricultural GIs and visibility of the EU quality logos.

CHAPTER 1



EU geographical indications and their link to origin



1.1. Introduction

The relevance of origin is in line with EU policy objectives on agriculture and rural economy, aimed at rewarding producers and contributing to rural development, especially for disadvantaged areas. To achieve this goal, an efficient communication strategy is required, enabling consumers to correctly identify the quality of the products in the marketplace. Within this framework, EU policy objectives could be undermined by various issues like the loosening of the link to origin and the lack of visibility of EU quality logos.

This chapter assesses the link between product, producers and place. This is addressed, in section 2, by discussing the definitions of appellations of origin and geographical indications set by main international treaties on GIs, in particular, the Lisbon Agreement and the TRIPS Agreement first, before turning to relevant EU legislation, and attention being given to the difference between EU PDOs and PGIs.

Section 3 presents the results of the qualitative content analysis of the single documents for EU agricultural products and foodstuffs listed in the EU Register. The analysis is based on the description of the link between the product and its geographical origin, with a focus on the characteristics of the product and/or production methods justifying the link with the territory. The fact that the single documents are made available through a single EU Register, along with their conciseness and their translation into English, made it possible to expand the scope of the research encompassing all the products listed in the EU Register.

Following the empirical analysis, sections 4 and 5 provide some observations on the difference between PDOs and PGIs, as listed in the EU Register. In particular, the results of the qualitative analysis and interviews with producer groups are discussed, examining why the Register contains PGIs with a strong link to origin and, at the same time, PDOs with a looser link. The chapter concludes with some reflections, explaining why the clear difference in the legal definitions of PDOs and PGIs is blurred in the practice of the Register.

1.2. Notion of GIs

1.2.1. The concept of GI at international level

The 1883 Paris Convention for the Protection of Industrial Property is the first international treaty giving protection to geographical origin as a separate intellectual property right. The Paris Convention refers to ‘indications of source or appellations of origin’ but does not provide a definition of these concepts.¹ In particular, an indication of source can be understood as a mere reference to the geographical origin of a product, while an appellation of origin is understood as a narrower concept used to define a certain quality link between the product and its geographical origin.²

Few years after the entry into force of the Paris Convention, attempts have been made to strengthen the protection of origin. The 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods provides a more comprehensive form of protection of indications of

¹ Art. 1(2) Paris Convention for the protection of industrial property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14 1967.

² Martin Pflüger, ‘Article 1’ in Thomas Cottier and Pierre Veron (eds), *Concise International and European IP Law TRIPS, Paris Convention, European Enforcement and Transfer of Technology* (Wolters Kluwer 2016) 216.

source than the one under the Paris Convention. In particular, the Madrid Agreement not only prohibits the use of false indications of source but also deceptive ones.³

The 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement) is aimed at giving stronger protection to geographical indications. It defines appellations of origin as:

*The geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.*⁴

This definition requires that a product, apart from originating from a specific area, must have quality and characteristics which are ‘exclusively or essentially’ due to its geographical origin. Mere ‘reputation’ is not enough to comply with the definition of appellation of origin. As a consequence, industrial products, which are not influenced by natural and human factors, are excluded from protection.

The restrictive notion of appellation of origin adopted in the Lisbon Agreement, due to its mandatory combination of natural and human factors, requires a very strong link between the product and the territory.⁵ Moreover, the Agreement does not differentiate between products such as handicrafts, wines, spirits and foodstuffs. Insofar as a product complies with the link to origin mentioned above, it falls within the scope of the Agreement.⁶

The Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of 15 April 1994 provides for a minimum standard of protection for GIs. Pursuant to Art. 22(1), geographical indications are defined as:

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

It is important to note that, due to its large membership, the TRIPS Agreement leaves the concept of geographical origin open to many interpretations. In order to accommodate different interests, there is no reference to a necessary combination of human and natural factors, unlike appellations of origin, provided that the good originates in a given territory.⁷

³ Art. 1 Madrid Agreement for the repression of false or deceptive indications of source on goods of April 14, 1891, revised at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958: “All goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries.”

⁴ Art. 2(1) Lisbon Agreement for the protection of appellations of origin and their international registration of 31 October 1958, as revised at Stockholm on 14 July 1967 (with official English translation).

⁵ For an overview of the difference between appellation of origin and geographical indication see Anselm Kamperman Sanders, ‘Future solutions for protecting geographical indications worldwide’ in Christopher Heath and Anselm Kamperman Sanders (eds.), *New Frontiers of Intellectual Property Law IP and Cultural Heritage – Geographical Indications - Enforcement – Overprotection* (Hart 2005) 134.

⁶ The Registry of the Lisbon Agreement contains a total of 934 products, including non-agricultural products <<http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp>> accessed 31 January 2022. Further assessed in section 2.1 of chapter 5.

⁷ Daniel Gervais, ‘The TRIPS Agreement. Drafting History and Analysis’ (Sweet & Maxwell 1998) 122. In particular, the author highlights that the reference to ‘indications’ makes it clear that the definition is not

‘Quality, reputation or other characteristic’, under Art. 22(1) TRIPS, has been the object of different interpretations. In particular, quality has been understood as a positive attribute of the good that creates a favourable impression on the consumer. The expression ‘other characteristic’ implies the existence of colour, texture or fragrance, which is central for the consumer at the time of purchase. Unlike the Lisbon Agreement, the TRIPS Agreement includes reputation as a link to origin, enlarging the number of products eligible to receive GI protection. The separate reference to reputation allows a product to qualify for GI protection even if its link does not result in any objectively measurable characteristic but merely a certain goodwill or reputational associations with consumers.⁸

The TRIPS Agreement provides certain flexibility when it comes to the implementation of its provisions. With regard to reputation, for example, national courts are free to determine its existence, as attributable to the geographic origin of the good. The main problem deals with the relatively short timeframe in which it is possible to build the reputation and the ‘invented traditions’ that make the product more attractive in the market, rather than providing a true link to its history.⁹

A solution to the issues above is given by the wording ‘essentially attributable to its geographical origin’, which means that reputation must serve as a link to the geographical origin of the product. In other words, the provision of the TRIPS Agreement requires the reputation to be inherent to the geographical area, mere goodwill created by a marketing strategy is not sufficient to establish the link with the geographical area. Long-lasting reputation has to be based on tradition, excluding the possibility to link the products to a given geographical area by simply ‘creating’ a tradition.¹⁰

When it comes to the breadth of protection, all products are not treated in the same way. Some issues about the rationale of GI protection are raised by the fact that enhanced protection is granted even against acts that do not give rise to consumers’ confusion,¹¹ a topic which is further assessed in Chapter 2. Although this enhanced protection was initially limited to wines and spirits, Art. 24 TRIPS allows extending this protection to products other than wines. Nonetheless, no consensus has been reached among the WTO members: some argue for extending the protection conferred by Art. 23 to

confined to geographical names, like under the Lisbon Agreement, but it is open to anything that identifies a good as originating from a given territory. See Dwijen Rangnekar, ‘Geographical Indications. A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits’ (2003) UNCTAD – ICTSD Issue paper 4, 17 <https://unctad.org/system/files/official-document/ictsd2003ipd4_en.pdf> (accessed 31 January 2022).

⁸ Pilar Montero García-Noblejas, *Denominaciones de Origen e Indicaciones Geográficas* (Tirant lo Blanch 2016) 150. For an overview of these notions see Justin Malbon, Charles Lawson and Mark Davison, ‘The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary’ (Edward Elgar 2014) 334. See also David Vivas Eugui and Christoph Spennemann ‘The evolving regime for geographical indications in WTO and in free trade agreements’ in Abdulqawi Ahmed Yusuf and Carlos Correa (eds.), *Intellectual Property and International Trade, the TRIPS Agreement*, (Kluwer Law International 2016) 201.

⁹ Further addressed in section 2 of Chapter 2.

¹⁰ UNCTAD – ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005) 291. More detailed analysis of the concept of tradition for GIs is provided under Chapter 2 of this book.

¹¹ Art. 23(1) TRIPS: “Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.” For a comprehensive analysis of the additional protection for GIs for wines and spirits see Michael Blakeney, *The Protection of Geographical Indications Law and Practice* (Edward Elgar 2014) 25.

all products, while others consider that this will create unreasonable burdens.¹²

The Geneva Act of the Lisbon Agreement of 21 May 2015 on appellations of origin and geographical indications (the Geneva Act) contains provisions aimed at widening the membership of the Lisbon Agreement, making it more attractive to users.¹³ In particular, Art. 2(1)(ii) Geneva Act applies in respect of:

(i) any denomination protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation; as well as

(ii) any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

In other words, the Geneva Act applies to both appellations of origin and geographical indications, enlarging the scope of the Lisbon Agreement by including the notion of geographical indications with similar wording to the one already adopted by the TRIPS Agreement. Therefore, the Geneva Act applies to any indication identifying a product originating in a geographical area, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin, granting them the same protection already granted to appellations of origin. These definitions equally cover agricultural products and foodstuffs, wines, spirits and non-agricultural products,

¹² With regard to the stalemate of the GI negotiations at a multilateral level see Anselm Kamperman Sanders, 'Geographical Indications of Origin: When GIs Become Commodities, All Gloves Come Off' in (2015) 46 *International Review of Intellectual Property and Competition Law* 755. 'Issues related to the extension of the protection of geographical indications provided for in Art. 23 of the TRIPS Agreement to products other than wines and spirits and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity', Report by the Director-General, WTO Doc WT/GC/W/633, TN/C/W/61, 21 April 2011, paragraph 17. In particular, the main common actors in this debate are Argentina, Australia, Canada, New Zealand, and the United States on the one side, the European Union, Georgia, Turkey and Switzerland on the other side. See the delegations that submitted the Joint Communication WTO Doc IP/C/W/289 of 29 June 2001, arguing that an extension could lead to excessive costs, potential consumer confusion and conflicts within the WTO Members, and 'Draft Decision to Amend Section 3 of Part II of the TRIPS Agreement' WTO Doc TN/C/W/6, 19 April 2011.

Felix Addor and Alexandra Grazioli, 'Geographical Indications beyond Wine and Spirits A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement' in (2002) 5 *The Journal of World Intellectual Property* 865. The authors believe that this two-tiered system, based mostly on historical reasons, is no longer justified. In their view, extending the protection under Art. 23 TRIPS to all products would be beneficial for indigenous and local communities in order to protect their traditional knowledge characterised by a link with its geographical origin.

¹³ Despite the broader scope of protection of the Geneva Act when compared to the Lisbon Agreement, Gervais looks at the opportunity missed to reconcile the *sui generis* GI system with the common law systems. See Daniel Gervais, 'A Look at the Geneva Act of the Lisbon Agreement: A Missed Opportunity?' in Irene Calboli and Ng-Loy Wee Loon (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 122.

without making any difference when it comes to the kind of goods originating in a given geographical area.¹⁴

The Geneva Act provides a solution to the lack of progress at the WTO in the creation of a multilateral system for GIs and a higher level of protection to all GI products. In particular, Art. 28(iii) Geneva Act allows any intergovernmental organization to become a party to the Act. The EU accession of 26 November 2019 is a cornerstone of the Act, representing not only an important step for protecting EU GIs in a multilateral forum but also an important expansion of the geographical coverage of the Act.¹⁵

1.2.2. The concept of GI at EU level

Different from the path taken at the international level, the EU has chosen to protect GIs using a sectoral approach. In particular, four EU GI regulations have been adopted for agricultural products and foodstuffs, wines, spirit drinks and aromatised wine products.¹⁶ The following paragraphs and the qualitative analysis are focused on agricultural products and foodstuffs covered by Regulation 1151/2012.

The European vision is based on the concept of *terroir*, an interpretation of the link between product and territory that emphasises the role played by land and soil together with the collective production knowledge developed by the human community established in that place. This approach is historically rooted in the production of French wines, which initially led to the notion of appellation of origin.¹⁷ Moving from this historical background, the EU developed a more flexible system based on a twofold link to origin: protected denomination of origin (PDO) and protected geographical indications (PGI). The strong link with the territory for PDOs, similar to that required to obtain protection for appellations of origin under the Lisbon Agreement, has been accompanied by a looser link for PGIs. This allows the protection of product names enjoying a high reputation in the market, but that cannot

¹⁴ Anna Micara, 'The Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration: An Assessment of a Controversial Agreement' (2016) 47 *International Review of Intellectual Property and Competition Law* 673.

¹⁵ See PR/2019/84126 November 2019 <https://www.wipo.int/pressroom/en/articles/2019/article_0015.html> (accessed 31 January 2022). Further analysis concerning the issues raised by the accession of the EU to the Geneva Act for those EU countries that were already members of the Lisbon Agreement, in particular for non-agricultural products, is provided in section 5.3.2. of chapter 4.

¹⁶ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJEU L343/1; 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 [2013] OJEU L347/671; 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 [2019] OJEU L 130/1; Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products [2014] OJEU L84/14.

Currently, as further discussed in chapter 5, there is no EU-wide *sui generis* system for non-agricultural products.

¹⁷ Dev Gangjee, 'GIs Beyond Wine: Time to Rethink the Link?' (2017) 48 *International Review of Intellectual Property and Competition Law* 129.

prove unique characteristics due to soil or climate.¹⁸

Concerning the definition of agricultural products and foodstuffs, Art. 2(1) Regulation 1151/2012 covers agricultural products intended for human consumption listed in Annex I of the Regulation and to products listed in Annex I to the Treaty of the Functioning of the European Union (TFEU). This definition of agricultural products differs from the broader one pursuant to Art. 2 of the Agreement on Agriculture,¹⁹ which refers to products listed under Annex 1 of that Agreement, namely those included under Chapters 1 to 24 of the Harmonized System Codes, with the exception of fish and fish products, and some raw materials.²⁰ The reason for the different product coverage can be found in Recital (17) Regulation 1151/2012, which limits the scope of denominations of origin and geographical indications to products having an intrinsic link between the characteristics of the products and their geographical origin²¹ and explains why some products are outside of the scope of the EU GI Regulation.²²

According to Art. 5(1) Regulation 1151/2012, PDOs identify agricultural products and foodstuffs originating in a specific place, region or exceptionally a country, whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors and whose production steps take place entirely in the defined geographical area. The

¹⁸ As ruled by the Court of Justice of the European Union (CJEU) in 10/11/1992, C-3/91, *Exportur SA v LOR SA and Confiserie du Tech SA* ECLI:EU:C:1992:420 § 28.

¹⁹ Uruguay Round of Multilateral Trade Negotiations (1986 - 1994) - Annex 1 - Annex 1A - Agreement on Agriculture (WTO-GATT 1994) [1994] OJEU L 336/22.

²⁰ International Convention on the Harmonized Commodity Description and Coding System <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs_convention.aspx> (accessed 31 January 2022).

²¹ The inclusion of only certain types of chocolate as confectionery products is an anomaly. In addition, the Regulation does not currently include condiments and sauces, soups, ice cream, sorbet and products containing cocoa. Recital 16 expressly excludes wines, aromatised wines, spirit drinks, products of organic farming, or legislation on products coming from outermost regions from the scope of Regulation 1151/2012. Wine-vinegars, originally excluded, were included at a later stage by Council Regulation (EC) 692/2003 of 8 April 2003 amending Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2003] OJ L99/1 (hereinafter Regulation 692/2003).

It is interesting to note that live animals and fish are included within the scope of Regulation 1151/2012 through a reference to Annex I to the TFEU. Indeed, these products are encompassed in the definition of agricultural products intended for human consumption (see chapters 1 and 3, Annex I TFEU). In order to be registered as GIs, Recital (17) Regulation 1151/2012 makes clear that an intrinsic link with the geographical origin is required. In some cases, the intrinsic link is based, *inter alia*, on the specific breed adopted. See for example the Hannlamb PDO [2016] OJ C-239/22, a Swedish lamb of the ‘gutefar’ breed, originating from the old Gotlandic ‘allmogefar’ breed, which became accustomed to pastures in the geographical area of Gotland. The choice of a breed can trigger important debates, as for the (traditional/authentic) Camembert de Normandie, concerning the use of pasteurized milk but requiring a higher percentage of traditional herds, further discussed under section 2.5 in Chapter 2.

It is important to note that the ‘intrinsic link’ is not always based on the uniqueness of the breed. The Whitstable Oysters PGI-GB-0371, for example, base their link mainly on reputation. The types of oyster grown near Whitstable (the native Whitstable Oyster *O. edulis* but also the cultivated Whitstable Oyster *C. gigas*) do not present any unique link to origin, being cultivated in various areas of the Mediterranean Sea and Pacific Ocean. Therefore, the system seems open to accept also new breeds, provided the ‘intrinsic link’ can be established. EC Guidelines provide no information in this regard.

²² Mineral and spring waters have been deleted from Annex I Regulation 2081/92 by Regulation 692/2003. Recitals (2) and (3) consider that natural mineral waters and spring waters are not suitable for protection under Regulation 2081/92 pursuant to Art. 13, due to the use of invented names and identical names for different waters.

legal definition of PDOs provides for a very close link between the territory, the product, and the production steps. Exceptionally, raw materials may come from a larger area under the condition that said area is limited, and the production itself is a result of special conditions.²³

Art. 5(2) Regulation 1151/2012 describes PGIs as quality symbols used to identify agricultural products and foodstuffs originating in a specific place, region or country, whose given quality, reputation or other characteristics is essentially attributable to its geographical area and where at least one step in the production takes place in the geographical area. Therefore, the link between the territory and the product is essentially but not exclusively due to the origin, similar to the definition of GI adopted under Art. 22 TRIPS. Different from PDOs, PGIs do not require raw materials to be sourced in the territory. In other words, the law requires a minimum amount of the production to take place in the area but remains silent with regard to the origin of raw materials. In particular, the CJEU ruled that a foodstuff is considered produced in a given geographical area, even when the raw material comes from outside the geographical area.²⁴ This looser link with the territory is the result of the lower importance given to natural factors and allows the registration of PGIs for processed products, which derives from the collective know-how of local producers.²⁵

In other words, the link between products and their geographical origin is the cornerstone of the entire GI system. This allows identifying the true origin of the products and needs to be carefully documented in the product specifications and in the single documents.

1.2.3. Link to origin: product specifications and single documents

Product specifications are legal documents establishing the requirements that a product must meet in order to be qualified as a PDO or PGI. They are registered through a procedure that includes two phases, one at the national level and the other at the European level by the EU Commission, through implementing acts.²⁶ Pursuant to Art. 8 Regulation 1151/2012, product specifications contain the description of the link between the product and its geographical origin, allowing an analysis of the characteristics of the product and/or production methods that create this link. In addition, pursuant to Arts. 36 and 37 Regulation 1151/2012, official controls are carried out to verify that a product complies with the corresponding product specification before entering the market. Competent authorities or control bodies carry out controls at dairies, slaughterhouses, meat plants and other production/processing establishments in order to ensure that the production process complies with the registered product specifications.

More in detail, product specifications define the specific quality and characteristics of a product.

²³ Art. 5(3) Regulation 1151/2012 provides this exception for animals, meat and milk, further assessed under chapter 2.

²⁴ 06/12/2001, C-269/99, *Carl Kühne GmbH & Co. KG v Jütro Konservenfabrik GmbH & Co. KG*, ECLI:EU:C:2001:659 § 61. According to the product specifications of the Spreewälder Gurken, 70% of the gherkins are grown in the Spreewald area while 30% come from outside that area. See Gail Elizabeth Evans, 'The Comparative Advantages of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products in the European Union' (2010) *International Review of Intellectual Property and Competition Law* 3.

²⁵ Delphine Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts: How to Apply the Concepts of Natural and Human Factors to All Products' (2013) 4 *The WIPO Journal* 194. Further considerations on the link through human factors for non-agricultural products are discussed in chapter 4.

²⁶ Art. 52 Regulation 1151/2012. Implementing acts are non-legislative acts adopted by the European Commission to specify how legislation should be implemented with regard to technical aspects. For a detailed description of the registration process (both at the national and EU level) see further Pilar Montero (n 8) 194.

Therefore, they must describe the principal physical, chemical, microbiological or organoleptic characteristics of the product, including its raw materials, together with a definition of the delimited geographical area in a precise way that presents no ambiguities, referring to physical or administrative boundaries.

The product specifications have to provide evidence that the product originates from the geographical area. In particular, they have to describe the procedures adopted by operators to control the origin of raw materials, feed and other items that must be produced locally. In addition, the specifications must describe the characteristics of the product attributable to its geographical origin, providing a justification of the link. In other words, the specifications must explain how a given quality, reputation or other characteristics are linked to the origin, including a description of the production process and, where applicable, the authentic and unvarying local methods. Details have to be provided concerning the production steps that have to take place in the territory. If the producer's group requires packaging to take place within the production area, further justifications are required as to why the packaging must be done locally, e.g. to safeguard the quality and ensure the origin or control activities.²⁷

Together with the product specifications, the application has to include additional documents, such as the single document. Pursuant to Art. 8(1)(c) Regulation 1151/2012, this document contains the main points of the product specifications, including a concise definition of the geographical area, a description of the link between the product and the geographical origin, the characteristics of the product and/or production methods justifying the link with the territory, and, where relevant, specific rules concerning packaging and labelling.

The EU provides applicants with a template²⁸ and a short guide on how to compile the single document,²⁹ requiring them to keep it short but at the same time precise and concrete.³⁰ Under section 5, the guide describes the link with the geographical area, referring to the consequences that natural, human and other factors have on a product's characteristics.³¹ The link is defined in three aspects: the specificities of the product, as the product's features that make it special when compared to similar products; the specificities of the geographical area both natural and human factors; and their causal link with the product, i.e. the influence of these specificities on the product. In the case of PGIs, for example, any link based on reputation has to be justified, *inter alia*, with press articles or releases, awards, references in books, etc.

Apart from the documentation listed by the EU Regulation, EU Member States may require additional documents for the recognition of agricultural products and foodstuffs.³² For example, Italy requires three reports: historical, socio-economic and technical reports which serve to better understand the

²⁷ Further analysis of the amendments of product specifications for packaging is provided in chapter 2.

²⁸ See Annex I A Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2014] OJEU L 179/36.

²⁹ EC, Guide to applicants. How to compile the single document. <https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/food_safety_and_quality/documents/guide-to-applicants-of-single-document_en.pdf> (accessed 31 January 2022).

³⁰ *ibid* 1.

³¹ *ibid* 6.

³² EU Member States cannot impose stricter requirements than the ones set by the EU Regulation, as this would be contrary to Art. 4 TEU. See further, Pilar Montero (n 8) 195.

link of the product with the place.³³ The historical report, accompanied by bibliographic references, is aimed at proving production for at least 25 years, not necessarily consecutive, and the consolidated use of the name in trade or in common language. The socio-economic report provides information concerning the quantity produced with reference to the last three years and the number of companies involved in every segment of the supply chain.³⁴ Lastly, the technical report shows the causal link with the territory through technical and scientific evidence. These reports highlight the reasons why the quality and/or characteristics are obtained and maintained only within the geographical area, showing that the product has at least one qualitative characteristic which differentiates it from the quality standard of similar products obtained outside the production area. As another example, Spain requires a study justifying the use and notoriety of the GI name and its relation to the geographical area. Reports from the Spanish Patent and Trade Mark Office (OEPM) and from the EU Intellectual Property Office (EUIPO), on the existence of registered trade marks related to the name of the GI, have to be included as well.³⁵

The delimitation of the geographical area, and consequently the definition of the link to origin, is one of the most complex aspects in drafting the product specifications.³⁶ The criteria include environmental factors, such as geology, soil, climate; historical factors, based on the reconstruction of the history of the product; cultural factors, which mainly concern local knowledge and methods of consumption; economic factors, related to the volumes produced; and the reputation of the product. All these factors, and in particular their relevance for the specific quality scheme chosen (PDO or PGI), are further explored in the following sections concerning the analysis of the link to origin.

1.3. Qualitative analysis of the link to origin for PDOs and PGIs

After an overview of the concept of GIs and their link to origin, as defined by international treaties and European legislation, it is necessary to provide a clearer understanding of the main linking factors and whether there are differences concerning those factors and the legal requirements for the protection of denominations of origin as compared to geographical indications set by Art. 5 Regulation 1151/2012. In other words, how are the legal requirements concerning the link to origin for PDOs and PGIs reflected in the EU Register?

The answer to this question can be provided by an analysis of the content of the single documents

³³ Art. 6 Decree 14 October 2013 adopting national provisions for the implementation of Reg. (EU) 1151/2012 European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs in matter of PDO, PGI, and TSG. Published on the Italian Official Journal no. 251 of 25 October 2013.

³⁴ Some authors interpreted this requirement as a "restrictive" approach to discourage applications from those products lacking the minimum economic dimension to face the markets, or for which imitations do not seem so economically relevant to justify a strong protection in the whole territory of the EU. See further Filippo Arfini, Giovanni Belletti and Andrea Marescotti, *Prodotti tipici e denominazioni geografiche strumenti di tutela e valorizzazione* (Tellus, 2010), 127.

³⁵ Art. 7 Royal Decree 1335/2011, 3 October, regulating the procedure for processing applications for registration of protected designations of origin and protected geographical indications in the Community register and their opposition.

³⁶ Some authors highlighted the multitude of admissible criteria resulting in different possible delimitations of the same production area. See further Laurence Bérard, et al. 'Historical, cultural and environmental factors in the delimitation of PGI geographical areas' in Sylvander B., Dominique Barjolle, Filippo Arfini (eds.), *The socio-economics of origin labelled products in agro-food supply chains: spatial, institutional and co-ordination aspects* (Inra 2000) Actes et Communications, no. 17, 163-176.

available on the GI database managed by the European Commission.³⁷ A literature review shows various research in this area. The existing studies are limited in their scope with regard to the geographical area of origin of the products, the categories of products considered, or the type of links with the territory. A 2017 research conducted a qualitative content analysis of the single documents for registered PDOs and PGIs.³⁸ That research organised (into a conceptual framework) the significant factors that qualify agricultural products and foodstuff as GIs, but it was limited to German PDOs and PGIs. The results of this research are country-specific and cannot be automatically extended to GIs from other EU countries.³⁹ Another research applies qualitative content analysis to single documents and product specifications for cheese products,⁴⁰ with a focus on food safety and hygiene. Lastly, a 2018 research analysed all the single documents contained in the DOOR database, focusing on the historical element, i.e. the linking factor based on the history of the product.⁴¹ This research revealed that the differences between PDOs and PGIs are often blurred. In particular, the terroir-based link, which characterises PDOs, frequently appears in PGI specifications. At the same time, the reputational link and the historical element, which characterise PGIs, often appear in PDOs, making PDOs and PGIs almost interchangeable in practice.⁴²

The content analysis described in this book is intended to organise all linking factors into a unique conceptual framework. The aim is to describe the link to origin as accurately as possible, and to ultimately compare the nature of the link of PDOs with that of PGIs, verifying and further developing the results of the existing research concerning the blurred difference between PDOs and PGIs. To this aim, the methodology used in this book consists of a qualitative content analysis of all single documents available on the database of the European Commission. Multiple readings of the documents allow for a clearer understanding of the link to origin; recurring factors are analysed and categorised in a code structure.

Furthermore, the qualitative aspect of the research is complemented by a quantitative analysis of the number of quotations identified for every linking factor. The results divided between PDOs and PGIs attempt to provide an answer to the research question, understanding how PDOs and PGIs are linked to their geographical origin and whether a difference, on the basis of their legal requirements pursuant to Art. 5 Regulation 1151/2012, is indeed reflected in the EU Register as well. The use of single documents allows covering both PDOs and PGIs for all types of agricultural products and foodstuffs with the purpose of creating a clearer understanding of the link between GIs and their geographical

³⁷ The DOOR database has been used for the analysis of agricultural products and foodstuffs, publicly available at <<http://ec.europa.eu/agriculture/quality/door/list.html>> (accessed 15 June 2020). The database was archived on 20 December 2019 and starting from 1 January 2020 the relevant information for the content analysis can be found on the e-Ambrosia electronic register <<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>> (accessed 31 January 2022).

³⁸ Thomas Dylan Acosta, 'Qualification for geographical indication among German food stuffs and agricultural products' (Master's Thesis, Technical University of Munich 2017).

³⁹ *ibid* 70. This is also due to the strict interpretation of the link to the territory adopted by German authorities, requiring a rigorous scientific proof of the link to origin before granting a PDO, see further Andrea Zappalaglio, 'The Why of Geographical Indications: The transformation of the link between the product and its place of origin in Europe' (PhD Thesis, Oxford University 2018) 162.

⁴⁰ Maria Papadopoulou, 'Food Safety, Production Modernisation and Origin Link under EU Quality Schemes' (Master's Thesis, Wageningen University 2017).

⁴¹ See Andrea Zappalaglio (n 39) and more recently Andrea Zappalaglio, 'The Transformation of EU Geographical Indications Law: The Present, Past and Future of the Origin Link' (Routledge 2021) 135.

⁴² *ibid* 174.

origin.

1.3.1. Definition of qualitative content analysis

The methodology chosen for this research, known as content analysis, has been widely used in the social sciences.⁴³ This is a rather flexible tool used in different contexts, in particular in communication and healthcare more than in legal literature,⁴⁴ to analyse the content of written, verbal or visual communication messages. Qualitative or inductive content analysis provides a systematic classification process. The data is organised in categories, and specific codes are created in order to identify common themes and patterns.⁴⁵

The methodology adopted in the coding process is a qualitative approach. Among the existing types of qualitative analysis, the directed content analysis approach has been chosen.⁴⁶ Different from the conventional content analysis, where coding categories are derived exclusively from the text of the documents, in this case, legislation and academic literature have been used to become acquainted with the terminology and the legal requirements for the registration of GI products. These predetermined codes are used to make a first read-through of the data. All quotations that do not fit in the predetermined codes are identified and analysed at a later stage in order to understand whether they represent a new category or a subcategory of an existing code.

Considering the criticism of content analysis as a subjective technique,⁴⁷ Atlas.ti software has been used in order to allow other researchers to replicate the study.⁴⁸ This software allows exporting into Excel tables, available upon request for transparency and replicability reasons, the final results of the analytical process, showing the link to the territory for each product.⁴⁹

Given its flexibility, there are no universal rules on how to conduct content analysis. The approach adopted is divided into three different phases: preparation phase, organising phase, and reporting phase.⁵⁰

1.3.2. Preparation phase

As regards the process of analysis, it should be noted that the qualitative content analysis does not provide for a systematic rule for analysing data.⁵¹ The preparation phase consists of defining the unit

⁴³ For a comprehensive overview of the milestones in the history of content analysis see Kimberly Neuendorf, *The Content Analysis Guidebook* (SAGE Publications 2002) 27.

⁴⁴ Satu Elo and Helvi Kyngas, 'The qualitative content analysis process' (2008) 62 *Journal of Advanced Nursing* 108. For an overview of the use of content analysis in legal scholarship see Mark Hall and Ronald Wright, 'Systematic Content Analysis of Judicial Opinions' (2008) 96 *California Law Review* 67.

⁴⁵ *ibid* 109.

⁴⁶ Hsiu-Fang Hsieh, Sarah E. Shannon, 'Three approaches to qualitative content analysis' (2005) 15 *Qualitative Health Research* 1281.

⁴⁷ The open issues between qualitative and quantitative analysis are described by David L. Morgan, 'Qualitative content analysis: a guide to paths not taken' (1993) 1 *Qualitative Health Research* 112. The analytic skills of the researcher are important in order to obtain reliable results. Without them, every method could be simplistic. In this sense see Robert Weber, *Basic Content Analysis* (SAGE Publications 1990) 5.

⁴⁸ Susanne Friese, 'ATLAS.ti 8 Windows User Manual' 2018 <http://downloads.atlasti.com/docs/manual/atlasti_v8_manual_en.pdf> (accessed 31 January 2022).

⁴⁹ Sungsoo Hwang, 'Utilizing Qualitative Data Analysis Software: A Review of Atlas.ti' (2008) 26 *Social Science Computer Review* 521.

⁵⁰ Stephen Cavanagh, 'Content analysis: concepts, methods and applications' (1997) 4 *Nurse Researcher* 7; Satu Elo and Helvi Kyngas (n 44) 110.

⁵¹ See Robert Weber (n 47) 13; Satu Elo and Helvi Kyngas (n 44) 109.

of analysis of the research, deciding what to analyse and in what detail.

The EU database contains a list of all PDOs, PGIs and TSGs,⁵² classified according to their status, whether applied, published or registered. In addition, the database contains the indication of the country of origin and the classes of products. The research can be further limited to a given timeframe, and the list of results can be exported in an Excel table. Here it is possible to find further information, including the date of amendment of the product specifications.

The 1,332 single documents and summaries, representing the PDOs and PGIs for agricultural products and foodstuffs registered until 11 September 2018, are the data set used for the purpose of this research.⁵³ At this stage of the research, only the first version of the single documents has been considered.⁵⁴ It has been chosen to extend the research to all products, and not only to a smaller group, in order to obtain a more comprehensive picture of the link between the product and the territory for all EU Member States.

The DOOR database, active at the time when the research was conducted (now eAmbrosia), contains GI documents under the section ‘denomination information’ of registered PDOs and PGIs. More precisely, this section contains two categories of documents: ‘Official Journal Publications’ and ‘Other Documents’. The first category consists of the implementing act registering the geographical name (published under the L series of the Official Journal of the EU, the OJEU), and the summary or single document (object of the analysis) published pursuant to Art. 50(2)(a) Regulation 1151/2012 (published under the C series of the OJEU). The second category, containing the product specifications, the detailed applications for registration in the national language, and the summary of the applications for registration in different languages of the EU, has not been taken into account.

It is necessary to consider that apart from the EU sources (templates and guides for applicants), since there are also other documents available at the national level, such as national provisions and guidelines for national recognition.⁵⁵ These documents have not been considered at this stage of the research, limiting the analysis to the single documents contained in the EU database, the EU Regulations, and the EU guidelines for the compilation of the single documents. This choice has been made in order to have a uniform data set with an EU focus, without possible national influences on the interpretation of the link to origin.⁵⁶

For the sake of completeness, it is important to clarify that starting from 1996, when the first GIs were entered in the EU database, three different provisions regulated the matter: the first was EEC

⁵² Pursuant to Art. 18 Regulation 1151/2012, a Traditional Speciality Guaranteed is a name describing a specific product or foodstuff that results from a mode of production, processing or composition to traditional practice for that product or foodstuff, or is produced from raw materials or ingredients that are those traditionally used. Since TSGs aim at safeguarding traditional methods of production and recipes and not protecting products linked to a geographical area, TSGs are out of the scope of this book.

⁵³ Only those products having a single document or a summary were considered for the purpose of this research. Considering other documents, like full text of the national product specifications, more detailed and with a different structure, could have falsified the outcome of the analysis. A full list of the documents excluded from the analysis is available in Annex I B.

⁵⁴ Amendments of the single documents are analysed in chapter 2 of this book.

⁵⁵ Among others INAO, Guide du demandeur d’une appellation d’origine protégée (AOP) ou d’une indication géographique protégée (IGP) à l’exception des vins, boissons alcoolisées et boissons spiritueuses, November 2017 <<https://www.inao.gouv.fr/Espace-professionnel-et-outils/Produire-sous-signes-de-qualite-comment-faire/Guides-pratiques>> (accessed 31 January 2022).

⁵⁶ National provisions concerning the registration procedure are considered under section 1.4 of this book.

Regulation 2081/1992, repealed by EC Regulation 510/2006, which in turn has been repealed by EU Regulation 1151/2012.⁵⁷ Notwithstanding some changes in the format, the documents available in the EU database can be considered a homogenous data set for the purpose of this research. This can be verified in two ways: a diachronic comparison of EU provisions regulating the content of the product specifications, and an analysis of the various formats of summaries and single documents set by the various EU regulations that regulated the matter.

The first analysis shows that the definitions of designations of origin, geographical indication and product specifications are substantially identical in the three Regulations, even if characterised by different wording.⁵⁸ As regards the content of summaries and single documents, the three Regulations provide a different level of detail. Art. 6(2) Regulation 2081/1992 only requires the indication of the ‘main points of the application’,⁵⁹ while Art. 5(3)(c) Regulation 510/2006⁶⁰ and Art. 8(1)(c) Regulation 1151/2012⁶¹ define these points, requiring a more detailed description of the link between the product and the geographical environment.

The second analysis, based on the comparison of the formats of summaries and single documents attached to the EU Regulations, shows the existence of four different templates.⁶² The two templates

⁵⁷ Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1992] OJEU L 208/1 (Regulation 2081/92); Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJEU L 93/12 (Regulation 510/2006); Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2012] OJEU L343/1.

⁵⁸ Compare Arts. 2 and 4 Regulation 2081/92 with Artt. 2 and 4 Regulation 510/2006 and with Artt. 5 and 7 Regulation 1151/2012.

⁵⁹ Art. 6(2) Regulation 2081/92 reads as follows: “If, after taking into account of paragraph 1, the Commission concludes that the name qualifies for protection, it shall publish in the Official Journal of the European Communities the name and address of the applicant, the name of the product, the main points of the application, the references to national provisions governing the preparation, production or manufacture of the product and, if necessary, the grounds for its conclusion”.

⁶⁰ Art. 5(3)(c) Regulation 510/2006 reads as follows: “The application for registration shall include at least: (c) a single document setting out the following: (i) the main points of the product specification: the name, a description of the product, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area; (ii) a description of the link between the product and the geographical environment or geographical origin referred to in Article 2(1)(a) or (b), as the case may be, including, where appropriate, the specific elements of the product specification or production method justifying the link.”

⁶¹ Art. 8(1)(c) Regulation 1151/2012 reads as follows: “An application for registration of a designation of origin or geographical indication pursuant to Article 49 (2) or (5) shall include at least a single document setting out the following: (i) the main points of the product specification: the name, a description of the product, including, where appropriate, specific rules concerning packaging and labelling, and a concise definition of the geographical area; (ii) a description of the link between the product and the geographical environment or geographical origin referred to in Article 5(1) or (2), as the case may be, including, where appropriate, the specific elements of the product specification or production method justifying the link.”

⁶² See Summary under Annex I, Commission Regulation (EC) No 383/2004 of 1 March 2004 laying down detailed rules for applying Council Regulation (EEC) No 2081/92 as regards the summary of the main points of the product specifications (2004) OJ L 64/16; Summary under Annex VIII and Single Document under Annex I, Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (2006) OJ L 369/1; Single Document under Annex I, Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the

available for summaries are almost identical,⁶³ with no particular differences regarding the link to origin. The two templates for summaries present some differences when compared to the single documents regarding the amount of information and the level of precision required by the applicant. In particular, the latter requires a more detailed description of the product and its link to the geographical area.⁶⁴ In other words, both summaries and single documents require the same type of information, but the latter is more structured and detailed.

Given the substantial identity of the legal definitions and the similar structure of the templates (although the structure of the single documents is more detailed than for the summaries), it is possible to conclude that the documents contained in the EU database are an effective data set for the analysis of the descriptions of various geographic links of the products to their territory.⁶⁵ For the sake of completeness, the impact of the different templates on the code structure and on the number of quotations is analysed with a diachronic approach in section 4.1 of this chapter. Where possible, the English version of the single documents has been considered, relying on the summary of the applications only when the single documents were not available on the database. The Italian, French or Spanish version of the documents was considered if the English version was not available. For the few documents for which there was no translation in the languages mentioned above, the content analysis was performed with the use of Google Translate.

A possible disadvantage in the use of summaries and single documents is the limited amount of information contained in those summaries and single documents, unlike the more detailed product specifications.⁶⁶ In the event, the fact that the single documents are quite short and made available in different European languages makes it possible to conduct a comprehensive analysis of all PDOs and PGIs registered at the EU level. This allows us to explore the link of the product to its origin by way of various natural, human, and reputational factors, without limiting the unit of analysis to a few national products. The analysis of the link to origin will be complemented with the analysis of the amendments for processed meat products conducted in Chapter 2.

application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (2014) OJ L 179/36.

⁶³ See section 4.9 of Annex I Regulation 383/2004 absent in Annex VIII Regulation 1898/2006.

⁶⁴ Annexes I Regulations 1898/2006 and Regulation 668/2014 require detailed information on the place of origin of raw materials (for processed products only) and feed (for products of animal origin only). Headings like “method of production” and “labelling” are included in the description of the product, which requires more detailed information also on the “specific steps in production that must take place in the identified geographical area, specific rules concerning slicing, grating, packaging”. Annex I Regulation 1898/2006 presents a more detailed analysis of the link between the product and the territory, with three separate headings on the “specificity of the geographical area”, “specificity of the product”, and a description of the “causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, reputation or other characteristic of the product (for PGI)”. On the contrary, Annex I Regulation 668/2014 simply requires the description of the link to the territory without any sub-section. An example of the different level of detail between summaries and single documents is provided in section 1.4.1 regarding the code ‘know-how’.

⁶⁵ The same conclusion has been reached also by Acosta (n 38) 30.

⁶⁶ Art. 7(2) Regulation 1151/2012 “*In order to ensure that product specifications provide relevant and succinct information, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down rules which limit the information contained in the specification referred to in paragraph 1 of this Article, where such a limitation is necessary to avoid excessively voluminous applications for registration*”. See also EC (n 29) 1.

1.3.3. Organising phase

The purpose of the direct approach to content analysis is to validate and extend prior research in this field, identifying key concepts as initial coding categories. This approach is different from the conventional content analysis that derives new codes directly from the data, by first highlighting the exact words from the text, without relying on preconceived categories.⁶⁷ Indeed, legal provisions show a first macro-categorisation of geographical linking factors, making a distinction between natural, human, and reputational factors together with the relevance of quality and specific characteristics of the product.

The organising phase can again be divided into three phases: open coding, grouping, and abstraction. This phase deals with the development of the coding categories, through multiple readings of the sample. The preliminary results are then grouped, avoiding repetitions and providing a description of each code.

1.3.3.1. Open coding

The open coding phase starts after the documents are downloaded from the EU database and uploaded in Atlas.ti. During this phase, the documents are read in full in order to develop a general understanding of the possible ways in which a product can be linked to its origin. Particular attention is given to the section dedicated to the description of the link to the geographical area of the different versions of the single documents, including the sections concerning the place of origin of raw materials (for processed products only) and feed (for products of animal origin only), the method of production, and the specific steps in production that must take place in the identified geographical area.

Natural factors have been broadly addressed in Regulation 1151/2012 as links between the quality or characteristic of the product and the geographical environment.⁶⁸ Those factors are further detailed in the EU guidelines; in particular, reference is made to the pedo-climatic features of a given geographical area, such as topography, climate, soil, rainfall, and altitude.⁶⁹ Additional details are provided with regard to the feed for products of animal origin and raw materials for processed products.⁷⁰

Human factors have been defined with regard to the ‘authentic and unvarying local methods’ of production.⁷¹ When it has an influence on the product, producers’ know-how can be included as part of the specificities of the product or of the geographical area of production. Normal production skills cannot be included as part of the human factors.⁷²

Reputation essentially attributable to the geographical origin of the product is expressly mentioned as a linking factor for PGIs.⁷³ Applicants have to show the evidence that the product enjoys reputation

⁶⁷ See Hsiu-Fang Hsieh, Sarah E. Shannon (n 46) 1281.

⁶⁸ Art. 7(1)(f)(i) Regulation 1151/2012 to be read in combination with Art. 5(1)(b) Regulation 1151/2012.

⁶⁹ EC (n 29) 7. Some of these codes can be found in the findings of Thomas Dylan Acosta (n 38) 52.

⁷⁰ Art. 7(1)(b) Regulation 1151/2012 and EC (n 29) 3.

⁷¹ See Art. 7(1)(e) Regulation 1151/2012.

⁷² EC (n 29) 7. See further section 4 of chapter 4 on the proposal of the EC concerning the inclusion of human factors only ‘where relevant’.

⁷³ See Art. 5(2)(b) Regulation 1151/2012.

and how it is linked to the geographical area.⁷⁴

The coding activity begins with the pre-determined codes mentioned above, assigning a code to every quotation describing a specific link of the product to its origin. This initial coding does not bias the identification of the relevant text⁷⁵ since in most cases the pre-determined codes are directly contained in the text of the quotations. As analysis proceeds, data that cannot be coded is identified, new codes are developed, thus adapting and revising the initial coding scheme. After the first reading, labels for codes start to emerge, leading to the creation of the initial coding scheme, as further explained in the grouping section.

1.3.3.2. Grouping

After open coding, codes are grouped together into higher-level categories. This step allows us to better describe the existing links between GIs and their origin.⁷⁶ Grouping means not only bringing together similar codes but also making a distinction between codes comprising a category and those outside a category.⁷⁷ This step requires reviewing the meaning of each code, using quotations in order to understand the meaning of each linking factor and the difference with the other codes.

Human factors are particularly complex to identify due to the interrelations between different codes. In particular, producers' know-how, apart from being the foundation of the process of production, can be connected to the cultural significance of the product and perhaps one of the reasons for which the product has acquired its reputation. In this case, various codes have been used to better reflect the various links to origin: namely, the codes 'cultural significance' and 'traditional know-how', usually mentioned in the description of the product or in the section concerning the link to origin through human factors, together with the code 'reputation', contained in the last section of the link to origin. A more detailed analysis of these codes is provided during the abstraction phase.

The second reading of the single documents was aimed at expanding the code structure, finding more codes that had passed unnoticed in the first reading, with particular attention to reputation and know-how which appear to be the ones with the highest number of quotations and also the most complex to identify. In order to emphasise the role played by the community of producers regarding the production of a product in a given geographical area, the category named people was created. This category results from a closer look at the quotations related to the community of producers and the cultural significance of the product for the local community before being included in the category reputation.

This category highlights the references made to producers, meaning those groups of people that have kept the local traditions alive over generations. The code 'group of producers', different from other codes within the same category, identifies the people that make use of the know-how within a given production step. This code considers producers as part of a collectivity, including information on the number of producers located in a given area and on the creation of their associations. In addition, the code 'infrastructures' looks at the long-standing cooperation among producers or shared physical production technology or facilities. An example is a service of pollen forecast, which informs

⁷⁴ EC (n 29) 7.

⁷⁵ See Hsiu-Fang Hsieh, Sarah E. Shannon (n 46) 1283.

⁷⁶ See Stephen Cavanagh (n 50) 9.

⁷⁷ Ian Dey, *Qualitative Data Analysis. A User-Friendly Guide for Social Scientists* (Routledge 1993) 20.

producers of the flowering of different plants in a given area.⁷⁸

1.3.3.3. Abstraction

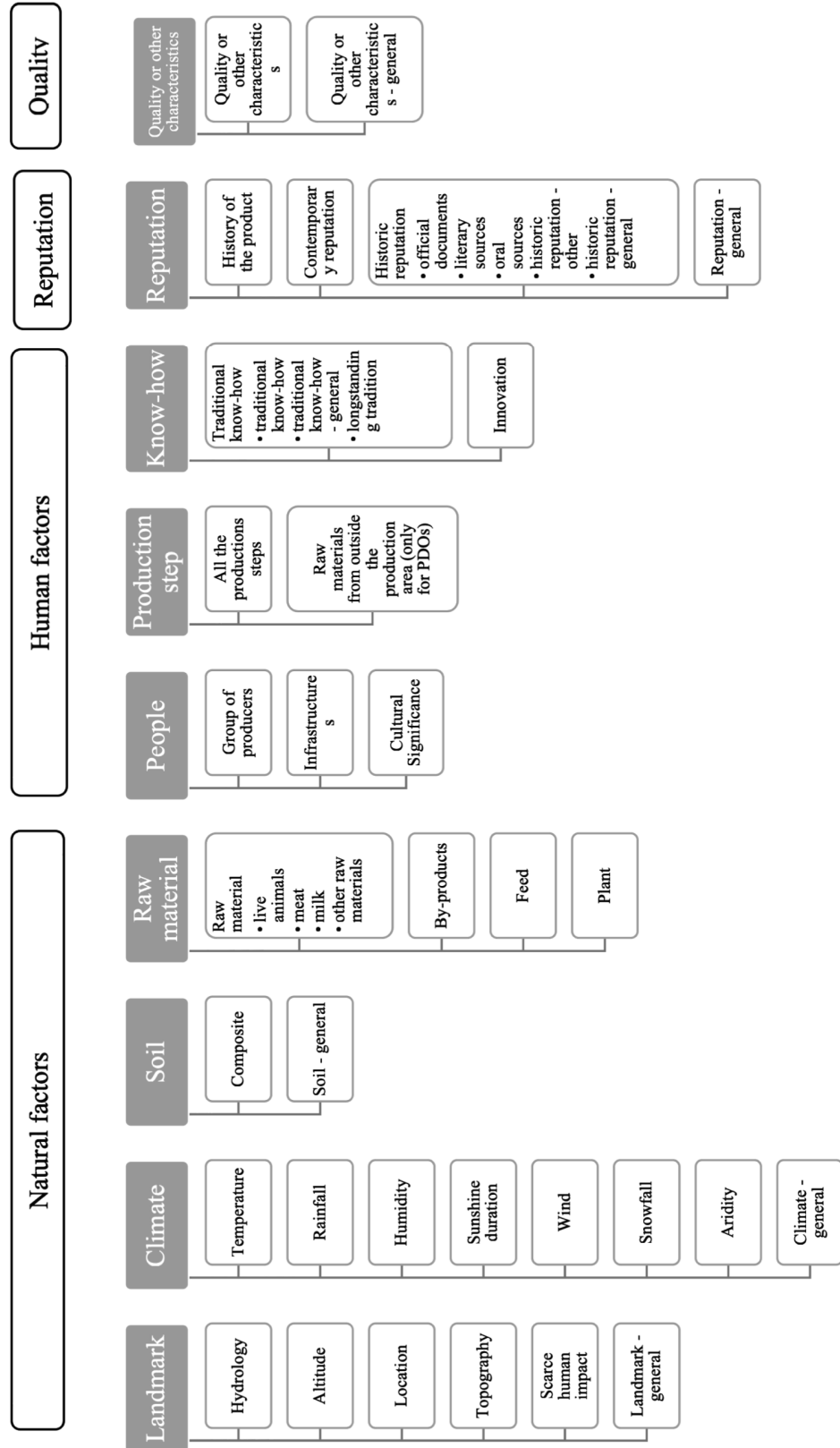
After this second read, a description of the categories generated by the research is made. This allows a clear definition of the categories and a better understanding of the different codes in order to clearly define and compare them. Each category has been named after the words used in the quotations in order to keep the link with the single documents as much as possible. The multiple readings and the grouping activity result in the code structure represented in Chart 1.

In order to make defensible inferences from the data, it is necessary to prove the link between quotations and codes.⁷⁹ This enables other researchers to better understand and follow the coding process used in the research. To this end, it is required to make authentic citations for every code, together with the use of appendices and tables, showing how categories and codes are formulated. The results of the abstraction phase, namely the description of each code and the use of quotations, are detailed in Annex II, which explains more in detail the categories and codes used in Chart 1.

⁷⁸ Kočevski gozdni med PDO [2011] OJ C70/11, no. 4.6.

⁷⁹ Denise Polit, Cheryl Beck, *Nursing Research. Principles and Methods* (Lippincott Williams & Wilkins 2004) 120.

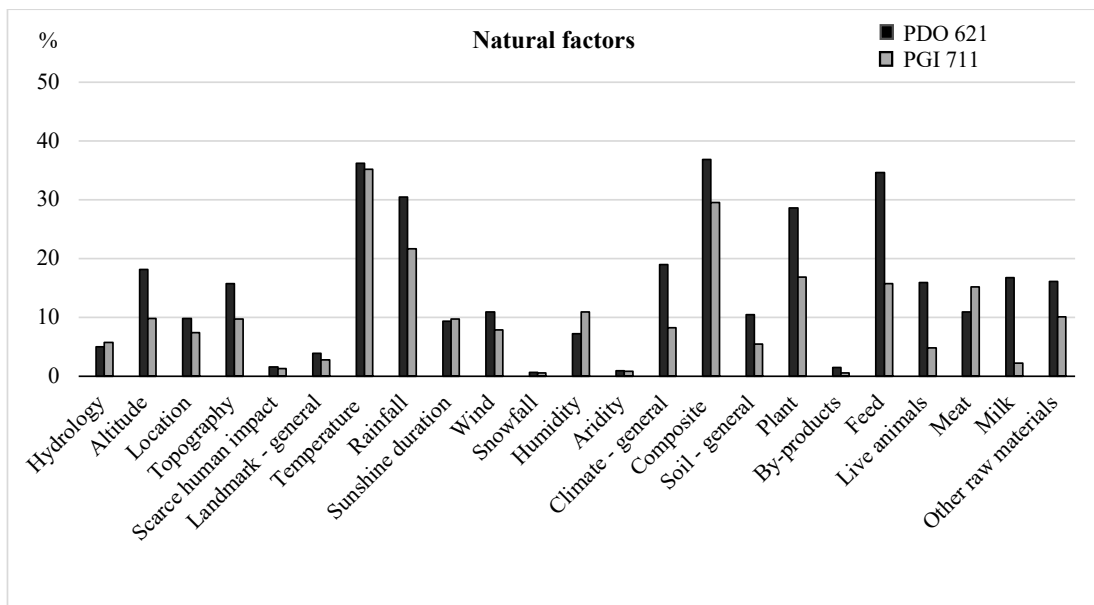
Chart 1 Code structure



1.3.4. Reporting phase

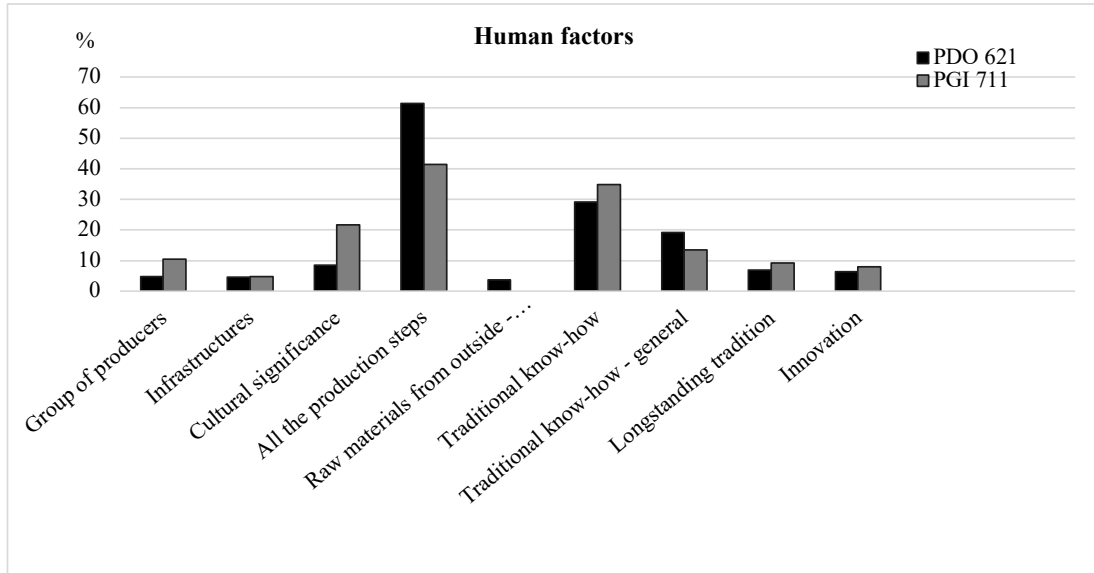
Apart from coding the information related to the link to origin, the function ‘code document table’ of Atlas.it allows counting the number of quotations used for each code listed in Chart 1. In addition, the software allows filtering the results, distinguishing between PDOs and PGIs. The results of the qualitative analysis for natural, human and reputation factors, obtained from a population of 1,332 GIs (621 PDOs and 711 PGIs), are shown in the charts below.

Chart 2 Natural factors



Starting from the legal definition pursuant to Art. 5(1)(b) Regulation 1151/2012, we would expect that natural factors are more important for PDOs than for PGIs, linking the product to a particular geographical environment. Contrary to our expectation, the percentage of quotations (listed in the vertical axis) shows that many codes have almost the same results for PDOs and PGIs. Natural factors appear to be equally important for both quality signs, with the exception of the composition of the soil (codes ‘composite’ and ‘soil-general’) and the localisation of the raw materials (codes ‘feed’, ‘live animals’, and ‘milk’), for which there is a higher occurrence for PDOs rather than for PGIs.

Chart 3 Human factors



Similar considerations can be done for quotations based on human factors. Despite the fact that human factors are expressly required as a linking factor pursuant to Art. 5(1)(b) Regulation 1151/2012, they appear to be relevant for both PDOs and PGIs. In particular, Chart 3 shows that there is a high number of PGIs (around 40%) whose production steps take place entirely within the production area. Therefore, these products comply with the stricter legal requirements for PDOs rather than with the looser requirements for PGIs, requiring ‘at least one’ production step to take place in the geographical area and not all of them. This unexpectedly strong link of some PGIs to their territory will be complemented, in section 4.2 of this chapter, with a deeper analysis of those PGIs having a combination of natural and human factors, making them (at least theoretically) compliant with the PDO requirements.

Chart 4 Reputation

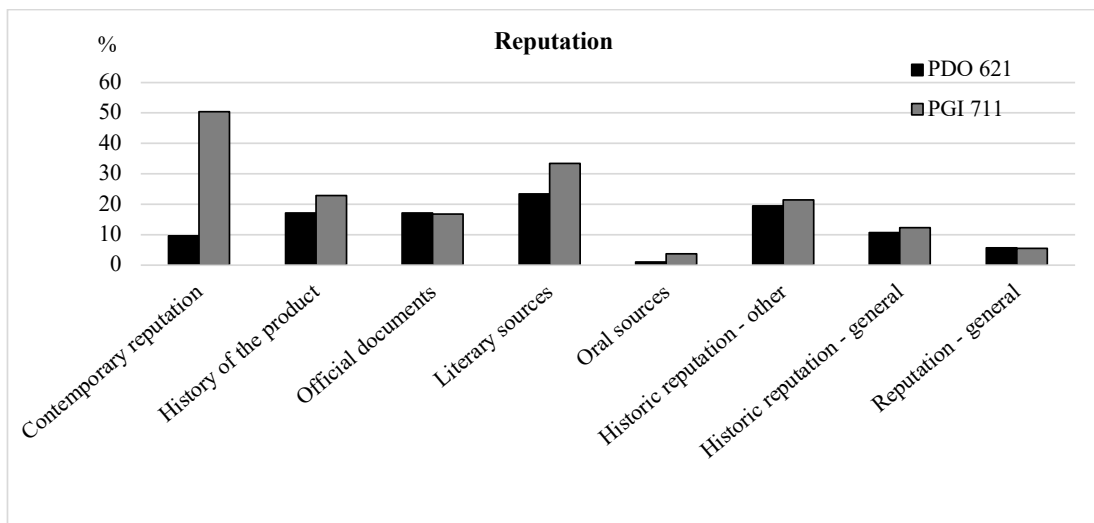


Chart 4 shows that the code ‘contemporary reputation’ occurs almost five times more often for PGIs than for PDOs. For the purpose of this analysis, contemporary reputation refers to any information dated no more than 30 years old that shows the level of reputation of the product among the public.⁸⁰ The other codes, related to the history of the product or the historical reputation achieved by the product over the years, are equally distributed among PDOs and PGIs.

1.4. Interpretation of the results

The considerations above show that natural, human, and reputational factors are important linking factors for both PDOs and PGIs. While the legal requirements described in the EU Regulation seems to privilege natural and human factors for PDOs and reputational factors for PGIs, producers tend to provide the same kind of information despite the quality scheme chosen.

The analysis of the templates used for single documents and summaries and the instructions for their completion shows at least two reasons that could justify these results. The first is that the template used for requesting a GI is the same for both PDOs and PGIs. Producers tend to fill in all information, even if not required for the specific quality sign chosen. In particular, in the section on the link to origin (section 4.6 ‘link’ of the summary or section 5 ‘link with the geographical area’ of the single document) producers tend to mention the reputation acquired by their PDO even if this is not expressly required by Art. 5(1)(b) Regulation 1151/2012. This behaviour shows a certain pride for the product and a misunderstanding of the concept of reputation. Even if PDOs have an inherent reputation, as for appellations of origin under Art. 2(2) Lisbon Agreement, they differ for PGIs, where reputation operates as a free-standing option.⁸¹

A second reason is that section 5 ‘link with the geographical area’ of the new template for single documents provided under Annex I of Regulation 668/2014 is less precise than section 4.6 ‘link’ of the template provided under Annex I Regulation 1898/2006. The more recent template does not articulate the link to origin in three parts (‘specificity of the geographical area’, ‘specificity of the product’, and ‘causal link’) as the previous template did. This new articulation does not favour a detailed reconstruction of the link to origin and might induce applicants to describe some natural and human factors that are not relevant on which to base the origin of the product.⁸² Moreover, the very short guidelines provided by the EC, when compared with the more detailed French guidelines provided by INAO, do not adequately inform producers about how to correctly describe the link between the product and the place.⁸³

For these reasons, a more structured template with specific differences between PDOs and PGIs regarding the type of product, together with more detailed guidelines, would help applicants in choosing the most opportune information concerning the natural human and reputational factors on which to base the link of the product to their origin. Engaging both local authorities and GI professionals in drafting product specifications and single documents through trainings and working groups would probably result in better quality drafts, avoiding unnecessary information that seems to

⁸⁰ For a definition of tradition see Art. 3(3) Regulation 1151/2012, further considered in section 2 of chapter 2.

⁸¹ Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) 146.

⁸² In its guidelines INAO advises applicants to keep the former structure. INAO (n 55) 23.

⁸³ Concerning the need of a more extensive set of EU Guidelines see Andrea Zappalaglio (n 41) 207.

serve more as marketing tools rather than true linking factors.⁸⁴

Additional reasons that could explain a blurring of the linking factors between PDOs and PGIs, like the procedure adopted for early registered products and the exception of the origin of raw materials under Art. 5(3) Regulation 1151/2012, are addressed in the following sections of this chapter. In addition, interviews with producers' groups aim to clarify why they opted for a specific quality sign, further explaining why the difference in the legal requirements between PDOs and PGIs is not reflected in the practice of the EU database.

1.4.1. Focus on early registered products

For a complete interpretation of the results, some remarks need to be made about the products registered using the simplified procedure pursuant to Art. 17(1) Regulation 2081/1992. This procedure was made available to EU Member States for their GIs, within six months from the entry into force of the Regulation, both for the names that were already legally protected (for example in the case of France, Italy and Spain that already had a registration system in place) and for those names established by usage in the Member States where there was no protection system. This analysis is necessary for at least two reasons. The first is that the link to origin of these products is detailed in a document called "summary", a prior version of the "single document" used to describe the link to origin of the product. Therefore, verifying whether the difference between simplified and regular registration procedure is liable to affect the code structure of the effectiveness of the data set used for the research is needed. The second reason is that some Member States (including France and Italy) did not at that time have a protection system for PGIs. Therefore, the products registered as PGI usually were identified from pre-existing categories re-adapted to this scope.

As regards the first point, excluding the difference between summaries and single documents is liable to affect the effectiveness of the data set used and the code structure created. It is worth considering that the simplified procedure requires compliance with Arts. 2 and 4 Regulation 2081/1992, defining the concept of PDO/PGI and product specifications, which have already been proven to be almost identical in the three subsequent Regulations governing the matter.⁸⁵

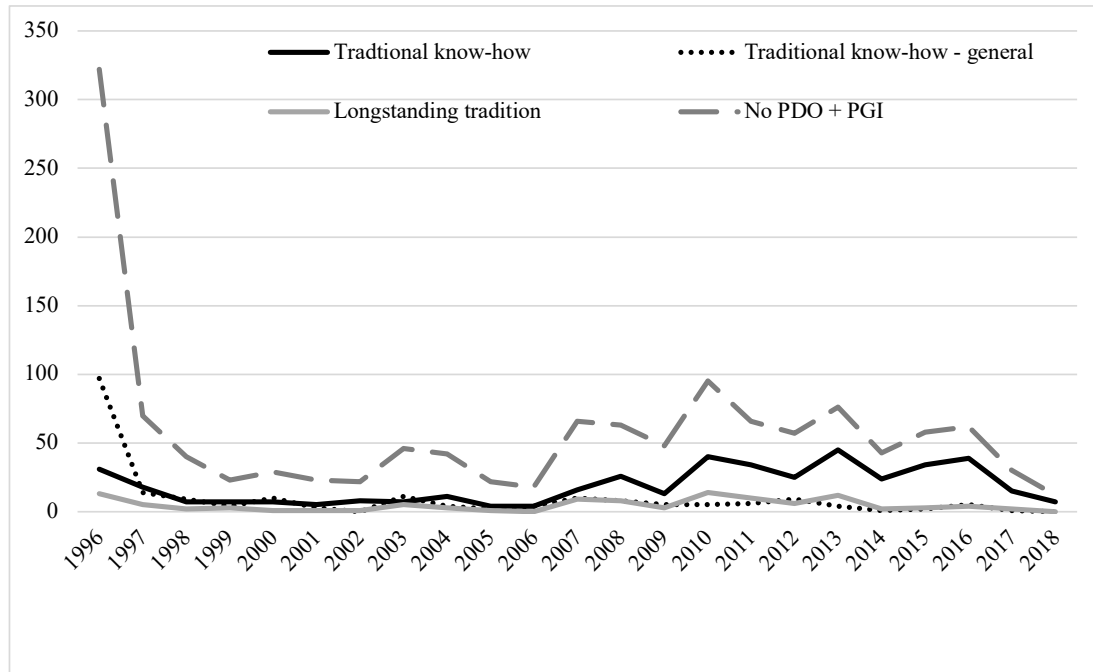
As explained in the preparation phase, this change in the legal texts does not affect the code structure or the effectiveness of the data set used for the research. Nonetheless, the fact that the summaries present little information when compared with the single documents could have consequences with regard to the number of quotations contained in each document. In particular, there could be an impact on the number of quotations for natural, human, and reputational factors for the two quality schemes.

For the sake of clarity, an example shows the different quotations on traditions according to the registration year of PDOs and PGIs.

⁸⁴ For example, PDO Piave [2009] OJ C234/18 no. 5.3 and PDO Miel de Tenerife [2013] OJ C235/5 no. 5.3 under the section causal link to origin provide information on the renown of their products, namely a list of recent awards and mention in the media. By itself, these are not valid linking factors for EU PDOs because they seem to prove the commercial success of the products and their reputation among consumers, rather than their link to origin.

⁸⁵ See section 3.2 above.

Chart 5 Quotations on tradition



The codes represented in the chart above refer to the human factors contained in 1,332 registered products, in particular the quotations used to describe the link of a product with the know-how of a community of producers. As further described under Annex II, those quotations highlight the traditional character of a product and the fact that the knowledge is handed down from one generation to the next. Chart 5 divides the quotations into the following codes: ‘traditional know-how – general’, ‘traditional know-how’, and ‘longstanding tradition’. This sub-categorisation is aimed at distinguishing the situations where the documents make only a general reference to tradition (codes ‘traditional know-how - general’ and ‘longstanding tradition’, where the product is simply defined as traditional without further details) from the cases where the tradition is detailed, explaining the decades of experience that created a unique ability from the producers’ side, contributing to production skills and knowledge (code ‘traditional know-how’).

The chart above, and in particular the evolution of the code ‘traditional know-how – general’, shows that PDOs and PGIs for early registered products provide less detailed information concerning the link to origin than later ones. Initially, traditional know-how was mainly described by way of a general reference to tradition, with no further details. This is particularly true for those products registered using the simplified procedure under Art. 17(1) Regulation 2081/1992. These products, communicated by the Member States within six months from the entry into force of the Regulation, have been registered at the EU level through progressive amendments to the Annex of Regulation 1107/1996, being entered in the EU Register from 1996 to 2001.

Chart 5 also shows that starting from 2004, increasingly more quotations on tradition are described in greater detail, showing the difference between summaries and single documents. In particular, the kind or number of linking factors used are not altered; what changes is rather the degree of precision of the single quotations. Furthermore, there is no reason to believe that the different degree of detail

between summaries and single documents changes which specific quality sign is chosen. For this reason, the use of summaries and single documents is not liable to affect the code structure or the effectiveness of the data set used for this research.

As regards the second point, the fact that Member States did not have a protection system for PGIs before 1992 requires a brief overview of the nature of the pre-existing categories which have been re-adapted to serve as indicators of the geographical origin of a product. The products registered using the simplified procedure amount to a total of 454 products.⁸⁶ More precisely, 280 products were registered as PDOs, while the remaining 174 were registered as PGIs. It should be noted that countries with a strong GI tradition and members of the Lisbon Agreement, traditionally in favour of a strong interpretation of the link to origin (such as France and Italy), contributed with the registration of many PGIs. Italy, for example, registered 71 PDOs and 31 PGIs using the simplified procedure, while France registered 46 PDOs and 54 PGIs.

The reason for the high number of PGIs, at this very early stage, is that Italy allowed producers already organised in associations and consortia to file a PDO/PGI application. Therefore, producers were able to attract more companies and solve together the problem concerning the drafting of the product specifications.⁸⁷ France, in particular, relied on the pre-existing categories of *Label Rouge*, *Label Regional*, and *Certification de Conformité*. These categories attest that a good or service conforms to a set of characteristics previously defined in a specification. The *Label Rouge*, for example, certifies that foodstuff or unprocessed non-agricultural products have specific characteristics establishing a higher level of quality resulting from particular production conditions established by the product specifications, which distinguish them from other similar products.⁸⁸

The main limit of this approach is that the minimum standards for obtaining the labels and certifications mentioned above were different from the legal requirements for obtaining a PGI set by the EU Regulation. In other words, it was easier to draw up a *Label Rouge* or *Certification de Conformité* application rather than a PGI application, since the latter required a historical study, justification of area delimitations, and an analysis of the know-how attached to the product.⁸⁹ Therefore, at least in theory, some of the PGIs recognised under the simplified procedure might have been refused under the ‘regular’ procedure, with a consequent loosening of the link to origin.

In addition, the simplified procedure combined with the need of protection might have determined why some producers opted for the PGI, perceived as the quickest and easiest solution available. In some cases, this choice might have been taken without a consensus for that specific quality sign or with no discussion of the alternative offered by the PDO.⁹⁰ All these considerations argue in favour of a blurring of the difference between PDOs and PGIs, further assessed under the following sections.

⁸⁶ Research conducted on the database EUR-lex using the keywords “regulation AND supplementing AND 1107/1996” identified 12 amendments to the Annex of Regulation 1107/1996.

⁸⁷ Filippo Arfini, Giovanni Belletti, Andrea Marescotti (n. 34) 84. This happened for some PDOs like Mozzarella di Bufala Campana and Salame di Varzi and for PGIs like Speck from South Tyrol.

⁸⁸ See Art. L.641-1 French Rural Code (Code Rural et de la Pêche Maritime).

⁸⁹ Christine de Sainte Marie, François Casabianca, ‘Les dénominations géographiques protégées (AOP et IGP) et leur inscription dans le droit français. Analyse de la situation du secteur des charcuteries- salaisons’, in José Almeida and José Tirapicos Nunes (eds.) *Tradition and innovation in Mediterranean Pig Production* (CIHEAM 2000) 298.

⁹⁰ See interview PGI Tomme de Savoie in Annex IV.

1.4.2. Blurring the difference between PDOs and PGIs?

The legal requirements set by Art. 5 Regulation 1151/2012 show a clear difference between PDOs and PGIs. On the one hand, due to its combination of natural and human factors, PDOs provide a very strong link of the product to the territory. The legal definition requires that a product, apart from originating from a specific area, must have quality or characteristics which are essentially or exclusively due to its geographical origin. Reputation alone is not sufficient to comply with the legal requirements. On the other hand, PGIs broaden the strength of the link with the territory, including the concept of reputation. This notion, together with quality or other characteristics of the product, is equally important in linking a good to a given territory.⁹¹ For some agricultural products, obtaining a quality sign is possible even if the ingredients/components of the good do not originate from the geographical area, in view of the historical link that the product has with the region that gives the product its reputation.⁹²

In line with the above, the various notions of the link to origin are characterised by a different strength without overlapping edges. The intensity of the link to origin for PDOs and PGIs definitions could be graphically represented as follows.⁹³

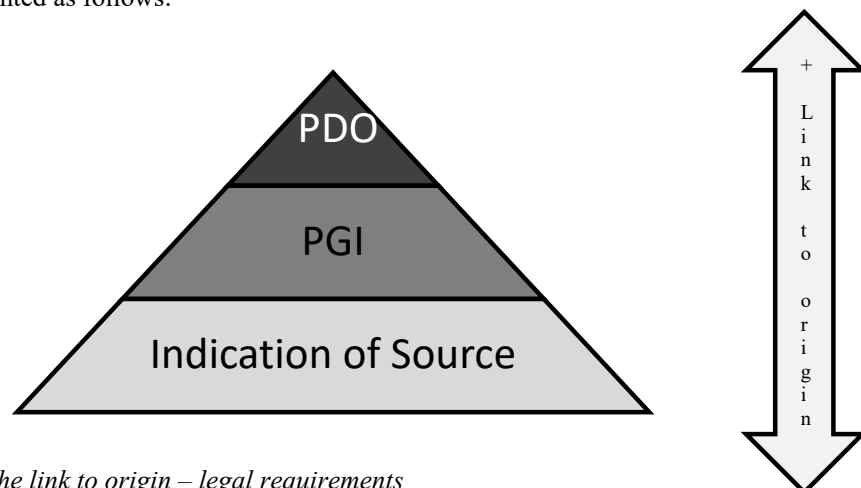


Figure 1 Intensity of the link to origin – legal requirements

PDOs are placed at the top of an imaginary pyramid since they represent the strongest possible link to the geographical origin of the product with raw materials and all the production steps coming from the geographical area. Indications of source, on the contrary, are placed at the bottom, since they do

⁹¹ Dev Gangjee (n 81) 213. With regard to the link between reputation and territory see further UNCTAD – ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005) 290.

⁹² Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link', in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 38.

⁹³ Similar graphic representations have been used to explain the intensity of the link to origin with regard to appellations of origin, geographical indications and appellations of origin contained in the major international treaties governing geographical indications already considered under section 2.1 of this chapter. See Anke Moerland, 'Geographical Indications and Innovation, What is the Connection?', in: Josef Drexl and Ansem Kamperman Sanders (eds.) *The Innovation Society and Intellectual Property* (Edward Elgar 2019) 62. Das Kasturi, 'Perspective on Geographical Indications', Workshop on Opportunities and Challenges of Geographical Indications (GIs) Protection in West Bengal, Kolkata, 25 July 2008 (ppt presentation <www.slideserve.com/clus/perspectives-on-geographical-indications> accessed (31 January 2022)).

not require any special quality, reputation, or characteristic of the product attributable to its origin, but simply require that the product originates in a certain geographical area.

The results of the qualitative content analysis and the use of similar linking factors for both PDOs and PGIs allow reconsidering the traditional representation of the link to origin. In particular, where the difference between PDOs and PGIs has been blurred, there are some PGIs whose link to origin is strong enough to justify PDO protection. The same applies conversely for those PDOs with a looser link to origin.

Pursuant to Arts. 5(1)(c) and 5(2)(c) Regulation 1151/2012, one of the main differences between PDOs and PGIs is the area where the production steps (all versus at least one) take place. The analysis of the human factors in Chart 3 shows that more than 30% of the PGIs specify that all the production steps (and not at least one) have to take place in the area of production. More precisely, 271 PGIs provide a general reference to the fact that all the production steps take place in the area or provide a detailed list of all the single production steps taking place in the area.⁹⁴ The intensity of the link to origin for PDOs and PGIs products registered in the EU could be graphically represented as follows:

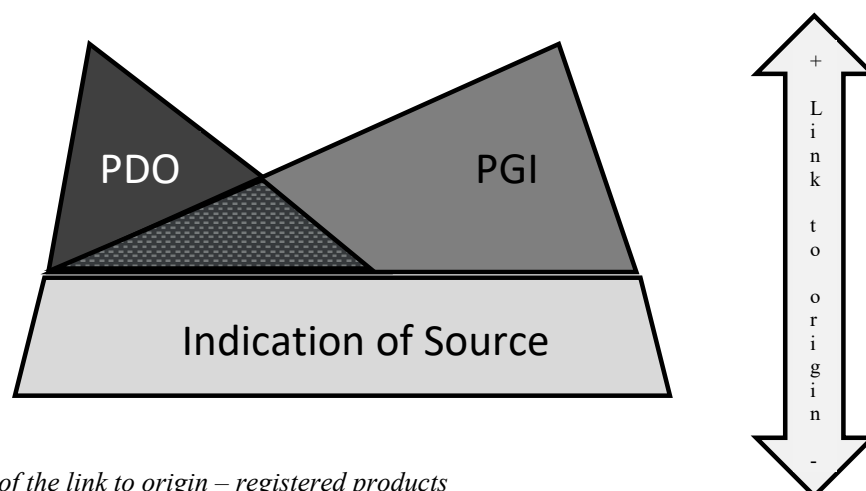


Figure 2 Intensity of the link to origin – registered products

Instead of representing PDOs and PGIs within the same triangle, where PDOs are placed at the top of it, the results of the research conducted into the registered EU GIs show that the intensity of the link to origin can be better represented by placing PDOs and PGIs in two different triangles. In particular, Figure 2 highlights the existence of a blurred difference between PDOs and PGIs rather than a rigid hierarchy between the two quality signs. This finding is confirmed by the existence of some PGIs having a strong relationship with their territory (ideally represented at the top of the PGI triangle), listed under Annex III, and some PDOs having a loose link to origin (ideally represented at the bottom of the PDO triangle), namely older PDOs that allow raw materials to come from a larger/different area, further examined in section 1.4.2.2. below. These findings are confirmed by the existing literature and by the interviews discussed in section 5 of this chapter⁹⁵.

1.4.2.1. PGIs with a strong link to origin

Starting from the results of the qualitative content analysis, the EU PGIs having all the production

⁹⁴ Packaging has not been considered, see further Chapter 2.

⁹⁵ See Zappalaglio (n 41) 135.

steps occurring within the production area have been carefully examined. The analysis has been focused on those products comprising a combination of natural and human factors, in line with Art. 5(1)(b) Regulation 1151/2012, and excluding those originating from an entire country,⁹⁶ where available information regarding the use of autochthonous breeds or local cultivars and ecotypes has been included. The result is a list of 232 PGIs having a particularly strong link to origin.

An analysis of these PGIs listed in Annex III shows that the majority of products (around 70%) belong to class 1.6 for fruit and vegetables. A closer analysis of their geographical origin shows that around 36% come from Italy, 15% from France, another 15% from Spain, and the remaining 34% from other 13 EU countries⁹⁷. A comparison of these PGIs with the total number of PDOs and PGIs registered for each of these countries for products of class 1.6 is shown in the table below.

Table 1 Comparison of PDOs and PGIs of class 1.6

	Italy	France	Spain
A) PDOs class 1.6	36	22	25
B) PGIs class 1.6	76	34	37
C) PGIs with a strong link to origin in class 1.6	61	27	27
(C/B) x 100%	80,26%	79,41%	72,97%

The table above shows that the percentage of PGIs with a strong link to origin compared to the total amount of PGIs for products in class 1.6 is particularly high in all countries. Nonetheless, it is possible to observe that while the ratio between PGIs and the total amount of products in class 1.6 (PDOs and PGIs) is almost the same for Spain and France, Italy shows a higher number of registered PGIs than PDOs for fruit and vegetables. Since the three countries share a similar GI tradition, there is no reason to believe that Spanish or French producers have a stronger interest in applying for a PDO than Italian producers.

An analysis of the number of PDOs and PGIs registered in Italy from 1996 to 2019 for products in class 1.6 shows a clear difference with the number of GIs registered in Italy for all classes of products. Indeed, Chart 6 shows that from 1996 to 2002 fruits and vegetables were mainly registered as PGIs, while the majority of PDOs were registered between 2003 and 2012. Chart 7 shows that early Italian GIs were mainly registered as PDOs while starting from 2006 there is a prevalence of PGIs.

⁹⁶ Art. 5 (1)(a) Regulation 1151/2012 allows their registration only in exceptional circumstances. As regards the notion of human factors adopted see section 4 of chapter 4.

⁹⁷ The high number of PGIs with restrictions on the use of raw materials compared with the practice of the German authorities to usually object to such restrictions shows that national authorities in the various EU Member States follow different guidelines. Adriano Profeta and others, 'The Protection of Origins for Agricultural Products and Foods in Europe: Status Quo, Problems and Policy Recommendations for the Green Book' (2009) 12(6) *The Journal of World Intellectual Property* 632. See also Andrea Zappalaglio (n 39) 209.

Chart 6 Number of PDOs and PGIs registered in Italy, France and Spain for class 1.6

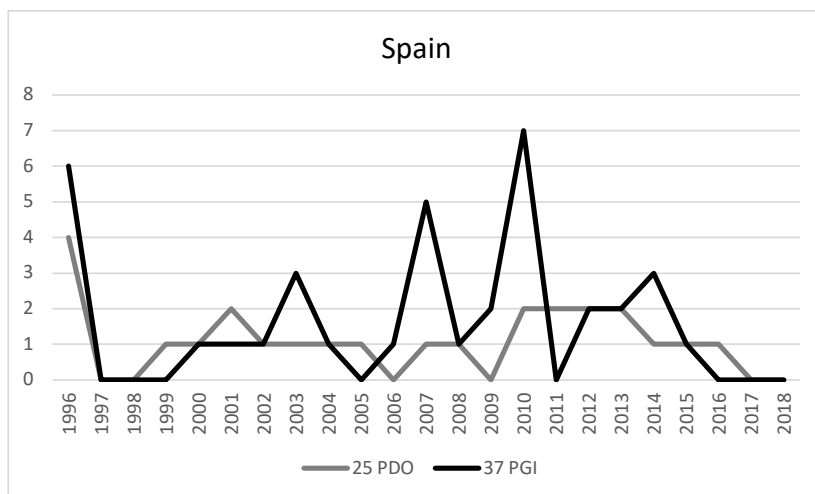
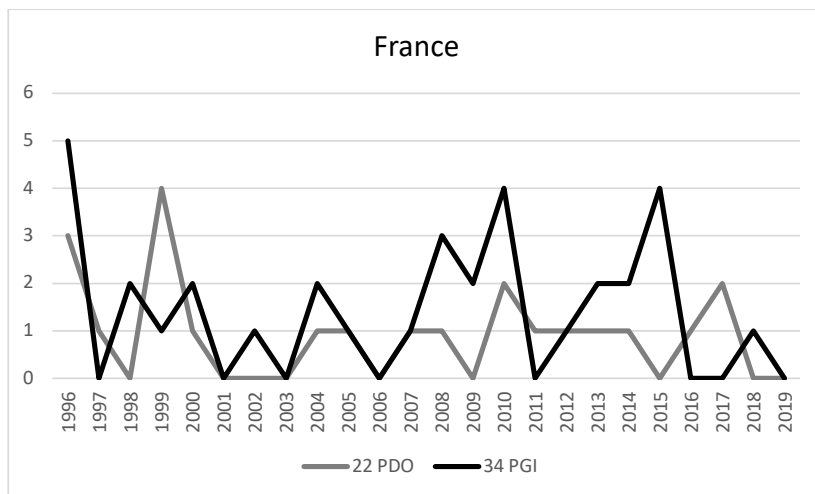
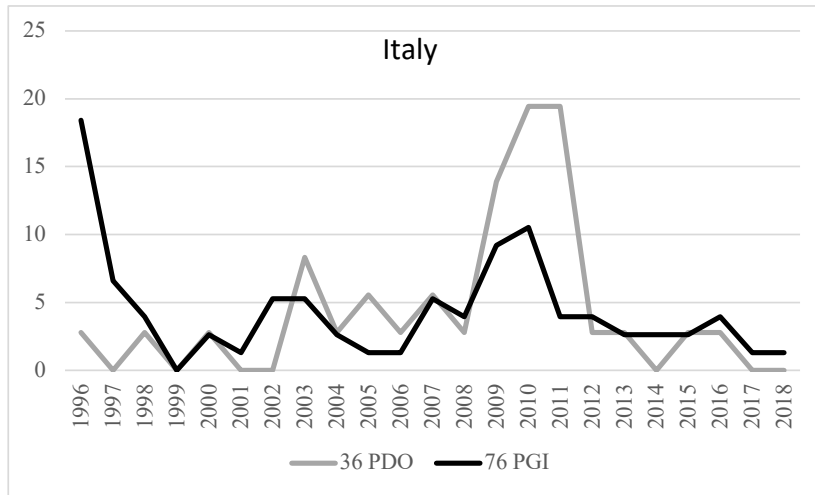
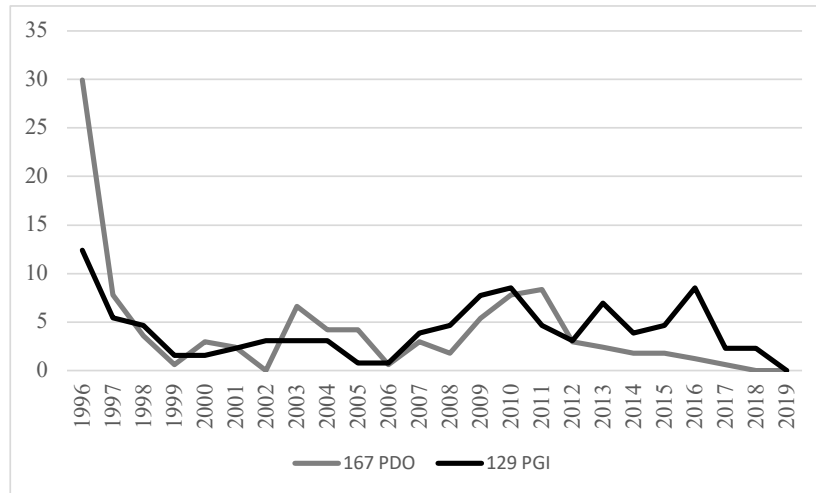


Chart 7 Number of PDOs and PGIs registered in Italy for all classes



The fact that the number of PGIs for early Italian fruits and vegetables was largely predominant over PDOs represents an exception when compared to other EU countries with similar GI traditions. France and Spain, for example, show only a minimum predominance of PGIs over PDOs in the early stage of the registration system. More than the preference of Italian applicants for PGIs, the reason for this trend, and its difference when compared to other products apart from class 1.6, can be found in a change of interpretation of the link to origin that seems to have influenced national authorities to grant more PGIs than PDOs. This, in particular for fruits and vegetables, might contribute to explaining the high number of PGIs with a strong link to origin.

The Italian Ministry of Agriculture (MIPAAF) interpreted Regulation 2081/92 in the sense that only those products having both production and transformation activities located within the geographical area were entitled to obtain a PDO.⁹⁸ Indeed, the definition of designation of origin pursuant to Art. 2(2)(a) Regulation 2081/92 required the “production, processing and preparation” of the agricultural product or foodstuff to take place in the defined geographical area, amended into “the production steps of which [the product] all take place in the defined geographical area” under Art. 5(1)(c) Regulation 1151/2012, might have contributed to generating the misunderstanding. As a consequence, the products whose specifications regulated only the production and not the transformation phase were considered PGIs regardless of the intensity of the link with the territory. Following this approach, many non-transformed products like fruits and vegetables (which included only the production phase) were registered as PGIs. This early interpretation of the Italian authorities has changed since 2003, allowing PDO recognition even only in the presence of the production phase for non-transformed products, provided it takes place in the area of origin.⁹⁹

Another possible reason is that non-processed products, such as fruit and vegetables, might not have a strong link to the territory regarding their human factors. In this sense, human factors may be limited to cultivation practices that consider the specificities of the territory but without substantial

⁹⁸ Filippo Arfini, Giovanni Belletti and Andrea Marescotti (n 34) 72.

⁹⁹ Regarding plant production, the French guidelines list some production steps that might take place in the area, like plant varieties, fertilisation, sowing and harvesting, harvesting method, storage, shipping. INAO (n 55) 21.

differences when compared to the know-how of producers located outside the geographical area. The amendment to the legal requirements for PDOs under Regulation 1151/2012, recently proposed by the EU Commission, regarding a possible balance between strong natural factors when compared to looser human factors, is further considered in section 4 of Chapter 4.

Other possible reasons that might explain the number of PGIs with a strong link to origin, such as the registration process and consumers' recognition, are assessed in section 5 of this chapter together with the interviews conducted with the producers' groups.

1.4.2.2. PDOs with a loose link to origin

Due to their stronger link with the territory, PDOs are usually represented in consumers' minds as niche products, with limited volumes and intended for local markets, while PGIs seem suitable for more industrial or even mass production. Actually, there are PDOs with high production volumes intended for large markets, and PGIs with very limited volumes and intended for local markets.¹⁰⁰

The analysis of the summaries and single documents shows that many production areas are limited to a single region, while others show a larger area that affects more than two regions. The justification of the extension of the production area is partly due to an effective link with the territory (particularly specific historical and cultural roots) and, on the other hand, relies on the political decision to use GIs as development tools for rural areas, promoting products destined for a market of large consumption which requires the use of processing plants with high capacity distributed over larger production areas.

The first category of products, for which the area of origin is often included in a single region, encompasses both PDOs and PGIs, namely cheeses and olive oils (where PDOs are prevalent) and fruit and vegetables (mainly PGIs). The second category, for which the area of origin extends over more than one region, includes both PDOs and PGIs belonging to class 1.2. (processed meat products). Therefore, this category seems particularly relevant as regards the issue of a loose link to origin for PDOs.

PDOs for processed meat products well represents the exception on the origin of raw materials, deriving from the fact that their recognition had taken place on the basis of customs and national standards existing prior to Regulation 2081/1992. Today, Art. 5(3) Regulation 1151/2012 allows raw materials (namely live animals, meat, and milk) to come from a larger area, provided that four conditions are satisfied: the production area is defined, there are special conditions for the production of the raw materials, controls are put in place to ensure that those special conditions are respected, and the products were recognised as designations of origin in the country of origin before 1 May 2004.¹⁰¹

¹⁰⁰ In the EU Register there are various examples of PDOs with a looser link compared to PGIs. As regards fruits, the PDO Pomme du Limousin [2015] OJ C120/6 no. 3.2, the variety of apple is broadly described as “*The apples are of the ‘Golden delicious’ variety or of one of the mutants authorised for the ‘Pomme du Limousin’ designation of origin (standard characteristics similar to those of ‘Golden delicious’)*” while other PGIs, in addition to the natural and human factors, are reserved only to local cultivars, see PGI Limone Interdonato Messina [2009] OJ C74/70 no. 3.2.

¹⁰¹ Having regard to the possible inconsistency with Art. 3(1) TRIPS because the term for exception expired in 2004 and nationals from some WTO members were not entitled to apply since their national legislation did not allow the national administration to be part of the application procedure (expressly required by Art. 12 Regulation 2081/92), see Adriano Profeta (n 97) 631.

The consequence of this exception can be verified by an analysis of 37 PDOs registered under class 1.2. before 1 November 2019. 52% of these PDOs, listed in Annex III.B, are characterised by raw materials coming from outside the area where the final product is processed. This percentage is even higher for Italian products, for which 15 out of 21 PDOs (around 70%) benefit from the exception of Art. 5(3) Regulation 1151/2012. In other words, those GIs define two different areas in their product specifications, one for the supply of raw materials (larger) and the other one for processing (smaller).

As regards ham production, there are various reasons for a particularly loose link to origin. One of these is the industrialisation process that delocalised pig raising outside the traditional transformation areas.¹⁰² In addition, many local breeds disappeared or are at risk of extinction and are therefore crossed with other breeds. These issues oblige producers to rely on other linking factors, such as traditional know-how and reputation. As a consequence, few processed meat products could comply with strict scrutiny regarding their link to origin.¹⁰³

In other cases, even if the production and processing areas coincide, raw materials and processing can be done in various regions, denoting a loose link with the territory. For example, the PDO Salamini Italiani alla Cacciatora can be produced in 12 different Italian regions.¹⁰⁴ This allows us to conclude that the location and production capacity of the processing companies played an important role in the definition of the production area.¹⁰⁵

In order to take the specific character of certain products or areas into account, Regulation 1151/2012 provides additional flexibilities concerning the sourcing of feed and slaughtering of live animals. When sourcing entirely from within the defined geographical area is not technically practicable, Art. 1 Commission Delegated Regulation 664/2014 allows the use of feed sourced from outside that area (within the limit of 50% of dry matter on an annual basis), provided that the product quality or characteristics essentially due to the geographical environment are not affected.

Interviews with producers' associations can further clarify why they opted for a PGI instead of a PDO, notwithstanding their products showing a strong link to the territory.

1.5. Results of the interviews

Among the PGIs characterised by a strong territorial link, 13 interviews were conducted covering a total number of 15 products of different classes. The semi-structured and open-ended questions were designed to explore three different issues: the reasons why producers applied for a PGI, whether they are interested in opting for a PDO, and their opinions on the difference between the two quality schemes.

The interviews targeted producers' groups of southern EU Members States, namely France, Italy, and Spain. These countries were chosen because of their high number of registered GIs and their longstanding GI tradition, proven by the fact that they are signatory members of the Lisbon Agreement.¹⁰⁶ Given their GI tradition, appellations of origin (or the equivalent PDOs) are more

¹⁰² For example, in France a high percentage of pigs come from Bretagne, a region that does not have a pork butcher tradition. See Christine de Sainte Marie, François Casabianca (n 89) 298

¹⁰³ Christine de Sainte Marie, François Casabianca observe that the conditions to get a PDO in France are stricter than in other countries. If Iberian pigs fed with acorns could qualify for PDO protection, hardly the same could be said for the PDO Prosciutto di Parma. Ibid 298.

¹⁰⁴ PDO Salamini Italiani alla cacciatora [2019] OJ C359/7 no. 4.

¹⁰⁵ Filippo Arfini, Giovanni Belletti e Andrea Marescotti (n 34) 76.

¹⁰⁶ Spain signed the Agreement in 1958 but never ratified it.

recognisable among consumers and perceived as more prestigious quality signs than geographical indications (or PGIs). Therefore, when a product fulfils the stricter legal requirements for a PDO, we could expect producers to prefer a PDO rather than a PGI.

The interviewees are employed by the producers' groups with different roles, namely president, technical director or employees in charge of communication and marketing.¹⁰⁷ The interviews were conducted by phone, and all the participants were allowed to review the content of the interview and gave their consent before its publication. The full text of the interviews (including the interview in the original language and its translation into English) is available in Annex IV of this book.

All interviews provide additional details on the role of natural and human factors, confirming the strong relationship between the product and its territory, as described in the first version of the single documents. Later amendments have not been considered,¹⁰⁸ nonetheless, some interviews shed light on the amendments under examination before the European Commission and therefore not yet published on the GI database, at the time when the interview was conducted.

When asked if it would have been possible to apply for a PDO instead of a PGI, 6 out of 13 interviewees declared that the producers' group first considered to apply for a PDO and later on changed to a PGI. The main reason for this choice was the faster granting process.¹⁰⁹ Continuous infringement activities required immediate protection, and a PDO would have delayed the procedure, which is why producers preferred to rely on the reputation of the product and opt for a PGI.¹¹⁰ In addition, three more issues were identified: the delimitation of the geographical area, business reasons not to limit the production steps within a single area, and the adoption of a control plan.

First, initial delimitation of the geographical area, as defined by the producers' group, might be modified following technical expertise. In France, for example, INAO submits the PDO application to the attention of some independent experts that review the file during a delimitation procedure.¹¹¹ These experts define objective criteria for limiting the geographical area based on natural and human factors of the place, identifying the respective areas on the map. It is only after this delimitation phase, conducted by independent experts with the help of the producers' group and

¹⁰⁷ Only one of them is not currently employed by the producers' group, but was former president at the time of the creation of the producers' group and is currently retired. See interview Sel de Guerande.

¹⁰⁸ In particular, the amendment to the product specifications of Pimiento Asado del Bierzo allows for the transformation of the product to take place outside the area of production. This amendment formally excludes a possible PDO protection but it is interesting to note that, for the time being, there are no companies located outside the production area. Theoretically, it would be possible to amend the product specifications and opt for a PDO.

¹⁰⁹ See interviews Raclette de Savoie, Sel de Guerande, Soumaintrain, Limone di Siracusa, Pimiento Asado del Bierzo, Saint-Marcellin. There is no data concerning the fact that the granting process for PDOs is slower than the one for PGIs. On average, the Commission takes four years to register a name after receiving the application. Indeed, the scrutiny conducted by the Commission often requires an exchange of letters with the Member State, delaying the registration process. The Member State, in turn, has to consult the producers' organisations, then producers have to gather information and conduct additional studies when needed. See Commission Staff Working Paper Impact Assessment on Geographical Indications, Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes, SEC (2010) 1525, 10 December 2010, 9.

¹¹⁰ See interviews Sel de Guerande and Soumaintrain.

¹¹¹ For more detailed information on the procedure see INAO, Directive délimitation de l'aire géographique d'une appellation d'origine ou d'une indication géographique, ou de révision de l'aire géographique d'une appellation d'origine ou d'une indication géographique enregistrée, INAO-DIR-2015-03, 31 March 2015, 17.

followed by a public consultation, that the geographical area can be identified and the dossier can continue with the following registration steps. However, this step is not compulsory for PGIs. In this case, the *commission d'enquête* of INAO, after having examined the file, may recommend to the national committee that it approve the delimitation of the area as it is, if it considers that the link between the product and the origin is well proven. If some information is missing or the link has not been proven adequately, then the PGI dossier has to go through the same delimitation procedure established for PDOs.¹¹²

When the product specification includes larger production areas covering one or more regions, PGIs are usually preferred. In this case, it would be particularly complex to prove how the quality or characteristics of the product are linked to a particular geographical environment, meeting the legal requirements for a PDO. Nonetheless, the EU Register contains also interesting examples of PGIs with a strong link to origin and a small area of production, like the PGI Petit Épeautre de Haute Provence.¹¹³ This choice can be explained in terms of business opportunities, registration procedure and legal protection, as further discussed below.

A second reason is that PDOs must locate all the production steps within the geographical area. According to three interviewees, PGIs grant more flexibility in terms of business opportunities opening up to companies located outside the area of production of raw materials.¹¹⁴ This is particularly relevant for those products that can no longer benefit from the exception pursuant to Art. 5(3) Regulation 1151/2012. Therefore, even if many PGIs comply with the stricter PDO criteria, there are strategic reasons to register them as PGIs, namely the option of switching between suppliers according to producers' needs.¹¹⁵

A third issue concerns the creation of the control plan. French PDOs, for example, require an analytical and organoleptic examination to ensure the quality and typicality of the products. The organoleptic examination is carried out by an Organoleptic Examination Commission composed of competent professionals and experts, under the responsibility of the control body, under conditions guaranteeing an independent and impartial examination of the products.¹¹⁶ The aim of this examination is to confirm, by tasting or by appropriate sensory tests, the acceptability of the product within its appellation. More precisely, it confirms the presence of specific characteristics as defined in the specifications and the absence of unacceptable defects.¹¹⁷ The fact that this procedure is mandatory only for PDOs, and where appropriate for PGIs for wines and spirit drinks, justifies why some producers prefer to avoid this quality sign opting for a PGI.¹¹⁸

¹¹² *ibid* 10.

¹¹³ Petit Épeautre de Haute Provence PGI [2008] OJEU C261/11, n 4.3. The production area is limited to 235 municipalities at an altitude of over 400 metres.

¹¹⁴ See interviews Limone di Siracusa, Cordero Manchego, Lenteja de Tierra de Campos.

¹¹⁵ Gail Evans, 'The Strategic Exploitation of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products in the European Union' (2010) 1(2) *The WIPO Journal* 163. For a wrongful interpretation of the 'production steps' (as including also the transformation phase) that might have induced producers to opt for a PGI instead of a PDO, see section 4.2.1 above.

¹¹⁶ See Art. L642-27 French Rural Code.

¹¹⁷ More information is available at INAO, Directive du conseil des agréments et contrôles, Objet : Commission Chargée de l'examen Organoleptique, INAO-DIR-CAC-2, 26 November 2013.

¹¹⁸ See interviews Sel de Guérande on the fact that some PGI producers created very demanding product specifications (more demanding than some PDOs) including the obligation to set up organoleptic commissions, which is not mandatory for PGIs. In addition, Pimiento Asado del Bierzo declared that they did not find

When asked if, today, they would be interested in applying for a PDO, the majority of the interviewees (10 out of 13) gave a negative answer. The most common reason is that they did not find a concrete advantage in terms of scope of protection that could justify the cost of the amendment (including a new study on the qualitative link),¹¹⁹ or because the adoption of a PDO could limit the growth of the sector.¹²⁰ Some of them acknowledge that PDOs are more recognised by consumers but believe that this issue could be solved by investing more resources at European and national level in promoting PGIs among consumers.

One interviewee stated that they could be interested in obtaining a PDO, but this issue is not a real priority and (again) depends on the real perception that consumers have of the two quality signs.¹²¹ Yet two interviewees are interested in having a PDO for their products.¹²² In particular, they stated that there is a need for clarification for both consumers and producers, since the interviewees have problems in explaining why their product is a PGI when the product specifications are as strict as those for the PDOs of the same sector.

In conclusion, the interviewees were asked to provide an opinion on the difference between PDOs and PGIs both regarding the quality of the information provided to producers (from national and European bodies) and on consumers' perception, in particular on the intensity of the link to the territory.

The majority of the interviewees (8 out of 13) considers the information provided by national and European authorities on the difference between PDOs and PGIs to be insufficient. According to some interviewees, there is a need for improvement at the qualitative level (more and better information), but also the communication strategy should be reconsidered since the information is often blocked at the administrative level and should reach producers and consumers better.¹²³ In this line, some interviewees expressed a certain criticism of the position adopted by national authorities that are not able to adequately advise producers' groups during the application process.¹²⁴ Only one interviewee considered national and European authorities as providing enough information on the difference between the two quality signs,¹²⁵ while another interviewee did not consider this issue relevant, being more interested in the difference between PGIs and other national quality signs (namely *Label Rouge*).¹²⁶

As regards consumers' perception, slightly more than half of the respondents (7 out of 13) felt that the difference between PDOs and PGIs should be explained better to avoid confusion and misinformation. A direct consequence of the lack of understanding of the difference between PGIs and PDOs (on the consumers' side) is that producers' groups cannot conduct a pros and cons analysis,

significant differences between the quality of the product produced in the area and others produced outside the area, deciding not to further investigate the qualitative link between the product and the territory.

¹¹⁹ See for example interview Pimiento Asado del Bierzo.

¹²⁰ See interviews Limone di Siracusa e Lenteja de Tierra de Campos.

¹²¹ See interview Sel de Guerande.

¹²² See interviews Emmental de Savoie, Raclette de Savoie and Soumaintrain.

¹²³ Interview Canestrato di Moliterno.

¹²⁴ Interview Soumaintrain.

¹²⁵ Interview Cordero Manchego.

¹²⁶ Interview Agneau du Poitou Charentes. Label Rouge is a French sign that designates products which, by their production or manufacturing conditions, have a higher level of quality compared to other similar marketed products (<<https://www.inao.gouv.fr/Les-signes-officiels-de-la-qualite-et-de-l-origine-SIQO/Label-Rouge>> (accessed 31 January 2022)).

necessary for starting an amendment procedure and, eventually, change quality sign.¹²⁷ Only two interviewees stated that the level of information was adequate, and one did not express an opinion on this issue.

Apart from the need for clearer and more detailed information to consumers, only two producers are in favour of merging PDOs and PGIs, if confusion persists. However, four interviewees are in favour of keeping the current twofold link to origin.¹²⁸ Further discussion on this issue is provided in Chapter 4 of this book.

1.6. Interim conclusions

International treaties provide different definitions of GIs, according to the strength of the link between the product and its territory. As regards the EU, Art. 5 Regulation 1151/2012 clearly distinguishes between PDOs and PGIs, based on the strength of their link with the territory. In particular, the looser link for PGIs is the result of the lower importance attributed to natural factors, when compared to human and reputational factors, allowing the registration of products whose raw materials come from outside the production area.

However, the analysis conducted of the single documents shows that natural, human, and reputational factors have almost equal importance for both PDOs and PGIs. While the legal requirements described in the EU Regulation seem to privilege natural and human factors for PDOs and reputational factors for PGIs, producers tend to provide the same kind of information despite the quality scheme chosen. In addition, there are many PGIs that have a strong link to origin fulfilling, at least in theory, the legal requirements for obtaining a PDO.

These results confirm the findings of the existing research, which revealed a blurred difference between PDOs and PGIs. The fact that there is a unique template for both quality schemes, with a section on the link to origin less articulated than in the former templates, together with the very short guidelines on how to compile it, may explain why the difference in the legal requirements between PDOs and PGIs is not adequately reflected in the practice of the EU database.

Moreover, the adoption of clearer and more detailed guidelines at the EU level, further discussed in Chapter 4, may help national authorities to better understand the link to origin and the legal requirements for PDOs and PGIs. Most likely, this would have avoided the wrong interpretation of the ‘production, processing and preparation’ phases¹²⁹ made by Italian authorities until 2003, recognising as PGI those fruits and vegetables having only the production phase (and not the transformation) in the territory, despite the strength of their link to origin that might have justified a recognition as PDO. Even more, the fact that Italian GIs for fruits and vegetables were mainly registered as PGIs until 2002 partly explains why the EU database contains many PGIs with a strong link to origin.

Other reasons that might explain the blurring between PDOs and PGIs are related to early registered GIs, in particular, how early PGIs were selected and how the link to origin was initially interpreted. In this sense, the adoption of a simplified procedure, together with the use of pre-existing categories like the French *Label Rouge*, *Label Regional*, and *Certification de Conformité*, with different legal requirements than PGIs and adhering to a different rationale, may have contributed to further

¹²⁷ Interview Sel de Guerande.

¹²⁸ Interview Sel de Guerande.

¹²⁹ Art. 2(2)(a) Regulation 2081/92.

loosening the link to origin (see for example the 54 PGIs and 46 PDOs registered in France using the simplified procedure).

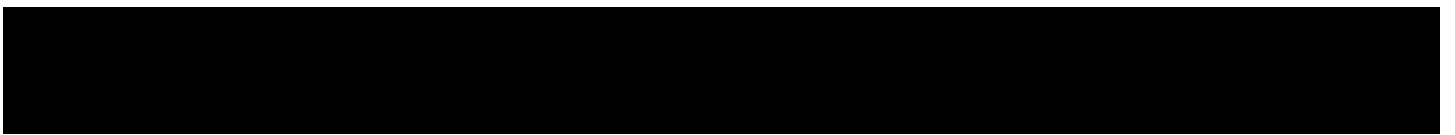
Interviews conducted with producers' groups show other possible reasons that may lead producers to opt for a PGI even if the link to origin of the product is strong enough to justify an application for a PDO. The first reason is that Regulation No 1151/2012 grants the same legal protection to PDOs and PGIs. Therefore, there is no legal incentive that would justify the producers' choice of a particular quality scheme. The second reason is that the national phase for the registration of a PDO is usually more complex and more time-consuming. For example, the fact that for PDOs the definition of the geographical area is more stringent could lead to longstanding negotiations among producers on the exclusion of some of them from the list of authorised producers. This, combined with the urgent need of protection for producers, could explain why they opted for a PGI. The third reason is a certain confusion and misinformation detected among consumers. Such a lack of understanding of the difference between PGIs and PDOs immediately reflects on producers that cannot conduct an adequate pros and cons analysis of the choice of a specific quality sign.

The results of the analysis of the single documents, showing that natural, human, and reputational factors have almost equal importance for both PDOs and PGIs with a consequent blurring of their notions, represent only one side of the coin. Indeed, this analysis sheds light on the interpretation of the notion of the link to origin at the time when the GIs were registered, covering a timeframe of over 25 years. A more complete understanding of the evolution of the link to origin, that is to say how the single documents have been amended and whether product and process innovations had an impact on the linking factors for PDOs and PGIs, is conducted in the following chapter.

CHAPTER 2



EU geographical indications and the
innovation of the link to origin



2.1. Introduction

The study on the link to origin, conducted in the previous chapter through the analysis of the single documents for both PDOs and PGIs, is complemented by an assessment of the innovation of that link. In particular, the idea is to understand not only how natural, human, and reputational factors were linking the product to its origin at the time when the GI was applied for but also how these factors evolved over the years through an analysis of the product and process amendments recorded in the single documents.

The amendments represent a change in the product specifications, the rules that producers have to comply with to be entitled to use a PDO/PGI logo. The amendments are due to various reasons, mainly evolving natural conditions of the place and changes in the socio-economic dimension that put pressure on producers to adapt to the new situations. Within this framework, it is important to understand whether this innovation is in conflict with the traditional and historical linking factors, commonly used to base the geographical origin of the products.

To this aim, sections 2 and 3 provide an analysis of the relationship of GIs with culture and innovation. Indeed, in various single documents, it is possible to find a reference to a process innovation that occurred in the history of the product leading to the creation of a new production standard. This proves how traditional products changed in the past, providing a dynamic and evolving notion of tradition as opposed to a static one.

After having provided a definition of tradition and its relationship with innovation, section 4 continues the analysis of the blurred difference between PDOs and PGIs conducted under Chapter 1, by exploring the role of the two EU quality schemes when it comes to the amendments of the product specifications for processed meat products. This category of products has been chosen because it allows an analysis of both the origin of raw materials and the process of production. The aim is to understand if there is a correlation between the two quality schemes and the nature of the amendments: whether PDOs and/or PGIs tend to adopt more flexible amendments, providing a wider range of options to producers, or whether PDOs and/or PGIs adopt stricter amendments, reducing the range of options available to producers.

Unfortunately, the findings concerning more flexible or stricter amendments cannot be automatically translated into results concerning the strengthening or loosening of the link to origin for PDOs and PGIs. How more flexible or stricter amendments can affect the link to origin is the result of a complex agronomic research (out of the scope of the present research) that investigates in detail the technical nature of the amendments and how they impact the evolution of the link to origin. For this reason, the present research is limited to the correlation between quality signs and the flexible/strict nature of the amendments, with considerations about how open the EU quality schemes are to innovation or tradition.

Subsequently, section 5 provides a focus on recent discussions concerning the amendment of the PDO Camembert de Normandie, highlighting the role of the EU quality signs in the innovation of the link to origin.

2.2. GIs and tradition

2.2.1. Concept of tradition

The policy rationale of the EU GI system is to preserve local traditions and cultural diversity, establishing permanent communal rights.¹ This justification is used to include GIs as part of the broader category of intellectual property rights, aimed at fostering innovation and creativity by granting a temporary monopoly.² That being said, the purpose of the GI system is not to reward innovation, but rather to reward members of a group of producers complying with practices and methods belonging to their traditions.³

Continuous striving for innovation and mechanisation of the process of production has turned many traditional methods into outdated and uncompetitive knowledge. In recent times, small enterprises and family-owned businesses recovered and valorised traditional know-how as a strategic element of rural development. The aim is to produce value for local communities protecting local traditions and creating new job opportunities.⁴

Despite the importance of the traditional component, Regulation 1151/2012 does not define the concept of traditional know-how. ‘Traditions’ and ‘knowledge’ are only briefly mentioned in Art. 3(3) of that Regulation, which defines ‘traditional’ as intergenerational usage within the domestic market for at least 30 years.⁵ For a better understanding of the notion of traditional know-how for GIs, it is possible to refer to the concept of traditional knowledge (TK), meaning a body of knowledge that belongs to a tradition, commonly used in international treaties and conventions regulating different matters like plant and genetic resources and cultural diversity.

The concept of TK is explicitly mentioned in relation to genetic resources for food and agriculture in Art. 9(2)(a) of the 2001 International Treaty on Plant and Genetic Resources for Food and Agriculture.⁶ The traditional lifestyle of local communities aimed at preserving biological diversity,

¹ Recitals 1 and 2 Regulation 1151/2012. With regard to the role that GIs have in developing and protecting EU cultural heritage and natural resources see European Commission, Why Do Geographical Indications Matter to Us? MEMO/03/160 30 July 2003 <http://europa.eu/rapid/press-release_MEMO-03-160_en.htm> (accessed 31 January 2022).

² Daniel Gervais, ‘Traditional Innovation and the Ongoing Debate on the Protection of Geographical Indications’ in Peter Drahos and Susy Frankel (eds.) *Indigenous Peoples’ Innovation: Intellectual Property Pathways to Development* (ANU Press 2012) 121, 123. The author includes GIs under the categories of commercial designations and unfair competition, as defined by Art. 2 (viii) of the Convention Establishing the World Intellectual Property Organization, amended on September 28, 1979. For a more detailed analysis of the inclusion of GIs within the framework of commercial law see Pilar Montero García-Noblejas, *Denominaciones de Origen e Indicaciones Geográficas* (Tirant lo Blanch 2016) 39.

³ As regards to the function of GIs in the protection of quality and tradition see Pilar Montero García-Noblejas (n 2) 56.

⁴ Recital 5 Regulation 1151/2012 and European Commission, Future of CAP: Protecting our traditions 30 October 2017 <https://ec.europa.eu/info/news/future-cap-protecting-our-traditions_en> (accessed 31 January 2022).

⁵ This definition of ‘traditional’ applies to Traditional Specialities Guaranteed, see also 36 Regulation 1151/2012. For a definition of ‘traditional’ as cultural values of a community beyond the antiquity of the knowledge see Marion Panizzon and Thomas Cottier, ‘Traditional Knowledge and Geographical Indications’ Foundations, Interests and Negotiating Positions’ in Ernst-Ulrich Petersmann (ed.) *Developing countries in the Doha Round: WTO Decision-making procedures and WTO Negotiations on Trade in Agricultural Goods and Services* (Robert Schuman Centre for Advanced Studies, European University Institute 2005).

⁶ Art. 9(2)(a) FAO International Treaty on Plant and Genetic Resources for Food and Agriculture of 3 November 2001.

together with the sustainable use of its components and the equitable sharing of benefits derived from the use of the genetic resources, makes these communities depositaries of a body of knowledge, innovations and practices which are relevant for the sustainable use of biological diversity.⁷

In a broader sense, TK includes the notion of traditional cultural expressions (also known as TCE). In particular, the UNESCO Universal Declaration on Cultural Diversity defines culture very broadly as:

*the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.*⁸

Similarly, the Convention for the Safeguarding of the Intangible Cultural Heritage defines intangible cultural heritage (or ICH) as follows:

*[...] the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage [...].*⁹

The definitions above show that a product can be linked to the traditional values of a community in three different ways: the culture of its production, the culture of its consumption, and the culture of its identity.¹⁰ The first aspect deals with the method of production of the product, further developed in the following sections. The second aspect deals with the context in which the product is used. In particular, the traditional way in which the product is consumed, the cultural festivities related to it, and the social context of consumption. The third aspect, the culture of identity, comes into play when the product is related to the cultural dimension of a community and acquires a symbolic meaning.

Food is deeply linked to culture, being an expression of local traditions, language, and trade relations.¹¹ TK and GIs, as previously defined, have some points in common. They both protect knowledge originating in a given geographical area and belonging to a community. On the one hand, TK represents the local traditions of knowledge; on the other hand, GIs represent a traditional production method, typical of a specific place, embedded in a physical product. In particular, GIs could be useful for the commercial exploitation of some tangible forms of expression of TK.¹²

For the purpose of this chapter, tradition is interpreted as an expression identifying knowledge, culture, and creations of a given local community handed down from one generation to the other.¹³ In

⁷ Art. 8(j) United Nations Convention on Biological Diversity of 5 June 1992.

⁸ Recital of the UNESCO Universal Declaration on Cultural Diversity of 2 November 2001.

⁹ Art. 2 (1) of the Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003.

¹⁰ Tomer Broude, 'Taking trade and culture seriously: Geographical Indications and cultural protection in WTO law' (2005) 26 University of Pennsylvania Journal of International Law 623, 636.

¹¹ This is confirmed by the inclusion of "culinary traditions" under the Non-Exhaustive List of Cultural Goods and Services in the UNESCO First Draft Convention (later on deleted in the Second Draft Convention). Some GIs are perceived as national symbols, see the dispute between Peru and Chile with regard to Pisco.

¹² Daniel Gervais, 'A Look at the Geneva Act of the Lisbon Agreement: A Missed Opportunity?' in Irene Calboli and Ng-Loy Wee Loon (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 133. Anselm Kamperman Sanders, 'Incentives for and Protection of Cultural Expression: Art, Trade and Geographical Indications' (2010) 13 *The Journal of World Intellectual Property* 81.

¹³ WIPO, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders* (2001) WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999), 25; and

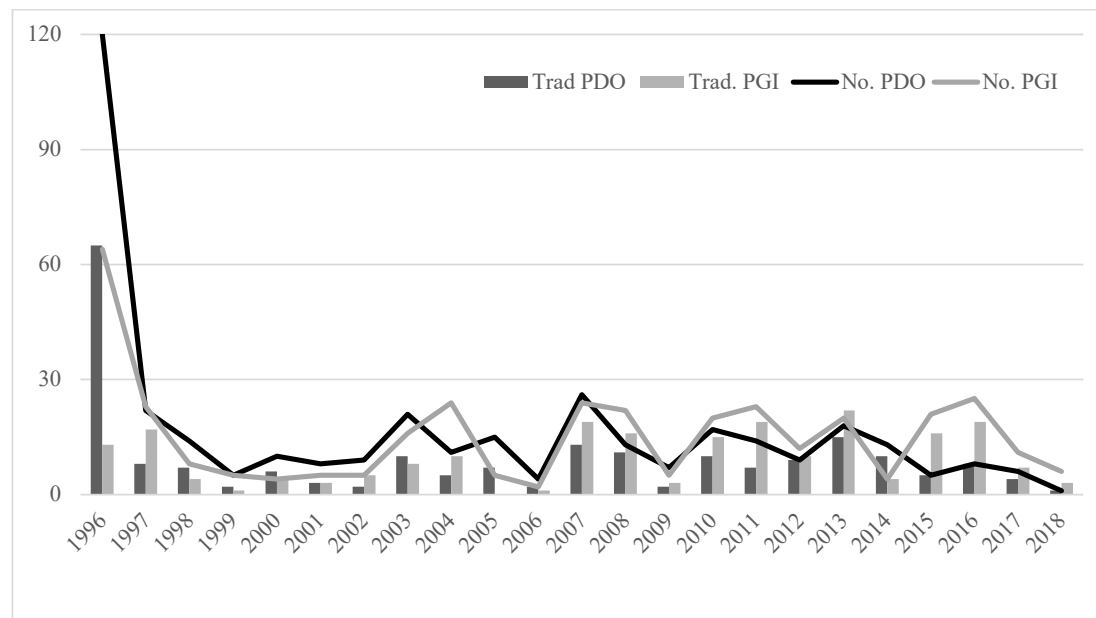
particular, tradition does not refer only to the antiquity of the knowledge itself but means that a given knowledge represents the cultural values of a community and is held collectively as part of its cultural traditions. In other words, the following sections show how tradition is not static but changes in time, arguing in favour of a dynamic notion of tradition. Culture is transmitted from one generation to the other and evolves due to the interaction between the people and the environment, including knowledge and practices concerning nature (i.e. breeding) and traditional craftsmanship.¹⁴

2.2.2. Tradition as link to origin

Policy and the academic literature often refer to GIs as traditional products. The common narrative presents GIs as small local productions realised with artisanal methods handed down from one generation to the next. But how much of this traditional element is included in the single documents?

The qualitative analysis of the single documents can prove the link between GIs and the culture of their production. In this sense, Chart 8 refers to the number of quotations regarding the culture of production of 621 PDOs and 711 PGIs, analysed in Chapter 1. Those quotations, contained in the single documents under the section named ‘link with the geographical area’, describe the connection of a product with the know-how of a community of producers, referring to the human factors and the traditional character of a product with the use of keywords like ‘traditional’, ‘longstanding production techniques’, and ‘handed down from one generation to the other’, further described in Annex II. In this sense, these quotations emphasised the traditional character of the product and its cross-generational production.

Chart 8 Number of quotations on tradition for PDOs and PGIs



The chart shows that there is a high occurrence of quotations on tradition. In particular, starting from 2006 almost every PDO and PGI contains a reference to traditional know-how. Tradition has an

Daniel Gervais, ‘Spiritual but not intellectual? The protection of sacred intangible traditional knowledge’ (2003) 11 *Cardozo Journal of International and Comparative Law* 467, 471.

¹⁴ See Art. 2(2) of the Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003.

important role in linking the product to its origin, although slightly more frequent for PGIs rather than for PDOs.

After having verified the importance of traditional know-how for PDOs and PGIs, it is now possible to reflect on the role that GIs have in the trade-culture relationship for agricultural products. At the international level, the enhanced protection under Art. 3 of the Lisbon Agreement, which prohibits the use of a GI name even if it is accompanied by the real geographical origin of the product or by expressions such as 'kind', 'type', 'style', and 'imitation', goes way beyond mere consumer protection as to the real geographical origin of the products and from acts of unfair competition.¹⁵

Similarly, at the EU level, Art. 13 Regulation 1151/2012, does not only cover the name of the product but also any indication regarding provenance, essential qualities or the packaging liable to convey a false impression as per the origin of the product. Protection is accorded to all GIs against misuse, imitation or evocation, even when the true origin of the product is indicated, the name translated or accompanied by the expressions mentioned above.

Since the GI system, at both an international as well as EU level, is not limited to consumer protection,¹⁶ the preservation of the cultural content of the products can better explain the reason for the enhanced protection. Indeed, a product can receive GI protection when the link with the natural conditions of the territory and the longstanding methods of production are respected. This link represents the cultural rationale of GI protection, setting a minimum quality level in line with traditional standards and reputation. Based on this cultural rationale, GIs could serve as a reply to globalisation and commodification of goods keeping traditions alive regardless of consumers' confusion.

This approach is confirmed by the meaning of *terroir*, a term missing in Regulation 1151/2012 but often used in the GI literature, that goes beyond the mere environmental elements of the geographical origin of a product. *Terroir* is commonly defined in the GI literature as a unique combination of climate and soil, including human factors and culture in the equation.¹⁷ *Terroir* represents the natural factors that make a given territory unique, such as soil, climatic conditions, and altitude, combined with the skills developed by the community of producers over the centuries, adapted to the environmental conditions, and handed down from one generation to the other.

¹⁵ Art. 22 TRIPS refers to acts of unfair competition as per Art. 10bis of the Paris Convention, but Art. 23 TRIPS provides enhanced protection limited to wine and spirits, as already discussed in section 2.1 of chapter 1.

¹⁶ Tomer Broude (n 10) 650.

¹⁷ INAO, Guide du demandeur d'une appellation d'origine protégée (AOP) ou d'une indication géographique protégée (IGP) à l'exception des vins, boissons alcoolisées et boissons spiritueuses, 2017, 26 <<https://www.inao.gouv.fr/Espace-professionnel-et-outils/Produire-sous-signes-de-qualite-comment-faire/Guides-pratiques>> (accessed 31 January 2022). More extensive definition and role of *terroir* can be found in Irene Calboli, 'Of markets, culture, and *terroir*: The unique economic and culture-related benefits of geographical indications of origin' in Daniel Gervais (ed.) *International Intellectual Property. A Handbook of Contemporary Research* (Edward Elgar 2015) 433. For a definition of *terroir* as 'social construction' see Philippe Prévost et al, 'Le terroir, un concept pour l'action dans le développement des territoires' (2014) 14 *Vertigo - la revue électronique en sciences de l'environnement* <<http://journals.openedition.org/vertigo/14807>> accessed 31 January 2022. Having regard to the importance of both natural and human factors in the definition of *terroir* see Andrea Zappalaglio, 'The Debate Between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right' (2019) 50 *International Review of Intellectual Property and Competition Law* 595, 603.

The importance of tradition in the EU GI system is again proven by Art. 7(1)(e) Regulation 1151/2012, which requires a description of the method of obtaining the product. This includes the ‘authentic and unvarying local methods’ that can justify the link to the territory. This reference to local, loyal, and constant use serves to explain how tradition and culture link the product to its origin. In particular, ‘authentic’ emphasises the link between the product and the place, whose production method, opposed to fraudulent practices, is recognisable not only by insiders but also by neighbours and outsiders. ‘Unvarying’ asserts the time-honoured nature of the production methods, recognisable, and attached to consistent, tried and tested local practices. ‘Local’ emphasises the link to a particular, definable locality.

The ‘authentic and unvarying local methods’ mentioned above, proving the traditional character of the product, may be included only if they are still in use and have to be described with ‘precise and well-established references’.¹⁸ In addition to these requirements, some countries require proof of the existence of a productive tradition rooted in time. In Italy, for example, a historical report is required, accompanied by bibliographical references, able to prove the production (even non-continuous) for at least 25 years, as well as the consolidated use of the name in commerce or in common language.¹⁹ The lack of an EU provision concerning the historical evidence, and the fact that this is required only by some Member States, may create a disassociation between territory and tradition.²⁰ Indeed, the antiquity of a product does not necessarily mean local and traditional production; on the contrary, it is necessary to prove continuity in the know-how and its transmission across generations.²¹

These considerations concerning the empirical relevance of ‘tradition’ in the single documents and the cultural rationale for GI protection highlight the role of culture in the quality, reputation, or other characteristics of the product that could justify the cost of government intervention aimed at preserving the cultural dimension of GI products. Cultural concerns may be used as grounds for the enhanced protection for not only GIs but also the entire GI system.

2.2.3. Loosening the link to origin between innovation and invented traditions

If the notion of *terroir* is a foundation for the cultural aspects connected to GI protection, some concerns are raised by all factors that tend to loosen the link with the territory. The following paragraphs attempt to classify the factors loosening the link to origin in two main categories: changes across space, comparing products from different zones within the same area of production, and across time, hampering the cultural rationale and the traditional production process.

As regards the first category, it is possible to note that the larger the area of production is, the broader the differences in terms of output quality are. It is important to limit the production area and to

¹⁸ This is confirmed by Annex I of the Commission Implementing Regulation (EU) 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2014] OJ L179/36. Here, in section 5 – Link with the geographical area, the applicant states on which factor the causal link is based, providing more detailed information.

¹⁹ Art. 6(e) Italian Decree 14 October 2013 ‘Disposizioni nazionali per l’attuazione del regolamento (UE) n. 1151/2012 del Parlamento europeo e del Consiglio del 21 novembre 2012, sui regimi di qualità dei prodotti agricoli e alimentari in materia di DOP, IGP e STG’ Gazzetta Ufficiale Serie Generale 251 of 25 October 2013.

²⁰ See Filippo Arfini, Giovanni Belletti and Andrea Marescotti, *Prodotti tipici e denominazioni geografiche strumenti di tutela e valorizzazione* (Tellus, 2010) 126.

²¹ Philippe Marchenay, Laurence Bérard, *Les produits de terroir: Entre cultures et règlements* (CNRS Éditions 2016) 60.

accurately assess in the application the link between product and territory. When products come from large production areas (or even nation-wide), it is complex to assess the uniformity of the natural and human linking factors, and this determines an evident variation in the final product.²² This is the reason why Art. 5(1)(a) Regulation 1151/2012 allows PDOs for products originating in a country only in ‘exceptional cases’.

The second category deals with changes that take place across time, in particular changes affecting both producers and methods of production.

Having regard to producers, there are two possible answers to the mobility of producers together with their cultural traditions and consequent enlargement of the production area. The first is that the collective nature of GIs might prevent individual producers, located outside the community, to produce GI products with equal proficiency.²³ The second considers that over time the land acquires additional characteristics as it is cultivated by humans.²⁴ Therefore, products protected under the GI scheme are the result of a significant human intervention developed over centuries, whose impact and results cannot be transferred through mere human and technological migration.

Having regard to methods of production, the main problem concerning the traditional link to origin deals with innovation and the change of traditional practices, further assessed under section 3 of this chapter, since nowadays the learning process takes less time with advances in scientific knowledge.

At the same time, the increasing number of GIs opens the road to a general devaluation of the quality symbols.²⁵ This is not beneficial for consumers for at least two reasons. Firstly, the increasing amount of information risks creating confusion at the time of purchase. Not only are EU consumers not aware of the meaning of the different quality symbols,²⁶ but the blurred difference between PDOs and PGIs also risk overcomplicating consumers’ decisions, instead of making the purchase more transparent.

Secondly, the high number of GIs reduce their impact on the protection of local traditions. The threshold of local distinctiveness must be kept high, avoiding the problem of ‘invented traditions’ with vague references to a past that has no more influence on modern production. Simply stating compliance with ‘authentic and unvarying local methods of production’, without establishing the longstanding history of the product, inevitably dilutes the cultural rationale. In these cases, recalling

²² See Feta PDO [2002] Dossier No. EL/PDO/0017/0427. The milk comes from prefectures from all over Greece. The product specifications compare the physical conditions of the areas of production of the raw material, showing similarities in matter of humidity rate, climate, and sunshine, stating that this contributes to the uniformity of the flora.

²³ Delphine Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ in Dev Gangjee (ed.), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar 2016) 318.

²⁴ This could be a consequence of the anthropisation of some rural areas, including agricultural land terracing, drainage, as well as landscape care and maintenance.

²⁵ Tomer Broude (n 10) 676. On the fact that quality and other characteristics do not need to be known to the public before the registration causing a possible devaluation of more prestigious geographical indications see Pilar Montero Garcia- Noblejas (n 2) 155.

²⁶ See Brian Ilberry and Moya Kneafsey, ‘Registering regional specialty food and drink products in the United Kingdom: the case of PDOs and PGIs’ (2000) 32 *The Royal Geographical Society (with the Institute of British Geographers)* 317.

a distant past serves more a commercial strategy, than a cultural foundation of the uniqueness of the product.²⁷

The concept of 'invented tradition'²⁸ refers to both new traditions (literally invented) and those emerging in a less traceable manner within a short period of time. It involves a set of practices which seeks to inculcate certain values and norms of behaviour by repetition, which implies continuity with a suitable historic past. The invention of tradition originates from the contrast between the constantly evolving modern society and the attempt to structure some parts of social life as unchanging and invariant.²⁹ This approach, different from the original romantic notion of GIs, can be achieved through product specifications designed for industrial products rather than for a typical product closely linked to the territory.³⁰ Here the 'invention' fulfils the function of creating an element of cohesion which, like many other more or less invented narratives that intend to affirm a direct continuity with the historical past, contributes to strengthening a feeling of territorial identity.

An example of a product referring to 'invented traditions' is the PDO Aceto Balsamico Tradizionale di Modena.³¹ Before the creation of the Consorteria dell'Aceto Balsamico Tradizionale³² in 1697, there was no clear guidance on the taste and organoleptic qualities of traditional balsamic vinegar. Traditional balsamic vinegar had to be 'reinvented' to differentiate the product from the other balsamic vinegars in terms of taste, building around it a symbolic system conferring a precise identity, which cannot be reproduced in any way by the industrial system. The fact that the product went through a process of constant evolution is proven by the eight different tasting cards developed from 1967 to 1994, introducing substantial changes in the relative weight of the individual evaluation elements.³³ In addition, the traditional balsamic vinegar symbols and tradition support each other without any solution of continuity, such as the tasting process and the identification of the winner of the Palio di S. Giovanni (started only in 1967), as if to re-propose a sacred liturgy of the past. Therefore, the "invention" of the balsamic tradition fulfils the function of creating an element of cohesion which, like many other more or less invented narratives that intend to affirm a direct continuity with the historical past, contributes to strengthening a feeling of territorial identity.³⁴

²⁷ Tomer Broude (n 10) 677, with regard to the GI Morellino di Scansano, a Tuscan wine that can provide references dating back to Middle Ages. Anyway, according to the history of the product, after the GI was granted, some big wine companies started to invest in the area of production, creating new wineries. See also Bronwen Bromberger, 'Aged, but not old: Local identities, market forces, and the invention of "traditional" European cheeses' in Richard Hosking (ed.) *Authenticity in the Kitchen: Proceedings of the Oxford symposium on food and cookery* (Prospect Books 2006) 96 with regard to the PDO Buxton Blue Dossier No. UK/PDO/0017/0287 and the vague reference to its unvarying local methods of production.

²⁸ Eric Hobsbawn, 'Introduction: inventing traditions' in Eric Hobsbawn and Terence Ranger (eds) *The Invention of Tradition* (Cambridge University Press 1983) 4.

²⁹ *ibid* 4.

³⁰ Angela Tregear, 'From Stilton to Vimto: Using Food History to Re-think Typical Products in Rural Development' (2003) 43 *Sociologia Ruralis* 91.

³¹ Stefano Magagnoli, 'L'invenzione "industriale" della tradizione: il cartello dell'Aceto balsamico tradizionale di Modena' (2005) 3 *Food & History* 225, 246.

³² An association aimed at promoting, organising and supporting initiatives and events for the protection and enhancement of Traditional Balsamic Vinegar, as well as the dissemination of its knowledge with respect for tradition <<http://consorteria-abtm.it/chi-siamo/>> (accessed 31 January 2022).

³³ Stefano Magagnoli (n 31) 246.

³⁴ Stefano Magagnoli (n 31) 261.

The issues considered so far show that the problem of loosening the link to origin is not new in the GI literature. In addition, an analysis of GI legal provisions shows a progressive loosening of the link between products and their geographical origin.³⁵ Historically, GI protection derives from the unique pedoclimatic and human characteristics of the territory that influenced the quality of the final product. In this sense, the Lisbon Agreement requires that a product, apart from originating from a specific area, must have quality and characteristics which are ‘exclusively or essentially’ due to its geographical origin. Mere reputation is not enough to comply with the definition of the appellation of origin.

This legal requirement changed over time, emphasising another linking factor. The TRIPS Agreement broadens the link with the territory, including the concept of reputation.³⁶ This notion, together with quality and other characteristics of the product, is equally important in linking a good to a given territory.³⁷ In particular, reputation allows the raw materials to originate from outside the geographical area of production due to the historical link of the product with the territory.³⁸ Situations where products do not entirely originate from the territory, together with the use of a de-localised model of production, further contributed to loosening this link to origin, with the risk of transforming GIs into a marketing tool at the expense of the entire system³⁹.

Linking a product to its origin by way of reputation represents, at the same time, an issue and an opportunity. On the one hand, the reputational link may loosen the strength of the geographical link between the product and its area of origin.⁴⁰ On the other hand, it gives certain flexibility to the system, allowing the protection of products having a historical link to a certain geographical area.⁴¹

The progressive loosening of the link with the territory, both concerning reputational and technological issues, leads to partially ‘de-territorialising’ GI production. This situation runs against the very rationale for GI protection, which is based on the link between the product and the territory.⁴² The definition of the area of production, together with the establishment of the raw materials and their source, recipe and other production standards, is a very sensitive issue. This process can easily become politicised, even more so when a GI has a high reputational value. As a consequence, there is a need for a collaborative network of producers that agree on the characteristics of the product and delimitation of the production area. Different from certification marks, where a private group of producers can establish their production standards, the *sui generis* GI system requires producers to

³⁵ Irene Calboli, ‘Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair(er) System of Protection in the Global Economy?’ in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 23.

³⁶ For an overview of this notion see Justin Malbon, Charles Lawson and Mark Davison, ‘The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary’ (Edward Elgar 2014) 334.

³⁷ Dev Gangjee, ‘From Geography to History: Geographical Indications and the Reputational Link’, in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 38.

³⁸ Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) 213.

³⁹ Irene Calboli, ‘In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin under TRIPS’ (2014) 6 *The WIPO Journal* 57; and Irene Calboli, ‘Time to Say Local Cheese and Smile as Geographical Indications of Origin? International Trade and Local Development in the United States’ (2015) 53 *Houston Law Review* 373, 387.

⁴⁰ See Justin Malbon, Charles Lawson and Mark Davison (n 36) 336; and Irene Calboli (n 39) 60.

⁴¹ Dev Gangjee (n 37) 39.

⁴² Irene Calboli (n 39) 387.

cooperate with governmental agencies and different stakeholders, entering into public–private cooperation, reaching a consensus on the product characteristics and their innovation.

The EU Regulation provides the framework within which quality standards are defined. The product specifications are negotiated through a bottom-up approach at the local level and then approved by a governmental authority. This is a process of social construction rooted in the history and tradition of the local community, brought together in a given historical moment to establish a series of formal production rules. Those quality standards allow reducing the variety and variability of product quality, and better coordinating the relationships among producers, as well as communicating more efficiently in the market.

The choice between strict or flexible product specifications, with more or less limited variability in product quality, is not an easy one. Although a strict product specification reduces the differences within the same category of goods created by different producers, leading to a loss of diversity and originality, this could reduce the variations existing in the tradition to the advantage of a dominant quality formula chosen by the majority of producers (or by the most influential ones), and create problems of exclusion of some producers from the production chain. On the other hand, a flexible product specification allows producers to innovate their product, adapting it to the exigencies of the market, but could also create problems for consumers, since products with different qualities are allowed to use the same designation. A bottom-up approach with collaboration and coordination among all stakeholders remains the most desirable option.⁴³

One of the major concerns is represented by the methods of production. Is it possible to adopt industrial techniques and new technologies or should traditional methods of production be preferred? Can they coexist within the same product specifications? To what extent is an innovation regarding, for example, the product/process of production allowed without loosening the link between the product and the territory?

The innovations above are a constant presence in the debate that pits big corporations against small companies, a clash about a modern method of production versus another method more in line with tradition. The coexistence among the different visions is far from easy, different products registered under the same quality sign could lead to the cannibalisation and marginalisation of products with higher production costs, or made in less-favoured places within the same production area.⁴⁴ With these issues in mind, understanding what this means for innovation and whether and how it can coexist with tradition is essential.

2.3. Innovation and tradition: two sides of the same coin?

Due to their link with the territory, GIs have an impact on local identity, keeping traditional products and traditional know-how alive. The point is made more complex by the fact that tradition can be approached not only as a ‘static’ notion, as in EU legislation, but also as a ‘dynamic’ notion. In particular, ‘traditional’ does not mean that the know-how is old, but deals with the process of sharing and learning. The fact that traditional know-how is passed down from one generation to another does

⁴³ Dwijen Rangnekar, *Geographical Indications and Localisation: A Case Study of Feni* (Centre for the Study of Globalisation and Regionalisation, 2009) 49. Feni is an Indian liquor, produced in two principal versions: coconut Feni and Feni made from cashew apples, imported to India in the 16th century. The decision to exclude coconut Feni from the GI definition means a loss of history and a potential risk of confusion for consumers.

⁴⁴ Filippo Arfini, Giovanni Belletti and Andrea Marescotti (n 19) 134.

not exclude that it undergoes a process of incremental development (*alias* innovation), where each generation adds new layers of knowledge to the inherited traditions.⁴⁵ In particular, it would be incorrect to consider negatively every change in products' typicality. Changes that occurred to the 'traditional' recipes over the centuries have to be carefully considered, furthermore the product may undergo positive and even desirable changes, a natural consequence of a changing society and environment.⁴⁶

That said, the following paragraphs will explain the meaning of the term innovation and the different types of innovation that can be found in many GI products throughout their history. For the purpose of this chapter, the term innovation is interpreted according to the definition of 'business innovation' by the OSLO Manual:

*A business innovation is a new or improved product, or business process (or combination thereof) that differs significantly from the firm's previous products or business processes and that has been introduced on the market or brought into use by the firm.*⁴⁷

This broad definition encompasses a range of sub-categories, dealing with the implementation of one or more types of innovations, such as product and process innovations. The minimum requirement for a product or process to be considered innovative is that it must be new to the company/organisation that adopted it.⁴⁸

The concept of 'new or improved product', employed in this chapter, differs from the patent-related notion of novelty, which excludes those products that already form part of the state of the art.⁴⁹ The definition of innovation referred to in the amendments of product specifications is broader, including both the case of a company that is the first one to develop a certain product or process and the case of a company that adopts innovations already developed by other companies located outside the production area of the GI. The broader definition of innovation for GIs when compared to patents is justifiable in light of the different scope of the two rights: the former is a right to a name for products that have a specific geographical origin and possess qualities or a reputation that are due to that origin, while the latter is an exclusive right granted for an invention that provides, in general, a new technical solution to a technical problem.

More in detail, 'product innovation' is defined as:

*[...] a new or improved good or service that differs significantly from the firm's previous goods or services and that has been introduced on the market.*⁵⁰

Similarly, 'business process innovation' is defined as:

⁴⁵ Graham Dutfield, 'Protecting Traditional Knowledge and Folklore. A review of progress in diplomacy and policy formulation' (2003) 1 International Trade & Sustainable Development Series, 23.

⁴⁶ Bronwen Bromberger (n 27) 93.

⁴⁷ OECD, *OSLO Manual. Guidelines for collecting, reporting and using data on innovation* (OECD 2018) 68.

⁴⁸ *ibid* 69.

⁴⁹ Art. 54 Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 as revised by the Act revising Art. 63 EPC of 17 December 1991 and the Act revising the EPC of 29 November 2000.

⁵⁰ OECD (n 47) 70.

*[...] a new or improved business process for one or more business functions that differs significantly from the firm's previous business processes and that has been brought into use in the firm.*⁵¹

In other words, new products and processes are those that differ significantly in their characteristics from the ones previously produced/adopted by the company. This means a change in materials, components, and other characteristics of the product. The broad definition of innovation adopted by this chapter is not limited to an enhancement of the quality of the product but includes all various amendments of the product specifications, including those consisting of a decrease in production costs and/or maintaining a certain quality level despite the change of external conditions (e.g. climate change), through a modification in the technical methods of production and the equipment used.

The entire GI system is based on the recognition of a name linked to specific production practice.⁵² Therefore, product innovation for GIs does not refer to the creation of 'new' products but mainly deals with the 'improvement' of existing ones.⁵³ This happens through a modification of the existing product that can take place while drafting the product specifications or later on with the amendments, as further explained in the following paragraphs.

Early adopters of the GI schemes can be compared to innovators since they both face similar problems as regards the bureaucracy of the application process and the implementation of a system of inspection and quality control.⁵⁴ These administrative burdens could prevent some actors from adopting a GI or from starting a procedure to amend a product specification, therefore hampering innovation.

An example of how administrative burdens can influence producers' choice can be found in the interviews with producer groups, as reported in Annex IV. Even though the products considered are from countries with a long GI tradition (mainly Italy, Spain, and France) where PDOs are more recognisable among consumers and perceived as more prestigious quality signs than PGIs, 8 out of 13 interviewees claimed that they were not interested in changing their quality sign, even if their products comply (at least theoretically) with the legal requirements for obtaining a PDO. In particular, the interviewees expressed concerns about the delay in obtaining the quality sign, communication with the EU authorities, lack of agreement among producers, new studies and expenses.⁵⁵ All these reasons cast second thoughts about amending a product specification, delaying or hampering innovation.

⁵¹ *ibid* 72.

⁵² See INAO (n 17) 13.

⁵³ Nonetheless, the system allows the recognition of "invented" products [*sic* in the single document] and products with a recent history of production. See Tekovský Salámový Syr PGI [2010], whose "production process was invented in 1921". And the kiwi Aktinidio Pierias PGI [2002], whose first plant was grown in Greece only in 1973.

⁵⁴ Brian Ilberry and Moya Kneafsey (n 26) 324.

⁵⁵ Interview Sel de Guerande (delay in obtaining the quality sign), interview Soumaintrain (communication with the EU authorities), interview Limone di Siracusa (divisions among producers), interview Lenteja de Tierra de Campos (new studies and expenses). Innovation-hampering arguments have been analysed together with innovation-facilitating features by Anke Moerland, 'Geographical Indications and innovation: what is the connection?' in Josef Drexl and Anselm Kamperman Sanders (eds) *The Innovation Society and Intellectual Property* (Edward Elgar 2019) 59.

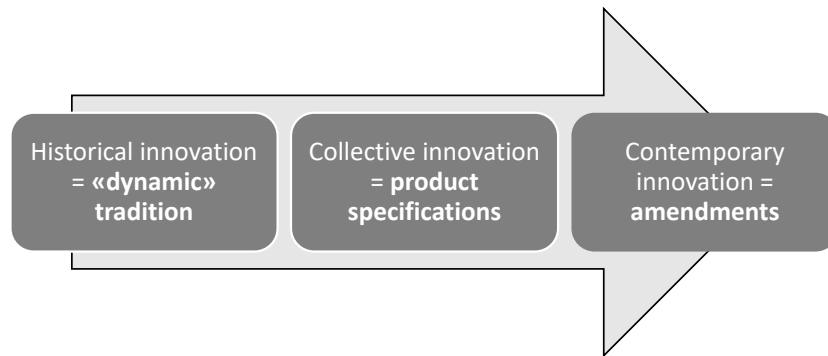


Figure 3 Different types of innovation for GIs

For the sake of clarity, it is possible to distinguish three different types of innovation for GIs, depending on when the innovation took place. Firstly, it is possible to identify the innovation that occurred in the past before drafting the product specifications (even before the GI application). This is the ‘historical innovation’ that happened to the ‘traditional’ recipes over the centuries as a natural consequence of a changing society and environment.⁵⁶ It is interesting to note that around 20% of the single documents for EU foodstuffs contain a reference to ‘innovation’, meaning the modernisation of the process of production that took place over the centuries. In particular, many innovations became the new standard of production, being indissolubly linked to the product as we know it. This code is often observed in the single document as part of process innovation, showing the ability of the local community of producers to innovate within the traditional process of production, advocating in favour of a dynamic concept of tradition.⁵⁷

Secondly, the ‘collective innovation’ that occurred at the time when the product specifications were drafted. The definition of the production standards is a complex procedure that requires drafters and decision-makers to represent the interests of all legitimate GI beneficiaries.⁵⁸ In this phase, the community of producers does not only limit confirmation of the existing practice but needs to reconcile different perspectives and come to commonly agreed product specifications, depending on the producers’ objectives and priorities that can often be contradictory.⁵⁹

An example concerns the adoption of new production methods versus pre-existing ones, often pitting farmers against industrial producers. Within this ‘negotiated order’,⁶⁰ it would be possible to give certain flexibility and dynamism to the system. On the contrary, providing a too strict description of

⁵⁶ Bronwen Bromberger (n 27) 93.

⁵⁷ See Miel de Galicia PGI [2005] OJ C30/16 [4.6]. “The rapid expansion of modern beekeeping did not start until 1975, the year in which, thanks to the work of the producer associations, the first real changes took place influencing the know-how of beekeepers and the traditional methods of hive management. The major change to affect beekeeping generally was the changeover from fixed hives to movable hives, mainly multistoreyed hives”.

⁵⁸ Delphine Marie-Vivien and others, ‘Controversies around geographical indications - Are democracy and representativeness the solution?’ (2019) 121 *British Food Journal* 2996. The governance system in place when drafting of the GI specifications and the representativeness of the local community have an influence on the specifications, leading to the inclusion or exclusion of modernised practices, *ibid* 3001.

⁵⁹ FAO and SINGER-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications*, (FAO 2009) 39.

⁶⁰ Claude Compagnone, “Les appellations d’origine contrôlée comme ordre négocié” 2012 (2) *Négociations* 63.

the methods of production could prevent producers from competing on the market through quality and innovation of their products.⁶¹ The flexibility offered by the product specifications allows the coexistence between modern and traditional winemakers. An example is the ‘Barolo war’, where different winemakers competed in producing wine more suitable for the taste of modern consumers. In other situations, when the divide between tradition and innovation is more radical, producers within the area of production may decide to leave the GI producers group and pursue new production methods. In the case of ‘Supertuscans’, innovators started to work outside the GI ‘Chianti Classico’ adopting the lower classification of ‘Vino da tavola’ (a less prestigious category of wines used for daily consumption). Here they introduced Cabernet Sauvignon and other varieties of grapes coming from outside the area of production, thus obtaining a highly appreciated wine. This example shows how innovation and quality products are possible even outside of GIs.⁶²

The degree of complexity of reaching an agreement on the product specifications depends on several factors, such as the number of production steps required, the heterogeneity among local producers, the commercial channels used, together with the cultural and economic importance of the product. The heterogeneity of the actors involves both their different degrees of specialisation and the dimension of their economic activity, strongly influencing the production techniques and the commercial channels used. All this will result in significant differences in the quality attributes of the product obtained, differences that are strictly linked to the quality standards under which the companies operate.⁶³ The stronger the difference among the community of producers, the more complex it will be to find an agreement on the product specifications.

Thirdly, ‘contemporary innovation’ occurs with the amendments of the product specifications, after the registration of the product. These may be classified into two sub-categories: compulsory amendments requiring compliance with legal provisions, such as the entry into force of new safety regulations, and voluntary ones adopted by producers for strategic reasons, such as a change in consumers’ needs,⁶⁴ or technological developments.⁶⁵ The latter can be heavily influenced by other external factors like climate change and technical restrictions to the production according to the traditional recipe,⁶⁶ and outside producers’ control. All these issues could force producers to amend the traditional process of production, deviating from their traditional know-how.

⁶¹ Amit Basole, ‘Authenticity, Innovation and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari’ (2014) Department of Economics University of Massachusetts Boston Working Paper 2014-09, 27. When producers don’t agree on a given innovation (such as the use of a power loom instead of the traditional hand loom for the Indian Saree) the author suggests using the GI system in combination with a certification mark, which would allow producers to compete equally on the market.

⁶² Tomer Broude (n 10) 665.

⁶³ Filippo Arfini Giovanni Belletti and Andrea Marescotti (n 21) 137.

⁶⁴ See Pecorino Toscano PDO [2015] OJ C18/12, n. 3. The amendment of the method of production of Pecorino Toscano allows the use of vegetable rennet for the production of cheese in compliance with the Kosher certification. The paragraph expressly mentions that this practice is not new but was already part of the traditional know-how. “The possibility is added of using vegetable rennet, a long-standing practice in Tuscany for the production of Pecorino (already mentioned in the national registration application submitted in 1985). This practice has been taken up again in the last few years both as practice that is typical of the territory and for the production of Kosher cheeses”.

⁶⁵ Bra PDO [2014] OJ C205/15, n. 3. The amendment allows the mechanical skimming of the milk, identified as a practice that dates back to the early 1900s.

⁶⁶ Stelvio/Stilfser PDO [2013] OJ C77/29, n. 4.2.5. The amendment allows using rennet produced according to a traditional method even if it does not come from the area of production. “This amendment became

For example, food safety regulations require food to be safe as regards microbiological aspects, in other words, it should be risk-free. This influences the choice of new materials used in the process of production, to achieve better hygiene status (such as materials which are easy to clean and disinfect). Usually, safety regulations do not respect the diversity, history, and cultural dimension of the products, creating problems for small-scale productions adopting traditional processes.⁶⁷ Food safety requires the adoption of measures characterised by intense standardisation of processes and products that do not adjust to the diversity associated with traditional expertise. This impacts the traditional process of production and loosens the link to the origin of the products by introducing new methods and materials in place of traditional ones.

Apart from the adoption of new production techniques, market pressure can also lead to renegotiation and finally an enlargement of the area of production, including new producers that before were excluded due to their geographical location. This enlargement of the area of production, without well-argued historical and reputational evidence, could be detrimental to the culture of production of a given product and a further loosening of the link between the product and the territory, as already mentioned with regard to the PGI Melton Mowbray Pork Pie.⁶⁸

Nonetheless, not all amendments imply a permanent modification of the product specifications. In order to facilitate the administrative application process, Art. 53(3) Regulation 1151/2012 allows a temporary change to the specifications. In particular, Art. 6(3) Regulation 664/2014 derogates from the normal amendment procedures for temporary changes resulting from the imposition of obligatory sanitary and phytosanitary measures or linked to natural disasters or adverse weather conditions.⁶⁹ Member States publish temporary amendments to the product specifications and communicate them to the Commission within two weeks, including the reasons and evidence of the measure and a copy of the act recognising the disaster or adverse conditions⁷⁰.

An analysis of the amendment of the single documents contained in the EU database shows contrasting amendment strategies adopted by producers, reflecting a preference for more flexible, and in some cases more restrictive, rules to exploit market opportunities.⁷¹ A more detailed analysis of these amendments, and in particular of the difference between PDOs and PGIs for processed meat products, is conducted in the following section.

necessary for technical reasons linked to the difficulty for producers to obtain the rennet needed to produce ‘Stelvio/Stilfser’ within the districts of the Province of Bolzano”.

⁶⁷ Fabiana Thomé da Cruz and Renata Menasche, ‘Tradition and diversity jeopardised by food safety regulations? The Serrano Cheese case, Campos de Cima da Serra region, Brazil’ (2014) 45 Food Policy 116, 122.

⁶⁸ See chapter 1 with regard to the Melton Mowbray Pork Pie.

⁶⁹ A recent example from the Covid-19 crisis deals with the temporary amendment of the PDO Mozzarella di Bufala Campana 19/03/2020 <<https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8079>> (accessed 31 January 2022), allowing the temporary modification of the product specifications relating to the characteristics of the milk, namely the fact that milk has to be fresh and processed within the 60th hour from the first milking. This allows freezing the raw material for the part in excess compared to the quantities normally processed to obtain the PDO.

⁷⁰ Similar temporary measures are applicable also for grapevine products as per Art. 18 Delegated Regulation 2019/33 and Art. 11 of Implementing Regulation (EU) 2019/34.

⁷¹ Xiomara Fernanda Quiñones Ruiz et al, ‘How are food Geographical Indications evolving? – An analysis of EU GI amendments’ (2018) 120 British Food Journal 1876, 1884. In particular with regard to micro-filtration of milk and portion-sized pieces for individual consumption.

2.4. Qualitative analysis of the amendments

2.4.1. Methodology

The following section reports on a qualitative analysis of the amendments to the registered EU GIs. As in the previous analysis of the single documents in Chapter 1 of this book, the methodology consists of a directed content analysis of the text of the amendments made available on the GI database managed by the European Commission.

A research⁷² has been conducted on the amendments of the product specifications for fruit and vegetables (class 1.6). The study considers the changes in geographical area, farming level, processing level, final product characteristics and an overall synthetic assessment based on the amendment (qualified as stricter, more flexible, both and clarification) and the justification for the amendment (market, technology/research, policy/legal, identity/quality, change of natural conditions). Having regard to the direction of the amendments, Italian and Spanish amendments tend to include more flexibility and innovation, while French amendments tend to adopt stricter rules for strengthening the product's identity. Market changes, new technologies and quality of the product are the most common reasons for the adoption of the amendments, while environmental concerns seem less relevant.

A recent study⁷³ on the amendments of EU GIs for processed meat products revealed that most amendments are justified by the need to implement new legal provisions, mainly impacting the contents of the method of production, the nature and sourcing of the raw materials and the rules on packaging and labelling.

Different from the previous studies, the present research is aimed not only at examining the different types of amendments, together with their justifications, but also at comparing the results obtained for PDOs and PGIs. In particular, the present research aims to understand if there is a correlation between the two quality schemes and the nature of the amendments: whether PDOs and/or PGIs tend to adopt more flexible amendments, providing a wider range of options to producers, or whether PDOs and/or PGIs adopt stricter amendments, reducing the range of options available to producers.

Differently from Chapter 1, where the qualitative content analysis covered all agricultural products and foodstuffs, the analysis of the amendments has been limited to a specific category of products, namely processed meat products (class 1.2). The reason for this choice is to provide a more in-depth categorisation that is able to reflect the specificities of the product's object of analysis. Only approved amendments have been taken into consideration since in the EU database, no reference has been found concerning rejected amendments.

The analysis of amendments of class 1.2 shows that PDOs are amended more than PGIs. Despite the fact that for almost all classes of products registered in the EU database, PDOs have been consistently amended more often than PGIs, the amendments of class 1.2 show that PDOs have been heavily amended when compared to PGIs. Indeed, PDOs have been amended three times more than PGIs. The results of this analysis are shown in the table below.

⁷² Andrea Maresscotti and others, 'Are Protected Geographical Indications Evolving Due to Environmentally Related Justifications? An Analysis of Amendments in the Fruit and Vegetable Sector in the European Union' (2020) 12 Sustainability 3571.

⁷³ Andrea Zappalaglio and others, 'Study on the functioning of the EU GI system' (2022) Max Planck Institute for Innovation and Competition 127.

Table 2 Number of amendments for PDOs and PGIs⁷⁴

Class	1st PDO	2nd PDO	3rd PDO	1st PGI	2nd PGI	3rd PGI	No PDO	No PGI	% 1st PDO	% 1st PGI
1.1 (meat)	6	0	0	15	2	0	42	120	14,29	12,5
1.2 (processed meat)	22	3	0	28	1	0	36	140	61,11	20
1.3 (cheese)	66	16	3	9	0	0	189	46	34,92	19,57
1.4 (honey)	4	0	0	0	0	0	34	12	11,76	0
1.5 (olive oil)	33	3	0	2	0	0	115	18	28,7	11,11
1.6 (fruit and vegetables)	31	4	0	57	7	1	150	227	20,67	25,11
1.7 (fish)	1	0	0	9	0	0	13	32	7,69	28,13
1.8 (salt, spices etc)	6	0	0	1	0	0	37	20	16,22	5

Despite the relatively small number of amendments (54 as identified in the EU database),⁷⁵ processed meat products are indeed relevant in the analysis of the link of PDOs and PGIs with their territory. Apart from the high number of amendments occurring for PDOs, class 1.2 has been preferred because it allows an analysis of both the process of production and the origin of raw materials. In addition, the exception of Art. 5(3) Regulation 1151/2012, concerning the possibility to use raw materials located outside the area of production for PDOs, allows for a deeper understanding of the evolution of the link to origin highlighting the cases and the reasons for using raw materials for PDOs, since there is no legal obligation to use them.

More in detail, Art. 5(3) Regulation 1151/2012 allows for a name to be registered as a designation of origin even though the raw materials come from a geographical area that is larger than the defined geographical area. Under this exception, ‘raw materials’ are limited to live animals, meat and milk. This is allowed for the designations of origin recognised in the country of origin before 1 May 2004, as soon as the production area of the raw materials is defined and there are special conditions for their production.

⁷⁴ Data refer to the registered amendments of EU PDOs and PGIs exported from the EU database into an Excel file, which shows the date of the approved amendment for every GI.

1st, 2nd, and 3rd refer to the 1st, 2nd, and 3rd amendment for the same product. No PDO and No PGI refer to the number of registered PDOs and PGIs for each class of products.

⁷⁵ These results have been complemented with an additional research conducted on Eur-Lex <<https://eur-lex.europa.eu/homepage.html?locale=it>> for products of class 1.2. The research has been conducted by entering the name of each GI together with the keyword “amendment”, resulting in a total of 64 amendments used in the above-mentioned analysis. The research has been conducted on a total of 29 amendments for PDOs and 30 for PGIs. It was not possible to access the following documents: Prosciutto San Daniele PDO, Cotechino Modena PGI, Thüringer Leberwurst PGI, Thüringer Rotwurst PGI, Zampone Modena PGI).

This exception has been applied because these products were registered at the national level based on national provisions adopted before the entry into force of Regulation 2081/1992. The idea was to give relevance to the place of transformation of the raw materials, and not just to their origin. In this sense, it is possible to identify two categories of products: those having a single big area for the origin of the raw materials and their transformation and those having two different areas, one (bigger) for the origin of raw materials and another one (smaller) for their transformation. *Salamini italiani alla cacciatora* PDO⁷⁶ is an example of the first category of products, raw materials originate and are transformed in eleven Italian regions, showing a weak link with the area of origin. *Culatello di Zibello* PDO⁷⁷ is an example of the second category of products: raw materials originate in two Italian regions and are transformed in eight communes within the same region, keeping a stronger link to the territory.⁷⁸ *Sopressa Vicentina* PDO⁷⁹ represents an exception to the categorisation mentioned above, having located the origin of raw materials and their transformation within the same province. In other words, how have GIs amended their geographical area in light of this exception?

The unit of meaning for this analysis are both minor and not minor amendments for EU PDOs and PGIs published in the EU database and approved before 1 November 2019⁸⁰. Regulation 1151/2012 makes a distinction between minor and not minor amendments, at both a substantial and a procedural level. Pursuant to Art. 53, an amendment has to be considered not minor when it affects: the essential characteristics of the product; the link between the quality, reputation or other characteristics of the product and the geographical origin; the name of the product; the geographical area or determines restrictions on trade in the product or its raw materials. In all other circumstances, the amendment will be regarded as minor. The difference at the procedural level is that minor amendments are directly approved or rejected by the Commission, while not minor amendments require the publication of an amendment application pursuant to Art. 50(2)(a) Regulation 1151/2012, conferring the right to oppose pursuant to Art. 51. Oppositions, when filed, have been analysed. Temporary amendments to the product specifications have not been considered due to their temporary nature and limited justification, namely sanitary and phytosanitary measures, formal recognition of natural disasters or adverse weather conditions.⁸¹

⁷⁶ *Salamini italiani alla cacciatora* PDO [2001] OJ L240/2001, no. 2.

⁷⁷ *Culatello di Zibello* PDO [1996] OJ L163/1996, no.2.

⁷⁸ Filippo Arfini Giovanni Belletti and Andrea Marescotti (n 19) 76.

⁷⁹ *Sopressa Vicentina* PDO [2002] OJ C114/16, no. 4.3.

⁸⁰ The analysis has been conducted before the entry into force of Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union [2021] OJEU L435/262. For this reason, the paragraph refers to minor and not minor amendments instead of standard and Union amendments. The new text of Art. 53 defines Union amendments as an amendment to a product specification that: (a) includes a change in the name of the protected designation of origin or protected geographical indication, or in the use of that name; (b) risks voiding the link referred to in Article 5(1), point(b), for protected designations of origin, or the link referred to in Article 5(2), point (b), for protected geographical indications; (c) concerns a traditional speciality guaranteed; or (d) entails further restrictions on the marketing of the product. Standard and Union amendments differ also on the procedural level, in particular, while standard amendments are dealt with at Member State or third country level, Union amendments require an opposition procedure at the Union level.

⁸¹ In addition, the recognition procedure and the template used are different. See Annex VIII Delegated Regulation 664/2014.

The application for approval of a (minor and not minor) amendment contains the original and the amended text, together with the reasons for the amendment. This allows a qualitative analysis of the amendments, clearly identifying the amended elements in the different versions of the documents. The amendments have been classified using the labels ‘more flexible’, when they provide a wider range⁸² or increase the number of options available⁸³ than the ones listed in the previous product specifications; ‘stricter’, when they impose a stricter range⁸⁴ or reduce the number of options available⁸⁵ to producers; ‘both’, when they contain combined provisions aimed at widening and reducing the range available to producers.⁸⁶ The label ‘clarification’ has been used as a residual category used to classify those amendments that do not impose any change on the requirements already established in the product specification but provide additional information on the traditional and common practice of the sector.⁸⁷

The same product specification can be amended multiple times at different moments. In particular, the amendments concern around 30 % of the products of class 1.2, 25% of which have been amended twice and only one product went through a third round of amendment. It has been noted, however, that the majority of the multiple amendments deals with a different section of the product specifications, as further defined in Chart 9. In the case of an overlap between the amendment of a section with the previous one, no contradiction has been found between them. Later amendments tend to clarify the content of the previous ones or modified them in line with the direction already taken by previous amendments.⁸⁸ Therefore, for the purpose of this analysis, every amendment has been individually considered to analyse the modification of the link to origin for PDOs and PGIs.

⁸² Coppa piacentina PDO [2010] OJ C311/24, n. 8. Here the paragraph “The next drying stage takes place in appropriate drying chambers with climate control set at a temperature ranging from 17°C to 20°C, humidity at 75% to 80% and ventilation at 1 to 7 m/s for at least 7 days or, in any event, until the characteristic “mould” has appeared, at which point the product turns the typical rose colour.”, has been replaced by: “The next drying stage takes place in appropriate drying chambers with climate control set at a temperature ranging from 15°C to 25°C, humidity at 40% to 90%, under ventilation, for at least 7 days or, in any event, until the characteristic “mould” has appeared, at which point the product turns the typical rose colour.”, therefore increasing the minimum temperature from 17°C to 15°C and the maximum temperature from 20°C to 25°C.

⁸³ Pancetta di Calabria PDO [2015] OJ C79/9, n. 3. Here the native ‘Apulian-Calabrian’ breed has been added to the list of authorised breeds together with the ‘Duroc’ breed, due to its widespread presence in the pigs’ area of origin.

⁸⁴ Prosciutto di Carpegna PDO [2009] OJ C189/03, no. 3.2. In Art. 5 of the product specifications, the description of the maturing period as ‘on average 14 months and never less than 12’ has been replaced by ‘is not less than 13 months’, therefore raising the minimum requirements.

⁸⁵ Jamon de Teruel PDO [2013] OJ C242/17, no. 3.5. Having regard to the breed, the paternal line is restricted to the Duroc breed for reasons of product homogeneity, thereby reducing the variations in cross-breeds and considerably improving the product quality.

⁸⁶ Pancetta Piacentina PDO [2010] OJ C64/32, no. 10, 11. Here the maturation phase has been increased from at least two months to at least three months from the date of salting, therefore imposing stricter requirements for the drying and ageing phase. At the same time, the range of relative humidity has been increased from 70-80% to 70-90%, therefore giving more flexibility to producers with regard to the maximum percentage of relative humidity.

⁸⁷ Salsiccia di Calabria PDO [2015] OJ77/12, no.3. The ingredients to be used have been clarified, correcting the material error in the current text which stated: ‘red pepper provided for in the applicable provisions of law’. The amendment defines ‘red pepper’ more accurately as ‘chili pepper/bell pepper’, both belonging to the genus *Capsicum* L. Natural ingredients not included in the current text have been expressly listed to reflect historical practices in the area of origin.

⁸⁸ An example are the two amendments of the PDO Coppa Piacentina. As regards the preparation of the meat, the first amendment (Coppa Piacentina PDO [2010] OJ C 311/25, no. 3.7) clarifies the sequence of stages

The main category of the code structure has been created based on the headings of the product specifications used in the analysis conducted in Chapter 1 of this book. A code is then assigned to every quotation describing an amendment. As the analysis proceeds, data that cannot be coded is identified, new codes are developed, adapting and revising the initial coding scheme. After the first reading, labels for codes start to emerge, leading to the creation of the code structure, as further explained in the table below.

which the coppa goes through, making clear that the coppa is manually massaged during the refrigerated storage and only afterwards covered in pig' abdominal wall and both add flexibility. The second one (Coppa Piacentina PDO [2014] OJ C 88/21, no. 3) provides more flexibility by deleting the obligation to slice off the neck muscle while it is warm and allows this operation to take place at a later stage.

As regards flavourings, both amendments provide more flexibility. The first amendment (section no. 3.6.) introduces minimum and maximum amounts of individual ingredients to the mixture of natural salts and flavourings, allowing each producer to personalise the recipe. The second one (section n. 3) adds sugar as an additional component to the salting mixture to make the process more stable during the maturing process.

Chart 9 Code structure

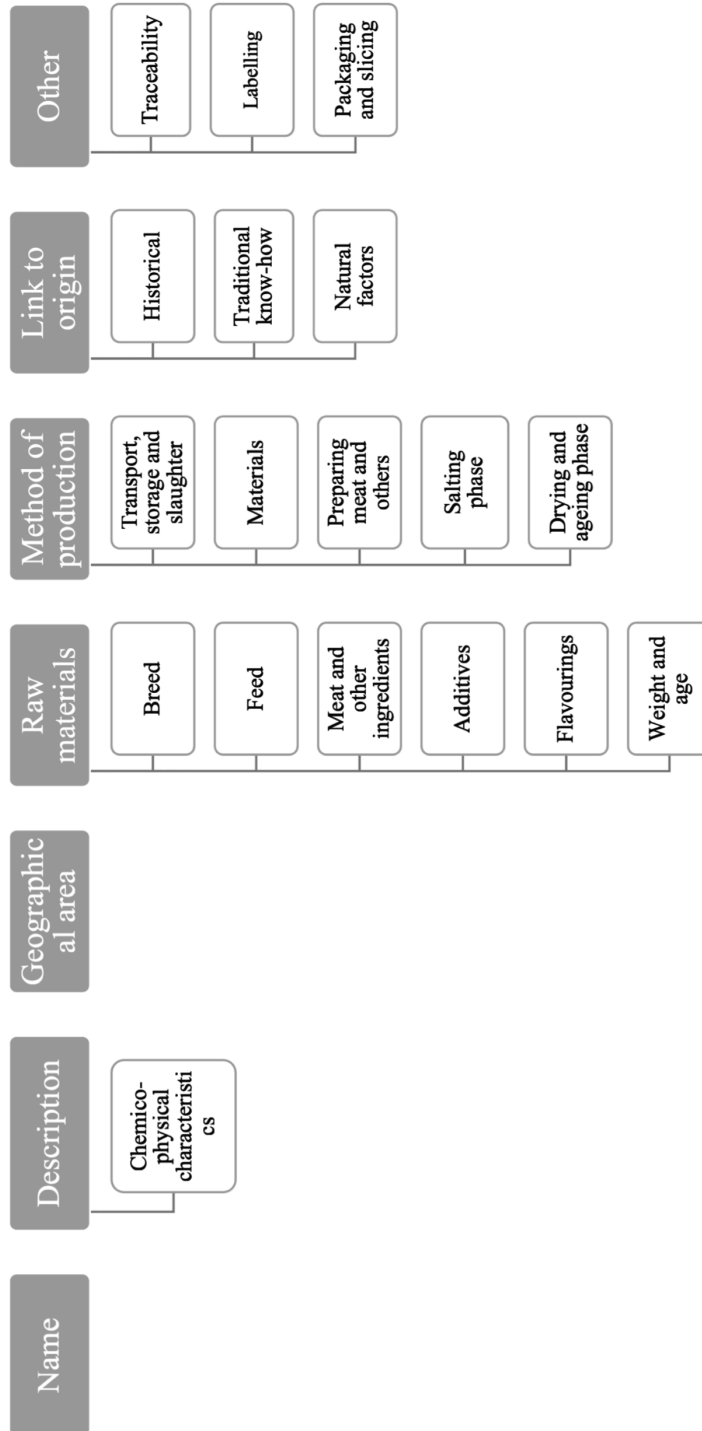


Chart 10 Amendments for PDOs

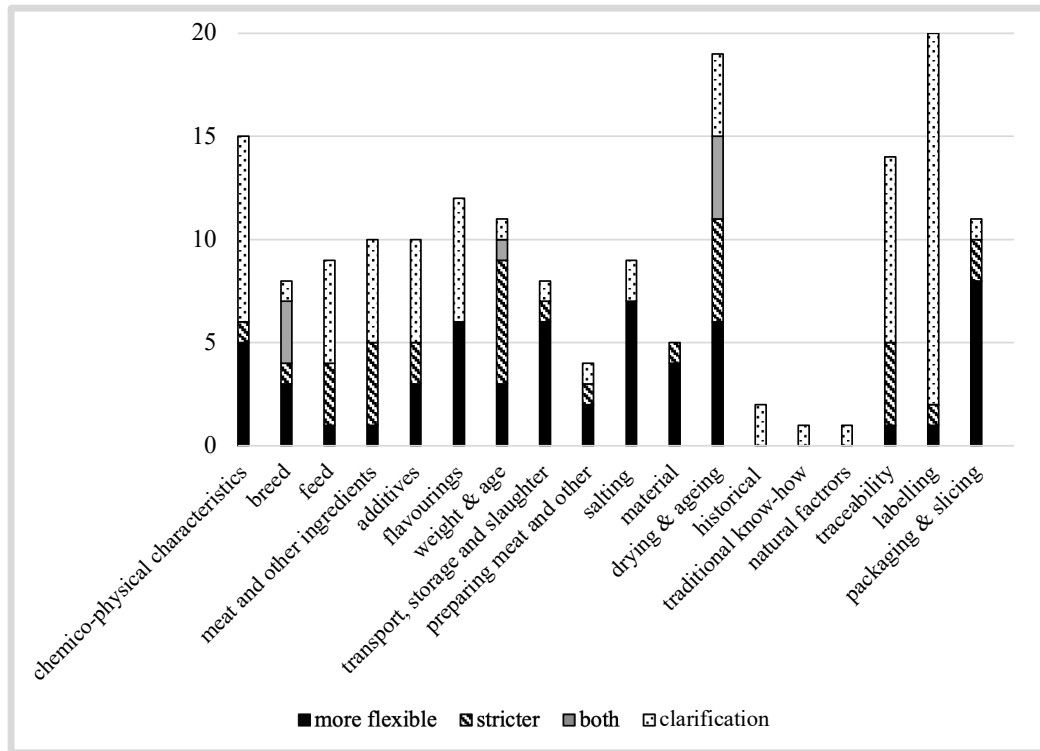
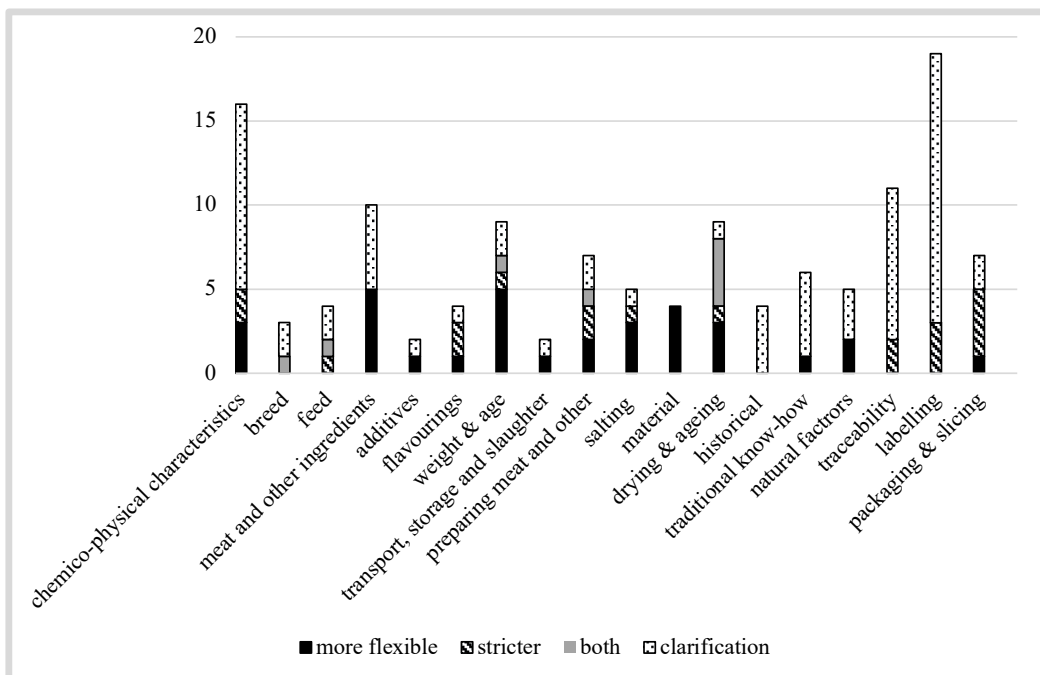


Chart 11 Amendments for PGIs



2.4.2. Analysis of the amendments

The following sections analyse the amendments for every category of the code structure: namely, description of the product, geographical area, raw materials, method of production, causal link to origin, traceability, labelling, and packaging. The results have been grouped into PDOs and PGIs and then compared, highlighting the differences and commonalities between the two EU quality schemes.

2.4.2.1. Amendments to the description of the product

Having regard to the description of the product, the majority of the amendments aim at clarifying the chemical-physical characteristics of the products by better defining their external appearance (weight, length, and shape). One example is the ‘V-shaped cut’ of Jamón de Teruel, specifying that the cut is always made in the vertex in the thickest part of the ham but that, depending on the shape of the ham, may not always be in the midpoint of the femur.⁸⁹ Other amendments intend to clarify their organoleptic characteristics (aroma, flavour, smell, and taste). One example is the description of the flavour and smoky fragrance of Tiroler Speck (“slightly spicy, underpinned by clear and recognisable smoky notes on a full meaty flavour, rounded off with a recognisable saltiness”), depending on the typical cold-smoking process and the spices used.⁹⁰

For both PDOs and PGIs, the majority of the amendments to the description introduce some flexibilities to the values already defined in the previous version of the product specifications,⁹¹ adapting the product to new production techniques and eating habits. For example, the basis for expanding the thickness, length and weight of Halberstädter Würstchen lies in consumers' eating habits, which have changed over recent years.

Only a few PDOs and PGIs amend the description of the products with stricter requirements. An example is Bresaola della Valtellina, creating different values for moisture and protein depending on the nature of both the cut used and the type of packaging. In particular, tests carried out on the finished product have revealed that Bresaola della Valtellina in nets tends to dehydrate naturally and may have a moisture level higher than that of the vacuum-packed product. As a consequence, “the sliced product must have lower moisture content than that of the vacuum-packed or netted product, in order to prevent condensation and the resultant deterioration of the finished product”.⁹²

2.4.2.2. Amendments to the geographical area

The geographical area for PDOs has rarely been amended. The list of amendments contains two clarifications: one is aimed at better defining the area of production of the raw materials and the area of production and maturing of the final product;⁹³ the other one is aimed at correcting mistakes contained in the previous product specifications.⁹⁴ In addition to that, this section contains an amendment that brings together the criteria for identifying the final stage of production and the curing facility. This method, more accurate than the previous one, refers to the absolute altitude of the

⁸⁹ Jamón De Teruel PDO [2013] OJ C 242/17, no. 3.2.

⁹⁰ Tiroler Speck PDO [2018] OJ C 46/8, no. 4.2.2.

⁹¹ Pancetta di Calabria PDO [2015] OJ C 78/9 no. 3. Pancetta Piacentina PDO [2010] OJ C 64/33, no. 3. Coppa Piacentina PDO [2010] OJ C 311/25, no. 3. Salame Piacentino PDO [2010] OJ C 122/18, no. 3. Halberstädter Würstchen PGI [2014] OJ C270/5, no. 3. b.

⁹² Bresaola della Valtellina PGI [2010] OJ c 321/23, no. 3.1.

⁹³ Dehesa de Extremadura PDO [2016] OJ C 207/21, no. 3.

⁹⁴ Guijuelo PDO [2015] OJ C 329/7, no. 3.

facilities entered in the PDO registers and not to the altitude of the municipalities. A margin of tolerance has been adopted to keep the facilities registered under the previous product specifications.⁹⁵

As for PDOs, the geographical area for PGIs has rarely been amended. The amendments contain four clarifications rectifying the list of municipalities, including some municipalities at first excluded by an oversight, correcting some spelling mistakes and describing the boundaries of the geographical area with a higher degree of accuracy.⁹⁶

2.4.2.3. Amendments to the raw materials

This section starts with the analysis of the geographical origin of raw materials, in light of the exception pursuant to Art. 5(3) Regulation 1151/2012, which allows raw materials for PDOs to come from a larger area. This section continues with the analysis of the amendments of other characteristics of raw materials (namely breed, feed, characteristics of the meat, additives, flavourings, weight and age of the animal) and their difference between PDOs and PGIs.

The analysis of the amendments to the geographical origin of raw materials shows that PDOs did not change the provisions concerning the origin of raw materials by means of an amendment. On the contrary, 4 out of 30 PGIs loosened their link to origin allowing raw materials to come from outside the area of production;⁹⁷ the most common reason presented by producers is that product's characteristics and appearance are not affected by the extent to which the ingredients originate in the region.

The category of raw materials for PDOs presents stricter amendments when it comes to 'feed', 'meat and other ingredients', and 'weight and age'. It is possible to observe how feed and the fattening phase have been strictly regulated in three amendments, introducing a minimum fattening time, a stocking density, and replacing the maximum permitted average weight with a minimum weight for the individual carcasses.⁹⁸ Four amendments present a stricter definition of the characteristics of the meat, such as the EU classification scale used to distinguish the carcasses of the animals,⁹⁹ together with the definition of minimum and maximum limits of fat and the use of specific meat cuts. The sub-category weight and age has been deeply modified. In particular, the weight of the carcasses has been

⁹⁵ Jamon de Teruel PDO [2013] OJ C 242/18 no. 3. The geographical area for processing is located in the province of Teruel in facilities located at 800 m or more above the sea level. Given that there are some facilities, registered under the not very accurate methods of calculating altitude, a margin of tolerance of 6% is applied (equivalent to a total of 48 m). It should be noted that in the troposphere, that is in the lowest layer of the atmosphere, the temperature falls by an average of 0.65°C with every 100 m of altitude gain, which — applying the tolerance margin — would equate to allowing facilities with an average temperature of 0.31°C higher than the temperature at the 800 m limit. The admission of this variation, imperceptible in the production process, would avoid excluding from the PDO facilities that are already registered which have produced products covered by it whose characteristics meet all the quality requirements established by the specification.

⁹⁶ Saucisson de l'Ardèche PGI [2015] OJ C437/9, no. 5.2. Jambon de l'Ardèche PGI [2015] OJ C330/3, no. 5.1. Gailtaler Speck PGI [2018] OJ C195/47, no. 5. Schwarzwälder Schinken [2012] OJ C274/2, no. 3.c.

⁹⁷ Thüringer Rostbratwurst PGI [2011] OJ C310/15, no. 3.1. Gailtaler Speck PGI [2018] OJ C195/47, no. 5. Jambon Sec des Ardennes PGI [2014] OJ C444/26, no. 3.3. Eichsfelder Feldgieker PGI [2015] OJ C281/12, no. 5.3.

⁹⁸ Jabugo PDO [2016] OJ 415/9 no.5. Dehesa de Extremadura PDO [2016] OJ C 207/19 no. 5. Guijuelo PDO [2015] OJ 329/3 no. 5.

⁹⁹ Prosciutto di Parma PDO [2013] OJ L317/10, no. 3. Salsiccia di Calabria PDO [2015] OJ C 77/12, no. 3 and Soppressata di Calabria PDO [2015] OJ C 82/7, no. 3.

increased,¹⁰⁰ replacing other requirements such as length or weight of the entire animal with the weight of the single meat cut,¹⁰¹ to better characterise the raw materials used in the production process.

Other sub-categories such as ‘breed’ and ‘flavourings’ present more flexible amendments aimed at allowing producers to personalise the recipe. For example, under the sub-category ‘breed’, the list of authorised breeds has been amended, authorising more breeds and crossbreeds; this is justified by reason of the widespread presence of a certain breed in the area of origin.¹⁰² The sub-category ‘flavourings’ presents lower minimum and higher maximum percentages of pepper, cloves, salt and other flavourings,¹⁰³ adapting the product specifications to the growing trends reducing the amount of salt in food.

For ‘feed’, ‘meat and other ingredients’, ‘additives’ and ‘flavourings’ there is a consistent percentage (around 50%) of the amendments aimed at better clarifying the existing product specifications. An example concerns the ingredients used in the production of Pancetta di Calabria, further clarifying that the ‘red pepper’ used is ‘chilli pepper/bell pepper’, both belonging to the genus *Capsicum* L, expressly mentioned to reflect historical practices in the area of origin.¹⁰⁴

Conversely, the category of raw materials for PGIs is characterised by a higher degree of flexibility when it comes to ‘meat and other ingredients’, the use of ‘additives’, and ‘weight and age’ of the animal. In particular, various amendments allow a change in the muscle ratio,¹⁰⁵ considering the advance in breeding techniques. The sub-category additives allows the use of nitrates,¹⁰⁶ while the sub-category weight and age increases the range of minimum and maximum age and weight of the animal at slaughter¹⁰⁷ since this does not alter the characteristics of the raw materials used in the production.

To sum up, the analysis shows that PDOs balance the broad exception of the origin of raw materials provided by Art. 5(3) Regulation 1151/2012 with the adoption of stricter requirements for the characteristics and use of raw materials, in particular feed, characteristics of the meat, and weight and age of the animal. Conversely, PGIs tend to amend the same categories by allowing more flexibility.

2.4.2.4. Amendments to the method of production

This part of the research deals with the analysis of the method of production. The following categories have been identified: transport (including storage and slaughter), preparation of the meat, salting, drying/ageing, and the materials used in various phases of production (such as wood used in the

¹⁰⁰ Pancetta Piacentina PDO [2010] OJ C 64/33, no. 3. Coppa Piacentina PDO [2010] OJ C 311/25, no. 3. Salame Piacentino PDO [2010] OJ C 122/18, no. 3. Dehesa de Extremadura PDO [2016] OJ C 207/17, no. 5.

¹⁰¹ Guijuelo PDO [2015] OJ C 329/3, no. 3.

¹⁰² Pancetta di Calabria PDO [2015] OJ C 78/9 no. 3. Dehesa de Extremadura PDO [2016] OJ C 207/18, no. 5 and Guijuelo PDO [2015] OJ C 329/3, no. 5 (the requirement of meat cuts coming from “pure-bred Iberian pigs or crosses with 75% Iberian blood and 25% Duroc-Jersey blood” has been replaced with a looser one, requiring “at least 75% Iberian blood”).

¹⁰³ Pancetta Piacentina PDO [2010] OJ C 64/33, no. 3. Pancetta Piacentina PDO [2014] OJ C 86/9, no. 3. Coppa Piacentina PDO [2010] OJ C 311/25, no. 3. Coppa Piacentina PDO [2014] OJ C 88/21, no. 3. Salame Piacentino PDO [2010] OJ C 122/19, no. 3. Salame Piacentino PDO [2014] OJ C 88/26, no. 3.

¹⁰⁴ Pancetta di Calabria PDO [2015] OJ C 78/9, no. 3.

¹⁰⁵ Jambon de l’Ardèche PGI [2015] OJ C330/3, no. 5.2.

¹⁰⁶ Jambon Sec des Ardennes PGI [2014] OJ C444/26, no. 3.4.

¹⁰⁷ Gornooryahovski Sudzhuk [2014] OJ C75/10, no. 3.1. Zgornjesavinjski Želodec PGI [2015] OJ C145/23, no. 5.2. Saucisson de l’Ardèche PGI [2015] OJ C437/10, no. 5.3.1. Prosciutto di Norcia PGI [2016] OJ C153/17, no. 5. Breasaola della Valtellina PGI [2010] OJ C321/25, no. 3.4.

smoking process). As in the previous section, the amendments have been analysed and compared with the PDO and PGI quality scheme used for their registration.

Different from the amendments to raw materials, the majority of the amendments regarding the method of production for PDOs provide some flexibility to producers. The sub-category ‘transport, storage and slaughter’ gives flexibility regarding the minimum time that the meat has to stay at the slaughterhouse before slaughter¹⁰⁸ or other deadlines.¹⁰⁹ The sub-category ‘preparing meat and others’ provides some flexibility concerning the operations that have to take place when processing the raw material.¹¹⁰ The amendments contained in the sub-category ‘material’ allow the introduction of non-traditional material in the process of production,¹¹¹ to better reflect current market conditions, such as the possibility to use elastic twine and not only natural one in the tying process, with the result of facilitating tying and improving the processing of the product. The amendments of the sub-category ‘salting’ are characterised by a difference in the salting period, usually a decrease of the minimum period;¹¹² this complies with modern salting techniques and avoids the meat absorbing too much salt, in line with consumers’ current food requirements. The sub-category ‘drying and ageing’ contains adjustments of the relative humidity and temperature ranges to more adequately reflect the customary manufacturing cycle and to adapt to climate change and customers’ needs.¹¹³

Similarly, PGIs provide a higher degree of flexibility to producers. The subcategory ‘transport, storage and slaughter’ broadens the temperature range used in the delivery of the meat.¹¹⁴ Some amendments allow the use of machines in the salting process, together with the traditional hand-made process.¹¹⁵ Tradition is partly overcome also in the sub-category ‘material’, which allows the use of non-traditional wood in the smoking process and expands the type of casings permitted in the production.¹¹⁶ The sub-category ‘drying and ageing’ broadens the length of the process and introduces more flexible temperature and ageing conditions.¹¹⁷

The research conducted into the method of production shows that there is no difference concerning PDOs and PGIs, both quality schemes have been amended providing more flexibility to producers.

¹⁰⁸ Jabugo PDO [2016] OJ 415/9 no.5

¹⁰⁹ Valle d’Aosta Lard d’Arnad PDO [2010] OJ C 222/14, no. 3. Prosciutto di Carpegna PDO [2009] OJ C189/03, no. 3.2.

¹¹⁰ Coppa Piacentina PDO [2014] OJ C88/20, no. 3. Salame Brianza PDO [2013] OJ L 243/10.

¹¹¹ Capocollo di Calabria PDO [2015] OJ C82/12, no. 3. Pancetta Piacentina PDO [2014] OJ C 86/9, no. 3. Coppa Piacentina PDO [2014] OJ C 88/21, no. 3. Salame Piacentino PDO [2014] OJ C 88/26, no. 3.

¹¹² Crudo di Cuneo PDO [2016] OJ C188/54, no. 5. Jabugo PDO [2016] OJ 415/9 no.5. Prosciutto di Carpegna PDO [2009] OJ C189/03, no. 3.2. Coppa Piacentina PDO [2014] OJ C 88/21, no. 3. Guijuelo PDO [2015] OJ 329/3 no. 5.

¹¹³ Jabugo PDO [2016] OJ 415/9 no.5. Coppa piacentina PDO [2010] OJ C311/24, no. 3.8. Coppa Piacentina PDO [2014] OJ C88/20, no. 3. Salame Piacentino PDO [2010] OJ C 122/18, no. 3.8. Salame Piacentino PDO [2014] OJ C 88/26, no. 3. Dehesa de Extremadura PDO [2016] OJ C 207/17, no. 5.e.

¹¹⁴ Speck Alto Adige PGI [2016] OJ C334/9, no. 5.

¹¹⁵ Jambon Sec des Ardennes PGI [2014] OJ C444/26, no. 3.4. Schwarzwälder Schinken [2012] OJ C274/2, no. 3.e.

¹¹⁶ Holsteiner Katenschinken PGI [2017] OJ C247/8, no. 5. e. Gailtaler Speck PGI [2018] OJ C195/47, no. 5. Salchichón de Vic PGI [2017] OJ C368/11, no. 5. Halberstädter Würstchen PGI [2014] OJ C270/5, no. 3. e.

¹¹⁷ Kranjska Klobasa PGI [2015] OJ C441/5, no. 5.1. Speck Alto Adige PGI [2016] OJ C334/9, no. 5. Breasaola della Valtellina PGI [2010] OJ C321/25, no. 3.2.

2.4.2.5. Amendments to the information on link to the territory

The category link to the territory is used to group the amendments concerning natural, human and historical factors linking the product to its territory. For both PDOs and PGIs, the majority of the amendments do not involve any change of the link, as regards either the natural and human environment, but are aimed at clarifying the specificity of the product and its causal link between the geographical area and its quality or characteristics. To do so, new sections on the historical event that support the use and renown of the geographical name, its accuracy and its link to the defined geographical area have been added.¹¹⁸ Information related to the human expertise that allows a high-quality product to be produced in the geographical area has been incorporated in the new specifications together with a more accurate description of the specific pedo-climatic conditions.¹¹⁹

For PGIs, some flexibility has been introduced about the natural link to the geographical area, in particular, the use of raw materials traditionally linked to the territory and the climatic conditions influencing the maturing period of the product.¹²⁰

2.4.2.6. Amendments to other categories

The category named ‘other’ groups together the amendments related to ‘traceability’, ‘labelling’, and ‘packaging and slicing’. As for the previous categories, the majority of modifications are aimed at clarifying the product specifications, mainly about the correct reference to the EU quality scheme and the EU quality symbol, in line with the current EU Regulation.¹²¹ In addition, the sub-category ‘packaging and slicing’ refers to the presentation, materials and weight of the packaging.¹²² The sub-category ‘traceability’ provides clarification on the tags and seals required by the national legislation in force, avoiding confusion in the slaughterhouse.¹²³

For both PDOs and PGIs, the amendments on ‘traceability’ and ‘labelling’ tend to clarify the information provided in the previous versions of the product specifications, monitoring each stage of the production process, keeping records and notifying the inspection body to ensure product traceability, providing a special system of sealing meat, and reducing the deadline for affixing an indelible stamp on the animal.¹²⁴ Having regard to ‘labelling’, detailed and comprehensive rules on labelling have been adopted to improve transparency and the information given to consumers. The use of additional information has also been regulated to indicate more precisely the cut of meat used and/or the producer's region within the defined geographical area. This provides a more accurate description of the product and more targeted information for consumers.¹²⁵

Conversely, the sub-category ‘packaging and slicing’ provides more flexibility, allowing the product to be sold whole, in pieces or slices in vacuum or modified atmosphere packaging. This has become

¹¹⁸ Zgornjesavinjski Želodec PGI [2015] OJ C145/23, no. 5.3.

¹¹⁹ Gailtaler Speck PGI [2018] OJ C195/47, no. 5.

¹²⁰ Holsteiner Katenschinken PGI [2017] OJ C247/8, no. 5. f. Schwarzwälder Schinken [2012] OJ C274/2, no. 3.f.

¹²¹ *Inter alia*, Coppa piacentina PDO [2010] OJ C311/24, no. 15.

¹²² Prosciutto di Parma PDO [2010] OJ L47/6, no. 2.

¹²³ Jabugo PDO [2016] OJ 415/9 no.5. Sopressa Vicentina PDO [2010] OJ L170/1. Saucisson de Lacaune PGI [2017] OJ C 214/25, no. 5.

¹²⁴ Prosciutto di Modena PDO [2010] OJ C72/20, no. 3.1. Prosciutto Veneto Berico-Euganeo PDO [2016] OJ C418/5, no. 5. Gailtaler Speck PGI [2018] OJ C195/47, no. 5. Speck Alto Adige [2011] OJ C199/19, no. 3.3.

¹²⁵ Prosciutto Toscano PDO [2009] OJ C322/22, no. 3.3. Tiroler Speck PGI [2018] OJ C46/8, no. 5.5. Cecina de León PGI [2012] OJ C81/6, no. 3.4.

necessary to adapt to new ways of purchasing and consuming the product while preserving its organoleptic characteristics.¹²⁶ In some cases, flexibility has been introduced for PDOs, allowing packaging and slicing to take place outside of the area of production.¹²⁷ Other amendments are stricter when it comes to packaging and slicing, in particular, when they require the name of the producer or the packaging firm since these two operators can provide a substantive guarantee as regards the information given on the product and therefore they may legitimately be regarded as ‘responsible’ vis-à-vis consumers¹²⁸ and when they require slicing and packaging to be done in the area of production to safeguard the reputation of the designated product by guaranteeing not only its authenticity but also its qualities and characteristics.¹²⁹

Therefore, there is no clear difference between PDOs and PGIs when it comes to the amendments in this category. Both PDOs and PGIs have a conservative approach to the amendments concerning traceability and labelling, while the sub-category ‘packaging and slicing’ provides at the same time flexible and strict amendments, in particular regarding the area where packaging has to take place (two PDOs allow packaging also outside the area of production, while one PDO and three PGIs restrict packaging to the area of production). The place of ‘packaging and slicing’ has been assessed by case law in various occasions, proving the relevance of these operations which may damage the quality and authenticity of the products if the requirements set in the product specifications are not complied with.¹³⁰

2.4.2.7. Amendments per Member State

Apart from the analysis of the amendments for products of class 1.2, grouped into PDOs and PGIs, further research has been conducted on the products originating from those Member States with the highest number of amendments: namely, Italy (19 products amended), Spain (6 products), Germany (6 products) and France (5 products).

This analysis has been limited only to the categories that present a higher number of amendments (‘raw materials’ and ‘method of production’). Due to the limited number of products, the results have not been classified into PDOs and PGIs but have been considered altogether in order to identify possible national trends towards more flexible or stricter amendments.

¹²⁶ Pancetta di Calabria PDO [2015] OJ C79/9, no. 3. Salsiccia di Calabria PDO [2015] OJ77/12, no.3. Soppressata di Calabria PDO [2015] OJ C 82/7, no. 3. Dehesa de Extremadura PDO [2016] OJ C 207/21, no. 3. Gailtaler Speck PGI [2018] OJ C195/47, no. 5.

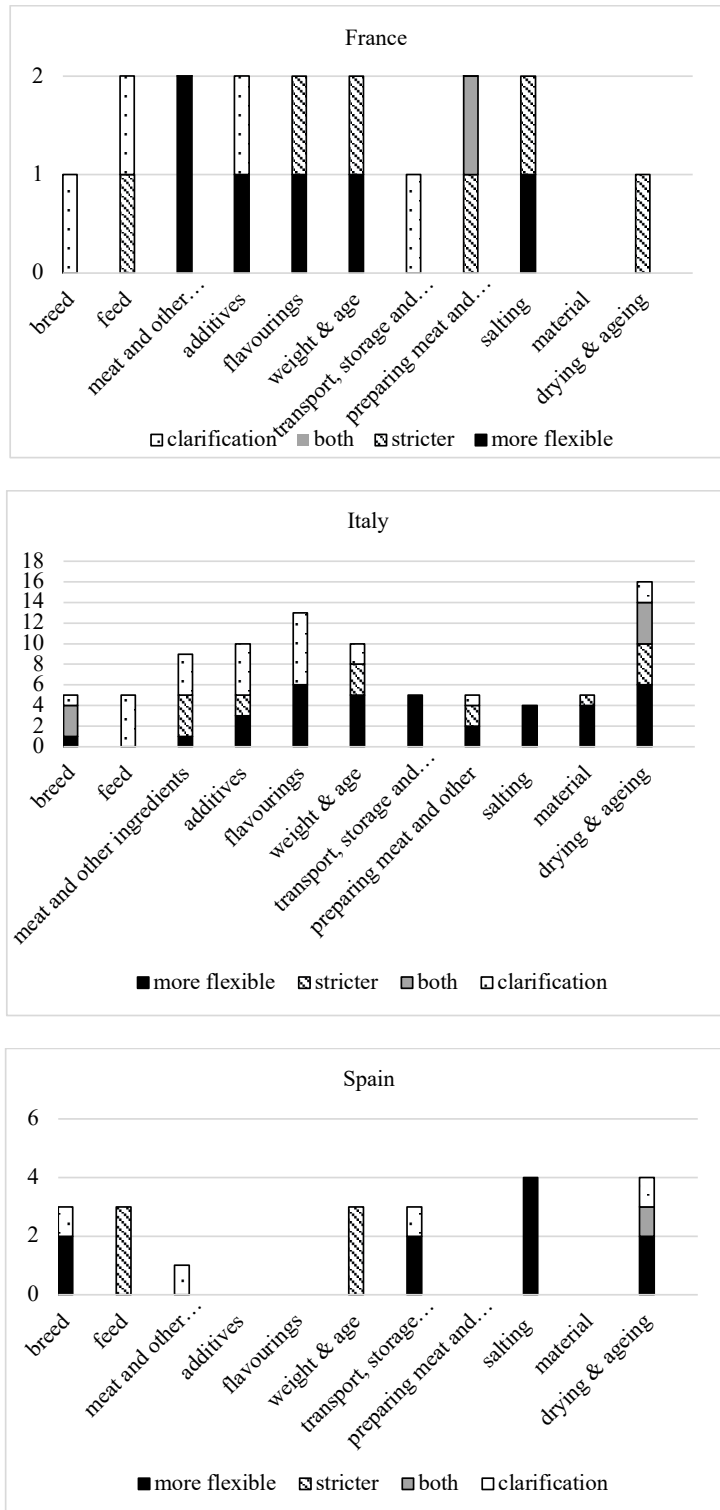
¹²⁷ Prosciutto Veneto Berico-Euganeo PDO [2016] OJ C418/5, no. 5. Presunto de Barrancos PDO [2014] OJ C432/16 no. 3.5.

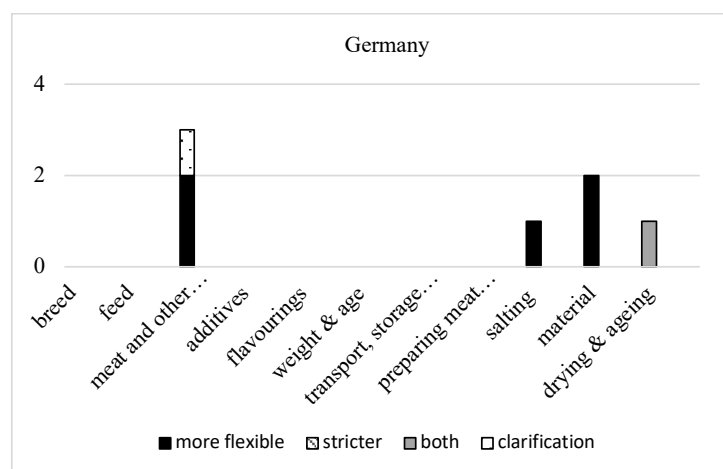
¹²⁸ Prosciutto di Parma PDO [2013] OJ C317/8, no. 3.

¹²⁹ Prosciutto Toscano PDO [2009] OJ C322/33, no. 3.2. Nürnberger Bratwürste PGI [2017] OJ C292/12, no. 5. e. Canard à Foie Gras du Sud-Ouest PGI [2015] OJ C11/18, no. 3.4. Tiroler Speck PGI [2018] OJ C46/8, no. 5.

¹³⁰ Further discussed in section 4.4. of this chapter.

Chart 12 Amendments to French, Italian, Spanish and German products





The results of the analysis seem to show a certain directionality of the amendments. While Italian, Spanish and German amendments resulted in more flexible product specifications, it is worth noting that French amendments appear more balanced, with an equal number of more flexible and stricter amendments (6 each).

However, these results may be biased by the small samples considered and cannot be used to claim a clear direction of the amendments for each Member State. Nonetheless, it is important to note that these results seem in line with previous research in the field, showing a similar directionality for Italian, Spanish and French amendments for fruit and vegetables in class 1.6¹³¹.

In order to prove a directionality of the amendments, and possibly a loosening of the link to origin, further research should be conducted on other group categories containing higher number of amendments, e.g. cheese in class 1.3.

2.4.3. Reasons for the amendments

Pursuant to Art. 6 Delegated Regulation 664/2014, the amendments published in the Official Journal of the EU contain the reasons for the amendments of the product specifications. A qualitative analysis of the reasons for the amendments shows a difference between PDOs and PGIs, in particular when it comes to the amendments of the sections concerning raw materials and the method of production.

Table 3 Reasons for the amendments

	29 PDO	30 PGI	29 PDO	30 PGI	29 PDO	30 PGI
	Raw materials	Raw materials	Method of production	Method of production	Other ¹³²	Other
Change in raw materials	2	5	0	0	0	0

¹³¹ Andrea Marescotti (n 72) 3576

¹³² This category concerns the reasons for the amendment dealing with sections on description, geographical area, labelling, and link to origin, as described in Table 2.

Common practice	0	7	2	8	0	0
Food safety	5	1	5	9	0	0
Legal provisions	7	6	1	1	23	14
Market needs	5	9	9	4	11	10
Modern practice	2	2	13	13	2	0
More accurate description	51	37	11	24	3	19
Quality	7	6	11	7	0	0
Traditional practice	5	2	12	4	0	0
Climate change	0	0	4	1	0	0
Traceability	0	0	0	0	3	9
Animal welfare	0	0	0	0	2	0

For PDOs, the majority of the amendments concerning raw materials provide a more accurate description of the specifications, correcting mistakes and using more precise wording, avoiding misinterpretation. Other frequent reasons concern producers' willingness to modify the section on raw materials to make them more in line with traditional practices, to improve the quality of the final product, and to comply with both national and EU legal provisions.¹³³ When it comes to PGIs, producers' interest, apart from a more accurate description and a focus on quality, is to adapt product specifications to the changes in raw materials, to adhere to common practices without specifying whether these are traditional practices that have not been codified in the previous version of the specifications or whether these are innovations commonly adopted by the majority of producers, and market needs.¹³⁴

As to the method of production, both PDO and PGI producers are interested in achieving more flexibility to adapt their product to a new market and consumers' needs, modern practices of production, and new food safety standards. For PDOs, an interesting percentage of amendments have been adopted to adapt to climate change (4 amendments) and to increase compliance with traditional practices (12 amendments).¹³⁵

A closer look at Table 3 shows that some amendments are aimed at making the product compliant with traditional or modern practice. In other words, keeping tradition or adopting modern and widely

¹³³ See Coppa piacentina PDO [2010] OJ C311/24, no. 3 (more accurate description). Coppa piacentina PDO [2010] OJ C311/24, no. 3 (improve quality). Guijuelo PDO [2015] OJ C 329/7, no. 5 f (legal provisions).

¹³⁴ See Jambon de l'Ardèche PGI [2015] OJ C330/3, no. 5.2 (change of raw materials). Saucisson de l'Ardèche PGI [2015] OJ C437/9, no. 5.3.1 (common practices). Zgornjesavinjski Želodec PGI [2015] OJ C145/23, no. 5.1 (market needs).

¹³⁵ Salame Piacentino PDO [2014] OJ C 88/26, no. 3 (market needs). Valle d'Aosta Lard d'Arnad PDO [2010] OJ C 222/14, no. 3.3 (modern practices). Canard à Foie Gras du Sud-Ouest PGI [2015] OJ C11/18, no. 3.3.6 (food safety). See Coppa piacentina PDO [2010] OJ C311/24, no. 3.9 (climate change). Capocollo di Calabria PDO [2015] OJ C82/12, no. 3 (traditional practice).

recognised standards were the main reasons that justified the amendments. An example could be the ban on using nitrites and nitrates in Prosciutto Toscano to strengthen the link with the historical method of production.¹³⁶ For the sake of completeness, it is important to consider that some amendments, like those related to food safety, change in raw materials and climate change, have the indirect consequence of strengthening tradition or fostering innovation even if they were not raised as the main reason to amend the product. Schwarzwälder Schinken, for example, is no longer cured in wooden vats but in stainless steel containers for reasons of hygiene, therefore requiring an innovation in the production methods.¹³⁷

To sum up, Table 3 shows that modifications of product specifications are more conservative for PDOs rather than for PGIs when it comes to the origin/production of raw materials, while they both tend to achieve more flexibility when it comes to the method of production.

An analysis of the reasons for the amendments shows that reference to tradition and innovation is spread among all the various categories of amendments. When it comes to the amendments of raw materials, respect for traditional practice is mentioned with regard to the chemico-physical characteristics of the products, weight and age of the animals, and the use of additives and flavourings. In the section regarding the method of production, tradition is mentioned having regard to the materials used in the production and the phases of salting, preparing, drying and ageing meat. Table 3 shows that tradition appears more often as a reason for the amendment of product specifications for PDOs rather than for PGIs, in particular when it comes to the method of production.

As regards innovation, amendments in line with modern practice are mentioned with regard to raw materials concerning flavourings and the weight and age of the animal. As regards the method of production, amendments in order to comply with modern practices are mentioned in the categories dealing with the materials used, and with the categories of preparing meat, salting, drying and ageing, transport, storage and slaughtering. Table 3 shows that innovation as a reason for the amendments appears the same number of times for PDOs and for PGIs, both when it comes to the amendment of raw materials and for the method of production.

In addition, the fact that sometimes tradition and innovation coexist within the same product, as reasons for different amendments, can be used to prove that they are deeply intertwined in GIs, arguing in favour of the fact that tradition and innovation are ‘two sides of the same coin’, as already discussed in section 2.3 of this chapter. An example can be found in the amendments of Capocollo di Calabria where, on the one hand, the extension of the maximum curing time from 8 to 14 days takes traditional processing methods into account and, on the other hand, the removal of the requirement to use only natural twine in the tying process (enabling manufacturers to use elastic twine) facilitates tying and improves the processing of the product.¹³⁸

2.4.4. Results of the analysis of the link to origin in amendments

The analysis of the categories mentioned above contributes to understanding the impact that PDOs and PGIs may have had on the amendments of product specifications. In particular, it has been observed that the geographical area for both PDOs and PGIs has rarely been amended, mainly to better define the area of production and correct some spelling mistakes.

¹³⁶ Prosciutto Toscano PDO [2013] OJ L 302/30, Annex I.

¹³⁷ Schwarzwälder Schinken PGI [2012], OJ C 274/2, no. 3.e.

¹³⁸ Capocollo di Calabria PDO [2015] OJ C82/12, no. 3.

As regards raw materials, the amendments show few changes in their geographical origin. In particular, PDOs adopted a more conservative approach than PGIs. Even if PDOs do not show a trend regarding a restriction of the geographical origin of their raw materials, they did not loosen it either. Conversely, 4 out of 30 PGIs loosened their link to origin allowing raw materials to come from outside the area of production.

As regards the other sub-categories of raw materials, PDOs tend to balance the broad exception of the origin of raw materials provided by Art. 5(3) Regulation 1151/2012 with the adoption of stricter requirements for the characteristics and use of raw materials, in particular feed, characteristics of the meat, and weight and age of the animal. Conversely, PGIs tend to amend the same categories by allowing more flexibility. The remaining sub-categories present clarification and more flexible amendments for both PDOs and PGIs.

As regards the method of production, both PDOs and PGIs tend to provide more flexibility to producers. In other words, the amendments of the method of production have not been influenced by the specific quality scheme chosen.

To sum up, as confirmed by the analysis of the reasons for the amendments, the analysis of the link to origin concerning the geographical area of production, the raw materials and the method of production shows that there is no significant difference between PDOs and PGIs, except for the origin/production of raw materials. Here a correlation has been found, showing that PDOs are more conservative than PGIs, reducing the range of options available to producers. Further research is required in order to prove whether these results can be verified also for other categories of products, in particular those that do not benefit from the exception of Art. 5(3) Regulation 1151/2012 and whether this can be translated into a strengthening or loosening of the link to origin, taking into account not only the reasons for the amendments presented by the group of producers but also a technical analysis of the amendments showing how they affect the link to origin.

The approach adopted for the sub-category ‘packaging and slicing’, in particular regarding the area where packaging and slicing must take place, requires a deeper analysis. The amendments show that provisions concerning packaging and slicing have been amended in different ways, with more flexible amendments in some circumstances and stricter ones in others. In particular, as already observed in section 2.4.2.6., one PDO and three PGIs have restricted packaging and slicing to the area of production, while two PDOs have been amended allowing these steps to take place also outside the area of production.

According to case law,¹³⁹ grating of cheese and slicing of ham and their packaging constitute important operations which may damage the quality and authenticity of the products if those requirements set in the product specifications are not complied with. Even if the protection conferred by a PDO does not normally extend to those operations, they can be prohibited to third parties located outside the production area when this is laid down in the product specifications to ensure the quality of the product, which would otherwise be impossible to guarantee. The reason is that products would not be protected in the same way by an obligation imposed on operators outside the region of

¹³⁹ As ruled by the Court of Justice of the European Union (CJEU) in 20/05/2003, C-469/00, *Ravil SARL v Bellon import SARL, Biraghi SpA* ECLI:EU:C:2003:295 § 83 and C-108/01, *Consorzio del Prosciutto di Parma, Salumificio S. Rita SpA v Asda Stores Ltd, Hygrade Foods Ltd* ECLI:EU:C:2003:296 § 50.

production to inform consumers by appropriate labelling that grating, slicing and packaging have taken place outside that region.

Since there is no legal obligation that restricts these steps within the production area, a focus has to be placed on the justification for the amendments. In particular, the reason for not limiting slicing within the production area is due to the fact that it does not affect the characteristics of the product and restricts its sale in different formats.¹⁴⁰ On the other hand, the safeguarding of authenticity, quality and characteristics are raised as arguments to justify the restriction of slicing and packaging to the production area, namely specific environmental and storage factors,¹⁴¹ reduction of the time between preparation and packaging to avoid oxidation and deterioration of the product,¹⁴² in addition to more general concerns about traceability and certainty of the origin of the product.¹⁴³

Despite the above, it is not possible to identify a trend regarding the limitations to packaging and slicing and the quality symbol chosen, the type of product, or the country of origin of the products. In this sense, Prosciutto Veneto Berico-Euganeo and Prosciutto Toscano are two Italian PDOs, both for ham, that removed (the former) and imposed (the latter) slicing to take place within the production area, based on different (and apparently incompatible) justifications. This assessment, carried out on a case-by-case basis regarding the specificities of the products and their natural and human environment, should be limited only to those provisions which are indispensable for guaranteeing the provenance and the characteristics of the product, rejecting those provisions which are exclusively designed to grant to residents in the area of production an exclusive right to further processing of the product. This, as observed by the Advocate General, would result in a quantitative restriction on exports within the meaning of Art. 29 EC.¹⁴⁴

2.5. Evolution of EU GI schemes in the case of product innovation

The research into the role of PDOs and PGIs in the amendments of product specifications has been complemented with the analysis of the discussion on the recent amendments for the PDO Camembert de Normandie and the creation of two different products protected under the same quality scheme: *Camembert traditionnel* vs *Camembert authentique*. This case presents an example of loosening the link to origin with the adoption of modern production techniques.

The PDO Camembert de Normandie is a soft cheese made from milk produced essentially by Norman cows. Starting from 1 May 2017, holdings must consist of at least 50% of their dairy cows in Norman cows, which graze for more than six months per year. One of the specific features of Camembert de

¹⁴⁰ Presunto de Barrancos PDO [2014] OJ C432/16 no. 3.5.

¹⁴¹ Prosciutto Toscano PDO [2009] OJ C322/33, no. 3.2. e.

¹⁴² Canard à Foie Gras du Sud-Ouest PGI [2015] OJ C11/18, no. 3.4. Tiroler Speck PGI [2018] OJ C46/8, no. 5

¹⁴³ Nürnberger Bratwürste PGI [2017] OJ C292/12, no. 5.

¹⁴⁴ Art. 29 European Union Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community 24.12.2002 OJEU C 325/01. See Opinion of Advocate General Alber, 25 April 2002, on case C-469/00, *Ravil SARL v Bellon import SARL, Biraghi SpA* ECLI:EU:C:2002:264 § 99 and Opinion of Advocate General Alber, 25 April 2002, on case C-108/01, *Consorzio del Prosciutto di Parma, Salumificio S. Rita SpA v Asda Stores Ltd, Hygrade Foods Ltd* ECLI:EU:C:2002:267 § 146, considering invalid the PDOs Grana Padano and Prosciutto di Parma in so far as limit grating, slicing, and packaging in the region of production.

Normandie is that it is produced with raw milk. Milk cannot be heat-treated at more than 40°C, nor be bacto fugged, ultrafiltered or undergo any treatment of equivalent effect.¹⁴⁵

The product specifications state that the traditional use of raw milk, together with the implementation of rigorous practices on animal feed, milking, and hygiene, contributes to keeping a high microbiological quality of the milk, allowing the cheese to benefit from native lactic microflora.¹⁴⁶

The use of raw milk has generated controversies pitting large companies against small cheese producers. In particular, it has been proposed to pasteurise milk to solve some food safety issues regarding *Listeria*, a bacterium contained in the milk. On the one hand, it has been proven that this bacterium can resist cold temperature but cannot survive pasteurisation. On the other hand, small cheese producers argue that, apart from killing *Listeria*, pasteurisation would change the organoleptic properties of the milk, loosening the link of Camembert de Normandie with its geographical area.

Problems started in 2007 when Isigny-Sainte-Mère and Lactalis (two of the biggest Camembert producers) started to produce a cheese labelled *Camembert fabriqué en Normandie* (Camembert made in Normandie) non-compliant with the product specifications agreed for the PDO, in particular allowing the use of pasteurised milk. In 2012, the Organisation for the Management and Defence of the PDO Camembert de Normandie started proceedings against these two companies, based on consumers' confusion and exploitation of the reputation of the PDO.¹⁴⁷

On 22 February 2018, the French *Institut national de l'origine et de la qualité* (INAO) announced an agreement between big dairy corporations and small cheese producers,¹⁴⁸ based on a new PDO that would have entered into force in 2021. This agreement was supposed to put an end to the use of the label *Camembert fabriqué en Normandie* and to give rise to a twofold PDO: a high-end Camembert de Normandie (Traditional Camembert de Normandie) and a mid-end Camembert de Normandie (Authentic Camembert de Normandie). The first one provides for at least 65% of Norman cows with the obligation to use raw milk (currently the minimum is set at 50% for the Camembert de Normandie PDO), while the second provides for at least 30% of Norman cows (currently there is no minimum percentage for the *Camembert fabriqué en Normandie*) with six months of pasture per year. For the mid-end Camembert de Normandie, the use of pasteurised milk will be authorised.

From the standpoint of the INAO, this was an important step forward.¹⁴⁹ Today consumers are not able to distinguish between Camembert de Normandie (around 6,000 tons produced) and *Camembert fabriqué en Normandie* (around 60,000 tons produced, with looser requirements concerning the geographical origin of the raw materials). One of the main fears is that the massive production of non-PDO Camembert cheese (around ten times more than the current PDO production) could make the smaller PDO production disappear.

¹⁴⁵ Camembert de Normandie PDO decree 2013/1059 of 22 November 2013, section 5.4 “Implementation of milk”.

¹⁴⁶ Camembert de Normandie PDO decree 2013/1059 of 22 November 2013, section 6.3. “Causal link between the geographical area and the quality or the characteristics of the product”.

¹⁴⁷ Angelo Zago, ‘Collective Reputation in Agricultural Markets’ (2015) 345 *Économie rurale Agricultures, alimentations, territoires*, 8.

¹⁴⁸ INAO, Communiqué Camembert de Normandie: un accord de principe dans le calendrier annoncé Montreuil, 22 February 2018 <<https://www.inao.gouv.fr/Nos-actualites/Le-vrai-du-faux-du-Camembert-de-Normandie>> (accessed 31 January 2022).

¹⁴⁹ INAO, Le vrai du faux du Camembert de Normandie, 2019 <<https://www.inao.gouv.fr/Nos-actualites/Le-vrai-du-faux-du-Camembert-de-Normandie>> (accessed 31 January 2022).

INAO did not take a position on the consequent loosening of the link to origin concerning the current PDO specifications. On the contrary, INAO stated that the amended PDO specifications would have increased the global amount of local milk used for both Authentic and Traditional Camembert de Normandie,¹⁵⁰ by increasing the percentage of Norman cows grazing in Normandy for at least six months per year. According to INAO, the coexistence of raw and pasteurised milk would not have been a problem, since it is already in use for other PDOs, like Saint-Nectaire, where the two processes of production coexist under different labels.

Following this approach, the need to represent different stakeholders and the different production techniques may lead to a re-discussion of many of the existing product specifications. Like for Camembert de Normandie, amendments may lead to a compromised solution in terms of the link to the territory allowing, for example, the use of pasteurised milk but requiring a higher percentage of traditional herds. The solution adopted for Camembert de Normandie with the adoption of specific wording like ‘traditional’ and ‘authentic’ to distinguish a cheese made from raw or pasteurised milk, raises some doubts, in particular about the rationale of the EU quality scheme and the correct use of the PDO/PGI symbols.¹⁵¹

INAO opted for a bigger PDO because the adoption of a double quality scheme (PDO and PGI) demanded by some professionals would have been difficult to defend in Brussels. Furthermore, producers were all committed to keeping the term Normandy, whatever the final choice. Besides, with a PDO and a PGI from Normandy, the confusion would not have been resolved. A large PDO Camembert de Normandie was considered by the INAO the right approach, not only would have shed light on consumers’ choice but also enhanced a significant part of milk production.¹⁵²

More recently, the project of a big PDO has been abandoned following a refusal of the *Conseil National des Appellations d’Origine Laitières*¹⁵³ (CNAOL), objecting to the process of coagulation and standardisation of the milk, and the negative vote of the Organisation for the Management and Defence of the PDO Camembert the Normandie. The consequence is that production of Camembert de Normandie is limited to the current production of 6,000 tons per year, signalling a victory for traditional producers.¹⁵⁴ Following the opinion of the Directorate General for Competition, Consumer Affairs and Fraud Prevention (Direction générale de la concurrence, de la consommation et de la répression des fraudes) the label *Camembert fabriqué en Normandie* can no longer be used starting as of 1 January 2021.¹⁵⁵

¹⁵⁰ Ibid.

¹⁵¹ Delphine Marie-Vivien and others (n 58) 10.

¹⁵² Lemoine, ‘L’INAO a tranché – une grande AOP pour le Camembert de Normandie’ (2018) *Revue Laitière Française* <<https://www.rlf.fr/actualites/l-inao-a-tranche-une-grande-aop-pour-le-camembert-de-normandie:YEOST4V3.html>> (accessed 31 January 2022). Interview to Patrice Chassard, président du Comité national des appellations laitières, agroalimentaires et forestières.

¹⁵³ More information available at <<https://www.fromages-aop.com/qui-sommes-nous/le-cnaol/>> (accessed 31 January 2022).

¹⁵⁴ See communication from the producers group of the PDO Camembert de Normandie <<http://www.fromagersdefrance.com/actualites/actualites-fromageres/communique-odg-camembert-de-normandie>> (accessed 31 January 2022).

¹⁵⁵ See Direction raudsi de la concurrence, de la consommation et de la raudsion des rauds, Avis aux opérateurs économiques sur la protection de la dénomination enregistrée en AOP « Camembert de Normandie » <https://www.economie.gouv.fr/files/files/directions_services/dgccrf/boccrf/2020/20_07/Avis-operateurs-eco-camembert.pdf?v=1594293873> (accessed 31 January 2022).

The Camembert case presents at least two issues: the loosening of the link to origin and the correct use of the PDO/PGI symbols. Keeping alive the traditional production standards appears more and more complex to achieve; within this scenario innovation appears necessary to open the road to more modern commercial solutions.

As regards the first problem, the use of raw milk is considered an important linking factor. Half of 45 French PDOs for cheese allow the use of pasteurised milk but the production volume of cheese made from raw milk still dominates the market.¹⁵⁶ Even if the use of raw milk is not compulsory for obtaining a PDO, nonetheless a cheese produced with raw milk has specific organoleptic characteristics showing a stronger link to its origin rather than the same cheese produced with thermised or pasteurised milk. Even more, if Camembert had allowed the use of pasteurised milk it would have been the first French cheese using 100% raw milk to change in favour of pasteurisation. Other product specifications accepting pasteurisation (like Maroille, Fourme de Montbrison, Époisses, etc.) have admitted it since their creation. So far, producers' interest has been in favour of strengthening the link to origin with the adoption of raw milk.¹⁵⁷

The second problem regards the choice of the quality sign that better represents this new link to origin in the most transparent way for consumers. Irrespective of the regulatory terms applicable to all dairy products, the use of an adjective or another word accompanying the designation of origin is generally prohibited in labelling and advertising. Some single documents allow for exceptions when this is required to inform consumers about the milk used in the production or on the adoption of a specific process of production. For example, the labelling requirements of the PDO Saint-Nectaire allow making a distinction when the cheese comes from a dairy or a farm.¹⁵⁸ Among others, the words 'produced from milk obtained entirely from the Salers breed', 'produced in a dairy' or 'ripened in a natural cell' can convey additional information to consumers. Whether the difference between 'traditional' and 'authentic' would have avoided consumers' confusion more than the use of different quality signs (PDO for the traditional Camembert and PGI for the authentic one) seems hard to argue.

A similar problem has already been faced by Italian vinegar with the creation of two products and the adoption of two quality symbols: the PDO Aceto Balsamico Tradizionale di Modena and the PGI Aceto Balsamico di Modena. Initially, the characteristics of balsamic vinegar and its basic production techniques were defined by the Ministerial Decree of 3 December 1965 of the Italian Ministry of Agriculture. This legal provision did not draw the line between the two different kinds of balsamic vinegar. It was necessary to wait until 1983 to get the recognition of the appellation of origin and a more detailed description of the process of production and the origin of the raw materials, distinguishing between "Aceto Balsamico Tradizionale di Modena" from "industrial" vinegar.¹⁵⁹

¹⁵⁶ This is due to the production of the PDO Comté, without which the use of pasteurised milk would prevail on the market. See interview Véronique Richez-Lerouge Annex IV.

¹⁵⁷ See the example of Chabichou de Poitou, with specifications that originally admitted both raw and pasteurised milk. Producers asked to switch to 100% raw milk, because there had been a decrease in quality and a diversion of consumers. Savencia Fromage & Dairy, a big dairy firm announced will leave the PDO in the case of amendments of the specifications exclusively based on raw milk. In this case, the PDOs would remain reserved for crafts, farmer and small SMEs, potentially recalling farmers who had left the PDO concerned about a decrease in product quality. See interview Véronique Richez-Lerouge Annex IV.

¹⁵⁸ Saint Nectaire PDO [2017] OJ C299/7, no. 3.6.

¹⁵⁹ Ministerial Decree of 5 April 1983 containing the recognition of the appellation of origin and Ministerial Decree of 9 February 1987 containing the product specifications defining every production step.

The first balsamic vinegar is obtained by specific vines cultivated within the province of Modena. The only ingredient is cooked grape must, fermented, acetified, and matured in barrels for at least 12 years. All the production steps have to take place within the defined geographical area, complying with the traditional method established in the product specifications.¹⁶⁰

The second balsamic vinegar is obtained by mixing cooked and/or concentrated grape must, at least 10% of wine vinegar, a small amount of vinegar aged for 10 years, and caramel colouring up to 2%. The resulting blend is refined in wooden containers (barrels, casks, or vats) for at least 60 days to be certified as PGI Aceto Balsamico di Modena. The production process, from blending of raw materials to refining and maturing in wooden barrels, must take place within the geographical area of origin, within the provinces of Modena and Reggio Emilia. There is no requirement for the raw materials to exclusively come from vines cultivated within the province of Modena, as there is for the PDO.

As considered for the Camembert, the coexistence of the two balsamic vinegars, despite their difference, has not always been easy. While the PDO was registered at the EU level with Regulation 813/2000 of 17 April 2000, it took several years to register the PGI due to the objections raised by Germany, Greece and France, pursuant to Art. 7 (1) of Regulation 510/2006, in force at that time.¹⁶¹

In particular, the objection raised by France dealt with the fact that Aceto Balsamico di Modena had no reputation at that time, but was mainly relying on the reputation of the PDO Aceto Balsamico Tradizionale di Modena, already registered at that time. This would have created confusion and misled consumers. Given the lack of agreement among the Member States, the EU Commission requested the opinion of a scientific committee. The outcome was that Aceto Balsamico di Modena had a reputation linked to its name, proven by the references to the product that could be found on the internet and in the press. Apart from having coexisted for years, the two products have different characteristics, price, packaging and target completely different consumers. Therefore, no risk of confusion for the public was found.

The approach followed for balsamic vinegar is different from that adopted for Camembert de Normandie. The use of two quality schemes (PDO and PGI), considered potentially misleading for Camembert, has been allowed for the balsamic vinegar from Modena. While the INAO opted for a large PDO, distinguishing between the two products with the adjective “traditional” and “authentic”, vinegar producers did not opt for a large PGI (a PGI and not a PDO because the raw materials for Aceto Balsamico di Modena do not originate from the area of production) setting a more market difference between the two products.

¹⁶⁰ Product specifications of the PDO Aceto balsamico tradizionale di Modena Official Gazette of the Italian Republic, General Series, 124/2000.

¹⁶¹ The objection raised by Germany and Greece concerned the fact that the registration of the PGI would have affected products placed on the market under the name “Balsamessig”, “Balsamon” and “Aceto Balsamico” claiming that these terms should be considered generic.

In Case C-432/18 *Consorzio Tutela Aceto Balsamico di Modena v Balema GmbH* [2019], EU:C:2019:1045 §§ 33-36. The protection of the name ‘Aceto Balsamico di Modena’ does not extend to the use of the individual non-geographical terms of that name. Therefore, the terms “Aceto”, “Balsamico” and “Aceto Balsamico” should not qualify for protection as Protected Geographical Indications (PGIs) under Regulation No. 1151/2012. Of a different opinion Barbara Klaus, ‘Scope of Protection of the Protected Geographical Indication ‘Aceto Balsamico Di Modena’: The Ghosts of the Past Return’ (2019) 14 European Food and Feed Law Review 160.

What is clear from the Camembert case is that the amendment of product specifications and the issue of loosening the link to origin are highly relevant and without an easy solution. In both cases, the rationale of consumers' protection is quite weak. If EU consumers do not clearly differentiate between PDOs and PGIs, nonetheless they will be misled by the use of the adjectives "traditional" and "authentic". Showing that two products have different characteristics, price, packaging and target completely different consumers is not always easy, although the qualification "authentic" is quite debatable for a product whose specifications have been adopted in a completely arbitrary manner, without respect for the traditional process of production.

A solution based on the use of both quality signs is advocated by the Association Fromage de Terroirs. In particular, the idea is to keep unchanged the specifications for the PDO cheese but to create a PGI for the milk from Normandy. This solution could differentiate between a PDO Camembert de Normandie and an industrial Camembert but produced with PGI milk. This would allow defining a territory and specifications with a breeding protocol (more Norman cows) for those dairy producers who want to enter a valuation context.¹⁶²

The Camembert saga has not yet come to an end. According to Patrick Mercier, President of producers group of the PDO Camembert de Normandie, the rejected agreement would have represented the end of the Camembert war, allowing not only progress in terms of quality of the product but also an important fight against fraud. Negotiations with INAO have to restart again in order to avoid a complete ban on the production of the *Camembert fabriqué en Normandie*, a too conservative approach would put the future of Norman dairy production at stake.¹⁶³

Undoubtedly, the goal of keeping traditional production standards alive appears more and more complex to achieve. Within this scenario a complete rethinking of the previous agreement could be made, in particular, highlighting a correct use of the PDO/PGI and the creation of two quality schemes, a PDO for the high-end Camembert de Normandie and a PGI for the mid-end one or, alternatively, a PGI for the milk produced in Normandy.

2.6. Interim conclusions

GIs are often referred to as traditional products. Advertisement and policy often convey the image of small local production realised with artisanal methods handed down from one generation to the other. In this sense, Table 1 shows a high occurrence of quotations on tradition, proving that single documents often refer to traditional know-how, designating a clear link between the product and its past, although a bit more frequent for PGIs rather than for PDOs.

The considerations made in section 2 above, concerning the empirical relevance of 'tradition' in the single documents and the cultural rationale for GI protection, seem to clash against 'innovation', a constant presence in the debate pitting big corporations against small companies, appearing as a conflict between a modern method of production versus a traditional one.

In order to better understand the notion of product and process innovation for GIs, meaning the modification of the existing product or process that can take place while drafting the product specifications or at a later stage, it is necessary to conduct an analysis of the single documents. The

¹⁶² See interview Véronique Richez-Lerouge Annex IV.

¹⁶³ See also Claire Sicard, Le 'camembert de Normandie' devra bien être au lait cru pour garder son nom 5 March 2020 Business Insider <<https://www.businessinsider.fr/le-camembert-de-normandie-devra-bien-etre-au-lait-cru-pour-garder-son-nom/>> (accessed 31 January 2022).

outcome of that research identified three different types of innovation, depending on when they took place: first, the ‘historical innovation’, taking place in the history of the product long before the creation of the product specifications; second, the ‘collective innovation’ that occurred during the drafting of the product specifications; and third, the ‘contemporary innovation’, embodied in the amendments of the product specifications after the registration of the product. This analysis reveals that innovation is not only a recent concern but it is deeply connected to the history of the product as well. These considerations advocate in favour of a dynamic notion of tradition, that is to say a tradition that has evolved over the centuries, constantly adapting to new needs.

Nowadays, innovation is necessary to be competitive in the market. Producers have to improve their product and the process of production, reconsidering their traditional know-how and adapting to new safety standards, changes in consumers’ needs, policy concerns, and technological developments. An analysis of the amendment of the single documents contained in the EU database shows contrasting amendment strategies adopted by producers, sometimes adopting more flexible, and in other cases more restrictive, amendments. This shows how tradition and innovation are deeply intertwined.

A more detailed analysis of these amendments, and in particular of the difference between PDOs and PGIs has been conducted with an analysis of the amendments of the single documents for processed meat products (class 1.2). As regards raw materials, the analysis reveals that PDOs did not amend the provisions concerning the origin of raw materials. In particular, PDOs did not restrict the geographical origin despite the broad exception pursuant to Art. 5(3) Regulation 1151/2012, which allows raw materials (such as live animals and meat) to come from a larger area. On the contrary, PGIs tend to loosen the link to origin. In particular, 4 PGIs have amended the link to origin of raw materials, allowing them to come from outside the area of production.

PDOs balanced the broad exception under Art. 5(3) with the adoption of stricter requirements for the characteristics and use of raw materials, in particular about feed, weight and age of the animals, and the characteristics of meat and other ingredients. Conversely, PGIs tend to amend the sub-categories concerning meat, the use of additives, and weight and age of the animals, granting more flexibility to producers. In addition, the analysis shows that there is no difference between PDOs and PGIs concerning the method of production; both PDOs and PGIs have been amended providing a higher degree of flexibility to producers.

These findings are confirmed by the analysis of the reasons for the amendments. As regards raw materials, PDO producers are more concerned with the respect for traditional practices and the quality of the products, while PGI producers seem more interested in adapting the specifications to new market needs and the methods of production that have become common practice in the sector. As regards the method of production, both PDO and PGI producers are interested in achieving more flexibility to adapt their product to new market needs, modern practices of production, and new food safety standards.

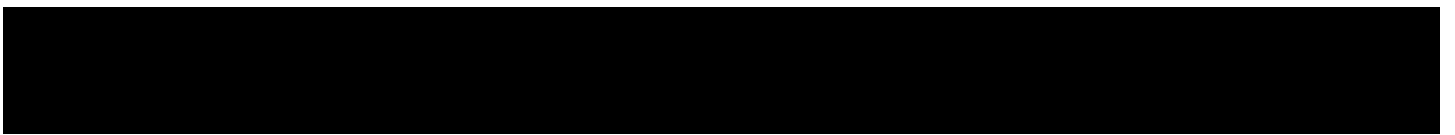
These considerations complement the findings of the first chapter of this book on the blurred difference regarding the link of origin for PDOs and PGIs. On the same line, the results of the analysis of the amendments show that both PDOs and PGIs for processed meat products tend to amend the product specifications by providing more flexibility to producers in the methods of production. However, as regards raw materials, it is found that PDOs tend to be more conservative. Finally, more research has to be conducted in this area, explaining whether these results are verified also for other categories of products.

As considered for the Camembert de Normandie, innovation is strictly connected to GIs. The problem mainly relies on keeping the threshold of local distinctiveness high, avoiding on the one hand the ‘invented traditions’ (examined for the PDO Aceto Balsamico di Modena) and on the other hand consumers’ confusion. Innovation must be accompanied by a clear use and understanding of the EU quality logos complemented with one-word qualifications that serve as a cultural foundation of the uniqueness of the product rather than as a mere commercial strategy.

3

CHAPTER 3

EU quality logos (PDOs/PGIs)
and international trade for
origin-linked products



3.1. Introduction

Following the analysis conducted in Chapters 1 and 2 on the legal requirements for the registration and amendment of PDOs and PGIs for EU products, this chapter considers the role of EU quality schemes in the registration of GIs from third countries. In particular, Chapter 3 answers the following question: “What is the role of PDOs and PGIs in the negotiations of bilateral agreements and in the registration of foreign GIs in the EU?”

Section 2 explores the role of PDOs and PGIs in international trade in two subsections: the first deals with GIs included in bilateral agreements between the EU and third countries, while the second is focused on foreign direct applications. The first sub-section aims to examine how GI lists are created and what the justification is for the product-by-product approach followed by the EU that results in the exclusion of some EU GIs from the negotiations. From an EU perspective, it is considered whether the difference between PDOs and PGIs has an impact on the creation of the lists of products, namely a preference for PDOs over PGIs. This might clarify the EU approach adopted in the creation of the GI lists and help producers in opting for a specific quality scheme. From the third-country perspective, it is considered how foreign GIs listed in bilateral agreements can be entered in the EU Register, and whether there are differences concerning the link to origin between EU and non-EU GIs protected in the EU through bilateral agreements, namely in the choice and use of the EU symbols.

The second subsection focuses on GIs from third countries protected in the EU by way of a direct application, made by the applicant or through the competent authority of the third country. This subsection examines the reason for the limited number of foreign GIs entered in the EU Register, traditionally explained by the ‘extra hurdles’ imposed on foreign producers by former EU GI legislation. In particular, this subsection questions whether additional reasons, apart from those already addressed at WTO level, for example a different level of protection, can justify the few foreign GIs listed in the EU Register.

Section 3 complements the research conducted under Chapter 1 with a qualitative content analysis of the link to origin of foreign GIs that are entered in the EU Register as PDOs or PGIs. The analysis looks at the quality scheme (PDO or PGI) that is more often chosen by third countries producers to register their products in the EU, whether there is a correlation between the quality scheme chosen and the legal system of the third country. Interviews are used to explore the understanding of the EU system by the producer groups in charge of the registration. The aim of section 3 is to understand whether there is a difference when the application is made directly by the applicant or via the appropriate competent authority of the third country, pursuant to Art. 49(5) Regulation 1151/2012.

3.2. PDOs and PGIs for EU and non-EU products in international trade

According to Recital 24 Regulation 1151/2012, GI protection granted to EU products should be equally available to designations of origin and geographical indications from third countries. Protection is conferred on foreign products that meet the conditions laid down in the Regulation, namely the requirements to be qualified as a PDO or PGI and the protection in their country of origin. Apart from granting protection to foreign products (for example by way of bilateral agreements), the EU system is open to receiving applications for GIs originating in third countries and registering them

in the EU GI Register as designations of origin and geographical indications, provided that they meet the corresponding criteria and are protected in their country of origin.¹

This section examines whether EU legal provisions allow GIs from third countries to be protected in the EU under the same conditions as EU products. The first part analyses EU and foreign GIs protected through bilateral agreements, with a focus on the creation of the EU GIs list and the entry of foreign GIs in the EU Register. The second part considers foreign GIs protected in the EU by way of an application made directly by the applicant or by the competent authority of the third country.

3.2.1. GIs in bilateral agreements

The policy objectives of bilateral GI negotiations, summarised by the European Commission, clarify the political relevance of GIs in international negotiations.² The main goal is to get additional protection in third countries for products beyond wine and spirits (TRIPS+ provisions³), together with provisions regarding co-existence with prior trade marks and phasing out prior uses of EU GIs.

In its negotiations with third countries, the EU has been using three different categories of agreements to promote trade with third countries.⁴ The first category deals with customs unions, whose aim is to eliminate customs duties and quantitative restrictions in bilateral trade and establish joint custom tariffs. An example is the Customs Union agreement with Turkey, which provides for a common external tariff for all industrial goods, but does not address agriculture (except for processed agricultural products), services or public procurement.⁵ The second category relates to partnership and cooperation agreements, which provide a general framework for trade relations without changing customs tariffs. An example is the Partnership and Cooperation Agreement with Iraq, whose products imported in the EU are subject to the EU most-favoured-nation tariff in accordance with the GATT 1994.⁶ The third, and most relevant, category deals with association agreements, stabilisation agreements, economic partnership agreements, and free trade agreements (FTAs), generally aimed at removing or reducing customs tariffs in bilateral trade. An example is the Free Trade Agreement with

¹ Recitals 24 and 59 Regulation 1151/2012. *Sui generis* form of protection in the country of origin is not required, a protection compliant with the provisions of the TRIPS Agreement is enough. This is the case of PDO Rooibos [2020] OJ C190/46, protected in South Africa as certification mark.

² European Commission, Why do Geographical Indications matter to us?, Memo/03/160 of 30 July 2003 <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_03_160> (31 January 2022). For an overview of the EU approach under bilateral FTAs see Carlos Correa, Abdulqawi Yusuf, *Intellectual Property and International Trade: The TRIPS Agreement* (Wolters Kluwer 2016) paragraph 6.04.

³ Art. 24 TRIPS allows members to enter into negotiations aimed at increasing the protection of geographical indications under Art. 23, which prevents, among others, use of a geographical indication identifying wines for wines originating from a place different from the one indicated by the geographical indication in question, even where the true origin is indicated or used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

⁴ More information on the ongoing and concluded negotiations are available at <<https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/>> (accessed 31 January 2022).

⁵ Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC).

⁶ Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part [2012] OJEU L204/20.

South Korea that eliminates duties for industrial and agricultural goods in a progressive manner and addresses non-tariff barriers to trade in the automotive and pharmaceutical sectors.⁷

Among the agreements above, FTAs play a central role in the EU GI external policy. The economic and political weight of these trade negotiations is so high that, today, it would be inconceivable to negotiate an FTA without an appropriate chapter on GIs.⁸ Among the large number of bilateral agreements negotiated and concluded by the EU, a further distinction can be drawn between ‘old’ and ‘new’ generation FTAs. This new, comprehensive, and more ambitious trend started in 2006.⁹ ‘New’ FTAs are not limited only to the protection of wines and spirits, but they are open also to other products,¹⁰ extending GI protection under Art. 23 TRIPS beyond wines and spirits.

The success of FTAs can be explained by the greater bargaining power enjoyed by the EU in bilateral negotiations as opposed to a multilateral forum. In particular, the international negotiations aimed at increasing the protection of individual geographical indications, pursuant to Art. 24 TRIPS, have been significantly hampered by ‘new world countries’ like the USA, Australia and New Zealand. Indeed, these countries are among the strongest supporters of trade marks for the protection of origin products, instead of *sui generis* rights like in the EU.

In addition, the EU’s 26 November 2019 accession to the Geneva Act of the Lisbon Agreement of 21 May 2015 on appellations of origin and geographical indications, which permitted its entry into force on 26 February 2020, may influence the EU policy on international bilateral agreements and facilitate multilateral negotiations as well.¹¹ In particular, the Geneva Act is aimed at securing protection in the territory of other members through a single application, facilitating recognition of EU and foreign GIs and complementing protection already granted through bilateral agreements.

A look at the lists of products contained in the GI chapters of the various bilateral agreements shows that the number of protected EU GIs greatly differs from one agreement to another. This result mainly depends on historical traditions and on the legal framework of the third country, in particular whether or not it adopted a *sui generis* GI system for the protection of origin products. In some cases, in order

⁷ Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJEU L127/1.

⁸ DG AGRI working document on international protection of EU Geographical Indications: objectives, outcome and challenges, Meeting of 25 June 2012, 8 <https://ec.europa.eu/agriculture/sites/agriculture/files/consultations/advisory-groups/international/2012-06-25/agri-working-doc_en.pdf> (accessed 31 January 2022).

AND-International, ‘Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialities guaranteed (TSGs): Executive Summary’ (Publications Office of the European Union 2020) 6. In 2017, the value of whole exports of EU GIs to third countries has been estimated to represent EUR 16.94 billion.

⁹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions Global Europe, Competing in the world A Contribution to the EU’s Growth and Jobs Strategy, COM(2006) 567 final 8 <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0567:FIN:en:PDF>> (accessed 31 January 2022).

¹⁰ Mainly foodstuffs. References to non-agricultural products can be found in the Agreement with Peru and Colombia and with Mexico. See further Chapter 4.

¹¹ European Commission, ‘Commission welcomes agreement to better protect geographical indications’ Press Release 14 March 2019, the statement of Phil Hogan, Commissioner for Agriculture and Rural Development, highlights the impact of the Geneva Act on multilateral and bilateral protection. At this time the Geneva Act has 11 contracting parties with a geographical coverage of 34 countries. The Cambodian Kampot Pepper is the first third-country GI protected in the EU by way of the Geneva Act.

to establish a list of EU names to be protected in the third country, it is not always possible (or desirable) to get protection for all EU GIs but only for a few names. Therefore, preference is given to those EU GIs for which there is an economic interest or a potential development in a specific market.

That said, it is possible to group third countries in three different categories. The first includes agreements with neighbouring countries, like Georgia, Moldova, and Ukraine. Here the EU has been able to achieve a high degree of integration, with a long list of protected products. The second group refers to agreements concluded with non-neighbouring countries, such as South Korea, Peru and Colombia, Vietnam, Singapore, Indonesia, Japan, and China. Sometimes negotiations with these countries are difficult because there are only a few GI holders that are interested in obtaining protection on the EU market. The third group deals with agreements with countries without a GI tradition, such as Canada.

The following sections analyse the GI lists contained in the ‘new’ generation of bilateral agreements (already in force or still pending) with the three categories of countries mentioned above. Therefore, the lists are quite heterogeneous, by reason of different proximity with the EU and different GI traditions of those countries.

3.2.1.1. EU PDOs/PGIs

The first sub-section explains how GI lists are created and whether there is a preference for a specific quality scheme.

3.2.1.1.1. The creation of the EU GI lists

As already mentioned, the lists of products included in the FTAs cover only a part of the EU registered GIs. Most of the EU PDOs and PGIs do not receive any protection under FTAs but have to individually seek protection in the respective third countries through the local GI provisions (either based on *sui generis* or trade mark rights).

In other words, FTAs do not grant protection to all registered GIs in the EU but only to those listed in the annexes of the agreement. For example, Art. 208(1) of the trade agreement with Colombia and Peru refers to Annex XIII, Appendix 1, where agricultural and foodstuff products, wines, spirit drinks and aromatized wines from Colombia, the EU and Peru are listed under letters (a), (b), and (c).

Having completed an objection procedure and having examined the geographical indications of the European Union listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications) which have been registered by the EU Party, the signatory Andean Countries will protect such geographical indications according to the level of protection laid down in this Section.

An equivalent provision for Peruvian and Colombian products protected in the EU is available under Art. 208(2) of the agreement.

Lack of uniformity and consistency is not only limited to the fact that, under different bilateral agreements, some GIs may be included in a list and excluded from another.¹² Differences also

¹² Tim Engelhardt, ‘Geographical Indications Under Recent EU Trade Agreements’ (2015) 46 International Review of Intellectual Property and Competition Law 781,782. For example, with regard to the EU GIs included in the agreements between the EU and Switzerland, Georgia, and Moldova, the agricultural and foodstuff GIs originating from Austria, Cyprus, Greece, Finland, Ireland, Luxemburg, the Netherlands, Sweden, Slovenia and Slovakia are the same in all three agreements. However, GIs originating from Germany,

concern the level of protection granted to each GI listed in the same FTA. An interesting example is the exception pursuant to Art. 20(21) of the Comprehensive Economic and Trade Agreement (“CETA”) concluded with Canada. Under this agreement, some GIs (even if listed) are excluded from protection.

For example, Greek producers cannot prevent the term Feta being used for cheese produced in Canada when ‘accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like and is in combination with a legible and visible indication of the geographical origin of the product concerned’.¹³ Furthermore, they cannot prevent the indication Feta being used by anyone who made commercial use of it before 13 October 2013. Justification for this different treatment can derive from the specific circumstances under which the bilateral negotiations took place, therefore excluding any problem of arbitrariness.¹⁴

Before the beginning of the negotiations, the EU and the third country prepare a list of products for which they want to obtain protection under the agreement. The list constitutes the basis of future negotiations and will end up in a final list of GIs. The prospective list of products often changes depending on the third country with whom the EU is negotiating.

The product-by-product approach followed by the EU can be explained by different negotiating, economic and geographical reasons. The EU is not willing to start negotiations regarding all GIs contained in its Register (more than 1,400 for agricultural products and foodstuffs alone). This could scare off the opposite party and unnecessarily delay the negotiations.¹⁵ Besides, the economic and geographical rationale tends to grant cross-border protection only to those GIs having a (potential) market in the country at issue. This inevitably creates a difference in treatment among GIs. For this reason, some stakeholders ask for a pragmatic approach, based on the creation of GI lists encompassing the most exchanged GIs in the trade relationship with the third country, for which an actual risk of usurpation of notoriety exists. Conversely, other stakeholders are in favour of protecting all registered EU GIs to prevent future usurpation of notoriety.¹⁶

Despite the difference in the number of EU products contained in every GI list,¹⁷ an analysis of the GI lists of 14 bilateral agreements¹⁸ shows a certain consistency in the products chosen and finally

Belgium, the Czech Republic, Denmark, Spain, France, Italy, Poland, Portugal and the UK are not the same across all three agreements.

¹³ See Exceptions under Art. 20(21) (1) and (2) CETA.

¹⁴ Bernard O’Connor and Laura Richardson, ‘The legal protection of Geographical Indications in the EU’s Bilateral Trade Agreements: moving beyond TRIPS’ (2012) *Rivista di diritto alimentare* 4.

¹⁵ DG AGRI (n 8) 8.

¹⁶ European Commission, Green paper on agricultural product quality: product standards, farming requirements and quality schemes, COM (2008) 641 final, 15 October 2008, 14.

¹⁷ Having regard to foodstuffs, the bilateral agreement with Vietnam contains only 59 EU GIs, while the agreement with Armenia includes more than 1,200 EU GIs.

¹⁸ Analysis of the lists of EU GIs of the following bilateral agreements: Armenia Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part [2018] OJ L23/4; Moldova Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part [2014] OJ L260/4; Ukraine Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part [2014] OJ L161/3; Georgia Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261/4; Canada Comprehensive Economic and Trade Agreement (CETA) between Canada, of the

included in the list. In particular, 77 EU GIs for foodstuffs (on an average of 351 products per agreement) are contained in more than 70% of the lists.¹⁹ An overview of those products makes it possible to understand that they are the ‘national champions’ of various EU Member States, that is to say the most traded GIs in international markets which are at risk of usurpation of their notoriety.

Once the parties have reached an agreement and negotiations are concluded, objection proceedings may be initiated by the law of the different jurisdictions, based on the legitimate interests of prior users of those names included in the list of products.²⁰ After both the examination and the objection phase are completed, the final version of the GI list is added to the bilateral agreement.

3.2.1.1.2. EU PDOs/PGIs in the GI lists

As considered in the previous section, the product-by-product approach followed by the EU mainly depends on the economic relationship between the EU and the third country. These trade considerations, together with statements that PDOs have a deeper impact on the EU economy than PGIs,²¹ question whether the EU symbols have any impact on the choice of including a product in the FTA. In particular, at the time of preparing the list that will be submitted to the third country, does the EU prefer to include products registered under a specific quality scheme (PDO or PGI)?

The analysis of the GI lists of 14 bilateral agreements shows that the EU does not favour any specific quality sign for agricultural products and foodstuffs.²² In particular, the percentage of PDOs contained in each class of GIs listed in the bilateral agreements is almost equal to the percentage of

one part, and the European Union and its Member States, of the other part [2017] OJ L11/23; Colombia and Peru and Ecuador Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [2012] OJ L354/3; and Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador [2016] OJ L356/3; Vietnam Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam [2020] OJ L186/3; South Korea Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2011] OJ L127/6; Japan Agreement between the European Union and Japan for an Economic Partnership [2018] OJ L330/3; Switzerland Agreement between the European Union and the Swiss Confederation on the protection of designations of origin and geographical indications for agricultural products and foodstuffs, amending the Agreement between the European Community and the Swiss Confederation on trade in agricultural products [2011] OJ L297/3; Central America Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other [2012] OJ L346/3; SADC EPA States Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part [2016] OJ L250/3; Mexico New EU-Mexico Agreement – the Agreement in principle 23 April 2018, Singapore Free Trade Agreement between the European Union and the Republic of Singapore [2019] OJ L294/3. The abovementioned agreements are listed on the webpage of the European Commission under the section ‘Negotiations and Agreements’ available at <https://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_partly-in-place> (accessed 31 January 2022).

¹⁹ See the list of products in Annex VII.

²⁰ See for example Art. 231(3) and (4) in combination with Art. 232, subsection III, subsection B, chapter 7 of the Bilateral Agreement with Armenia.

²¹ See for example, Commission Staff Working Paper Impact Assessment on Geographical Indications, accompanying document to the Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes, SEC(2010) 1525, 41. When considering to merge the two definitions of PDOs and PGIs, it is considered that “PDO products have a higher added-value compared to standard production than PGI products”. In addition, as regards environmental concerns, “PDOs can better favor local development because of their strong link to origin and thus contributing to environment and biodiversity”.

²² The bilateral agreements are those listed in footnote 18.

PDOs for each class of products registered in the EU database.²³ The percentage is almost the same in every bilateral agreement, with a slight prevalence of PDOs over PGIs in the bilateral agreements with a reduced number of products (namely Singapore, Japan, South Korea, Vietnam and Peru-Colombia-Ecuador). This difference is not due to the adoption of a different negotiating strategy vis-a-vis certain countries; more probably the prevalence of PDOs over PGIs can be explained by the small number of products listed in the agreements that make the PDO/PGI ratio less representative for certain classes of products.²⁴

Having regard to class 1.2 (processed meat products), it is possible to observe that the percentage of PDOs listed in the bilateral agreement is consistently much higher than the average of PDOs registered in the EU database. This is probably due to the exception under Art. 5(3) Regulation 1151/2012. This exception allows for a name to be registered as a designation of origin even though the raw materials (namely live animals, meat and milk) come from a geographical area that is larger than the defined geographical area. This is allowed for designations of origin recognised in the country of origin before 1 May 2004, as soon as the production area of the raw materials is defined and there are special conditions for the production of raw materials.

Older GIs, possibly more often exchanged in international trade and included in the GI lists, have been registered as PDOs, while more recent products could not benefit from the exception and have been registered as PGIs.²⁵ As a consequence, the percentage of PDOs contained in the bilateral agreements for products in class 1.2 is almost twice as high (around 40% or more) than the average registered in the EU database under the same class (around 20%). A different result can be found for cheese products registered under class 1.3. Even if the products belonging to this category benefitted from the exception under Art. 5(3) Regulation 1151/2012, they present a percentage of PDOs listed in the bilateral agreement that is more or less the same as the average of PDOs registered in the EU database (around 80%). The high number of PDOs for this product can be explained as a particular favour for this quality sign in the cheese sector, in particular in France, Italy and Spain that represent more than 50% of the registered GIs for cheese.²⁶

The fact that the PDO/PGI ratio per class of products contained in the GI lists is in the majority of cases and for the majority of products equivalent to the PDO/PGI ratio of the class of products registered in the EU database suggests that the difference between the two EU quality signs does not have per se an impact on the creation of the lists.

²³ See Annex VIII. For ‘class of products’ reference is made to the product classes contained in the EU database.

²⁴ See for example class 1.6 (fruit and vegetables) in the bilateral agreements with Singapore, South Korea and Peru-Colombia. Here the table shows 100% of PDOs, this is due to the fact that very few products of this class have been protected under those lists.

²⁵ An analysis of the products of class 1.2 registered in the EU database before 2005 shows that 64% of PDOs (24 out of 37) were registered before that date, while PGIs count only for 35% (51 out of 143). This preference for PDOs can be explained by the flexibility concerning the origin of raw materials pursuant to Art. 5(3) Regulation 1151/2012 (and former Art. 2(3) Regulation 510/2006 and Art. 2(4) Regulation 2081/1992). More detailed results, also in view of later accession of some Member States, could be obtained by considering the registration date in the country of origin. See further Annex VIII.

In addition, table 3 in Annex VIII shows that the large majority of PDOs for products of class 1.2 listed in 9 bilateral agreements (chosen because their list of products represents a smaller portion of the EU registered GIs - less than 50%) were entered in the EU database before 2005.

²⁶ See interview Emmental de Savoie, Raclette de Savoie and Tomme de Savoie, under Annex IV.

3.2.1.2. List of third-country GIs

The second sub-section analyses foreign GIs protected through bilateral agreements. The aim is to understand how third-country GIs listed in bilateral agreements can be entered in the EU Register and use the EU quality symbols.

3.2.1.2.1. Entered in the EU Register

After having analysed the creation and composition of the GI lists, this section considers how foreign GIs can be entered in the EU Register, highlighting the lack of a complete compilation of EU and non-EU GIs protected via bilateral agreements.

Pursuant to Art. 11(1) Regulation 1151/2012, the Commission adopted an implementing act to maintain a public register of protected designations of origin and protected geographical indications. In particular, Art. 14(1) Regulation 668/2014 which lays down rules for the application of Regulation 1151/2012, states that the Commission has to record information in the EU Register concerning the name of the product, its class, the instrument registering the name, the quality symbol chosen, and the indication of the country of origin.

As to non-EU products, Regulation 1151/2012 adopts a different wording. To facilitate information, protection, and control of the names protected through international agreements, Recital 27 and Art. 11(2) of that Regulation provide that the names “may be entered” in the EU database of protected GIs. That wording does not provide clear instructions on how to deal with GIs from third countries. No further details are provided on the procedure to be followed to register such GIs, apart from the one set by Art. 49 ff. Regulation 1151/2012, giving rise to some inconsistencies highlighted at the end of this section. Once the foreign GI is entered in the EU Register, the indications ‘protected designation of origin’ or ‘protected geographical indication’, or the Union symbols associated with them may appear on the labelling, pursuant to Art. 12(6) Regulation 1151/2012.

At this time, very few GIs from third countries, protected in the EU within the terms of bilateral agreements, are also included in the EU GI Register. For example, the Agreement with Peru and Colombia contains four products (three from Peru and one from Colombia) of which only Pisco was entered in the EU Register on 31 October 2013. It should be noted, however, that the application was made on 27 July 2009, therefore even before the conclusion of the negotiations of the bilateral agreement in 2011.²⁷ More precisely, Pisco was entered in the EU Register by way of a different procedure called ‘direct application’, further explained under section 3.2.2 below. A full list of the GIs in bilateral agreements included in the Register can be found under Table 4.

A different approach that is likely to be the new EU approach regarding GI negotiations with third countries, was adopted with the ‘10 plus 10’ project.²⁸ This project is the result of a collaboration between the EU and China which started in 2006, due to the increasing demand for protection of EU and Chinese GIs in the last decade. Within the scope of this project, both the European Commission and the Chinese General Administration of Quality Supervision, Inspection and

²⁷ See main specifications of the technical file for Pisco [2011] OJEU C141/16 and Commission Regulation (EU) No 1065/2013 of 30 October 2013 amending Annex III to Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks [2013] OJEU L289/48.

²⁸ Further information <https://ec.europa.eu/commission/presscorner/detail/en/IP_12_1297> (accessed 31 January 2022).

Quarantine (the authority responsible for the administration of geographical indications in China) formally lodged applications for the protection of 10 agriculture GIs in each other's territories. From 2010 to 2012, the European Commission examined and included in the EU Register 10 Chinese food names.

On the basis set by this project, a broader bilateral agreement was negotiated to protect 100 European GIs in China and 100 Chinese GIs in the EU. Both sides signed the agreement on 14 September 2020. The European Parliament endorsed the agreement on 11 November 2020, followed by the Council of the European Union on 23 November 2020. Four years later, the scope of the agreement will cover an additional 175 GIs from both sides. These names will follow the same registration procedure as the 100 GIs already covered by the agreement (i.e. assessment and publication for comments).²⁹

One of the major deadlocks that delayed the signing of the agreement was the choice of the GI lists from both sides and their entry in the EU Register,³⁰ This problem was finally solved by Art. 5(2) of the agreement, allowing Chinese GIs listed in Annex III to be incorporated in the EU Register and, therefore, authorised to use the PDO/PGI symbols (as per Art. 12(6) EU Regulation 1151/2012) after the entry into force of the agreement and, for certain products, with effect from the date of application of the decision concerning their entry as PDOs or PGIs.

The approach adopted with China will probably be used by the EU in future agreements, justified, apart from the interest of foreign producers for obtaining the right to use the EU quality symbols, by the most-favoured-nation treatment that prohibits countries from discriminating between their trading partners.³¹ If in the future similar provisions are included in more bilateral agreements, this would probably lead to a higher number of foreign GIs listed in the EU Register and potential blurring of the difference between the EU quality symbols, further discussed under section 3.2.1.2.2. of this chapter.

Apart from the example of China, entering the EU Register does not seem a straightforward procedure. In particular, it is possible to draw a difference between the objection procedure laid down by the trade agreements, which applies to the inclusion of the names in the GI lists, and the one established by Regulation 1151/2012, which only applies to EU and non-EU GIs that enter the EU GI Register.

Art. 51 Regulation 1151/2012 provides three months for lodging a notice of opposition with the Commission followed within two months by a reasoned statement of opposition, as referred to in Art. 10 Regulation 1151/2012. In comparison, bilateral agreements require that statements of objections

²⁹ Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications [2020] OJEU L1 408/3.

³⁰ Wang Xiaobing and Irina Kireeva, 'The Protection of Geographical Indications in the EU and China: Tracing Causes of Delays in the Ongoing Negotiation on the Co-operative Agreement on Geographical Indications' (2014) 2 Intellectual Property Quarterly, 141.

³¹ Art. 4 TRIPS. Switzerland will be able to enjoy an MFN treatment and enter its products in the EU Register. An analysis of the product specifications has to be conducted in order to correctly attribute the Union symbols. Gruyère, for example, is registered in Switzerland as an AOP but in the EU it will be recognised as a PGI because the maturation phase takes place in Switzerland but also outside the production area. See product specifications of Gruyère Part 1, section 3(3) <<https://gruyere.com/content/ressources/cahier-des-charges-definitif-du-6-juillet-2001-anglais-aop-2014-v2016.pdf>> (accessed 31 January 2022).

must reach the European Commission within two months from the date of publication of the information notice in the Official Journal³².

Apart from the different notification periods, another important difference resides in the substantive content available for the opposition: a single document describing the link between the product and the territory (for EU and non-EU GIs that are entered in the EU Register) or simply the GI name (for GIs listed in bilateral agreements). Indeed, while Arts. 50 and 51 Regulation 1151/2012 start the opposition procedure after the publication of the single document, a similar provision is absent for GIs listed in bilateral agreements. Here opponents can merely rely on the names listed in the relevant annex of the agreement without further details on their link to origin.

In addition, a comparison of the admissibility criteria of various agreements show that the EU approach has not been uniform. For example, the agreements with Ukraine and Mexico provide that a proposed name cannot be protected under five grounds (same as in the EU Regulation): when the name conflicts with a name of a variety or breed, with a homonymous name, with trade mark's reputation, with a generic name or when it jeopardises the existence of an identical name or trade mark or product which has been on the market for at least five years.³³ By contrast, the agreement with Japan states that 'each Party may consider' two grounds in the objection phase: conflict with a plant variety or animal breed and the customary nature of the name in common language.³⁴ Provisions are included for homonymous names under Art. 14(25) of the Japan-EU FTA but no clear reference is made to the protection of subsequent GIs, the coexistence between GIs and trade marks, and the case of marks with a reputation. Pursuant to Art. 14(27), the existence of a prior conflicting trade mark in a party would not completely preclude the protection under this agreement of a subsequent GI for similar goods of that party. A footnote in the agreement further explains that the competent authorities 'may require' certain conditions for the protection of a geographical indication which conflicts with a prior existing trade mark³⁵.

Given the difference in the objection grounds, it is possible that a product listed in a bilateral agreement would not be able to qualify for registration under Regulation 1151/2012. In this case, a Japanese product protected in the EU by way of a bilateral agreement might be refused entry in the EU Register depending on other grounds of objection not considered by the bilateral agreement. This difference in objection procedures might result in incoherence between EU and non-EU GIs.³⁶ Such

³² See for example Chapter XX, Annex I, Part A, letter d of the New EU-Mexico Agreement – the Agreement in principle 23 April 2018.

³³ See Annex XXII-B to Chapter 9 letter e) of the Agreement with Ukraine and Annex I Part A letter (e) of the Agreement with Mexico.

³⁴ See Art. 14(25) (4) of the Agreement with Japan.

³⁵ When it comes to conflicting trade marks and the protection of third parties, FTAs does not seem to contain a remedy in favour of the trade mark holder, allowing the coexistence between the prior trade mark and the subsequent GI. See for example Article X.37 of the New EU-Mexico Agreement – the Agreement in principle, which clarifies that a prior trade mark may not entitle its owner to prevent a registered geographical indication from being granted protection, apart from the case when the trade mark enjoys reputation and the use of that name as a geographical indication is liable to mislead the consumer as to the true identity of the product.

³⁶ Bernard O'Connor and Laura Richardson (n 14) 18 considers that further clarification is needed from the Commission on this issue and where an objection is upheld but the relevant international agreement has been concluded before the successful objection. This may be problematic when the agreement does not contain provisions allowing for the exclusion (or inclusion) of GIs on the lists of those protected third-country GIs.

difference does not seem justified by reason of the same level of protection granted to both EU and foreign GIs within the territory of the EU.

The current scenario, characterised by the absence of a multilateral register and the proliferation of bilateral agreements, requires a complete and updated source of information. This is particularly important because not only the GI lists to be protected change from one agreement to another, depending on the outcome of the negotiations, but also those lists are usually amended and updated through an exchange of letters between the EU and the third country and the scope of protection granted to GIs is different in each agreement.³⁷ On top of that, in order to provide some flexibility and safeguard the future economic relationship, some bilateral agreements provide for a cooperation mechanism that is charged with the protection of GIs. In the case of CETA, for example, Art. 20(22) under Chapter 20 establishes the creation of a Joint Committee that can amend (by adding or removing) the GI list.

For the time being, the European Commission has created ‘GIview’, a search database for all geographical indications protected at the EU level, containing information on non-EU GIs protected at EU level through bilateral and multilateral agreements, and on EU GIs protected in non-EU countries.³⁸ What is noteworthy are the compilation efforts made (and currently ongoing) by oriGIN with its ‘Worldwide GIs Compilation’, aimed at gathering under the same research tool all GIs protected in different jurisdictions with and without *sui generis* protection.³⁹

3.2.1.2.2. Choice between geographical indication or designation of origin

Pursuant to Art. 14(1)(d) Regulation 668/2014, the entry of the GI in the EU Register is connected strictly to the information that the name is protected as a geographical indication or as a designation of origin. As already considered under the previous section, products of third countries protected through bilateral agreements may be entered in the EU Register. In particular, the second part of Art. 11(2) Regulation 1151/2012 clarifies that ‘unless specifically identified in the said agreement as protected designations of origin under this Regulation, such names shall be entered in the Register as protected geographical indications’.

An analysis of the text of bilateral agreements shows a lack of coherence between the legal provision under Art. 11(2) and the practice under which bilateral agreements are negotiated. In particular, an analysis of 14 bilateral agreements, namely Armenia, CETA,⁴⁰ Central America, Georgia,⁴¹ Japan,

³⁷ Art. 10.19(1) of the Agreement with Singapore protects GIs against any use that indicates that the good originates in a geographical area other than its true place of origin in a manner which misleads the public as to the geographical origin of the good and against acts of unfair competition under Art. 10*bis* of the Paris Convention. Art. 12.27(1)(a) of the Agreement with Vietnam adds an additional provision, preventing the use of GIs originating in their true country of origin but not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product was for consumption in the other Party.

³⁸ Database ‘GIview’ < <https://www.tmdn.org/giview/> > (accessed 31 January 2022).

³⁹ More information available at < <https://www.origin-gi.com/i-gi-origin-worldwide-gi-compilation-intro-uk.html> > (accessed 31 January 2022).

⁴⁰ Annex 20-A part B ‘Geographical Indications Identifying a Product Originating in Canada’ is left empty.

⁴¹ The sections on foodstuffs, spirit drinks, and aromatised wines are left empty.

Mexico, Moldova,⁴² Peru-Colombia-Ecuador,⁴³ SADC, Singapore,⁴⁴ South Korea, Ukraine, and Vietnam, shows that GIs are not ‘specifically identified’ as geographical indications or as designations of origin in the text of the agreements, either in the GI chapters or in the annexes of GIs from third countries. For example, no mention of PDO is made under the bilateral agreement with Vietnam for Phú Quốc, despite the fact that this product had been recognised under a PDO symbol well before the entry into force of the agreement. The bilateral agreement with Switzerland is the only exception since it contains a list of Swiss products qualified as PDOs or PGIs. A footnote in the text of the agreement explains that this qualification depends on Swiss legislation, which adopts a twofold system of ‘appellations d’origine’ (AOP) and ‘indications géographiques’ (IGP), and not on their recognition as EU PDOs or PGIs. In addition, pursuant to Art. 12 of the bilateral agreement, each party authorises, within its own territory, the marketing of products listed in the agreement and which may bear GI symbols used by the other party. Therefore, for the time being, the Swiss products listed in the GI chapter were not entered in the EU Register and are not qualified to use EU GI symbols, despite the similarities between the two legislative documents.

Even when express mention is made of the use of the EU symbols, see Art. 5(2) of the draft agreement with China, no qualifications such as PDO or PGI are made in the text of the agreement. On the contrary, the EU ‘following a case-by-case assessment’ will decide on entering the Chinese GIs in the EU Register either as PDOs or PGIs. If no specific application for a PDO is made, the EC will grant a PGI following Art. 11 Regulation 1151/2012. At this time, the EU Register contains 110 registered Chinese GIs, 104 of which have been registered as PGIs, blurring even further the difference between PDO and PGI. In this case, it seems that Chinese producers were particularly interested in the EU GI symbols, either a PDO or a PGI, irrespective of the strength of the link to origin that might allow an application for a PDO.

A comparison between non-EU products entered in the EU Register and the list of foreign products included in the bilateral agreements mentioned above, updated at 31 August 2021, shows that only a few products were entered in the EU Register. Those products, with the exception of the Chinese products which were registered on 1 March 2021 at the date of entry into force of the bilateral agreement, have been identified through research into eAmbrosia and are listed in Table 4 below. Further research shows that the majority of those products were entered in the EU Register during, or even before, negotiation of the bilateral agreement.

Table 4 GIs from third countries listed in bilateral agreements and entered in the EU Register

Country	Name	EU sign	Status	Date
Armenia	Sevani Ishkhan Application made before the conclusion of the Comprehensive and Enhanced Partnership Agreement, provisionally applicable since June 2018.	PDO	Applied	23/08/2016

⁴² These products refer to wines, the sections of Moldovan foodstuffs, spirit drinks, and aromatised wines are left empty. The EU products are listed together with their PDO/PGI symbols.

⁴³ List of products updated by Decision No 1/2020 of the Trade Committee of 19 November 2020 modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2021/273] [2021] OJ L61/27.

⁴⁴ No products are listed in Annex 10-B section B ‘Geographical Indications of Singapore’.

Guatemala	Ron de Guatemala Application made on 15 March 2010 before the conclusion of the Association Agreement with Central America, signed on June 2012.	GI	Registered	04/02/2014
Mexico	Tequila Application made on 3 January 2013, after the inclusion of the name in Annex II of the Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks OJEC [1997] L152/16	GI	Registered	28/02/2019
Peru	Pisco Application made on 27 July 2009, before the conclusion of the negotiations of the bilateral agreement in 2011	GI	Registered	31/10/2013
South Africa	Rooibos-Redbush Application made on 21 August 2018, after the Economic Partnership Agreement of 2016	PDO	Registered	31/05/2021
Vietnam	Phú Quốc Application made on 26 August 2009, before the conclusion of the EU-Vietnam Framework Agreement on Partnership and Cooperation that entered into force in 2016 and the Free Trade Agreement signed in 2019.	PDO	Registered	11/10/2012

Pursuant to Art. 11(2) Regulation 1151/2012, the fact that there is no mention of a specific quality symbol for the remaining products (more than 300⁴⁵) suggests that these GIs should be qualified as PGIs (whether and when they will be entered) in the EU Register. Registering non-EU GIs contained in bilateral agreements as PGIs, irrespective of their link to origin, would blur even more the difference between PDOs and PGIs regarding their link to origin, already highlighted in Chapter 1. However, the ‘case-by-case assessment’, already discussed for the bilateral agreement with China, could prevent this problem if Chinese producers are well assessed in their choice between PDO/PGI, adopting the quality symbol in line with the strength of the link to origin of their product.

There are at least two reasons for not mentioning a specific EU quality symbol for non-EU GIs in bilateral agreements and their non-entry in the EU Register. A first reason is the obligation of due diligence imposed on the EU and the third country. This is limited to the cross-examination of their legislation and their compliance with Art. 22(1) TRIPs together with the protection of GIs in their respective country of origin.⁴⁶ Moving to this stage of the analysis of the PDO/PGI requirements, and in particular the more stringent PDO requirements, will not increase the protection of foreign GIs in the EU; on the contrary, it might slow down or impede their inclusion in the list.

⁴⁵ In particular: Armenia 1 product, CETA, Central America 10 products [Costa Rica 1, El Salvador 2, Guatemala 2 of which 1 spirit, Honduras 2, Nicaragua 2, Panama 1 spirit], Georgia 18 products, Japan 56 [of which 4 wines and 4 spirits], Mexico 20 products, Moldova of which 2 for wines, Peru and Colombia 4 products [of which 1 spirit], SADC EPA 105 products [South Africa 3 foodstuffs, 102 wines], Singapore, South Korea 64 [of which 1 for spirits], Ukraine 2 products for wine, and Vietnam 39 products.

⁴⁶ For example, Annex I to Protocol 3 of the list of GIs of South Africa and the EU.

Due to the increasing interest of producers from third countries for obtaining an EU quality symbol, a second reason that could limit the entry of a PDO/PGI in the EU Register is the low willingness to start the ‘case-by-case assessment’ of PDO/PGI requirements not assessed during the negotiations of the bilateral agreement. This could be due to fact that EU requirements are more stringent than those in place in third countries, requiring not only a description of the link to origin in line with the PDO/PGI requirements but also heavy controls mechanisms, in line with EU standards pursuant to Arts. from 36 to 40 Regulation 1151/2012.

3.2.1.2.3. Use of the EU quality symbol

Recital 28 of Regulation 1151/2012 requires the adoption of special provisions concerning labelling, in particular those dealing with the use of PDOs and PGIs. These provisions are implemented through Annex X of the EU Implementing Regulation 668/2014, reproducing the EU symbols in colour and in black and white, including their size and abbreviations in the various EU languages.

Recital 28 and Art. 12(3) Regulation 1151/2012 clarify that the use of EU symbols in labelling is made compulsory for products originating in the EU and marketed under a PDO or a PGI logo. The rationale of this provision is to allow easier identification of the products in the market and better recognition of GIs by consumers.

As to products originating in third countries, Art. 12(6) Regulation 1151/2012 and the former Art. 8(3) Regulation 510/2006 state that the PDO/PGI symbol ‘may appear on the labelling’, provided that the name of the product has been entered in the EU Register. Therefore, the use of EU symbols has been made voluntary for GIs originating from third countries and registered in the EU.

The provision under Art. 12(6) creates a difference between GIs protected in the EU through bilateral agreements and those (both EU and non-EU) that are entered in the EU Register. This provision has been interpreted as encouraging registration from third countries, waiving the additional obligation of the EU logo, to promote the EU *sui generis* GI system and increase the number of adhesions. Nonetheless, some non-EU producers are interested in using EU quality symbols, as confirmed by the express provision on the use of EU quality logos contained in the agreement with China, as already mentioned. This is particularly true for those products for which EU logos are better known and associated with quality products, for which consumers are willing to pay a premium price. In this case, the use of EU quality symbols would be relevant also for those products that are not exported in the EU but whose market is limited to China, allowing Chinese producers to be more competitive in their internal market, by showing an EU logo on their products, often seen as a guarantee of high quality and safety standards.

3.2.2. GIs from third countries applied in the EU

After having considered the protection of foreign GIs in the EU through bilateral agreements, this section refers to the application of GIs from third countries by way of a direct application, made directly by the applicant or through the competent authority of the third country.

Registration of GIs from third countries changed after the complaint filed by Australia and the US at the WTO.⁴⁷ The issue concerned the violation of national treatment obligations by Art. 12(1)

⁴⁷ See WT/DS174/R, European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (complaint by the US) and WT/DS290/R, European Communities –

Regulation 2081/92, requiring equivalence and reciprocity conditions. In particular, non-EU nationals and products were disadvantaged and discriminated in comparison to EU producers.

As to national treatment, Art. 3(1) TRIPS requires each WTO member to provide to nationals of other members no less favourable treatment than the one accorded to its own nationals. In other words, members have to ensure ‘effective equality of opportunities’ between own and foreign nationals. Under the former EU Regulation, GIs from third countries could be registered in the EU, provided that the legal system in place in the third country was considered equivalent to the EU GI system.

According to the EU, the requirement of a GI system equivalent to the one in place in the EU did not discriminate against applicants on the basis of their nationality. On the contrary, the Regulation set out different procedures based on the geographical origin of the product (whether within or outside the EU), and therefore was unrelated to the nationality of the applicant. The weakness of this argument relies on the peculiar nature of GIs, which seems to create a virtually indissoluble link between the geographical origin of the GI and the nationality of the party entitled to use it. This is different from other intellectual property rights, which may first subsist in one country under the ownership of the national of another. The panel found that this requirement constituted an extra hurdle for the registration of a foreign GI, causing a *de facto* discrimination of non-EU producers. In particular, GIs from third-countries were not eligible for registration in the EU when the third country did not provide an equivalent form of protection to the EU GI system, even when the GI system of the third country was compliant with the minimum standards established by TRIPS.

Other issues were found with regard to GI application and objection procedures. The EU claimed that that it was not applying less favourable treatment to non-EU nationals; on the contrary, the obligations for non-EU members corresponded with those for EU members. In reality, the provisions of the EU Regulation requiring a non-EU national to file an application through its own government (and not directly to the EU Commission), would have required the third country to participate in these procedures at the disadvantage of the third-country producer, when compared to EU producers. Non-EU governments have no obligation to establish comparable procedures, while EU producers have the right to claim such action from their governments. The WTO panel found that the EU system for GIs from third countries constituted less favourable treatment and a violation of Art. 3 (1) TRIPS.

Following the report of the WTO Panel, the EU changed its approach allowing applications from third countries to be sent to the Commission directly or via the authorities of the third country concerned, as per Art. 5(9) Regulation 510/2006 (now Art. 49(5) Regulation 1151/2012).

The limited number of GIs entered in the EU Register from third countries has traditionally been explained by the ‘extra hurdles’ they had to face under previous EU legislation.⁴⁸ Today, despite the changes of the EU Regulation, the small number of GIs from third countries entered in the EU Register shows how little practical impact the WTO dispute had on the registration of foreign GIs in

Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (complaint by Australia).

⁴⁸ David Vivas-Eugui and Cristoph Spennemann, ‘The evolving Regime for Geographical Indications in WTO and in Free Trade Agreements (1996-2015)’ in Carlos Correa and Abdulqawi Yusuf (eds) *Intellectual Property and International Trade: The TRIPS Agreement: The TRIPS Agreement* (Kluwer Law International 2016) 193, 212.

the EU.⁴⁹ One possible reason is that the WTO complaint was not instituted because producers from the US and Australia had been denied protection for their products in the EU. This was clearly acknowledged during the proceedings.⁵⁰ Therefore, despite claims that the dispute was aimed at protecting producers' actual and potential interests, it is arguable that different reasons motivated the US and Australia to bring their action before the WTO, namely an attempt of opposing the EU and the imposition of its standards of GI protection throughout the world.⁵¹

Another reason that might create an insurmountable hurdle to the registration of foreign GIs in the EU are the official controls that have to be performed before placing the product on the market. In particular, pursuant to Art. 37(2) Regulation 1151/2012, compliance with the product specifications has to be verified by the competent public authorities or product certification bodies, and not all producers can meet this test.⁵² More generally, it should be noted that some countries have adopted quite recently (or have still not adopted) a comparable system of registration for GIs.⁵³

3.3. Qualitative analysis of the link to origin for PDOs and PGIs from third countries

The following sections give a qualitative analysis of the link between foreign GIs and their geographical origin. The methodology consists of a content analysis of the single documents available on the e-Ambrosia database of the European Commission concerning the registration in the EU of PDOs and PGIs from third countries for agricultural products and foodstuffs.

The analysis will provide an understanding of the different ways in which the products are linked to their origin. The aim of this research is to provide knowledge and understanding of the link of GI products to their geographical origin, as per the code structure shown in Table 1 of Chapter 1. Particular attention will be paid to the differences between PDOs and PGIs for non-EU products, complementing the research and the results obtained in Chapter 1 of this book.

3.3.1. Results of the qualitative analysis

The results obtained from a population of foreign GIs, namely 8 PDOs and 18 PGIs, registered on the e-Ambrosia database on 20 December 2019 are shown in the tables below.

⁴⁹ See also Marie-Vivien, D. and E. Thevenod-Mottet, 'Quelle reconnaissance pour les indications géographiques des pays tiers en Europe? Enjeux découlant de la décision de l'organe de règlement des différends de l'OMC' (2007) 299 *Economie rurale*, 58.

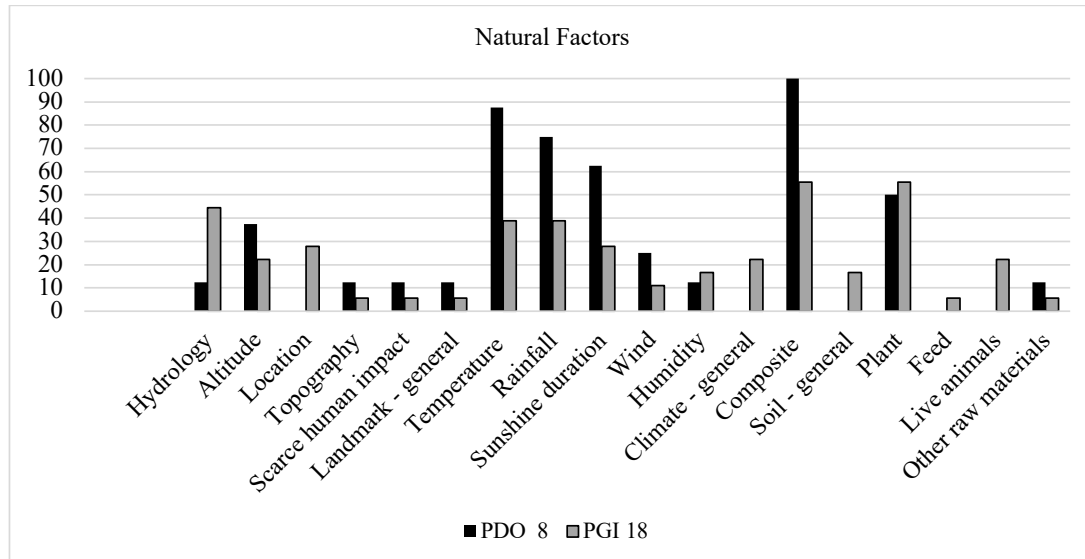
⁵⁰ See EC-US Report at [7.52]; EC-Australia Report at [7.103].

⁵¹ Michael Handler, 'The WTO Geographical Indications Dispute' (2006) 69 *The Modern Law Review*, 78.

⁵² Irina Kireeva, 'The new European Regulation on Quality Schemes for Agricultural Products and Foodstuffs' in Joseph McMahon and Michael Cardwell (eds.) *Research Handbook on EU Agriculture Law* (Edward Elgar 2015) 285, 287.

⁵³ Christopher Heath, 'How Would Geographical Indications from Asia Fare in Europe?' in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017), 191.

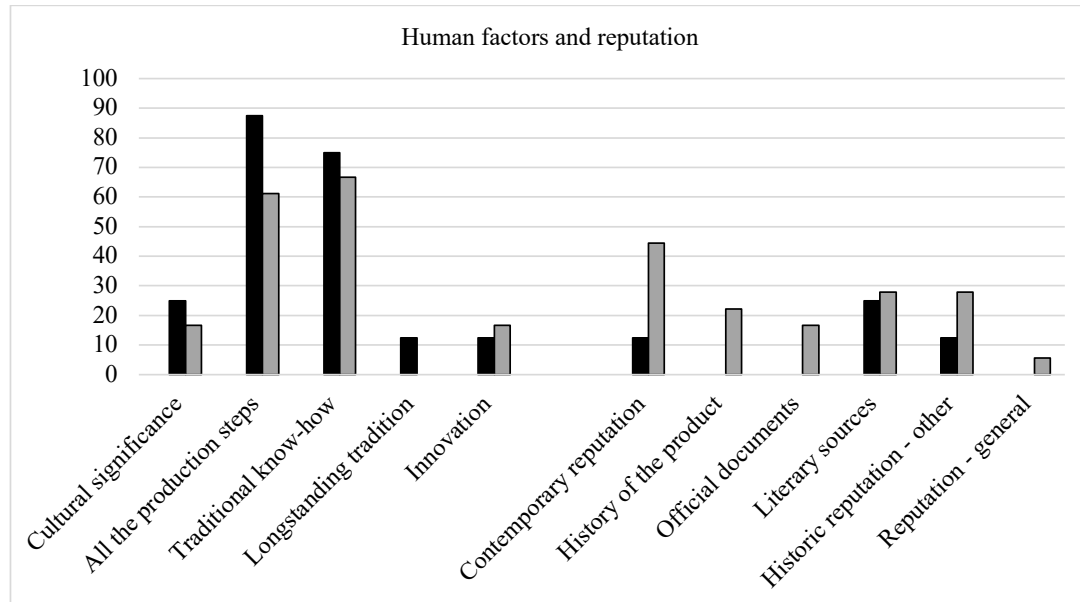
Chart 13 Natural factors for non-EU products



The quotations of natural factors for non-EU products show that, despite having higher occurrences for PDOs than for PGIs, PGIs keep a strong link to origin regarding their natural factors. Even for climate (codes “temperature”, rainfall” and “sunshine duration”) and composition of the soil (code “composite”), for which there is a higher occurrence for PDOs than for PGIs, globally, quotations on natural factors for PGIs are no less than 50% of those for PDOs.⁵⁴ In addition, raw materials for 16 out of 18 PGIs come from the same production area (see Table 5 below), confirming the strength of the link with their territory.

⁵⁴ The quotations on natural factors are included in the single documents under the section named ‘link with the geographical area’. Natural factors explicitly mentioned in the sub-section ‘specificity of the geographical area’ have been considered only when referred to by subsection ‘causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, the reputation or other characteristic of the product (for PGI)’. The descriptions of pedoclimatic conditions of the geographical area have not been taken into account if not causally linked to the product.

Chart 14 Human and reputational factors for non-EU products



The comparison between PDOs and PGIs for human and reputational factors shows that human factors are equally important for both quality signs. In particular, the production steps of 60% of non-EU PGIs take place entirely within the production area (code ‘all the production steps’). This very high percentage, when compared to the percentage of EU PGIs whose production steps take place entirely within the territory (30% as per Table 3 in Chapter 1), shows a particularly strong link to origin.

Regarding the reputational factors, “contemporary reputation” occurs around 4 times more for PGIs rather than for PDOs. The other codes are equally distributed among PDOs and PGIs, with slightly more occurrences for PGIs rather than for PDOs.

3.3.2. Interpretation of the results

In line with the results of the qualitative analysis conducted in Chapter 1, the qualitative analysis of GIs from third countries registered in the EU at September 2018 shows that, even if the difference between PDOs and PGIs is not completely blurred, natural and human factors have high relevance for both EU quality signs.

Different from the findings of section 4.1 of Chapter 1, the time when the registration of non-EU GIs took place is not relevant. In particular, the simplified procedure pursuant to Art. 17(1) Regulation 2081/1992 was not made available to non-EU GIs. In addition, registration took place from 2007 to 2019. This relatively short timeframe does not allow for relevant changes in the templates made available by the EU Commission. Small differences in the templates are not liable to affect the code structure or the effectiveness of the data set used for the research since they do not alter the kind or number of linking factors used.

Table 5 Registered Non-EU GIs

Designation	Country	Type	Class	Raw materials	All produ	GI definition
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				from the area	ction steps	
Carn d'Andorra	Andorra	PGI	class 1.1.	Yes	Yes	No <i>sui generis</i> system
Poivre de Kampot	Cambodia	PGI	class 1.8.	Yes	Yes	TRIPS-like
Dongshan Bai Lu Sun	China	PGI	class 1.6.	Yes	Yes	Lisbon-like + reputation
Pinggu Da Tao	China	PDO	class 1.6.	Yes	Yes	Lisbon-like + reputation
Yancheng Long Xia	China	PGI	class 1.7.	Yes	Yes	Lisbon-like + reputation
Zhenjiang Xiang Cu	China	PGI	class 1.8.	Yes	Yes	Lisbon-like + reputation
Jinxiang Da Suan	China	PGI	class 1.6.	Yes	Yes	Lisbon-like + reputation
Longjing cha	China	PDO	class 1.8.	Yes	Yes	Lisbon-like + reputation
Guanxi Mi You	China	PDO	class 1.6.	Yes	Yes	Lisbon-like + reputation
Shaanxi ping guo	China	PDO	class 1.6.	Yes	-	Lisbon-like + reputation
Lixian Ma Shan Yao	China	PGI	class 1.6.	Yes	-	Lisbon-like + reputation
Longkou Fen Si	China	PGI	class 2.7.	No	No	Lisbon-like + reputation
Café de Colombia	Colombia	PGI	class 1.8.	Yes	No	Lisbon-like + reputation
Café de Valdesia	Dominican Republic	PDO	class 1.8.	Yes	Yes	Lisbon-like + reputation TRIPS-like
Darjeeling	India	PGI	class 1.8.	Yes	Yes	TRIPS-like
Kopi Arabika Gayo	Indonesia	PGI	class 1.8.	Yes	No	TRIPS-like
Fenalår fra Norge	Norway	PGI	class 1.2.	Yes	Yes	PDO/PGI-like
Tørrfisk fra Lofoten	Norway	PGI	class 1.7.	Partly	Yes	PDO/PGI-like
Khao Sangyod Muang Phatthalung	Thailand	PGI	class 1.6.	Yes	Yes	TRIPS-like
Kafe Doi Tung	Thailand	PGI	class 1.8.	Yes	No	TRIPS-like
Kafe Doi Chaang	Thailand	PGI	class 1.8.	Yes	No	TRIPS-like
Khao Hom Mali Thung Kula Rong-Hai	Thailand	PGI	class 1.6.	Yes	Yes	TRIPS-like
Malatya Kayısı	Turkey	PDO	class 1.6.	Yes	Yes	PDO/PGI-like
Aydın İnciri	Turkey	PDO	class 1.6.	Yes	Yes	PDO/PGI-like
Antep Baklavası	Turkey	PGI	class 2.4.	No	No	PDO/PGI-like

Phú Quốc	Vietnam	PDO	class 1.7.	Yes	Yes	Lisbon-like (+ reputation after-2005)
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The table above shows that, for the majority of the products, all the production steps take place in the geographical area, including the origin of the raw materials. Nonetheless, 18 out of 26 non-EU GIs have been registered in the EU as PGIs rather than as PDOs. This confirms the findings of the qualitative analysis and shows that many non-EU GIs have a strong link with their geographical origin.

There are two reasons why producers from third countries tend to choose a PGI despite the strength of the link to origin, apart from the complexity and length of the PDO procedure, already identified for EU GIs in section 4 of Chapter 1. The first deals with the nature of the GI system of the third country, whether or not it adopted a twofold link to origin (similar to the PDO/PGI quality scheme in place in the EU). The second considers the nature of the application, whether or not the GI has been registered in the EU through a direct application made by the applicant or through an application made via the competent authority within a cooperation agreement between the third country and the EU (such as the Chinese 10+10 project already mentioned).

To further explore these reasons, the following sections provide an analysis of the nature of the GI systems of third countries, divided into three categories: countries with a twofold link to origin, countries with a single link to origin, and countries without a *sui generis* GI system. In particular, all third countries, except for Andorra and Colombia, have shown a tendency to register their products under the quality symbol closer to the notion of GI adopted in their national system, irrespective of the strength of the link to origin that would have allowed them to apply for a PDO.

3.3.2.1. Countries with a twofold link to origin

An analysis of the national legal provisions shows that Dominican Republic, Norway, and Turkey have a twofold system, adopting the concepts of designations of origin and geographical indications. In particular, the Norwegian and Turkish definitions are fully comparable to the EU PDO/PGI, since they include reference to the production steps that must take place within the geographical origin of the product.

The Dominican IP code⁵⁵ defines the concepts of designations of origin (*‘denominación de origen’*) and geographical indication (*‘indicación geográfica’*) with wording similar to the wording adopted by the Lisbon Agreement and the TRIPS Agreement. The product registered as a PDO has a strong connection with the territory, with the raw materials and all the production steps taking place in the defined geographical area.⁵⁶

The Norwegian GI Regulation defines the concepts of designations of origin (*‘Beskyttet opprinnelses betegnelse’*) and geographical indications (*‘Beskyttet geografisk betegnelse’*) in line with the

⁵⁵ See Art. 20(h) and 20(i) of Law 20-00 on Industrial Property of 8 May 2000 <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKewiy7JupvYTpAhVq7OAKHVEiBrkQFjAAegQIARAB&url=http%3A%2F%2Fonapi.gob.do%2Findex.php%2Fmarco-legal%3Fdownload%3D62%3Aley-no-20-00-sobre-propiedad-industrial&usq=AOvVaw1-J6B1MQ_joNI8iFoh6YEo> (accessed 31 January 2022).

⁵⁶ Café de Valdesia PDO [2016] OJ C91/15, no. 3.4 reads as follows: “All steps in the production of ‘Café de Valdesia’ must take place within the defined geographical area, which has suitable soil and climatic conditions and a long tradition of producing coffee using the approved processes and methods. Therefore, the coffee beans must be grown and processed into green coffee and the green coffee processed into roasted coffee beans or ground roasted coffee within the defined geographical area”.

requirements of Art. 5 Regulation 1151/2012.⁵⁷ The PGI Tørrfisk fra Lofoten has a relatively strong connection with the territory but was registered as a PGI because at the time of the application there was very little migration of codfish to Lofoten. In order to solve this problem, the producers' group decided to enlarge the zone of fishing, including neighbouring areas. Today, despite the fact that codfish are back in Lofoten, the producers' group is not interested in changing the product specifications and re-starting the recognition process as a PDO. The choice of a specific quality symbol is not perceived as an issue.⁵⁸

Similarly, the Turkish Industrial Property Act provides for two different links to origin, the 'appellation of origin' ('*Mense adidir*'), whose definition is close to the EU PDO, and 'designation of origin' [sic in the English translation of the Industrial Property Code available at the website of the Turkish Patent and Trademark Office] ('*Mahrec adidir*'),⁵⁹ whose definition is close to the EU PGI.

Both Norwegian and Turkish products are registered in the EU with the same quality signs used at the national level, correctly interpreting the PDO/PGI difference on the basis of the strength of the link to origin of the product. At the time of the EU registration, Norwegian producers of Tørrfisk fra Lofoten did not re-discuss the link to the territory and the EU quality symbol chosen.

3.3.2.2. Countries with a single link to origin

Table 5, and in particular the comparison between foreign GI provisions and the EU quality symbols adopted, shows that foreign producers opt for the EU quality symbol that is closest to the GI definition adopted in their national system. This happens irrespective of the strength of the link to origin that would have allowed foreign producers to opt for a PDO instead of a PGI. This is particularly true for Cambodia, India, Indonesia, and Thailand.

The Cambodian, Indian, and Thai laws on Geographical Indications contain GI definitions that reflect the one contained in Art. 22 TRIPS. The relevant legal provisions contain no reference to the various production steps nor the origin of raw materials of the product. In order to grant GI protection, it is required that the quality, reputation or other characteristics of the product are essentially linked to its place of origin.⁶⁰

⁵⁷ See Sections 5 and 7 of the Regulation on the protection of designations of origin, geographical indications and designations for traditional foodstuffs of 5 July 2002 <<https://lovdata.no/dokument/SF/forskrift/2002-07-05-698>> (accessed 31 January 2022).

⁵⁸ See Interview Tørrfisk Fra Lofoten in Annex VI. As regards the PGI Fenalår Fra Norge, the obstacle to the recognition as PDO mainly relies on the fact that the product has been produced all over Norway for a very long time. See interview Fenalår Fra Norge in Annex VI.

⁵⁹ See Art. 34 (1) (a) and (b) of the Industrial Property Act adopted on 22 December 2016 and entered into force on 10 January 2017 No. 29944. Translation available at <<https://www.turkpatent.gov.tr/TURKPATENT/resources/temp/4D59A7D3-A564-40A1-9C96-DB1E3D157E90.pdf;jsessionid=8A685E020B6299CD5DA7D3D3C722506B>> (accessed 31 January 2022).

⁶⁰ See Art. 4 of the Cambodian Law on Geographical Indications of 20 January 2014, translation available at <http://www.cambodiaip.gov.kh/DocResources/3677be8a-1510-40b7-ba88-e84d6262a9a1_007729c5-60a9-47f0-83ac-7f70420b9a34-en.pdf> (accessed 31 January 2022).

See Art. 2 (1) (e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 No.48 of 1999 (30th December, 1999) <<http://www.ipindia.nic.in/act-1999.htm>> (accessed 31 January 2022). Here GIs applies to both goods originating or manufactured in the geographical area.

See the General Provisions under Chapter I, Section 3 of the Thai Protection of Geographical Indications Act B.E. 2546 (2003), translation available at <<https://wipolex.wipo.int/en/text/185549>> (accessed 31 January 2022).

The Indonesian Law on Marks and Geographical Indications links products to their territory based on natural or human factors or a combination thereof.⁶¹ This definition is looser than the one pursuant to Art. 2 (2) of the Lisbon Agreement, requiring a mandatory combination of natural and human factors.

As regards Vietnam, the concept of appellation of origin was introduced following cooperation with France. In 2005, Vietnam adopted an IP Law, with a GI definition modelled on Art. 22 TRIPS. In particular, Art. 79 of the IP Law provides that a GI product must originate from the area, locality, territory, or country corresponding to the related GI and must also have the reputation, quality, or characteristics essentially attributable to the geographical conditions of the area.⁶²

Despite the broader definition, GIs in Vietnam are still considered ‘appellations of origin’ according to the definition of the Lisbon Agreement, since the link between the quality of products and their respective geographical environments must be met.⁶³ Evidence of this is Art. 82 of the IP Law requiring a mandatory combination of human and natural factors to justify GI registration, which is much stricter than the definition of GIs that is provided in TRIPS. In addition, GI dossiers are really detailed, including the demonstration of the link between the products and their geographical origins, and no GI registration has been issued based on the criterion of reputation alone. This, together with the cooperation with the French government, has been reflected in the choice of the PDO for the registration of the Phú Quốc fish soup in the EU.

This case, notwithstanding the stronger link to origin, does not differ from the previous ones. In both circumstances, foreign producers opted for the EU quality symbol that is closest to their national GI tradition. In particular, when the foreign GI is registered in the third country as designation of origin, the product is registered in the EU as a PDO (e.g. Phú Quốc). However, when the foreign GI is registered in the third country as a geographical indication, the product is registered as a PGI, despite the strength of the link per se considered that might qualify the product for a PDO (e.g. Darjeeling and Poivre de Kampot).

A different approach has been followed for the registration of Café de Colombia. The quality symbol chosen at the EU level (PGI) does not fully correspond to the stricter definition of *denominación de origen* adopted at the national level. In particular, Colombian GIs refer to the concept of appellation of origin and require a strong link based on a combination of natural and human factors⁶⁴ in line with the definition of appellations of origin provided by the Lisbon Agreement. However, Decision No 486 of the Andean Community does not differentiate between denomination of origin and geographical indication. Colombian denominations of origin can be used regardless of how many

⁶¹ See Art. 1 (6) of the Law of the Republic of Indonesia No. 20 of 2016 on marks and geographical indications, translation available at <<http://ditjenpp.kemenkumham.go.id/arsip/terjemahan/38.pdf>> (accessed 31 January 2022).

⁶² See GI definition available on the website of the IP Office of Vietnam <http://www.noip.gov.vn/en_US/web/english/overview3> (accessed 31 January 2022).

⁶³ Barbara Pick, Delphine Marie-Vivien, and Dong Bui Kim ‘The Use of Geographical Indications in Vietnam: A Promising Tool for Socioeconomic Development?’ in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 305, 312.

⁶⁴ See Art. 201 of the Decision of the Commission of the Andean Community No. 486, translation available at <<http://www.sice.oas.org/Trade/Junac/Decisiones/DEC486ee.asp#tit12c1>> (accessed 31 January 2022).

production steps take place in the geographical area (all or at least one). Therefore, a Colombian denomination of origin can be registered in the EU as a PDO or a PGI.

There are at least two reasons why Colombian producers opted for a PGI instead of a PDO⁶⁵. The first deals with the extension of the geographical area. There are smaller denominations of origin registered in Colombia for coffee but the idea was to put together different producers, whose products are equally registered as GIs at the national level. The idea is to create a ‘PGI umbrella’,⁶⁶ able to group producers and be competitive in international markets. In addition, it would have been more complex to prove an exclusive link based on natural and human factors on such an extensive geographical area. A link to the geographical origin based on reputation, admissible under Colombian law, is not possible for a PDO under Art. 5(1) Regulation 1151/2012.

The second reason, similar to other GIs for coffee, deals with the fact that the roasting phase of the green beans often takes place outside the area of production, according to the practice of the importing countries. Colombia, the third biggest producer of coffee in the world, has had to adopt a different commercial strategy than other smaller productions such as the PDO Café de Valdesia, since it is necessary to export part of the production as green beans, which are to be roasted elsewhere.

In theory, it would have been possible to apply for a PDO by including all the transformation phases (including roasting) in the geographical area. However, the decision to opt for a PGI is a clear balance not only for the origin of the product but also for commercial relations. In particular, producing countries consider that the typicality of the coffee is fully obtained in the country of origin, while importing countries believe that the roasting process implies a substantial transformation and has an impact on the quality of the coffee. Therefore, the origin of the product for tariff reasons is different. Applying for a PGI and allowing the roasting phase to be conducted outside the area of production gives more flexibility with regard to the doctrine of substantial transformation.⁶⁷

Having understood the relevance of the roasting phase for tariff purposes, it is interesting to note that for the PDO Café de Valdesia, all the production phases, roasting included, take place in the geographical area. This is justified by the fact that the roasting phase determines the physical, chemical and organoleptic characteristics of the processed product and requires skills mastered by

⁶⁵ See interview with PGI Café de Colombia in Annex VI.

⁶⁶ Traditionally, PDOs and PGIs are represented as two different links to origin labelling products which are in competition among them. This concept is often influenced by the various GI traditions of EU Member States, in particular those with a strong GI tradition. Nonetheless, the flexibility proposed by PGIs when compared to PDOs might allow a certain synergy between the two quality signs, allowing the coexistence between niche PDO production and a more industrialised PGI production. The coexistence between the PDO Aceto Balsamico Tradizionale di Modena and the PGI Aceto Balsamico di Modena is perhaps the most famous example, but this practice is becoming more and more widespread. For olive oil, it is possible to mention the example of *Olivo di Calabria* PGI (including the entire region of Calabria) and smaller local PDOs within the region. A similar discussion is currently ongoing for the *Camembert de Normandie* PDO and the creation of a PGI *Lait de Normandie* for milk coming from the region.

⁶⁷ More information available at European Commission, Introduction Non-Preferential Origin <https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/nonpreferential-origin/introduction_en> (accessed 31 January 2022).

In addition, the interview highlights the importance of protecting the name in the EU in order to mention to consumers the Colombian origin of coffee. To do so, an exception has to be made concerning the doctrine of substantial transformation. Since labelling authorities operate nationwide, the risk was to lose the Colombian origin of the coffee in the communication with consumers, depending on the different interpretation of the labelling authorities with regard to the doctrine of substantial transformation.

roasters in the defined geographical area, therefore operating as a human factor to link the product to its territory.⁶⁸ Despite the relevance of this transformation phase, the single document allows placing Café de Valdesia on the market as green coffee,⁶⁹ apparently contradicting the considerations above.

Therefore, it is possible to observe that foreign producers opted for the EU quality symbol that is closest to their national GI definition, despite the strength of the link per se considered. The case of Colombia represents an exception mainly motivated by the extension of the geographical area and commercial reasons.

3.3.2.3. Countries without a *sui generis* GI system

The EU Register contains only two cases of agricultural products registered by a third country without a *sui generis* GI system: the PGI Carn d'Andorra and the PDO Rooibos-Redbush. Both products are protected at the national level via trade marks. Art. 36 of the Law on Trade Marks of Andorra, for example, allows registering a collective mark to identify the geographical source of goods. In June 1999 the Government of Andorra approved the Regulation on the use of the official stamp of control and guarantee "Meat of controlled quality of Andorra" that collects the traditional production systems of the different types of meat, defines its commercialisation and regulates the use of the seal for three differentiated products: beef, lamb, and goat. Later on, the Government of Andorra, on behalf of the Ramaders d'Andorra SA company, filed the application and obtained the recognition of the product in the EU.⁷⁰

The second example represents an interesting exception to the observed trend that applicants from third countries opt for the quality symbol closest to the notion of GI adopted in their national system, irrespective of the strength of the link to origin. In this case, despite the lack of a *sui generis* system, producers applied for a PDO and not for a PGI, which seems to be the general trend. Possible reasons for this choice seem to be found in the complete absence of a public framework. The development of GI started in 2006 at the initiative of a group of researchers, soon becoming industry driven. The decision to apply for a certification mark at the national level and for a PDO in the EU has also been used as part of a lobbying strategy by the industry, supporting the need for better domestic protection.⁷¹

3.3.3. Nature of the applicant: choice of the quality scheme in the case of direct application from individuals *versus* competent authority

Following the WTO decision, Regulation 510/2006 (repealing Regulation 2081/92) removed specific administrative burdens for the registration of GIs from third countries. As a consequence, the EU system gained flexibility and became more open to registering foreign GIs, allowing applications from the authorities of the third country or, in addition to that, direct applications from individuals.

From the analysis of Table 5, it is possible to observe that many non-EU GIs have a strong link with their geographical origin. In particular, the production steps of the majority of those products all take place in the geographical area, including the origin of raw materials. Nonetheless, many non-EU GIs

⁶⁸ See PDO Café de Valdesia (n 56) 5.3.

⁶⁹ *ibid* 3.2.

⁷⁰ Information made available by the Department of Agriculture of the Government of Andorra at <<https://www.agricultura.ad/carn-d-andorra>> (accessed 31 January 2022).

⁷¹ Estelle Biénabe and Delphine Marie-Vivien, 'Institutionalizing Geographical Indications in Southern Countries: Lessons Learned from Basmati and Rooibos' (2017) 98 *World Development* 58, 62.

are registered as PGIs rather than as PDOs. A first reason, already identified in section 3.2., is based on the nature of the GI system of the third country. The majority of applicants from third countries opt for the quality symbol closest to the notion of GI adopted in their national system, irrespective of the strength of the link to origin that might have allowed an application for a PDO.

A second reason depends on the nature of the application, whether or not the GI is to be entered in the EU Register through a direct application made by the applicant or through an application made via the competent authority by reason of a cooperation agreement between the third country and the EU. In the latter case, it seems that a careful assessment of the difference between PDOs and PGIs necessarily leads to more PDOs being granted to foreign products.

The Chinese products, for example, were entered in the EU Register through the ‘10 plus 10’ project. Those products, registered in China through the rules of the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ), comply with the Provisions on the Protection of Geographical Indication Products (PPGIP).⁷² In particular, Art. 2 PPGIP provides a definition partly in line with the Lisbon Agreement, including a mandatory combination of natural and human factors.⁷³ The Chinese definition of GI is somehow loosened by including the concept of reputation, with no specific mention of the origin of raw materials and the production steps, but only of the fact that these originate ‘wholly or partially’ from the territory. Within this framework, 4 out of 10 products were qualified to be entered in the EU Register as PDOs, while the others were registered as PGIs.

Nonetheless, the approach taken with the first Chinese registrations seems to have changed with the entry in the EU Register of 100 additional Chinese GIs, following the conclusion of the EU-China agreement. The fact that all 100 additional Chinese products were entered in the EU Register as PGIs proves the interest in EU logos, irrespective of the strength of the link to origin that might allow an application for a PDO. This is in line with the findings of Chapter 1 regarding the preference of EU producers for PGIs compared to PDOs and might blur even further their difference in case other third countries adopt the same approach.

That being said, it is possible to observe that when registering a foreign GI through a direct application, applicants tend to opt for a PGI, irrespective of the strength of the link with the territory and the GI tradition of their country. In addition, PDOs are usually chosen when the product was registered in the country of origin according to a quality scheme that replicates the EU PDO/PGI schemes (see Turkish PDOs) and for products registered via the competent authority, even when the third country does not differentiate between PDOs and PGIs (see the example of China for the first 10 GIs).

The most probable reason for this behaviour is that a cooperation agreement allows for a better understanding of the difference between PDO and PGI, due to better information and probably also the guarantee from the EU side that certain products meet the PDO requirements. Yet, in the case of a direct application, submitted by lawyers and not by officials or researchers (as in the PDO Rooibos case), producers may be more interested in obtaining a PGI, perceived as easier and quicker to get

⁷² For more information concerning the Chinese GI system see Haiyan Zheng, ‘A Unique Type of Cocktail: Protection of Geographical Indications in China’ in Irene Calboli and Ng-Loy Wee Loon (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 380.

⁷³ Provisions of May 16, 2005, for the Protection of Products of Geographical Indication (promulgated by Order No. 78 of June 7, 2005 of the General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China) <<https://wipolex.wipo.int/en/text/181517>> (31 January 2022).

when compared to a PDO (already discussed in Chapter 1), and even more in a situation where there are no ongoing negotiations with the EU.⁷⁴

3.4. Interim conclusions

In reply to the research question of this chapter: “What is the role of PDOs and PGIs in the negotiations of bilateral agreements and in the registration of foreign GIs in the EU?”, it is possible to observe that the difference between a PDO and a PGI is not particularly relevant, either for the creation of the EU GI lists in bilateral agreements or for the registration of foreign GIs in the EU. Nonetheless, why are there still some foreign GIs asking to be registered as a PDO?

Having regard to EU products, the EU does not have any preference for a specific quality sign (PDO or PGI) at the time of preparing the list that will be submitted to the third country. In particular, the PDO/PGI ratio per class of products contained in the GI lists is equivalent to the PDO/PGI ratio per class of products contained in the e-Ambrosia database. This allows concluding that the difference between the two EU quality signs does not have per se an impact on the creation of the lists.

In addition, despite the difference in the number of EU products contained in the GI lists, an analysis of the GI lists of 13 bilateral agreements shows a certain consistency in the products chosen and finally included in the list. In particular, 77 EU GIs for foodstuffs are contained in more than 70% of the lists. A look at these products makes it possible to understand that these are the most commonly traded GIs in international markets, the “national champions” of various EU Member States.

Having regard to non-EU products, recognised through bilateral agreements, the choice between the EU quality symbols plays a very limited role. Pursuant to Art. 11(2) Regulation 1151/2012, GIs pertaining to products of third countries are qualified as PGIs (once entered in the EU Register) unless specifically identified as PDOs in the bilateral agreements to which the EU is a contracting party. The fact that there is no mention of a specific quality symbol for the majority of products (more than 300) suggests that these GIs will be qualified as PGIs (whether and when they will be entered) in the EU Register.

In addition, very few products in the GI lists from third countries protected in the EU within the terms of bilateral agreements are included in the EU GI Register. No further details are provided on the procedure to be followed in order to register such GIs. The limited number of GIs entered in the EU Register from third countries has traditionally been explained by the ‘extra hurdles’ they had to face under the previous EU legislation. Nonetheless, more than 15 years after the WTO decision, the EU Register contains a relatively small number of GIs from third countries. One of the reasons is the need to show traceability and controls in the country of origin, and not all producers can meet this test.

Therefore, GIs contained in the lists from third countries do not provide a clear difference between PDOs and PGIs. This is also due to the fact that the EU does not require such distinction in the bilateral agreement. According to Art. 11(2) the great majority of products would be qualified as PGIs, irrespective of the strength of their link to origin. This would contribute to blurring the difference between PDOs and PGIs, already considered in Chapter 1, and make the EU system less understandable for both EU and non-EU producers.

⁷⁴ I am particularly thankful to Dr Delphine Marie-Vivien for her insightful comments in this regard.

Recently, EU quality symbols seem to play a bigger role in the conclusion of bilateral agreements, creating a shift from the centrality of the name (that is the basis of GI protection) to a higher relevance of GI logos. In the text of the agreement with China, this is proven by the express reference to the entry of foreign GIs in the EU Register, through a case-by-case decision concerning their entry as PDOs or PGIs. The registration of 100 Chinese products as PGIs inverted the previous trend based on an assessment of the link to origin to qualify some products as PDOs. This new trend seems to lead to a complete generalisation of foreign GIs into PGIs.

The qualitative analysis of the link to origin for non-EU GIs entered in the EU Register (apart from the 100 Chinese products mentioned above) in section 3 shows that even if the difference between PDOs and PGIs is not completely blurred, natural and human factors have high relevance for both EU quality signs. The findings of Table 3 confirm that many non-EU GIs have a strong link with their geographical origin. For the majority of these products, all the production steps take place in the geographical area, including the origin of the raw materials. Nonetheless, many non-EU GIs are usually registered in the EU as PGIs rather than PDOs.

Apart from the reasons already analysed in section 4 of Chapter 1, dealing with the complexity and length of the PDO procedure, two more reasons have been identified specifically for GIs from third countries. The first concerns the nature of the GI system of the third country, whether or not it adopted a twofold link to origin (similar to the PDO/PGI quality scheme in place in the EU). The second considers the nature of the application, whether or not the GI has been registered in the EU through a direct application made by the applicant or through an application made via the competent authority.

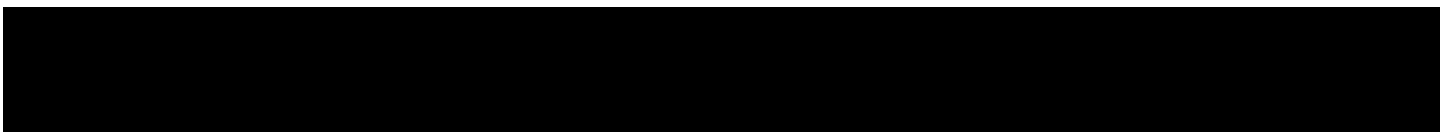
Considering the nature of the GI system of third countries, it has been observed that foreign applicants, except for Andorra, Colombia, and South Africa, tend to register their products under the quality symbol closest to the notion of GI adopted in their national system (usually PGI), irrespective of the strength of the link to origin that would have allowed them to apply for a PDO.

Having regard to the nature of the application, when registering a GI from a third country through a direct application, applicants tend to opt for a PGI, irrespective of the strength of the link with the territory and the GI tradition of their country. Yet, PDOs are usually chosen for products registered through the competent authorities of the third country (see Phú Quốc from Vietnam of the first batch of Chinese products) and when the product was registered in the country of origin according to a quality scheme similar to the EU PDO. For direct applications, this may depend a lot on the context of the registration, for instance when a lawyer is involved whose background might be determinant in advising the client, directing the application towards a specific quality symbol.

CHAPTER 4



Options for a higher visibility of the EU quality schemes (PDOs/PGIs)



4.1. Introduction

Despite the interest in EU quality symbols in international trade, the analysis conducted in the previous chapters shows that EU policy objectives could be undermined by the blurring of the difference between PDOs and PGIs and the loosening of the link to origin. This chapter provides some options on GI protection in the EU, in particular on how to establish and maintain a clear difference between PDOs and PGIs.

Starting from a description of the status quo and the problems concerning the visibility of the EU quality symbols, section 3 considers five possible options in light of the results of the analyses of the three previous chapters. In particular, each option is analysed under the lenses of: (1) the blurred difference between PDOs and PGIs; (2) the need of innovation and the amendment of the link to origin; and (3) the role of PDOs and PGIs in international trade. At the end of this section, an analysis of the objectives and interest groups are made, retaining and further analysing the two most effective options.

In light of the recent proposal of the European Commission, aimed at making the current GI system more attractive to both producers and consumers, section 4 analyses the proposed amendment to the PDO definition, with the inclusion of human factors only when ‘relevant’. Attention is given to the impact that this simplification of the link to origin might have on the blurred difference between PDOs and PGIs, in particular for fruit and vegetables.

4.2. Visibility of the EU quality schemes

The EU GI system is based on the French concept of *terroir*, an interpretation of the link between product and territory that emphasises the role of the collective production knowledge developed by a human community over the course of its history. That knowledge results from the interactions between a physical and biological environment and a set of human factors.¹ This relevance attributed to the geographical origin is in line with the policy objectives in the matter of agricultural production and rural economy, and is aimed at adequately rewarding producers and contributing to rural development, especially for disadvantaged areas. This aim requires efficient communication to consumers, enabling them to correctly identify the quality of the products in the marketplace.²

EU policy objectives could be undermined by various issues, *inter alia*, the lack of visibility of EU quality schemes and the loosening of the link to origin. Indeed, the results of the qualitative analysis conducted in Chapters 1 and 3 show that the practice of the EU Register does not fully reflect the requirements for designations of origin and geographical indications set in Art. 5 Regulation 1151/2012. In particular, natural, human, and reputational factors appear to be equally important for both PDOs and PGIs. This tends to blur the difference between PDOs and PGIs and leads many EU and non-EU producers to apply for a PGI even if the link to origin of their products is (at least in theory) strong enough to qualify for a PDO.

The ongoing preference for PGIs might have important consequences as regards the link to origin. Indeed, the analysis of amendments of the single documents for processed meat products shows that

¹ INAO, Guide du demandeur d’une appellation d’origine protégée (AOP) ou d’une indication géographique protégée (IGP) à l’exception des vins, boissons alcoolisées et boissons spiritueuses, 2017, 26 <<https://www.inao.gouv.fr/Espace-professionnel-et-outils/Produire-sous-signes-de-qualite-comment-faire/Guides-pratiques>> (accessed 31 January 2022).

² See Recitals 2 to 4 Regulation 1151/2012.

PDOs did not change the provisions concerning the origin of raw materials, while 4 out of 30 PGIs allowed raw materials to come from a larger area. On top of that, PDOs adopted stricter requirements for the characteristics and use of raw materials,³ while PGIs have shown the tendency to amend the same categories by allowing more flexibility.

The problems concerning the visibility of the EU quality schemes and the strength of the link to origin have already been discussed by the EU on various occasions. In 2008,⁴ the EC started consultations to rethink the functioning of the quality policy for agricultural products, aimed at protecting the names of specific products to promote their unique characteristics, linked to their geographical origin as well as traditional know-how. The aim was to simplify the system, bringing together the existing GI regulations into a single regulatory structure. In addition, merging the existing PDOs and PGIs and providing for different levels of EU protection was also discussed.⁵

One of the priorities was to improve consumers' recognition of the EU quality schemes. Member States pointed out that producers had limited knowledge of the system and a low interest in collective initiatives. In particular, producers were more familiar with the trade mark system, perceiving PDOs and PGIs as bureaucratic, costly (creation of an applicant group, drafting the specifications, evidence of the use of the name, cost of certification and controls) and time-consuming. In addition, consumers had difficulties in differentiating PDOs from PGIs, and understanding the concept of GIs as such.⁶

As regards the visibility of the EU quality scheme, PDOs and PGIs have been created in order to provide consumers with guaranteed information on qualitative aspects of the products. However, the knowledge of consumers, suppliers and producers was (and still today is) low, as proven by a 2007 survey where only 8% of EU consumers were able to distinguish and recognise EU quality symbols.⁷

In order to avoid confusion as to the meaning of the EU quality scheme and increase visibility of the EU quality scheme,⁸ the use of the terms “protected designation of origin” and “protected

³ In particular feed, characteristics of the meat, and weight and age of the animal.

⁴ European Commission, Green paper on agricultural product quality: product standards, farming requirements and quality schemes, COM (2008) 641 final, 15 October 2008.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on agricultural product quality policy, COM (2009) 234 final, 28 May 2009, 10.

⁶ Commission Staff Working Paper Impact Assessment on Geographical Indications, Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes, SEC (2010) 1525, 10 December 2010, 13.

⁷ London Economics, ADAS and Ecologic ‘Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)’ (2008) Tender n. AGRI/2007-G4-04 81 <https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/ext-eval-pdo-pgi-report_2008_en.pdf> (accessed 31 January 2022). Ramona Teuber, “Producers’ and Consumers’ Expectations towards Geographical Indications—Empirical Evidence for Hessian Apple Wine”, presentation at the 113th EAAE Seminar: “A Resilient European Food Industry and Food Chain in a Challenging World”, Greece, 2009; Christos Fotopoulos and Athanasios Krystallis, “Quality Labels as a Marketing Advantage: The case of the ‘PDO Zagora’ Apples in the Greek Market” (2003) 37(10) *European Journal of Marketing* 1350.

⁸ *Ibid.* Of those who recognised the PDO/PGI symbols, only 51% correctly identified that the symbols mean the product is produced in one specific area and only 42% correctly identified that the symbols mean that “guarantee of origin and compliance with product specifications are certified by a controlling body”. Moreover, only about one-third were able to identify that the symbols identified products being produced according to an established specification or with a quality related to the area in which it is produced. In addition, about a quarter of the survey respondents erroneously believed that the PDO or PGI symbol referred to a product being produced in an environmentally friendly way (a characteristic of Organic products), or using a

geographical indication”, or the associated EU symbols in the labelling of products originating in the EU and marketed under a registered name, were made compulsory in 2006, with a provision applicable that entered into force in May 2009.⁹ Furthermore, starting as from May 2010, the visual difference of the EU quality symbols has been increased with the adoption of the colours red and yellow for PDO and blue and yellow for PGIs.¹⁰

The creation of a single link to origin made by merging PDOs and PGIs was opposed by many stakeholders. An analysis of price data showed that producers’ returns for GIs are higher than for non-GI products and PDOs command a higher price than PGIs.¹¹ Therefore, the final proposal maintained and reinforced the existing scheme for agricultural products and foodstuffs because merging the two quality signs would diminish the added-value benefits of PDOs.

Even if the twofold link to origin was maintained, a comparison of the three regulations on agricultural products and foodstuffs shows the evolution of the requirements for designations of origin and geographical indications. Without changing their concept as such, the definitions of PDO and PGI are modified to clarify and simplify their understanding by operators.¹² The notion of typicality of the area for PDOs has evolved from ‘production, processing and preparation’ to ‘all the production steps’. The notion of PGIs has been aligned with the definition of TRIPS, including the adverb essentially, and the requirement of ‘at least one production step’, aligned with the definition of PDO.

Starting from Reg. 510/2006, derogations regarding the origin of raw materials for PDOs have been limited to designations recognised as designations of origin in the country of origin before 1 May 2004, excluding non-recognised designations, despite their ‘traditional character and an exceptional reputation and renown’.¹³ In addition, Art. 5(4) Regulation 1151/2012 further assesses the specificities of certain production areas (including the production of products of animal origin) with restrictions and derogations regarding the sourcing of animal feed, slaughtering and sourcing of raw materials. These restrictions and derogations, adopted through delegated acts, are based on objective criteria regarding quality, usage, recognised know-how, and natural factors.

Recently, as part of an overall evaluation of the EU quality schemes, a new public consultation has been launched to receive feedback on the schemes’ effectiveness, efficiency and consistency.¹⁴ Some of the topics have already been discussed during the previous legislative reform, among others the clarity and intelligibility of the EU quality schemes, including visual differences, meaning and comparison with other national food quality logos, the necessity of keeping the current schemes, and

traditional recipe and distinguishing features (a characteristic of Traditional Specialty Guaranteed (TSG) products).

⁹ Art. 8(2) Regulation 510/2006.

¹⁰ Commission Regulation (EC) No 628/2008 of 2 July 2008 amending Regulation (EC) No 1898/2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2008] OJEU L173/3.

¹¹ Proposal for a Regulation of the European Parliament and of the Council on agricultural product quality schemes COM (2010) 733 final, 10 December 2010, 6.

¹² See Recital 22 Regulation 1151/2012.

¹³ Previously recognised by Art. 2(6) Regulation 2081/92.

¹⁴ European Commission seeks feedback on geographical indications and traditional quality scheme 10 November 2019, <https://ec.europa.eu/info/news/european-commission-seeks-feedback-geographical-indications-and-traditional-quality-scheme-2019-nov-04_en> (accessed 31 January 2022).

the possibility of bringing greater efficiency by unifying registration, amendment and cancellation procedures.¹⁵ The re-discussion of these issues proves their centrality for the EU quality policy.

Overall, the evaluation support study on GIs and TSGs in the EU highlights that understanding and recognition of the PDO and PGI schemes and logos vary considerably between Member States. It is higher in Member States like Italy, France and Spain, with a well-established GI tradition and several protected names, but in most Member States recognition of EU quality schemes is generally lower than recognition of national/regional quality schemes.¹⁶

The distinction between the different quality schemes is not clear to consumers, in particular 40% of them do not perceive any difference in the meaning between PDO and PGI.¹⁷ Similarly, awareness of the EU quality logos is relatively low and consumers confuse the different schemes, showing limited effectiveness in providing clear information.¹⁸

To increase the awareness of consumers in respect of PDOs and PGIs, Regulation 2021/2117 amended Art. 12(3) Regulation 1151/2012 by extending the obligation to use the Union symbols, not only on the labelling but also on advertising materials.

4.3. Options for a stronger link to origin in the EU GI system for agricultural products and foodstuffs

The status quo shows that the legal definitions of designations of origin and geographical indications contained in Regulation 1151/2012 are not reflected in the practice of the EU Register. Here, many products have been registered as PGIs, even if the link to origin of the product is strong enough to justify an application for a PDO. As already considered in section 5 of Chapter 1, three reasons have been identified. The first is that there is no legal incentive that would justify producers' choosing a particular quality scheme, since Regulation No 1151/2012 grants the same legal protection to PDOs and PGIs. The second reason is that the national phase for the registration of a PDO is usually more complex and more time consuming than the registration of a PGI, in particular with regard to the delimitation of the geographical area and the quality control. The third reason is that there is no legal obligation for producers to change their application from PGI to PDO when the product complies with the stricter PDO requirements as regards the link to origin. This, together with the early registered PGIs that benefitted from the simplified procedure pursuant to Art. 17(1) Regulation 2081/1992, explains why there are many PGIs with a strong link to origin.

As regards the amendment of the link to origin, the analysis conducted on the single documents for processed meat products shows that PDOs did not strengthen their link to origin by limiting the broad exception, pursuant to Art. 5(3) Regulation 1151/2012, which allows raw materials (such as live

¹⁵ Issues addressed by questions no. 2, 10, 19, 20, 21 of the EU survey 'Evaluation of Geographical Indications and Traditional Specialities Guaranteed Protected in the EU' <https://ec.europa.eu/eusurvey/runner/evaluation-GIs-TSGPs_Survey-2019> (accessed 31 January 2022).

¹⁶ European Commission, Evaluation support study on Geographical Indications and Traditional Specialities Guaranteed protected in the EU, Final Report, 2021, 71 and 93.

¹⁷ *ibid*, 81.

¹⁸ *ibid* 71; Special Eurobarometer 504 "Europeans, Agriculture and the CAP", October 2020 (fieldwork in August and September 2020), 171 <<https://europa.eu/eurobarometer/surveys/detail/2229>> (accessed 31 January 2022). The percentage of awareness of EU citizens (based on a sample of 27,237 EU citizens) regarding quality schemes logo was relatively low: 20% for PDO logo, 14% for PGI logo and 14% for TSG logo. This is much lower than the organic farming logo (56%) and the Fairtrade logo (40%). In addition, 20% of citizens was not aware of any of the logos.

animals and meat) to come from a larger area. On the contrary, 4 PGIs have amended their link to origin, allowing raw materials to come from outside the area of production. Furthermore, the analysis shows that PDOs adopted stricter requirements for the characteristics and use of raw materials (such as feed, weight and age of the animals), while PGIs tend to provide more flexibility to producers (concerning the use of additives and weight and age of the animals). In addition, there is no difference between PDOs and PGIs concerning the method of production, in this case both PDOs and PGIs have been amended providing a higher degree of flexibility to producers.

Recently, EU quality symbols played an important role in the conclusion of bilateral agreements. In the text of the agreement with China, there is an explicit reference to the entry of foreign GIs in the EU Register. This has to take place after a decision made on a case-by-case basis concerning their entry as PDOs or PGIs. It is still unclear whether this assessment will better demarcate between PDOs and PGIs but, for the time being, the qualitative analysis of the link to origin for non-EU GIs entered in the EU Register shows that natural and human factors have high relevance for both EU quality signs. For the majority of these products, all the production steps take place in the geographical area, including the origin of the raw materials. Nonetheless, many non-EU GIs are usually registered in the EU as PGIs rather than PDOs.

As to the nature of the GI system of the third country, it has been observed that foreign applicants tend to register their products under the quality symbol closer to the notion of GI adopted in their national system (usually PGI), irrespective of the strength of the link to origin that would have allowed them to apply for a PDO. As to the nature of the application, when registering a GI from a third country through a direct application, applicants tend to opt for a PGI, irrespective of the strength of the link with the territory and the GI tradition of their country. On the contrary, PDOs are usually chosen for products registered through the competent authorities of the third country (see the Chinese example) and when the product was registered in the country of origin according to a quality scheme similar to the EU PDO (see Turkey). In addition, Art. 11 Regulation 1151/2012 contains a provision aimed at registering foreign products listed in bilateral agreements as PGIs, unless specifically identified as PDOs. If this trend is not changed, in the future, we might assist an increasing number of PGI applications, further blurring the difference with PDOs contained in the EU Register.

Moreover, problems of lack of visibility and understanding of the difference between the two EU quality schemes are confirmed by the majority of the interviewees who consider the information provided by the national and European authorities to be insufficient for making an informed decision regarding the choice of the quality scheme. In this sense, the status quo shows a need for improvement, both producers and consumers should be provided with better information, in particular, on the difference between PDOs and PGIs.

To improve the status quo, the following five options are considered. Each of them is analysed under three different criteria concerning: the difference between PDOs and PGIs as regards their link to origin, innovation and the amendment of the link to origin, along with possible consequences for international trade.

4.3.1. Option A: Status quo with clarification of PDO/PGI differences for agricultural products and foodstuffs

Slightly more than half of all respondents (7 out of 13) complained about the quality of the information provided to producers (from national and European bodies) and about consumers' perception, in particular on the difference between PDOs and PGIs and the intensity of their link with

the territory. The difference is perceived as critical in the academic literature as well.¹⁹ Therefore, while maintaining the present registration procedure and the level of protection, a possible solution is based on a clearer definition of PDOs and PGIs in the form of guidelines for producers and on an amendment of the requirements set in the EU Regulation.

As regards the requirements for PDOs and PGIs, the EU Guide on how to compile the single document does not offer a product-specific approach based on the classes of products covered by Reg. 1151/2012.²⁰ Section 3.3 on the derogations to locally sourced raw materials for PDOs, for example, does not assess the specificities for live animals, meat and milk covered by the exception, or include a list of ‘objective criteria’ that might justify the exception. Likewise, section 3.4 does not list the production steps that must take place in the production area but only refers, by way of example, to the stage of slaughtering and cutting for meat.²¹ No mention is made to other production steps that might be relevant for other products, such as roasting for coffee beans.

Similarly, section 5 on the link with the geographical area does not provide any details on how the place or the methods of production may influence the specificities of the product. Further, the new template, provided by Annex I Regulation 668/2014, requires a less detailed description of the link to the territory, unlike the former Annex I Regulation 1898/2006 which had a more structured analysis of the link with three separate headings on the “specificity of the geographical area”, “specificity of the product” and a description of the “causal link” between them.

As a consequence of this approach, sometimes single documents describe the characteristics of the geographical area without specifying their influence on the products.²² The same happens with reputation, where the guide adopts general wording that does not allow for differentiating between the historical and commercial reputation of the product.²³

The French guidelines for agricultural products and foodstuffs, for example, are more detailed than the EU ones, but again do not provide product-specific information on the requirements for PDOs and PGIs. Section 5 provides a general description of the methods of production for processed products, animals and vegetables, only by way of example. No reference is made to the derogations

¹⁹ Adriano Profeta and others, ‘The Protection of Origins for Agricultural Products and Foods in Europe: Status Quo, Problems and Policy Recommendations for the Green Book’ (2009) 12(6) *The Journal of World Intellectual Property* 632; Christophe Geiger, and others ‘Towards a flexible international framework for the protection of geographical indications’ (2010) *The WIPO Journal* 1, 147; Gail Evans, ‘The Strategic Exploitation of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products in the European Union’ (2010) 1(2) *The WIPO Journal* 163.

²⁰ European Commission, Guide to applicants. How to compile the single document <https://ec.europa.eu/agriculture/sites/agriculture/files/quality/schemes/guides/guide-for-applicants_en.pdf> (accessed 31 January 2022).

²¹ Art. 5(4) Regulation 1151/2012 refers to restrictions and derogations with regard to the slaughtering of live animals.

²² An example is *Carne de Salamanca* PGI [2015] OJ C435/12. Section 5 describes the specificity of the geographical area (natural factors under section 5.1) and the specificity of the product (5.2) but when it comes to the description of the link between product and territory (5.3), the main elements of connection are generally described as traditional feeding and the fact that livestock can freely graze in the natural environment. The consequence of the characteristics of the environment (like the presence of holm oak) are not clearly reflected on the specificity of the product and its causal link with the territory.

²³ On the problems concerning the fact that present and historical versions of the product specifications are unrelated see Andrea Zappalaglio, ‘The Why of Geographical Indications: The transformation of the link between the product and its place of origin in Europe’ (PhD Thesis, Oxford University 2018) 266.

to locally sourced raw materials or slaughtering of live animals for PDOs, with the exception of Reg. 664/2014 concerning the sourcing of feed. Differing from the EU guidelines, section 6 provides a more detailed description of the link to origin. In particular, it suggests that applicants follow the division into three sub-parts modelled on the previous Reg. 510/2006, describing the specificity of the geographical area, the specificity of the product, and their causal interaction. In addition, the French guidelines distinguish between the concept of reputation and renown (*notoriété*), requiring the demonstration of the latter, even if this is not required by the EU Regulation.

The considerations above open the road to two solutions for better clarifying the difference between PDOs and PGIs. One option is to improve the soft law tools already in place, namely EU and national guidelines. In this sense, it would be required to implement the existing guidelines with a product-specific approach based on the classes covered by EU Regulation 1151/2012. A detailed explanation of the requirements for each class of products would allow, *inter alia*, a clearer understanding of the derogations to locally sourced raw materials for PDOs, the various production steps, and the ‘causal link’ to origin for the various classes of products.

The adoption of clear guidelines both at the EU and national level is important given the differences in the examination procedures among the Member States and the role recognised by local administrations. In Italy, for example, the regional administrations play an important role of "territorialisation" of the procedures, which however generates further interpretative differences. The French system, on the contrary, is highly centralised, being managed by a dedicated body (the *Institut national de l'origine et de la qualité*) which is competent to manage the applications and define the product specifications, grouping the representatives of professional categories, as well as representatives of various scientific disciplines, in national committees. The adoption of more detailed guidelines might help in streamlining the interpretation of the link to origin across the EU Member States.

Indeed, the distinction between PDOs and PGIs was not always clear in the applications for recognition, causing differences in the application of the EU Regulation. For example, in Italy some PDOs have been registered with weak links with the territory and very large raw material supply basins, while we can find PGIs with narrow production areas and with strong links with the territory. This is the case of many fresh fruits and vegetables.²⁴ As regards this category, the *Ministero delle Politiche Agricole Alimentari e Forestali* (MIPAAF) interpreted PDOs as those products having both production and processing requirements within the area defined by the specification.²⁵ Since many fruits and vegetables had only the production phase located in the territory, the Ministry considered these products as deserving a PGI, even if the entire production process took place within the area of origin.

Another solution would be a clearer definition of the difference between PDOs and PGIs by clarifying the concept of link to origin, with an emphasis on the origin of raw materials.²⁶ In this sense, PDOs would be reserved to products wholly obtained in the territory, including the production of the raw

²⁴ See Annex III.A.

²⁵ This reading of the Regulation has changed since 2003, accepting the interpretation that, in the presence of only the production phase, if this takes place in the area of origin, recognition as PDO is still possible. Filippo Arfini, Giovanni Belletti e Andrea Marescotti, *Prodotti tipici e denominazioni geografiche strumenti di tutela e valorizzazione* (Tellus, 2010) 72.

²⁶ *ibid* 188, or at least part of them pursuant to the exception under Art. 5(3) Regulation 1151/2012.

material and its transformation; while PGIs would be reserved to products obtained from transformation processes which, although strongly linked to the territory by quality characteristics, use of resources, local know-how and historical roots, do not make use of local raw materials. Without amending the text of Art. 5(1) and (2) Regulation 1151/2012, this solution would insist on a reconsideration of the exception under Art. 5(3) Regulation 1151/2012 regarding the origin of raw materials for certain categories of products. In this sense, the use of PGIs for products wholly obtained in the geographical area would be strictly limited to those products not showing inherent natural and human factors but mainly relying on quality, reputation or other characteristics essentially attributable to their geographical origin.

The academic literature provides alternatives emphasising the role of tradition. In particular, a difference between PDOs and PGIs based on a strong link with cross-generational tradition (including all the production steps for PDOs) or isolated traditions (including one production step for PGIs) is definitely tempting under a cultural property perspective.²⁷ In any event, these alternatives do not assess the problems related to the dynamic notion of tradition. As further discussed in Chapter 2, both PDOs and PGIs are under constant innovation. Only relying on tradition without adequately highlighting the role of natural factors might excessively loosen the link to origin for PGIs or (if a strict approach is adopted) transform PDOs into uncompetitive knowledge.

Recent proposals for amendment made by the EC and the EU Parliament concerning a limitation of the assessment of human factors only ‘where relevant’ under Arts. 5 and 7 Regulation 1151/2012, further assessed in section 5 of this chapter, seem to be going in this direction.²⁸ In particular, the link to the territory through natural factors seems strengthened for certain products, while human factors are somewhat toned down, limited to soil and landscape management, including cultivation practices and human contribution to the maintenance of the natural factors. This would allow for the recognition of products having a strong connection with the territory (e.g. fruit and vegetables) as PDOs, even without specific cultivation practices unique to a given area.

In line with the amendment of the definitions for PDOs and PGIs, the adoption of more detailed templates is required. New implementing regulations should include different templates for PDOs and PGIs in their annexes, including a more structured section on the link to origin in line with Annex I of the former Regulation 1898/2006. Moreover, product-specific sections divided per class of products might be included concerning the origin of raw materials and the production steps.

Improved definitions may enable applications to be clearer and of a better quality, thus limiting the number of exchange of letters between the Commission and the Member States and shortening the registration process. This would result in a more efficient investment of resources used in the

²⁷ See reform option 1 Marianna Bicskei and others, ‘Reform Proposals on the Geographical Indications of the European Union for the Protection of Traditional Knowledge’ in (2012) 3 WIPO Journal 232. According to the authors, additional information concerning the origin of raw materials should be provided through product labelling.

²⁸ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands, 2018/0218 (COD).

application process. Other problems related to the costs of obtaining a GI, such as problems in agreeing on a product specification or higher production costs due to the rules set by the specifications, are not addressed by this option. Producers who face difficulties in participating in the GI system would not see their position improved.

The clarification of differences between PDOs and PGIs does not have a direct impact on innovation. Nonetheless, as shown in Chapter 2, PGIs have shown a tendency to amend the single documents by allowing more flexibility than PDOs, in particular with regard to provisions concerning the origin of raw materials. Where a clearer difference between PDOs and PGIs results in an increased number of PDO applications, it is possible to expect a stronger link to origin but less room for amendment for producers, in particular concerning the origin of raw materials and the limitation of the area of production.

Improved definitions would increase the legal certainty for non-EU applicants as well. This option does not address the case of those applicants that do not perceive the PDO logo as more valuable than the PGI one (see further option C); this might be due to their national GI tradition and the specific sector in which they operate.

4.3.2. Option B: Harmonisation of the EU GI Regulations

This option considers the harmonisation of the existing EU GI Regulations for quality products (wines, aromatised wines, spirit drinks, and agricultural products and foodstuffs) regulating registration and protection of GIs. While similar in effect, the four regulations present some differences in terms of definitions, registration procedures and deadlines, types of register, and use of the quality symbols. This option extends the clarification of PDO/PGI definitions, limited under option A to agricultural products and foodstuffs, to all EU GIs. The possibility to extend it to non-agricultural products will be further assessed in section 5 of this chapter.

This debate is not new. Despite being in favour of harmonisation, some Member States have claimed the specificity of the wine sector would justify a separate treatment.²⁹ In 2009, as highlighted in the Scotta report of the EU Parliament.³⁰ Member States are of the opinion that the various GI systems should be kept separate. In particular, the current EU system for protection of GIs should be maintained and protection accorded to all products at the EU level. They also consider that the distinction between PDOs and PGIs should be kept in the future; a clearer distinction can be achieved through information and promotion effort towards consumers. In line with the Scotta report, the aim of this option is to keep the technical rules of the wine sector unchanged, by reason of its specificities, but to align provisions in matters of definition and the use of quality symbols.

The analysis of the definitions and use of the EU quality symbols shows that the four GI regulations adopted a different approach. In particular, EU regulations for wines and spirits did not adopt a twofold definition of the link to origin (PDO/PGI) equivalent to the one used for agricultural products and foodstuffs. As regards wines, the main difference between PDOs and PGIs is based on the origin of raw materials; 100% of the grapes must come from the area of production, while for PGIs a maximum of 15% of the grapes may come from outside the area of production.³¹ The definitions for

²⁹ SEC(2010) 1525 (n 6) 30.

³⁰ Draft Report on agricultural product quality policy: what strategy to follow? (2009/2105(INI)) Committee on Agriculture and Rural Development Rapporteur: Giancarlo Scotta, 5.

³¹ See Art. 93(1)(a) and 93(1)(b) Regulation 1308/2013.

aromatised wines and spirit drinks are in line with the one provided by TRIPS, without a distinction between PDOs or PGIs, nor a specific reference to the origin of raw materials or the production steps.³² Another important difference can be found with regard to the use of EU logos, made compulsory for agricultural products and foodstuffs and optional for the products covered by the other regulations.³³

As already considered under option A, the adoption of a twofold definition of the link to origin (at least for agricultural products and foodstuffs and wines) based on the origin of the raw materials and a compulsory use of the EU logos (for all products covered by the EU GI regulations), would increase their visibility for consumers. Art. 119(1)(b) Regulation 1308/2013 partly goes in this direction by including in the list of compulsory particulars the use of the term ‘protected designation of origin or ‘protected geographical indication’ in the labelling, a provision somehow weakened by the derogation of Art. 119(3), allowing the omission of these terms when traditional terms³⁴ are displayed on the label.

This option does not have a direct impact on innovation, since it is aimed at increasing the visibility of the EU quality schemes.

As regards international trade, the harmonisation of the various GI regulations (in particular with regard to definitions and registration procedures) would facilitate applications from third countries and negotiations of bilateral agreements, as the same rules would apply to the different product sectors, making EU legislation clearer. The streamlining of the four systems could support the EU negotiating position on the need for an extension of the TRIPS protection granted to wines and spirits to agricultural products as well.

4.3.3. Option C: Merge the definitions of PDO and PGI

This option aims at reducing confusion between quality signs by merging the two EU definitions. Probably the new definition would be closer to the one existing for PGIs, since the EU is bound to respect the definition pursuant to Art. 22 TRIPS. Adopting a definition closer to the one in place for PDOs would raise problems of compliance with the broader definition of GIs provided by TRIPS and difficulties of delisting those PGIs that do not meet the stricter criteria for PDOs.³⁵

Aligning the existing EU quality schemes with the PGI definition may result in a loss of investment in marketing campaigns aimed at promoting the existing quality symbols carried out by the EU and

³² Art. 2(3) Regulation 251/2014 and Art. 3(4) Regulation 787/2019.

³³ Art. 12(3) Regulation 1151/2012, Art. 120(1) Regulation 1308/2013 and Art. 16 Regulation 787/2019.

³⁴ Art. 112 Regulation 1308/2013 “A “traditional term” means a term traditionally used in Member States for the products referred to in Article 92(1) to designate: (a) that the product has a protected designation of origin or a protected geographical indication under Union or national law; or (b) the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the product with a protected designation of origin or a protected geographical indication.” See further Anke Moerland and Ramyaa Bhadauria ‘The Protection of Traditional Terms for Wines in the European Union and Beyond’ in Julien Chaisse, Fernando Dias Simoes, and Danny Friedmann (eds) *Wine Law and Policy From National Terroirs to a Global Market* (Brill 2020) 347.

³⁵ Marianna Bicskei and others (n 27) 233. An academic reform proposal has been made to maintain only PDOs based on a triple link to origin: all the production steps limited to the geographical area, traditional anchorage proved by historical data on across generation production and reputation. Emphasising tradition over natural factors creates problems concerning the geographical limitation of the area of origin and the recognition of those products (such as fruit and vegetables considered in chapter 1) of products having unique qualities due to their origin but deprived of unique human factors.

the right holders, together with a waste of resources invested in labelling and in studies aimed at delimiting the geographical area on the basis of natural and human factors.³⁶ Furthermore, EU countries that have strong GI traditions would probably face problems of loss of credibility and visibility of the system if PDOs (being the most known symbol) were to be abandoned. Since designations of origin are a long-established definition, it is possible that they would not disappear in the traditional mention of some EU Member States (like DOCG and DOC for Italian wines), further increasing consumer confusion and creating problems of communication and competition in the EU market.

Notwithstanding the communications directed at EU producers and consumers clarifying that PDOs and PGIs represent a different link to origin, and not a different quality output,³⁷ in some sectors PDOs have a higher added value than PGIs when compared to standard production.³⁸ Merging PDOs and PGIs would result in a loss of this premium for PDO producers. A possible negative impact on biodiversity and local development should be assessed, since PDOs, given their stronger link to the territory, have been observed to contribute better to the environment and to the local economy.³⁹ These latter arguments are somehow weakened by a certain blurring of the notions of PDOs and PGIs already analysed in Chapter 1 and could be read as further reasons to adopt an approach in line with option A.⁴⁰

As regards innovation, it has been considered that PGIs tend to amend the single documents by allowing more flexibility than PDOs, as shown in Chapter 2. Therefore, it is possible to estimate that the adoption of PGIs, on the one hand, would loosen the link to origin of raw materials and the delimitation of the production area and, on the other hand, would foster innovation.

As regards the relationship with third countries, merging the two definitions would simplify the EU system and result in easier classification of the foreign GIs as regards the choice of the quality scheme. As already considered in Chapter 3, third countries do not seem particularly interested in the difference between PDOs and PGIs but tend to register their products under the quality symbol closer to the notion of GI adopted in their national system (mainly PGI), irrespective of the strength of the link to origin that would have allowed them to apply for a PDO.

³⁶ See for example the launch in 2019 of 81 campaigns, promoted by the European Commission and approved by the EU's consumers, health, agriculture and food executive agencies, aimed at highlighting the quality of European food with geographical indications, or organic production methods both in the EU and in third countries. The campaigns, running for three years will benefit from an overall funding of €200 million from the EU agricultural budget. More information at <https://ec.europa.eu/info/news/launch-2019-campaign-promote-eu-agri-food-home-and-abroad-2019-oct-18_en> (accessed 31 January 2022).

³⁷ See answer no. 6 of the 'Frequent Answers & Questions – FAQ' of the Spanish Ministry of Agriculture <https://www.mapa.gob.es/es/alimentacion/temas/calidad-agroalimentaria/faqagroalim_tcm30-426478.pdf> (accessed 31 January 2022).

³⁸ For example, in the cheese sector PDOs have a price 117% higher than the average standard market, while PGIs are only 68% more expensive than the average standard market price SEC(2010) 1525 (n 6) 41.

³⁹ SEC(2010) 1525 (n 6) 41. The study used for the EC environmental impact refers to Tequila and Calvados. Anyway, these two products do not well represent the EU twofold link to origin, since spirits cannot be registered in the EU as PDOs. Ana Valenzuela Zapata and others, 'Conservación de la diversidad de cultivos en las regiones con indicaciones geográficas. Comparación del tequila y calvados' in (2004) 5 *Sociedades rurales, Producción y Medio Ambiente* 20.

⁴⁰ The PDO/PGI dichotomy should be abandoned due to unequal treatment of applications by different national authorities, lack of consistency in the differentiation (similar products are registered as PDOs in one country and PGIs in another), and the same legal protection. Adriano Profeta and others (n 19) 633.

As already discussed under option A, a clear distinction between PDOs and PGIs highlighting the origin of the raw materials seems a preferable option. Consequently, it would be necessary to reclassify the existing PDOs and PGIs in order to give clear information to consumers about the origin of the product and the raw materials used. In addition, the origin of raw materials should be indicated if there is a risk of misleading consumers.

4.3.4. Option D: Different levels of protection for PDOs and PGIs

This option aims at reducing the existing similarities between PDOs and PGIs by introducing different levels of protection. Two possibilities will be taken into account: the first deals with the creation of a different legal protection for PDOs and PGIs at the EU level; the second consists of the creation of two levels of protection, a national and an EU level, for both PDOs and PGIs.

The first sub-option is aimed at differentiating PDOs and PGIs by way of a different legal protection based on the intensity of the link to origin, stronger for PDOs and looser for PGIs. Currently the legal protection available for PDOs and PGIs is the same, as identified by Art. 13 EU Reg. 1151/2012. A different legal protection could be modelled on the basis of Art. 22 and 23 of the TRIPS Agreement. For example, the protection accorded to wines and spirits against translation and the use of expressions such as “kind”, “type”, “style”, “imitation” or the like under Art. 23 TRIPS could be reserved to PDOs, while PGIs would benefit from the minimum standard of protection set by Art. 22 TRIPS. This twofold level of protection, agreed in TRIPS negotiations to distinguish protection for wines and spirits from other products, could be used to attribute different levels of protection to the different levels of strength regarding the link to origin for PDOs and PGIs. On the one hand, the stronger protection under Art. 23 TRIPS for wines and spirits well represents the stronger link to origin that traditionally distinguishes these products, starting from the roots of the GI system in France, as discussed in Chapter 1. On the other hand, a weaker protection under Art. 22 TRIPS could represent the weaker link to origin for those (PGI) products that do not present an exclusive link to the territory.

The creation of a different legal protection for PDOs and for PGIs would solve the problem of the blurred difference of the link to origin between PDOs and PGIs, as identified in Chapter 1. This difference would cease to exist because PGI producers would see a stronger GI protection as an incentive to reconsider their application for a PDO. In any event, the problem of PDOs having a looser link to origin would not be solved.

Granting a stronger legal protection to PDOs raises some issues. First, this is not in line with recent EU policy, based on the promotion of both quality signs.⁴¹ Second, as analysed in Chapter 1, the quality scheme chosen does not reflect the link to origin of all GI products. Therefore, a reclassification of existing GIs would be required, in particular those PGIs having a strong link to origin that would be mostly affected by this option. Third, this option would conflict with some international treaties where the EU is a contracting party. In particular, Art. 11(2) of the Geneva Act of the Lisbon Agreement provides protection against imitation of both appellations of origin and geographical indications, even if the true origin of the goods is indicated, used in translated form, or accompanied by terms such as “style”, “kind”, and “type”. Limiting that protection only to PDOs does not seem a viable option. In addition, a different legal protection cannot be easily extended beyond agricultural products and foodstuffs. If so, this would pose problems for PGI wines that would

⁴¹ See Frequent Answers & Questions – FAQ’ of the Spanish Ministry of Agriculture (n 37).

receive protection below the minimum standards required by TRIPS. Furthermore, the creation of a twofold legal protection for PDOs and for PGIs limited to agricultural products and foodstuffs would go against the cross-sectoral harmonisation started by the EU, aimed at streamlining the procedural rules for registration, amendment and cancellation for wines in line with those established for agricultural products and foodstuffs.⁴²

This option would not have a direct effect on innovation. As already considered under option A, the incentive to register the product as a PDO would result in a stronger link to origin, with less room for amending provisions concerning the production steps and the origin of the raw materials.

As regards third countries, this option would probably make the conclusion of bilateral agreements more complex, in particular with those countries that are not familiar with the concept of PDO and require high protection for their products in the EU. This could be remedied by more information provided by the EU during and after negotiations with third countries.

The second sub-option is aimed at differentiating GIs according to economic or trade-based criteria. Within GIs there is a fracture between “agricultural” and “industrial” products, or better said, between those products where the industrial component prevails over craftsmanship and that target a large-scale market instead of a local/niche one. The majority of the turnover is achieved by a few GIs, many of which were already recognised at the national level before 1992.⁴³ The increasing number of GIs, most of which consist of excessively small productions lacking capacity to reach extra-local markets and be visible to the final consumer, contributes to a general devaluation of GIs.⁴⁴

This option does not attempt to distinguish between PDOs and PGIs but to differentiate between national and EU-wide protection for GIs. According to this option, only those products reaching a minimum value of exports (intra and extra-EU) could receive EU-wide protection,⁴⁵ while others would receive protection only at the national level. In practice, this option would make the existing regime of transitional national protection definitive for those having passed the scrutiny of the national authorities.⁴⁶

⁴² See Amendment 18 Proposal for a Regulation Recital 17(a) Draft European Parliament Legislative Resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands (COM(2018)0394 – C8-0246/2018 – 2018/0218(COD)) <https://www.europarl.europa.eu/doceo/document/A-8-2019-0198_EN.html> (accessed 31 January 2022). In line with Recital 2 Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation [2018] OJ L9/2.

⁴³ Filippo Arfini, Giovanni Belletti e Andrea Marescotti (n 25) 180.

⁴⁴ See Tomer Brode, ‘Taking Trade and culture seriously: Geographical Indications and cultural protection in WTO law’ (2005) 26 University of Pennsylvania Journal of International Law 623, 678.

⁴⁵ In 2007, 43% of PDO/PGI production is not exported outside its country of origin and 82% of the total value of production is sold within the country of origin, cheese, beer and olive oil are the products with the highest value of exports. See SEC(2010) 1525 (n 6) 14.

⁴⁶ Art. 9 Regulation 1151/2012.

On the one hand, this option considers that for some local products, EU-wide protection is not needed; equivalent recognition may be achieved at national level. This option might result in easier and quicker management of GI applications. The division of powers between the EU and Member States in the current registration procedure is justified by the fact that the national competent authorities are better positioned to check whether conditions for registration are met.⁴⁷ In addition, national systems could be more adapted to overcome barriers faced by small producers as regards costs and length of the EU procedure, making the registration process easier.

On the other hand, this option does not address the problem of the blurred difference between PDOs and PGIs. Depending on the modalities of how the division between EU and national systems is communicated to the public, consumers could believe that this differentiation corresponds to a certain hierarchy in terms of quality of the products. Even worse, coexistence between national and EU schemes could increase lack of visibility of quality logos.

The use of economic or trade-based criteria, like export values, could create unfairness among GIs,⁴⁸ since they cover many categories of products with different reference markets and production volumes. On a legal perspective, protection at national level would require streamlining national procedures to ensure a uniform approach among Member States. It is also possible that because of different historical traditions, some Member States would not put national GI systems in place, creating a disadvantage for their national producers.

In other words, these simplification needs would lead to a re-nationalisation of the GI system. Without the adoption of clear common rules, there would be the risk of increasing confusion regarding GI definitions and recognition. This could create not only problems of visibility of the EU quality schemes but also undermine the entire system.

As regards innovation, the main problem regards a possible fragmentation if major amendments, currently dealt with at the EU level, were managed at the national level.⁴⁹ In other words, since the assessment of amendments is made on a case-by-case basis, there is a risk that the national authorities would not apply the same criteria uniformly. In particular, there might be the risk that countries with a strong GI tradition, like France, would adopt a more conservative approach compared to countries without strong GI traditions, like Germany, that might take a more liberal approach favourable to innovation, creating discrepancies among GI producers within the EU.

In any event, a more active role of the national authorities seems to be in line with the recent proposal from the European Parliament regarding the approval of standard (minor) amendments, further discussed in section 2.4.1. In particular, the Member State in the territory of which the geographical

⁴⁷ 06/12/2001, C-269/99, *Carl Kühne GmbH & Co. KG v Jütro Konservenfabrik GmbH & Co. KG*, ECLI:EU:C:2001:659 § 53.

⁴⁸ Tim Josling, 'The war on terroir: Geographical Indications as a Transatlantic Trade Conflict' (2006) 57(3) *Journal of Agricultural Economics* 337. Even if such "micro GIs" are unlikely to benefit from sales beyond their own region, they are potentially useful in the development of agro-tourism, where the cultural identity bestowed by the concept of *terroir* and the GI system can be valuable.

⁴⁹ Pursuant to Art. 53 Regulation 1151/2012, amendments that are not minor follow the same procedure laid down in Arts. 49 to 52 for the application for registration of GIs, with scrutiny conducted by the EC.

area of the product concerned is located, has to approve the amendment and notify it to the European Commission, a task that today is performed directly by the EC.⁵⁰

As regards trade relationships with third countries, this option might improve the choice of GIs to be listed in bilateral agreements with third countries, giving priority to those products effectively traded outside the EU. Nonetheless, clear rules regarding the EU competence concerning applications from third countries have to be defined. The risk is that the creation of a twofold system (EU and national level) would give the right to non-EU producers to obtain protection in each Member State through their national systems. This would create unnecessary burdens for applicants from third countries, which are, however, partly mitigated by the EU's accession to the Geneva Act of the Lisbon Agreement and the implementation of the international register.

4.3.5. Option E: Trade mark protection

By effecting this option, the EU *sui generis* GI system would be abandoned in favour of trade mark protection. This option is particularly disruptive and conflicts with the current EU quality policy and the bilateral agreements in force with third countries, since the EU would mainly rely on collective and certification marks to protect indications of origin. In particular, by way of derogation from absolute grounds for refusal, it would be possible to register signs and indications designating the geographical origin of a product through EU collective marks.⁵¹

Rights conferred by a trade mark reveal some differences when compared to the protection under the EU *sui generis* GI system. Geographical indications and EU collective marks (consisting of signs used to designate the geographical origin of goods) are signs which are governed by distinct legal regimes and pursue different aims. On the one hand, Art. 74(1) Regulation 1001/2017 defines an EU collective mark as a sign capable of distinguishing the goods or services of the members of the association that is the proprietor of the mark from those of other undertakings. On the other hand, pursuant to Art. 5(2) Regulation 1151/2012, a PGI is a name that identifies a product originating in a specific geographical area, whose quality, reputation or other characteristics are essentially attributable to its geographical origin, and at least one of the production steps of which take place in the defined geographical area.⁵² Four main consequences can be identified.

Firstly, the definition of the link to origin would be simplified. In particular, the two concepts of PDOs and PGIs would be abandoned in favour of a single TRIPS-compliant definition (similar to PGIs) that would be applied by the EU and all Member States. In addition, EU certification marks would probably be amended allowing the registration of trade marks capable of distinguishing goods

⁵⁰ See Amendment 199 Proposal for a Regulation point 14(a) Art. 53 Regulation 1151/2012, Draft European Parliament Legislative Resolution (n 42). In order to ensure consistency in the adoption of the amendments at national level, the Commission has to adopt guidelines setting out criteria and a common methodology for the application of and compliance with the administrative processing of amendments to product specifications.

⁵¹ See Art. 74(2) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark [2017] OJ L154/1.

⁵² See 20/09/2017, C-673/15 P to C-676/15 P, *The Tea Board v. EUIPO* ECLI:EU:C:2017:702. The CJEU held that there is no difference between the essential functions of collective and individual marks. The fact that the good covered may have the same geographical origin is not relevant under Art. 8(1)(b) EUTMR. In addition, consider Burkhart Goebel and Manuela Groeschl, 'The Long Road to Resolving Conflicts Between Trademarks and Geographical Indications' (2014) 104 *The Trademark Reporter* 829. With regard the difference between trade mark and *sui generis* GI protection see Felix Addor and Alexandra Grazioli, 'Geographical Indications beyond Wine and Spirits. A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement' 5 *The Journal of World Intellectual Property* 865.

and services certified by the proprietor of the mark in respect of their geographical origin,⁵³ similar to Art. 28(4) Trade Mark Directive 2015/2436⁵⁴, allowing Member States to provide that signs or indications which may serve to designate the geographical origin of the goods or services may constitute guarantee or certification marks. Even if the producers' groups were to adopt detailed regulations governing the use, describing the conditions of use of the collective or certification mark, following the same requirements already in place in the GI products specifications, this information would hardly be available to consumers at the time of their purchase. The lack of a (more or less) recognisable PDO or PGI logo, the provision of general information on product characteristics and their link to origin, and the adoption of a multitude of EU certification marks, each for every registered product, might confuse consumers even more.

Secondly, the adoption of a trade mark system would accord a lower level of protection to geographical names. For example, trade marks do not receive protection against imitation and evocation when the true origin of the product is indicated,⁵⁵ they are not shielded against becoming generic,⁵⁶ and do not enjoy *ex officio* protection.⁵⁷ Private enforcement could constitute a problem for small producers. In addition, subsequent marks cannot be registered when a prior mark has already registered the name. This is different for GIs, for which coexistence is allowed when there is a conflict with a prior trade mark.⁵⁸ Such a level of protection would not be compliant with EU international obligations, in particular Art. 11(2) Geneva Act of the Lisbon Agreement, already discussed under option D. In addition, enhanced protection must be accorded to wines and spirits, pursuant to Art. 23 TRIPS. The protection through trade marks does not do so and would create problems of different treatment among GIs.

Thirdly, the adoption of the trade mark system would make international GI protection more complex and expensive for EU producers. GIs cost less money when registering and enforcing them in the EU and abroad, in particular in third countries which have signed a bilateral agreement with the EU. For example, at the EU level, GI registration is free of charge while the basic application fees for an EU collective mark are € 1,800. When it comes to registering abroad, GIs are included in the GI chapters of bilateral agreements conducted with third countries at no charge for the producers' groups. Conversely, registering a collective trade mark abroad (for example in Colombia and China) via the Madrid System and having the EU as office of origin, costs almost Swiss Francs 2,000.⁵⁹ The conclusion of bilateral agreements with third countries having a GI tradition would probably become more complex, since the EU would no longer grant a high level of protection to GI products.

Fourthly, abandoning the *sui generis* GI system in favour of trade marks would probably result in a loosening of the link to origin, in particular for PDOs. Even if, theoretically, producers' groups could adopt detailed regulations governing the use and describing the conditions of use of the collective or certification mark, following the same requirements already in place in the GI product specifications,

⁵³ Currently excluded by Art. 83(1) Regulation 2017/1001.

⁵⁴ Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks [2015] OJEU L336/1.

⁵⁵ Art. 13(1)(b) Regulation 1151/2012.

⁵⁶ Art. 13(2) Regulation 1151/2012.

⁵⁷ Art. 13(3) Regulation 1151/2012.

⁵⁸ Art. 14(2) Regulation 1151/2012.

⁵⁹ A list of fees payable to the EUIPO is available at <<https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo>>. The Fee calculator for the Madrid System is available at <<https://madrid.wipo.int/feecalculator/>> (accessed 31 January 2022).

they would have no legal obligation to comply with the strict requirements for PDOs described under Art. 5(1) Regulation 1151/2012. Yet, they might be willing to obtain more flexibility regarding, in particular, the production steps and the origin of raw materials.

Table 6 Advantages and drawbacks of the various options

	Advantages	Drawbacks
Option O: Status quo	<p>Stability of the legislative framework</p> <p>PDOs have a stronger link to origin concerning raw materials</p> <p>Increasing interest in EU logos in international trade (China)</p>	<p>Lengthy and non-harmonised procedures</p> <p>Lack of visibility of EU logos</p> <p>Blurred definitions of PDOs/PGIs</p> <p>No difference between PDOs/PGIs for the amendment of the method of production</p> <p>No clear understanding of the difference between PDOs/PGIs from non-EU applicants + registration by default as PGI, risk of even further blurring the PDO/PGI difference.</p>
Option A: Status quo with clarification of PDO/PGI differences for agricultural products and foodstuffs	<p>Better understanding of the notions of PDO/PGI</p> <p>Increased market transparency and consumer information (e.g. origin of raw materials)</p> <p>Better applications would shorten the registration process</p> <p>Better understanding might result in increased number of PDOs and stronger link to origin</p> <p>More legal certainty for EU and non-EU GI and TM applicants.</p>	<p>Reduction in the length of the registration process is hard to quantify</p> <p>Problems regarding access to the system (costs, lack of internal agreement, etc) are not addressed by this option</p> <p>No direct effect on innovation, possibly more PDOs and less flexibility for producers</p> <p>Limited impact for third countries without GI traditions.</p>
Option B: Harmonisation of the EU GI regulations	<p>More coherence and simplification in line with current EU quality policy</p> <p>Increased visibility of EU logos</p> <p>No direct impact on innovation</p> <p>Easier GI applications from third countries</p> <p>Supporting EU negotiations on extension of enhanced protection beyond wines and spirits.</p>	<p>Specificities of wines and spirits drinks prevent a full harmonisation</p> <p>No direct impact on innovation.</p>
Option C: Merge the definitions of PDO and PGI	<p>Blurred difference between PDO/PGI is solved</p> <p>EU GI definition closer to TRIPS</p> <p>Easier classification of GIs from third countries</p> <p>More flexibility regarding the origin of raw materials and the production steps.</p>	<p>Inconsistency with recent EU quality policy</p> <p>Loss of public/private investments</p> <p>Loss of PDOs' premium price and impact on biodiversity</p> <p>Difficult to implement at national level, resurgence of national mention</p> <p>Less information to consumers about the intensity of the link to origin</p> <p>Loosening of the link to origin, more flexibility regarding the origin of raw materials and the production steps.</p>

Option D: Different levels of protection for PDOs and PGIs	D1	<p>Incentive for PGI producers with strong link to origin to apply for PDO</p> <p>EU Register would better reflect the PDO/PGI definitions</p> <p>Possible stronger link to origin.</p>	<p>No incentive for PDO producers with looser link to origin to apply for PGI</p> <p>Discrimination between PDOs and PGIs, contrary to current EU policy</p> <p>Producers would try to amend their product specifications to comply with the PDO definition, need to reclassify existing products</p> <p>Conflict with Geneva Act</p> <p>Limited to agricultural products and foodstuffs</p> <p>No direct effect on innovation, possibly more PDOs and less flexibility for producers</p> <p>More complex negotiations with third countries.</p>
	D2	<p>Easier and quicker management of EU applications</p> <p>Less administrative burden for European Commission and small businesses</p> <p>Link to origin could be better addressed at national level</p> <p>Conformance with current legislative proposal for standard amendments</p> <p>More transparent choice of GIs to be included in bilateral agreements.</p>	<p>Blurred difference between PDO/PGI is not addressed</p> <p>Trade criteria are hard to define</p> <p>Possible proliferation of national logos</p> <p>Re-nationalisation of the GI system</p> <p>Disadvantage for producers from EU countries with no GI tradition - harmonisation national procedures required</p> <p>Risk of fragmentation for major amendments</p> <p>Non-EU producers might file national applications (risk mitigated by accession to Geneva Act).</p>
Option E: Trade mark protection		<p>Simplified definition of the link to origin, TRIPS-compliant</p> <p>Easier international negotiations with third countries without GI tradition.</p>	<p>Less information about the link to origin</p> <p>Discrimination between different products</p> <p>Lower level of protection, not compliant with the Geneva Act</p> <p>More expensive international protection for GI producers</p> <p>More complex international negotiations with third countries with GI tradition</p> <p>Loosening of the link to origin, more flexibility regarding the origin of raw materials and the production steps.</p>

The following table provides an analysis of the different objectives identified as a priority in the previous chapters of this book, namely a need for simpler and clearer information on the link to origin that will address the problem of the blurred difference between PDOs and PGIs, the preservation of a strong link to origin potentially hampered by the amendment of the single documents, and the development of international trade through the promotion of the EU quality policy.

The various options considered in sections 4.3.1 to 4.3.5 have been graded from the worst (--) to the best (++). The analysis of the advantages and drawbacks conducted in Table 6 has been used to assess compliance with, or fostering of, the objectives mentioned above.

Table 7 Analysis of the objectives

Objectives	Simpler and clearer information on the link to origin	Strong link to origin (Innovation)	Foster negotiations with third countries
Option A: Status quo with clarification of PDO/PGI differences for agricultural products and foodstuffs	++	+	+
Option B: Harmonisation of the EU GI regulations	+	0	++
Option C: Merge the definitions of PDO and PGI	+/-	-	+
Option D: Different levels of protection for PDOs and PGIs	D.1	+	--
	D.2	--	+/-
Option E: Trade mark protection	--	--	+/-

Among the options retained, option A (status quo with clarification of PDO/PGI differences) and option B (harmonisation of the EU GI regulations) show the highest achievement of the objectives.

The main problem identified under option C is the loss of the definition of PDO, with the consequent loosening of the link to origin. Options D.1 and D.2 are made ineffective by the discrimination created between PDOs and PGIs and by the lack of harmonisation of the national systems. Option E is probably the most problematic because it offers a disruptive solution to the lack of visibility of EU logos, but at the same time it does not provide sufficient information on the link to origin and tends to loosen that link's strength.

The analysis of the objectives is complemented by an analysis of the impact that the various options have on three interest groups, namely consumers, producers (further divided in traditional and innovative producers), and trading partners of the EU (further divided in countries with and without a GI tradition).

Table 8 Analysis of the interest groups

Interest groups	EU Consumers	Producers ⁶⁰		Trading partners	
		EU Traditional producers	EU Industrial producers	Non-EU trading partners with a GI tradition	Non-EU trading partners without a GI tradition

⁶⁰ For the purpose of this analysis, "traditional producers" refers to producers that try to be competitive in the market through a strong connection with the territory and the adoption of traditional processes of production characterised by limited volumes intended for local markets. "Innovative producers" are those interested in high production volumes realised through the adoption of modern production techniques.

Option A: Status quo with clarification of PDO/PGI differences for agricultural products and foodstuffs		++	++	++	+	0
Option B: Harmonisation of the EU GI regulations		+	+	+	++	0
Option C: Merge the definitions of PDO and PGI		+/-	-	+	++	0
Option D: Different levels of protection for PDOs and PGIs	D.1	0	+/-	+/-	-	0
	D.2	-	+/-	+/-	+/-	0
Option E: Trade mark protection		--	--	+/-	--	++

Options A and B appear to be again the most effective solutions. In particular, a clear definition of PDOs and PGIs together with the harmonisation of national procedures would be able to maximise the visibility of EU logos for almost all interest groups. The adoption of the definition of PGI, suggested by option C, would simplify the information given to consumers and provide more flexibility to innovative producers, but at the same time, it would reduce the degree of information available and risk of loosening the link to origin. The different levels of protection between PDOs and PGIs, offered by option D.1, would benefit PDO producers and create an incentive to strengthen the link with the territory. However, it would affect PGI producers and all those producers that employ raw materials and production steps outside the geographical area of production. Therefore, it is not possible to clearly understand the impact on traditional and innovative producers, since it is possible that they have adopted both PDOs and PGIs. The consequences of option D.2 are less clear with regard to the dichotomy innovation/tradition. D.2 opts for trade criteria, therefore it would have an impact on big/small producers rather than on traditional/innovative ones. Option E is again the least effective because it would affect the majority of interest groups as regards the information concerning the link to origin and the level of protection.

4.4. Clarification of the difference between PDOs and PGIs

Starting from the new EU commitments in the matter of climate change and international development,⁶¹ a public debate was triggered to understand whether the 2013 reform helps the Common Agricultural Policy (CAP) to adequately meet ongoing challenges, in particular environmental and climatic challenges. Within this framework, the role of GIs has been clarified in the Communication on the Future of Food and Farming.⁶² It has been proposed to amend the current GI system in order to make it more attractive to both producers and consumers, with faster recognition

⁶¹ See the 17 Sustainable Development Goals <<https://www.un.org/sustainabledevelopment/development-agenda/>> (accessed 31 January 2022).

⁶² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The Future of Food and Farming, COM(2017) 713 final, 29 November 2017.

and amendment of product specifications, therefore making it simpler and reducing administrative costs.⁶³

Some proposed amendments, namely the clarification of the differences between PDO and PGI (option A) and the simplification of the scrutiny of applications at the EU level, allowing Member States to decide on amendments that do not have an impact at EU level (option D.2), have already been examined along with the options provided in section 3 of this chapter.

It has been proposed to amend the PDO definition under Art 5 (b) Regulation 1151/2012 as follows:

(b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment, with its inherent natural factors and **where relevant** human factors;

Clarification of the notion of PDOs, in particular the expression ‘where relevant’, has been proposed for both wines and agricultural products and foodstuffs, to increase the coherence among the systems.

Following the proposal of the European Commission, the draft legislative resolution of the European Parliament modified some of the proposed amendments. In particular, the proposed amendment of the definition of PDO under Art. 5(b) Regulation 1151/2012 has been rejected.⁶⁴

whose quality or characteristics are essentially or exclusively due to a particular geographical environment, with its ~~inherent~~ natural factors and ~~where relevant~~ human factors.

Art. 7(1)(f) Regulation 1151/2012 is replaced by the following:

(f) details establishing the following: (i) **as regards a protected designation of origin** the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1); **the details concerning human factors of that geographical environment may, where relevant, be limited to a description of the soil and landscape management, cultivation practices or any other relevant human contribution to the maintenance of the natural factors of the geographical environment referred to in Article 5(1);**

(ii) ~~where appropriate~~ **as regards a protected geographical indication**, the link between a given quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5(2).

⁶³ Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organization of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands, COM(2018) 394 final, 1 June 2018, 14.

⁶⁴ The new text has been marked in bold characters, while the rejected amendment has been marked with single-strikethrough. Amendment 181, Proposal for a Regulation Art. 2 - paragraph 1 - point 2 a (new), Art. 5 Regulation 1151/2012, and Amendment 184, Proposal for a regulation Art. 2 – paragraph 1 – point 3 a (new) Art. 7 Regulation 1151/2012, Draft European Parliament Legislative Resolution (n 42).

The same modifications have been adopted also for Arts. 93 (1)(a)(i) and 94(2)(g) Regulation 1308/2013 concerning the PDO definition for wine and the content of the product specifications.

At the EU Council level, the Working Party on Agricultural Products has been identified as the preparatory body in charge of examining the proposed Amending Regulation. The Working Party observed that many Member States agree that since the product specifications have to include evidence of the geographical origin of a product, this provision should not be amended. On the contrary, the proposal of making human factors an optional component for PDOs divided Member States into two opposing sides. Some favoured this amendment, considering that this would prevent arbitrary descriptions when human factors are not relevant for linking the product to its origin; while others disagreed, pointing out that human factors were an important element of PDOs.⁶⁵

On the basis of the comments received, the Finnish Presidency redrafted the Commission's proposal, implementing the comments of the delegations. The changes proposed to the PDO/PGI definitions and the link to origin are in line with the amendments contained in the legislative resolution of the European Parliament.⁶⁶

On 6 December 2021, at the end of the legislative process, the text of Regulation 2021/2117,⁶⁷ amending Regulation 1151/2012, was published in the OJEU. The new Regulation does not change the requirements for designations of origin and geographical indications. Indeed, the proposed amendment to the PDO definition to include human factors "where relevant", has been definitely abandoned. Art. 5(1) and (2) Regulation 1151/2012 clarifies that a PDO or PGI name "may be a traditionally used name", which is in line with the existing practice of registering non-geographical names, provided they are the names in use in commerce or in common language to designate the specific product before the application is made.⁶⁸

More interesting are the amendments to the description of the link to origin in the product specifications and the relevance of human factors.

Art. 7(1)(f) Regulation 1151/2012 is replaced by the following:

(f) details establishing the following:

(i) as regards a protected designation of origin, the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1); the details concerning human factors of that geographical environment may, where relevant, be limited to a description of the soil and landscape management, cultivation practices or any other relevant human contribution to the

⁶⁵ Progress report 14012/18, 9 November 2018, 6.

⁶⁶ Revised Presidency suggested amendments, 14535/19 of 26 November 2019, substantially confirm former revised Presidency suggested amendments under Romanian Presidency 7451/19, 12 March 2019, 7 and 43.

⁶⁷ Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union [2021] OJEU L435/262.

⁶⁸ EC, Guide to applicants. How to compile the single document. <https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/food_safety_and_quality/documents/guide-to-applicants-of-single-document_en.pdf> (accessed 31 January 2022).

maintenance of the natural factors of the geographical environment referred to in that paragraph;

(ii) ~~where appropriate~~ **as regards a protected geographical indication**, the link between a given quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5(2);

Recital 30 Regulation 2021/2117 clarifies the relevance of human factors, stating that:

The geographical environment, with its natural and human factors, is a crucial element that affects the quality and characteristics of grapevine products, agricultural products and foodstuffs that benefit from protected designations of origin or geographical indications pursuant to Regulations (EU) No 1308/2013 and (EU) No 1151/2012. In particular, where fresh products that undergo little or no processing are concerned, natural factors may be predominant in determining the quality and characteristics of the product concerned, while the contribution of human factors to the quality and characteristics of the product may be less specific. Therefore, the human factors that should be taken into account in the description of the link between the quality or characteristics of a product and a particular geographical environment that is to be included in the product specification of protected designations of origin pursuant to Article 94 of Regulation (EU) No 1308/2013 and Article 7 of Regulation (EU) No 1151/2012 should not be limited to specific methods of production or processing that confer a specific quality to the product concerned, but may include factors such as soil and landscape management, cultivation practices, and any other human activities that contribute to the maintenance of the essential natural factors that predominantly determine the geographical environment and the quality and characteristics of the product concerned.

Notwithstanding the requirements for designations of origin and geographical indications remaining substantially unchanged, the relevance of human factors seems to be somewhat toned down in the new description of product specification under Art. 7 by the reintroduction of the expression ‘where relevant’. To this extent, Recital 30 clarifies that human factors may be limited to soil and landscape management, including cultivation practices and human contribution to the maintenance of the natural factors. Therefore, the relevance of human factors is, in certain circumstances, described in function of natural factors that appear predominant in linking the product to its origin.

The initial amendment to Art. 5 Regulation 1151/2012 proposed by the Commission was strongly criticised in the academic literature;⁶⁹ nonetheless, the amendment of Art. 7(1)(f) introduced by Regulation 2021/2117 read in combination with Recital 30 of that Regulation might provide a solution to the blurred difference between PDOs and PGIs. This approach seems in line with the idea of simplifying the concept of link to origin, emphasising the origin of raw materials, proposed under option A.

⁶⁹ Andrea Zappalaglio. ‘The Debate Between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right’ (2019) 50 *International Review of Intellectual Property and Competition Law*, 595.

As seen in the analysis conducted in Chapter 1, there are many products that show a very strong link to the territory through natural factors but do not involve specific human factors. This case is addressed, in particular, by Recital 30 Regulation 2021/2117 that expressly refers to ‘fresh products’. An analysis of the single documents for fruit and vegetables (see products listed in Annex III and Table 6-1) shows a high occurrence of natural factors, usually described to provide a basis for the quality and characteristics of the products with less specific human factors, mainly referring to a long tradition of production rather than specific techniques unique to the geographical area.

Until now, the European Commission guidelines opted for a strict definition of human factors for PDOs. Section 5 ‘Link to origin’ of the guidelines requires a description of the superiority of the local methods of production, explaining how they contribute to the specific and distinctive character of the products.⁷⁰ Similarly, specific and particular producers’ know-how has to be described, since normal production skills are not sufficient. Therefore, despite the strong link to origin based on natural factors, products without a specific know-how could be registered only as PGIs.

A clarification of the fact that human factors may be limited to soil and landscape management and cultivation practices, aimed at maintaining the essential natural factors, clarifies the role of human factors as link to origin, giving an emphasis to natural factors and raw materials as well. Needless to say, the EU guidelines should be amended accordingly.

4.5. Interim conclusions

The relevance attributed to geographical origin is in line with the policy objectives in relation to agricultural production and rural economy. Rewarding producers and contributing to rural development could be undermined by the lack of visibility of EU quality schemes and the loosening of the link to origin.

The blurred difference between PDOs and PGIs, which leads many EU and non-EU producers to apply for a PGI even if the link to origin of their products is strong enough to qualify for a PDO, might have consequences regarding the link to origin as well. In case of amendments, for example, PDOs tend to adopt stricter requirements concerning the characteristics and use of raw materials, while PGIs allow raw materials to come from a larger area and have shown a tendency to amend them by allowing more flexibility.

Clarity and understandability of the EU quality schemes are central for EU quality policy, as proven by a new public consultation launched to receive feedback on the effectiveness, efficiency and consistency of the EU *sui generis* system. In order to contribute to this debate, five options have been considered according to three different criteria: the difference between PDOs and PGIs, innovation and the amendment of the link to origin, and possible consequences for international trade.

The two most effective options deal with clarification of the difference between PDOs and PGIs (option A) and the harmonisation of the various EU GI regulations (option B). The first option proposes to clarify the GI definitions through an improvement of the soft law tools already in place, namely the EU and national guidelines. In particular, the inclusion of a product-specific approach, based on the classes of products covered by EU Regulation 1151/2012, would allow a clearer understanding of the derogations to locally sourced raw materials for PDOs, the various production steps, and the ‘causal link’ to origin for the various classes of products.

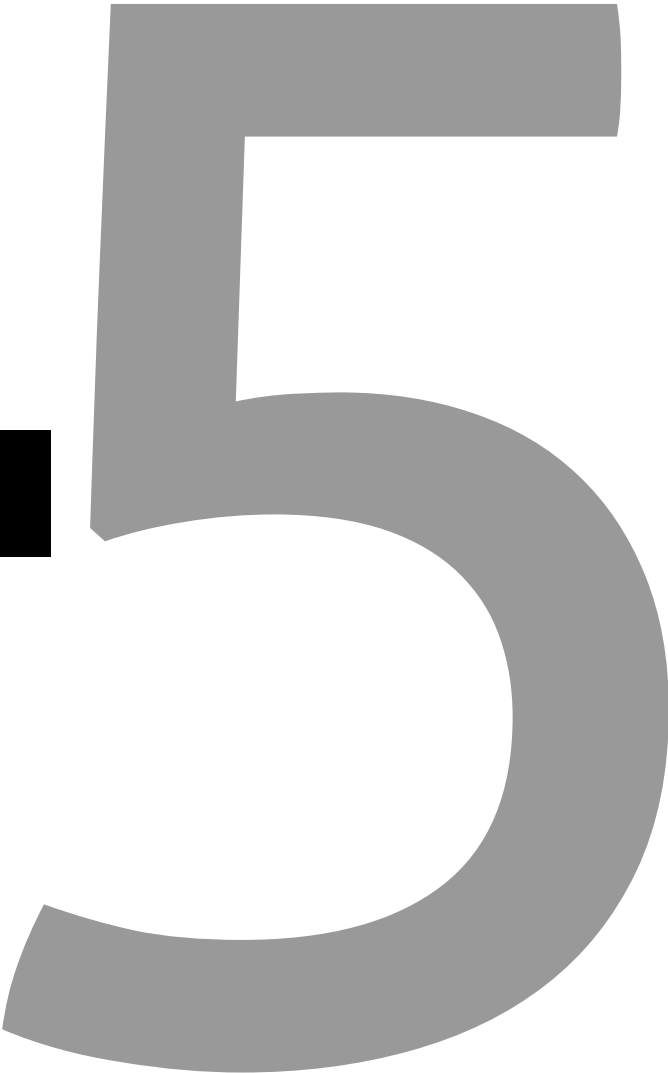
⁷⁰ EC (n. 68).

The second option proposes to harmonise the difference concerning definitions and use of the EU quality symbols in the four EU GI regulations. In particular, the twofold link to origin for wines and spirits is based on the origin of raw materials rather than on the production steps. The definitions for aromatised wines and spirit drinks adopts a single link to origin, without a specific reference to the origin of raw materials or the production steps. Moreover, the use of EU logos, made compulsory for agricultural products and foodstuffs, is optional for wines and spirits. This option can be combined with the previous one, making the EU quality symbols clearer and more understandable to consumers.

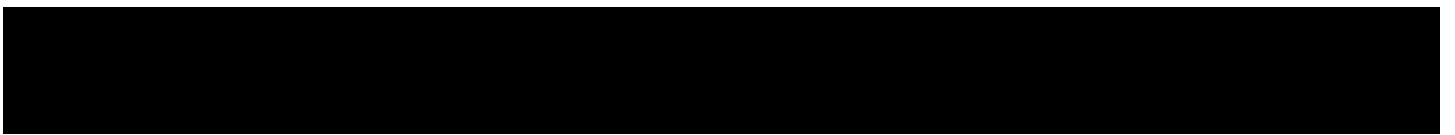
In addition, the amendment of the definition of PDOs and PGIs contained in Regulation 1151/2012, emphasising the origin of raw materials, could serve the same purpose already mentioned with the first option. PDOs would be reserved to products wholly obtained in the territory, including the production of the raw material, while PGIs would be reserved to products obtained from transformation processes which do not make use of local raw materials.

Recent amendments to Regulation 1151/2012, concerning the product specifications and the notion of human factors, seem to be going in this direction. In particular, the link to the territory through natural factors seem strengthened for certain products, while human factors are somewhat toned down (to be included 'where relevant'), limited to soil and landscape management, including cultivation practices and human contribution to the maintenance of natural factors. This would allow for the recognition of PDOs with a strong link to the territory (for example by way of unique natural factors) even if human factors do not involve methods of production or processing but are limited to cultivation practices and soil management. In other words, PDO recognition would be made easier for many products with a strong link to origin based on natural factors, such as fruits and vegetables, currently registered as PGIs.

CHAPTER 5



Options for EU quality schemes (PDOs/PGIs) for non-agricultural products



5.1. Introduction

Following a renewed interest in non-agricultural GIs, as shown by the ongoing legislative efforts to create an EU *sui generis* system for their protection, this chapter aims to broaden the scope of this book by considering how the options analysed in Chapter 4 would play out for non-agricultural products in the EU.

Starting from an analysis of the definition of non-agricultural GIs provided by international treaties and the current debate on the creation of a *sui generis* system for their protection in the EU, the aim of this chapter is to assess how the findings of the previous chapters apply to non-agricultural products. In particular, attention is given to the role that PDO/PGI quality schemes could play as linking factors for non-agricultural products, as well as their impact on innovation and on the trade relationship with third countries.

As already discussed in Chapter 1, international treaties provide a broad definition of GIs, subcategorising them according to the strength of the link between the product and the territory. The second part of this section examines the legal definition of non-agricultural GIs, starting from the international framework to current EU legislation.

The third part deals with the protection granted to non-agricultural products in the EU, both at the EU and at the national level. As to the protection granted at the EU level, attention is given to the current debate on the EU-wide protection for EU non-agricultural products and on the protection of foreign products, protected in the EU by way of bilateral agreements concluded with third countries. As to the protection granted at the national level by some Member States, a focus is placed on the French system for a brief analysis of the protection of non-agricultural GIs in France.

Moving from the definitions adopted at the international, EU, and national levels, the fourth part analyses the issues concerning the protection of EU non-agricultural GIs and their link to origin. To this aim, the analysis of the link to origin for non-agricultural products is conducted through a categorisation of non-agricultural products, dividing them from the strongest to the weakest according to the nature of the link.

The fifth, and last part, makes some recommendations regarding to the link of non-agricultural products with the territory, the use of EU GI logos, and the impact on innovation and trade relationships with third countries, with some conclusive remarks on the recent EC's proposal for a regulation on geographical indication protection for craft and industrial products.

5.2. GIs for non-agricultural products: a legal framework

5.2.1. International level

The Paris Convention is silent with regard to the scope of protection of indications of source and appellations of origin, in other words the Paris Convention requires protection for all indications of source and appellations of origin, regardless of the sector they come from.

Similarly, the Madrid Agreement regarding indications of source applies to “all goods” and no differentiation is made with regard to product categorisation or in view of a different degree of connection of the product with the territory. These considerations are strengthened by the fact that when the Madrid Agreement limits a provision only to certain products, an express exception is made directly in the text of that Agreement. For example, in matters of indications that do not fall under the provisions of the Madrid Agreement because of their generic character, an express exception is

made for “products of the vine”, which consequently fall under the scope of the Madrid Agreement, regardless of their generic character. In fact, these products cannot be declared to be generic by national courts.¹

The definition of appellations of origin of the Lisbon Agreement requires that a product, apart from originating from a specific area, must have a quality and characteristics which are “exclusively or essentially” due to its geographical origin. Only “reputation” is not enough to comply with the definition. As a consequence, industrial products, which are not influenced by natural and human factors, are excluded from protection.

By reason of its combination of natural and human factors, the Lisbon Agreement provides a very strong link of the product to the territory, but does differentiate between the kinds of products. In this sense, no distinction is made between vine products and other products, like in the Madrid Agreement.

The Geneva Act of the Lisbon Agreement of 21 May 2015 on appellations of origin and geographical indications contains provisions aimed at widening the membership of the Lisbon Agreement, making it more attractive to users.² In particular, the Geneva Act applies to both appellations of origin and geographical indications, without differentiating between the kinds of goods originating in a given geographical area. The Geneva Act is applicable to both agricultural and non-agricultural goods giving a certain flexibility to the contracting parties. In particular, it allows them to oppose “*any refusal, renunciation, invalidation or cancellation that may become effective with respect to its territory*”³ to registered appellations of origin and geographical indications.⁴ This is particularly important with regard to the accession of the EU to the Geneva Act and the current lack of protection of non-agricultural products in the EU, since the current position of the EU is to protect only GIs of other members of the Geneva Act for products in respect of which protection at Union level of GIs is provided. In other words, the EU will refuse GI applications having per object non-agricultural GIs.⁵

The database ‘Lisbon Express’ contains information on appellations of origin and geographical indications entered in the International Register kept by WIPO in accordance with the Lisbon System. It contains a total of 1,142 products, divided according to the following structure:⁶

¹ See Art. 4 of the Madrid Agreement: “*The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this Article.*”. For a more complete overview of Art. 4 of the Madrid Agreement see Christopher Heath, ‘Geographical Indications: International, Bilateral and Regional Agreements’, in Christopher Heath and Anselm Kamperman Sanders (eds.), *New Frontiers of Intellectual Property Law IP and Cultural Heritage – Geographical Indications - Enforcement – Overprotection* (Hart 2005) 99.

² The updated list of the contracting parties is available at <http://www.wipo.int/treaties/en/ActResults.jsp?act_id=50> (accessed 15 June 2020).

³ See Art. 9 of the Geneva Act of the Lisbon Agreement.

⁴ See Christophe Geiger, and others ‘Towards a flexible international framework for the protection of geographical indications’ (2010) *The WIPO Journal* 1, 147. With regard to the grounds for refusal under the Lisbon Agreement, no agreement was reached among the member states in order to limit the refusal only to generic denominations in a given country (as proposed by Italy and France). Therefore, refusal is limited to two conditions: it has to be declared by the administrations of the receiving country and must be declared within one year from the notification. According to WIPO document LI-GT/1/2 of 10 May 2000, the refusals are most frequently based on the conflict with an earlier mark. See Christopher Heath (n 1) 104.

⁵ Further assessed in section 5.2.2. of this chapter.

⁶ Available online <<http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp>> (accessed 31 January 2022).

Table 9 Registry of the Lisbon System

Beverages and related products		Food products and related products		Non-food products ⁷	
Beers	13	Dairy and dairy produce	89	Games, playthings and sporting articles	3
Non-alcoholic beverages	30	Fish and fish product	3	Glass and crystal	8
Other alcoholic beverages	13	Fruit and fruit products	41	Musical instruments	1
Spirits	71	Meat and meat products	34	Religious, ornamental and handicraft objects	17
Wines and wine products	625	Vegetables and vegetable products	39	Salts and minerals	14
Other ⁸	6	Other ⁹	29	Stones and ceramic objects	30
				Textiles products	35
				Other	45
Total	758	Total	235	Total ¹⁰	153

From the table above, it is possible to observe that non-food products represent almost 13% of the total number of products registered under the Lisbon System. This category includes products that differ greatly from one to another: raw materials but also a wide range of handicrafts (mainly ceramics

⁷ In particular the following category includes: (a) Games, playthings and sporting articles: fencing blades (1), wind musical instruments and percussion musical instruments (1), tobacco (1); (b) Glass and crystal: glass products (7), perlite (1); (c) Musical instruments: wind musical instruments and percussion musical instruments (1); (d) Religious, ornamental and handicraft objects: embroideries (3), jewellery (2), souvenir figurines and objects (1), wood handcrafted objects (3), handmade carpets (6); pearl (1); (e) Salts and minerals: salt (3), kaolin (4), quartz sand (5), alginate (1); (f) Stones and ceramic objects: household porcelain and porcelain figures (5), utility and decorative glass, generally blown or pressed, mosaic and glass microspheres (3), pottery (1), jewellery (2), ceramics (2), limestone (1), marble (9), amber (1), calcareous stone (1), opal (1), plaster (1), enamel (1); (g) Textiles products: embroideries (1), carpets (18), cloth (2), tapestries (2); (h) Other: mud (1), enamels (3), leaf or manufactured tobacco (28), fencing blades (1), essential oils and cosmetic products (2). Data updated at 30 May 2020.

⁸ The subcategory “Other alcoholic beverages” contains products not included in the above-mentioned categories, such as muscatel wine, liqueurs, cider and pisco. The subcategory “Others” contains products used for the preparation of alcoholic beverages, namely malt and hop.

⁹ The subcategory “Others” contains products not included in the above-mentioned subcategories, such as honey, vinegar, olive oil etc.

¹⁰ The subcategorisation does present duplicate entries. In particular, a closer look to the Registry shows that: “music instruments of Kraslice” are contained both under subsection (a) and (c); “fencing blades of Szentgotthárd” are reproduced both under subsection (a) and (h); “Jablonec Glass” is reproduced under subsection (b), (c) and (e); “Jablonec crystal ware” and “Jablonec ware” are reproduced both under sections (b) and (f); “embroidery of Kraslice” is contained both under subsection (d) and (g). For this reason, the total number of non-food products contained in the Registry is not equal to the sum of non-food products for each subcategory, without duplicate entries, amounts to 121 products. Data updated at 30 May 2020.

and carpets). A closer look at the ‘Lisbon Express’ shows that all non-food products contained in the database have been registered as appellations of origin. Therefore, notwithstanding their differences, these products are characterised by a strong connection with the territory, by reason of the restrictive notion of appellation of origin adopted in the Lisbon Agreement, limited to certain products, whose quality or characteristics are essentially or exclusively due to a particular geographical environment, linked through natural and human factors.¹¹

As for the previous treaties, the definition provided in the TRIPS Agreement is not limited to agricultural products, but encompasses all categories of goods.¹² Therefore, the contracting parties can opt to protect handicraft and other non-agricultural products through a *sui generis* GI system. By way of example, the Indian GI Act¹³ provides a broad definition of GIs built on the TRIPS provision. In particular, under Art. 2(1) Indian GI Act, no differentiation is made between agricultural, natural or manufactured goods. Every product can be registered as a GI provided that it has a quality, reputation or other characteristic which is essentially attributable to its geographical origin. GIs are defined to include any agricultural, natural or manufactured goods, handicraft, or industrial goods and foodstuffs.¹⁴ The longstanding handicraft tradition that characterises the Indian market is clearly reflected in the Indian Registry.¹⁵

The TRIPS Agreement does not differentiate between agricultural and non-agricultural products regarding the definition of GI but as to the scope of protection, not all the products are treated similarly. In particular, wines and spirits enjoy an increased protection that goes beyond misconception and unfair competition, even against acts that do not give rise to confusion. As already considered in Chapter 1, Art. 24 of the TRIPS Agreement allows extending this protection also to

¹¹ It has to be noted that at the time of writing the Registry contains no geographical indications, the records refer only to appellations of origin. For an overview of the difference between appellation of origin and geographical indication see Anselm Kamperman Sanders, ‘Future solutions for protecting geographical indications worldwide’ in Christopher Heath and Anselm Kamperman Sanders (eds.), *New Frontiers of Intellectual Property Law IP and Cultural Heritage – Geographical Indications - Enforcement – Overprotection* (Hart 2005) 134.

¹² The definition provided under the Lisbon Agreement of appellation of origin designates a product, while geographical indications as defined under the TRIPS Agreement identify a good. By reason of the wording of Art. 22 (1) TRIPS, the definition of GIs extends to all categories of goods: natural, agricultural and industrial, but not to services, notwithstanding the reference included in Art. 24 (4) and (6) TRIPS. See Felix Addor and Alexandra Grazioli, ‘Article 22’ in Thomas Cottier and Pierre Veron (eds.), *Concise International and European IP Law TRIPS, Paris Convention, European Enforcement and Transfer of Technology* (Wolters Kluwer 2016) 66.

¹³ The Geographical Indications of Goods (Registration and Protection) Act, 1999 No. 48 of 1999 (30th December, 1999). <http://www.wipo.int/wipolex/en/text.jsp?file_id=128105?> (accessed 31 January 2022).

¹⁴ Delphine Marie-Vivien, ‘The Protection of Geographical Indications for Handicrafts: How to Apply the Concepts of Natural and Human Factors to All Products’ (2013) 4 *The WIPO Journal* 192. The author considers that the interest in GIs for handicraft products results, *inter alia*, from the absence of a specific intellectual property tool for the protection of the traditional knowledge held by a given group of producers. In this sense GIs’ product specifications can be used to document such knowledge, even if their scope of protection is limited to the name of the product.

¹⁵ Government of India, Ministry of Commerce & Industry, Office of the Controller General of Patents, Designs & Trade Marks Department of Industrial Policy & Promotion, Registration Details of Geographical Indications <http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/Registered_GI.pdf> (accessed 31 January 2022). Here, 301 registrations have been granted for various GI applications in India. A diachronic and synchronic analysis allows us to conclude that handicrafts have been the most consistently registered GIs: 58% of Indian GIs are handicrafts, followed by 28% of agricultural products and 7% of manufactured goods (foodstuffs, textiles and natural goods represent a minor percentage). Data updated at 24 June 2018.

products other than wines, but no consensus regarding expanding the additional protection to other products than wines and spirits has been reached among the members.

That said, it follows that the scope of the international treaties mentioned above is not limited to agricultural products but encompasses all categories of goods. As a consequence, the broad definitions of geographical indications and appellations of origin allow the protection of agricultural products together with handicraft and other non-agricultural products beyond a sectorial approach. The relatively high number of non-agricultural products listed in the Lisbon Register, together with the fact that some contracting parties of the TRIPS Agreement do not make a distinction between agricultural and non-agricultural products in their national legislation, lets us conclude that international GI laws do not provide justification for the absence of an EU-wide GI protection, which is further discussed in the following section.

5.2.2. EU level

As already discussed in Chapter 1, the EU has chosen to protect GIs through a sectorial approach. *Sui generis* GI regulations have been adopted only for agricultural products and foodstuffs, wines, spirit drinks and aromatised wine products; at this time, non-agricultural products cannot benefit from unitary protection under a *sui generis* regime.

A clarification should be made concerning the type of products that fall within the notion of agricultural products and foodstuffs. In particular, Art. 2(1) Regulation 1151/2012 refers to agricultural products intended for human consumption listed in Annex I of the Regulation and to products listed in Annex I to the Treaty of the Functioning of the European Union. This provision should be read in combination with Recitals (16) and (17) which expressly exclude wines, aromatised wines, spirit drinks, products of organic farming, and products coming from outermost regions from the scope of Regulation 1151/2012 and further limits its scope to denominations of origin and geographical indications to products having an intrinsic link between the characteristics of the products and their geographical origin.¹⁶ These reasons show why some products, such as mineral and spring waters, are outside the scope of the EU GI Regulation.¹⁷

The focus on the ‘intrinsic link’ between the characteristics of the products and their geographical origin explains why products listed in Annex I Regulation 1151/2012 include agricultural products other than foodstuffs, such as cotton and leather. A consequence of this approach is that certain raw materials, such as wool, are entitled to receive protection in the EU,¹⁸ while products manufactured using the same raw material are outside the scope of the Regulation, irrespective of how traditional or deeply linked to the geographical origin the manufacturing process is.

The accession of the EU to the Geneva Act of the Lisbon Agreement¹⁹ brings the protection of non-agricultural products in the EU again into discussion. The current position of the EU is to protect only

¹⁶ The Regulation does not currently include condiments and sauces, soups, ice cream, sorbet and products containing cocoa.

¹⁷ Mineral and spring waters have been deleted from Annex I Regulation 2081/92 by Regulation 692/2003. Recitals 2 and 3 consider that natural mineral waters and spring waters are not suitable for protection under Regulation 2081/92 pursuant to Art. 13, due to the use of invented names and identical names for different waters.

¹⁸ Native Shetland Wool PDO [2011] OJ L289/14.

¹⁹ Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications [2019] OJ L271/12.

GIs of other members of the Geneva Act for products in respect of which protection at Union level of GIs is provided, in other words the EU will refuse GI applications having per object non-agricultural GIs.²⁰ Indeed, Art. 15 of the Geneva Act gives a certain flexibility to the system, allowing a member to declare, within one year of receiving the notice of registration, that it cannot ensure the protection of a registered appellation within its territory.

In the future, after the adoption of a common EU framework for the protection of non-agricultural GIs, said refusal will be withdrawn by means of an implementing act, adopted in accordance with the examination procedure referred to in Art. 15(2) Regulation 2019/1753,²¹ and contracting third parties could obtain protection in the entire territory of the EU through a single set of rules. Nonetheless, it is possible that the EU will adopt a milder approach with regard to certain products, since the Commission holds a delegated power to extend coverage of GIs to products closely linked to agricultural products or to the rural economy in order to take international commitments or new production methods or material into account.²² In the following paragraphs, it will be analysed how much progress has been made and which necessary steps should be taken in order to adopt a common EU framework for the protection of non-agricultural GIs.

Since 2011,²³ the European Commission has been exploring the possibility of extending the scope of GI protection to non-agricultural products. This, jointly with the harmonisation of the different laws of the Member States, would allow the creation of a uniform legal framework for the protection of non-agricultural products at the EU level. The European Commission, aware of the lack of harmonisation on this issue, questioned whether this fragmentation could have a negative impact on the functioning of the internal market.²⁴

In 2012, the European Commission launched a study aimed at collecting more information on protected and potential non-agricultural GIs. The purpose of this study was to understand whether or

²⁰ See answer given by Mr Breton on behalf of the European Commission to the question E-004236/2019 on 24 April 2020. Pursuant to Art. 7 Regulation 2019/1753, for geographical indications covering products not falling within the competence of the committees provided in Art. 15(1), the decision whether to grant protection shall be adopted directly by the Commission.

²¹ Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications [2019] OJ L271/1.

²² See in this regard the feedback to the roadmap submitted by the Organization for an International Geographical Indications Network (oriGIn) <https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-6308027/feedback/F8892_en> accessed 31 January 2022 and the answer given by Mr Breton on behalf of the European Commission to the question E-004236/2019 on 24 April 2020.

²³ This problem is not new. Back in 2008, the European Economic and Social Committee recommended including non-agricultural products in the list under Regulation 510/2006, requesting Insight Consulting to conduct a study on the protectability of handicrafts. See Opinion of the European Economic and Social Committee on Geographical indications and designations [2008] OJ C204/57 at paragraph 1.2.3.

²⁴ COM(2011) 287 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe [2011] 16 <http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf> (accessed 31 January 2022). Here it is stated that “*This fragmentation of the legal framework to grant protection for GIs for non-agricultural products may negatively affect the functioning of the internal market. Besides, protection for GIs for non-agricultural products is also important issue in bilateral and multilateral trade negotiations with third countries*”.

not a European unitary system for the protection of non-agricultural GI products should be established. The study concluded that the current legal framework is insufficient as it differs in terms of scope, effect and cost of protection. In particular, requirements for protection differ among Member States, making it more complex for producers to achieve protection for their products outside their country of origin.²⁵ In conclusion, the study identified 834 potential or existing non-agricultural GIs²⁶ and encouraged the creation of an EU unitary *sui generis* system for the protection of non-agricultural GIs.²⁷

Following the results of the study, the European Commission published a Green Paper²⁸ aimed at asking various questions to stakeholders as regards the scope of protection, substantive and procedural requirements for implementing an EU-wide GI system for non-agricultural products. The Green Paper was followed by a public consultation and a stakeholder conference (both EU and non-EU producers, consumers, public authorities, lawyers, and academics).²⁹ The majority of the stakeholders highlighted the need for a unitary system due to the fact that the mere harmonisation of national legislation may not be sufficient to avoid divergences existing in the internal market or the lack of interest from some Member States.³⁰ In addition, stakeholders highlighted that the nature of the link between the territory and the product should be carefully assessed, since raw materials are not necessarily originating from the territory, but the focus is usually on human factors and reputation.³¹ The majority of stakeholders agreed that GI protection for non-agricultural products

²⁵ oriGIn, Insight Consulting, REDD, ‘Study on geographical indications protection for non-agricultural products in the internal market’, final report (2013) 73-75.

²⁶ During their research on potential or existing non-agricultural GIs, the experts that conducted the study faced important challenges due to the lack of information or interest from stakeholders. Therefore a “detailed legal analysis” has been conducted on a more reduced list of 129 products, *ibid* 11.

²⁷ *ibid* 328.

²⁸ COM (2014) 469 final Green Paper Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products [2014] <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52014DC0469>> (accessed 31 January 2022).

²⁹ The ‘Public consultation on the possible extension of geographical indication protection by the EU to non-agricultural products’ ran from 15 July 2014 to 28 October 2014 <http://ec.europa.eu/growth/content/public-consultation-possible-extension-geographical-indication-protection-eu-non_en> (accessed 31 January 2022). The results of the public consultation were presented and discussed at the stakeholders conference ‘Geographical indication protection for non-agricultural products – What do we learn from the public consultation?’ that took place on 19 January 2015 <http://ec.europa.eu/growth/content/conference-geographical-indication-protection-non-agricultural-products---what-do-we-learn-0_en> (accessed 31 January 2022). EC Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs Industrial Property, Innovation and Standards, Results of the public consultation (15 July - 28 October 2014) and public conference (19 January 2015, Brussels) on the Green Paper, Making the most out of Europe’s traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products (COM(2014) 469 final), 6 <<http://ec.europa.eu/DocsRoom/documents/10565/attachments/1/translations/en/renditions/native>> (accessed 31 January 2022).

³⁰ *ibid* 27. 58.1% of the respondents were in favour of the adoption of a EU unitary system, while there is no clear consensus with regard to maintaining the national systems in parallel (44.1% of the stakeholders did not express any preference in this regard).

³¹ *ibid* 21-23. Many respondents suggested that the link with the territory, as defined for agricultural products, should be followed as closely as possible. “*Opinions vary, however, between those in favour of a very strong link with the territory, with all raw materials originating and all stages of production being carried out in the designated area, to those advocating a looser link, with at least one production stage taking place (and the raw materials not necessarily originating) in the area.*” 32.5% against 28.6% of respondents believe that two types of link with the territory (PDO and PGI) should be preferred, taking into account the great variety of

should be modelled on the protection already granted to agricultural products and foodstuffs. A small minority is of the opposite view, supporting protection similar to that conferred by trade marks, considering that the higher GI protection would constitute an obstacle to competition.³²

The Committee of the Regions (CoR) presented an opinion³³ on the Green Paper, expressing a favourable position with regard to this EC's initiative. In particular, the CoR stressed the role of GIs in preserving and developing European traditional knowledge, together with their nature of IP rights.³⁴ According to the CoR, action should be taken in order to harmonise the different regimes existing among some Member States into a single European system, modelled on the basis of the existing regime of protection for agricultural products³⁵.

Pursuant to Art. 304 of the TFEU, the European Commission consulted the European Economic and Social Committee (EESC) on the content of the Green Paper.³⁶ The EESC provided a favourable opinion with regard to the protection of non-agricultural products through a unitary EU regulation, calling for the need to follow the framework already in place for agricultural products. In addition, the focus is placed on the consequences for trade relations with third countries. By increasing legal protection and reducing litigation costs, SMEs would be able to invest in product and process innovation without increasing prices. Moreover, clear legal protection would allow companies to protect the know-how developed over generations, investing in positive skills training instead of defensive legal action. In its conclusions, the EESC highlighted the importance of the protection of the geographical origin of the product and its association with quality, tradition and *savoir-faire*, suggesting two different links with the territory (PDO and PGI), similar to agricultural products.

It is important to consider that the results of the public consultation are quite divided when it comes to the link between the product and territory. In particular, there is no absolute majority for adopting a twofold link to the territory.³⁷ According to some respondents, non-agricultural products encompass a broad variety of products with a different degree of connection with the territory, therefore the use

non-agricultural products: from those with a strong link with the territory (based on raw materials) and those having a looser link (mainly based on *savoir faire* and human factors).

³² *ibid* 31. 57.5% of the respondents were in favour of granting to non-agricultural products the same protection already granted to agricultural products in the EU. 37.8% did not express an opinion and 4.7% supported a protection more in line with trade mark protection.

³³ Opinion of the European Committee of the Regions – Extending geographical indication protection to non-agricultural products (2015/C 140/03) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.140.01.0013.01.ENG> (accessed 31 January 2022).

³⁴ Among the duties of the European Union there is the safeguarding and enhancement of the European cultural heritage (see Art. 3(3) TEU). In addition, the EU has to achieve a uniform protection of intellectual property rights throughout the Union (see Art. 118 TFEU) and the promotion of the interests of consumers, ensuring a high level of consumer protection (see Art. 169 TFEU).

³⁵ Cf CoR (n 33). The model suggested by the CoR is based on a cross-sectoral approach, with no more than two levels of link with the territory. The registration and the scope of protection should be again modelled on the existing system for agricultural products. In particular, a two-stage system registration procedure (a regional level and a European one, limited to verifying the compliance with the EU criteria) with a degree of protection equal to that provided for in Art. 23 TRIPS Agreement for wines and spirits.

³⁶ Opinion of the European Economic and Social Committee on the Green Paper — Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products (COM(2014) 469 final) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.251.01.0039.01.ENG> (accessed 31 January 2022).

³⁷ See Public consultation (n 29) 21. 32.5% in favour and 28.6% against. The remaining 38,9% did not express an opinion.

of two quality symbols would reflect the link with the territory better. Other respondents prefer to adopt PGIs alone. This would avoid confusion among consumers and would facilitate the conclusion of a bilateral agreement with those third countries that do not distinguish between PDOs and PGIs.

On 6 October 2015, the European Parliament adopted a resolution on the possible extension of protection of GIs to non-agricultural products.³⁸ The resolution recommends the adoption of EU-wide legislation on non-agricultural GIs. In particular, it considers that uniform protection would stimulate technological and economic development by increasing the number of people employed in producing traditional products, as well as the recognition of the quality of raw materials used together with the need for excellence during all stages of production.

The result of the above has been that the European institutions welcomed the creation of a new registration system to be created along the lines of the protection already in place for agricultural products and foodstuffs.³⁹ An EU-wide regulation for non-agricultural products could be beneficial for both producers and consumers, allowing better protection of the know-how contained in traditional products, promoting the relationship with third countries,⁴⁰ and improving the quality of traditional products.

As per its communication of 2015,⁴¹ the Commission worked on the economic aspects of EU GI protection for non-agricultural products. The study was aimed at collecting further economic evidence on the need and possible added value of the protection of GIs for non-agricultural products, in order to make progress towards the creation of a common framework for the protection of non-agricultural products in the EU. The draft conclusions of the study were discussed with producers, associations, academics and other stakeholders at a workshop held in November 2019.⁴²

The main conclusion of the study is that an EU *sui generis* system for non-agricultural GIs would be beneficial for both consumers and producers. In particular, the study considers that GIs would promote cooperation and coordination among producers, they would raise the visibility of the product

³⁸ Resolution of the European Parliament of 6 October 2015 on the possible extensions of geographical indication protection of the European Union to non-agricultural products (2015/2053(INI)) <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0331+0+DOC+XML+V0//EN&language=EN>> (accessed 31 January 2022). According to the European Parliament, the new system will “*foster innovation in traditional production processes and the creation of new start-ups for traditional products*” and “*conserve valuable know-how characterising entire social and local communities*”.

³⁹ *ibid* 47. In particular, the new system “*must be accompanied by the creation of a single standardized and public European register for non-agricultural products benefiting from geographical indication protection*”. Said registration should take place in two stages: at national and EU level, in order to ascertain that specific characteristics are not being interfered with and to ensure compliance with common criteria in all parts of the EU.

⁴⁰ *ibid* 27. In particular, “*the extension of protection for EU geographical indications to non-agricultural products would be a way to stimulate European exports and gain market share while achieving international recognition of the products in question and developing their high-quality image and reputation through trade and trade negotiations*”.

⁴¹ COM (2015) 550 final Upgrading the Single Market: more opportunities for people and business, 15 <<https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-550-EN-F1-1.PDF>> (accessed 31 January 2022).

⁴² Answer given by Mr Breton on behalf of the European Commission to the question E-004236/2019 on 24 April 2020.

creating a spill-over effect in the region, and they would raise consumers' willingness to pay for the product.⁴³

Following the economic study, the EC commissioned a study on control and enforcement rules for GI protection for non-agricultural products.⁴⁴ After an assessment of the existing control and enforcement mechanisms, the study provides some recommendations in the form of three models divided on the basis of the extent of public involvement in the phases of control and enforcement: a first a model that leaves the responsibility to producers, a second one based on a mixed public-private model keeping monitoring and enforcement under private responsibility, and a third one where all phases of control and enforcement are under mixed public-private responsibility⁴⁵.

Following the vote of the European Parliament and the publication of the studies on the protection of non-agricultural GIs, the European Commission drafted a proposal for a regulation on geographical indications protection for craft and industrial products.⁴⁶

5.3. Protection of non-agricultural products in the EU

5.3.1. Bilateral Agreements with the EU

Art. 207 (1) of the TFEU is the legal basis that confers on the EU exclusive competence in matters of common commercial policy in the field of trade-related aspects of intellectual property. In other words, the EU has sole competence to conclude international agreements in intellectual property with regard to international trade. According to case law, international agreements concerning intellectual property fall within the common commercial policy if they are essentially intended to promote, facilitate or govern trade and have direct and immediate effects on it.⁴⁷

Within the framework of international trade and negotiations, countries conclude bilateral agreements in order to improve export, competition and market access for their products. The TRIPS Agreement created an international framework for the recognition of geographical indications that led to the creation of new domestic GI legislation and also to a wider international recognition of GIs beyond their country of origin. As already discussed in Chapter 3, this result can be achieved through the individual registration in the EU of GIs from third countries, but also through the conclusion of a bilateral agreement aimed at giving protection to the list of GIs agreed by the signatories.

The practice of third countries protecting handicrafts through a *sui generis* GI system is particularly challenging for the EU. GIs receive a broad definition under bilateral agreements, using the same wording provided by international treaties and encompassing different categories of goods.⁴⁸ Despite

⁴³ Julia Rzepecka and others, *Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU* (Publications Office of the European Union 2020) 82. The study is based on a shortlist of 25 products (listed under table 2) representing various goods protected through trade marks and *sui generis* GIs.

⁴⁴ Frithjof Michaelsen and others, *Study on control and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU* (Publications Office of the European Union 2021).

⁴⁵ *ibid* 149.

⁴⁶ Proposal for a Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754 COM(2022) 174 final.

⁴⁷ See Opinion 2/15 (Free Trade Agreement with Singapore) of 16 May 2017, EU:C:2017:376, paragraph 112 and Daiichi Sankyo and Sanofi-Aventis Deutschland, C-414/11, EU:C:2013:520, 18 July 2013, paragraph 51.

⁴⁸ As an example, the Agreement between the European Community and the Republic of South Africa on trade in wine [OJ L 028, 30/01/2002 P. 0004 - 0111] defines a geographical indication as “an indication, including an ‘Appellation of Origin’, as defined in Article 22(1) of the TRIPS Agreement”. Art. 207(a) of the Trade

the broad wording, bilateral agreements concluded between the EU and third countries are almost entirely focused on agricultural products, with no protection for non-agricultural EU products. In addition, the lack of a common framework for all kinds of goods hampers international trade and the conclusion of bilateral agreements, since the EU cannot offer an equivalent *sui generis* unitary protection for non-agricultural products originating from some of its trade partners.⁴⁹ Nonetheless, it is important to note that these bilateral agreements do not exclude *a priori* non-agricultural products. Therefore, in the future, non-agricultural products might be protected by amending the list of protected GIs contained in the bilateral agreements.⁵⁰

Notwithstanding the lack of a uniform EU system for the protection of non-agricultural GIs, a strong interest has been shown in these products in international negotiations. An example is the Free Trade Agreement signed with Colombia and Peru in June 2012, joined by Ecuador in 2017.⁵¹ Here in Appendix 2 of Annex XIII, three geographical indications are listed for “products other than agricultural and foodstuff products, wines, spirit drinks or aromatized wines” for which protection is sought: Guacamayas (handicrafts) from Colombia, Chulucanas (pottery) from Peru and Montecristi (handicrafts) from Ecuador.

It is interesting to note that the bilateral agreement does not confer the same level of protection on all products. On the one hand, Art. 207(d) of the bilateral agreement recognises that the non-agricultural GIs mentioned above are protected as GIs in their country of origin.⁵² On the other hand, Art. 210(1)⁵³

Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [2012] OJ L354/55 defines geographical indications as follows: “*geographical indications are, for the purposes of this Title, indications consisting of the name of a particular country, region or locality or a name which, without being that of a particular country, region or locality, refers to a particular geographical area, and which identify a product as originating therein where a given quality, reputation or other characteristic of the product is exclusively or essentially due to the geographical environment in which it is produced, with its inherent natural and human factors*”.

⁴⁹ See answer given by Mr Breton on behalf of the European Commission to the question E-004236/2019 on 24 April 2020. European Commission, Green Paper on the protection of geographical indications for non-agricultural products (FAQ), memo (2014) <[http://europa.eu/rapid/press-release MEMO-14-486_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-14-486_en.htm?locale=en)> (accessed 31 January 2022). According to the European Commission “*EU-wide GI protection for non-agricultural goods could enhance our bilateral trade relationships with several of our important partners*”.

⁵⁰ For example, the creation of the Joint Committee aimed at amending the GI list under the CETA Agreement, see further section 2.1.2.1. chapter 3.

⁵¹ Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part [2012] OJ L354/55. In 2017 Ecuador joined the trade agreement. See Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, to take account of the accession of Ecuador [2016] OJ L356/3.

⁵² The second part of Art. 207(d) of the Trade Agreement between the European Union and its member states, of the one part, and Colombia and Peru, of the other part provides the following: “*Parties acknowledge that geographical indications listed under Appendix 2 of Annex XIII (Lists of Geographical Indications) [namely Guacamayas (handicrafts), Chulucanas (pottery) and Montecristi (handicrafts)] are protected as geographical indications in the country of origin [Colombia, Peru and Ecuador].*”

⁵³ Art 210 (1) states as follows: “*The geographical indications of a Party listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications), as well as those added pursuant to Article 209, shall be protected by another Party at least against: [...]; without prejudice to this subparagraph, if a Party amends its legislation in order to protect geographical indications other than those identifying wines, aromatised wines and spirit drinks at a higher level than the protection provided for in this Agreement, that Party shall extend such protection to the geographical indications listed in Appendix 1 of Annex XIII (Lists of Geographical Indications); [...]*”.

limits the scope of protection of the agreement to the products listed in Appendix 1 of Annex XIII, which include agricultural products only.

In order to break this deadlock, the first part of Art. 207(d) states the following:

geographical indications for products other than agricultural foodstuffs products, wines, spirit drinks or aromatised wines listed in Appendix 1 of Annex XIII (Lists of Geographical Indications) may be protected according to the laws and regulations applicable in each Party.

The inclusion of these names prevents the EU from denying them protection on the basis of Art. 207(b) EU-Colombia/Peru/Ecuador FTA and Art. 24(9) TRIPS, by stating that these products are not recognised or declared as GIs in their country of origin,⁵⁴ although no explicit commitment has been made by the EU to grant them protection in its territory as *sui generis* GIs. Given that the current EU *sui generis* system does not extend to non-agricultural products and that the EU has to comply with TRIPS for the protection of geographical indications, the protection “according to the laws and regulations applicable in each Party” can be achieved through different legal protection such as trade mark law and unfair competition law.⁵⁵ The different protection accorded to trade marks and geographical indications within the EU leads to a difference of treatment between agricultural and non-agricultural products.⁵⁶ This is a political choice, since the FTA does not require equal treatment between agricultural and non-agricultural products.

A similar approach has been adopted with the agreement in principle reached in April 2018 between the EU and Mexico.⁵⁷ Indeed, the scope of the agreement is clarified under Art. X-31(2):

The Parties agree to consider extending the scope of geographical indications covered by this Agreement after its entry into force to other product classes of geographical indications. For that reason, Parties have included in Annex III names identifying a product originating and protected in their territory that, provided the scope of protection of this Agreement is enlarged, will be considered to be included under the scope of protection of this Agreement in accordance with the procedures set for in this Section.

⁵⁴ See Arts. 212 and 218 of the Decision of the Commission of the Andean Community No. 486, translation available at <<http://www.sice.oas.org/Trade/Junac/Decisiones/DEC486ee.asp#tit12c1>> (accessed 31 January 2022).

⁵⁵ This view is confirmed by the answer rendered by the European Parliament to the question raised on 17 December 2017 by d’Ignazio Corrao, David Borrelli and Fabio Massimo Castaldo. ‘*In the current absence of protection for non-agricultural GIs at EU level, free trade agreements concluded by the EU do not cover non-agricultural GIs. Non-agricultural GIs are protected in the EU through various targeted legal frameworks in force in the Member States.*’ European Parliament, Parliamentary questions Answer given by Ms Bieńkowska on behalf of the Commission, 16 March 2018 <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-007786&language=EN>> (accessed 31 January 2022).

⁵⁶ See Bernard O’Connor and Laura Richardson, ‘The legal protection of Geographical Indications in the EU’s Bilateral Trade Agreements: moving beyond TRIPS’ (2012) 4 *Rivista di diritto alimentare* 19.

⁵⁷ The Agreement once ratified will replace the existing EU-Mexico Global Agreement, which entered into force in 2000. Text of the agreement in principle is available at <<https://trade.ec.europa.eu/doclib/press/index.cfm?id=1833>> (last accessed 31 January 2022).

Annex III contains a list of 19 Mexican products (no EU products are listed) referring to a wide array of products including pottery, hats, and musical instruments. As for the bilateral agreement concluded with the Andean Community, the parties recognise that, for purposes of assessment of trade mark applications (absolute grounds for refusal), those names are protected in the country of origin. It is advisable to amend the databases of the European Commission (e-Ambrosia and GIview), listing GIs from non-EU countries protected in the EU under bilateral agreements, by creating a separate section on third countries GIs listed in bilateral agreements and relevant in the EU for the purposes of assessment of trade mark applications.⁵⁸

Non-agricultural products became relevant also during the negotiations with China. As shown by Art. 1(2) of the bilateral agreement with China:⁵⁹

[...] The Parties agree to consider extending the scope of geographical indications covered by this Agreement after its entry into force to other product classes of geographical indications not covered by the scope of the legislation referred to in Article 2, and in particular handicrafts, by taking into account the legislative development of the Parties. For the purposes referred to in the first subparagraph of this paragraph, the Parties have included in Annex VII names identifying products originating and protected in their territory that, upon enlargement of the scope of protection of this Agreement, shall be given priority for protection in accordance with the procedures set out in Article 3 of this Agreement. The Parties shall review the progress made in enlarging the scope of protection of this Agreement within two years from the date of entry into force of this Agreement and conduct a review every two years thereafter.

Annex VII will be published at a later stage and, so far, no reference has been made to their protection as trade marks. In any event, the text of the agreement makes clear that the parties have to review progress made in enlarging the scope of protection of the agreement within two years after its entry into force, putting a certain political pressure on the EU to adopt a *sui generis* legislative framework for the protection of non-agricultural products.

Since the political situation may change in the near future, it is important to observe that bilateral agreements offer the possibility of amending the list of GIs through a Sub-Committee on Intellectual

⁵⁸ For the time being, Guacamayas (handicrafts) from Colombia, Chulucanas (pottery) from Peru and Montecristi (handicrafts) from Ecuador are not included in the database ‘GIs from non-EU countries protected in the EU under bilateral agreements’ < https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/food_safety_and_quality/documents/list-gis-non-eu-countries-protected-in-eu_en.pdf> (accessed 31 January 2022) nor in the database used by examiners at EUIPO, publicly accessible at <https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/Geographical_indications/geographical_indications.xls> (accessed 31 January 2022). How the EUIPO trade mark examiner will find out that a trade mark is excluded from registration pursuant to an international agreement, under Art. 7(1)(k) EUTMR?

For the sake of completeness, Guacamayas and Chulucanas are not registered as EU TMs. A research on the EUIPO’s database shows EUTM 4074449 ‘Chulucanas’ registered for products and services under classes 14, 21 and 35 of the Nice classification, expired on 2014. Only Montecristi has been registered as EU TM 1296937 ‘MONTECRISTI CUSTOMHAT WORKS’ for products of class 25 ‘Custom made and hand finished hats’.

⁵⁹ Agreement between the European Union and the Government of the People’s Republic of China on cooperation on, and protection of, Geographical Indications [2020] OJEU L1 408/3.

Property.⁶⁰ This allows not only the possibility for third countries to add new products but it also means the EU has the possibility to amend the lists by including non-agricultural products. For the time being, as long as there is no EU-wide GI protection for non-agricultural products, not only third countries do not receive a *sui generis* GI protection for non-agricultural products but the European Commission does not conduct negotiations on behalf of its Member States for the protection of such products.

5.3.2. Bilateral agreements with Member States of the EU

Apart from bilateral agreements concluded between the EU and third countries, it is necessary to consider the effects that bilateral agreements signed by an EU Member State have at the EU level in matter of GIs.⁶¹

When regard to geographical indications, EU law is exhaustive in nature.⁶² This means that the EU GI Regulations preclude a Member State from entering into bilateral agreements with another Member States or a third country in order to achieve protection for its GIs. For the purpose of this section, bilateral agreements should be interpreted restrictively, meaning those agreements concluded between an EU Member State and a third country on a matter not regulated at the EU level, namely GIs for non-agricultural products.

In other words, EU Member States can grant to products originating from third countries the same protection available to agricultural products, the same provisions apply for the international agreements entered into by a Member State before (or even after) its accession to the EU, but only before the adoption of an EU-wide protection of a given sector.⁶³

An example that could clarify the issue is the Lisbon Agreement to which seven Member States are parties, namely Bulgaria, the Czech Republic, France, Italy, Hungary, Portugal, and Slovakia,⁶⁴ while the EU is excluded because only countries can accede to this agreement. The situation changed with the adoption of the Geneva Act revising the Lisbon Agreement on 20 May 2015. In particular, the Geneva Act is compatible with the TRIPS Agreement and relevant EU law on GIs and allows intergovernmental organisations to become contracting parties.

⁶⁰ See for example Art. 209 of the EU-Colombia/Peru FTA.

⁶¹ oriGIIn, Insight Consulting, REDD (n 25) 92. The study analyses 86 non-agricultural products protected at the national level. 23 of these products enjoy protection through bilateral agreements in third countries. Among these bilateral agreements, the study identifies only one agreement concluded with non-EU countries: the bilateral agreement concluded between France and Costa Rica of 1933.

⁶² See 08/09/2009, C-478/07, *Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH* ECLI:EU:C:2009:521 § 121-129. See further Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link', in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press, 2017) 42.

⁶³ See 18/11/2003, C-216/01, *Budějovický Budvar, národní podnik v Rudolf Ammersin* ECLI:EU:C:2003:618, § 168-172. Member States have to take the appropriate steps in order to eliminate any incompatibility between the earlier agreement and the Treaty Establishing the European Community *OJ C 340, 10/11/1997 P. 0300*. Nevertheless, Member States are allowed to apply such an agreement, respecting obligations arising under international law.

⁶⁴ Three other Member States have signed, but not ratified, the Lisbon Agreement, namely Greece, Spain and Romania.

It should be noted, however, that the EU has exclusive external competence for the areas covered by the Geneva Act, as confirmed by a CJEU judgement⁶⁵ which clarified that the Geneva Act has direct and immediate effect on trade between the EU and third countries which are parties to the Lisbon Agreement. Therefore, the negotiations on the Geneva Act fell within the exclusive competence of the EU pursuant to Art. 3(1)(e) TFEU as it is part of the commercial aspects of intellectual property referred to in Art. 207(1) TFEU.

Given this exclusive competence, EU Member States cannot protect agricultural products that fall within the uniform and comprehensive protection systems established by the EU for wines, spirits, aromatised wines, and agricultural products and foodstuffs. In order to be able to properly exercise its exclusive competence related to the system in place for the protection of agricultural GIs, the EU had to become a contracting party to the Geneva Act. The question remains as to what extent EU Member States can accede to that act alongside the EU.

On 7 October 2019, Council's Decision (EU) 2019/1754⁶⁶, granting to any Member State the right to accede the Geneva Act alongside the European Union, has been objected by the European Commission before the CJEU in case C-24/20. On the one hand, according to the Commission, the Council acted in the absence of any Commission initiative creating room for autonomous decision-making by Member States in a matter of exclusive competence of the EU. On the other hand, according to the Council, its amendments to the Commission's proposal were designed to ensure that the EU became a party to the Geneva Act, while preserving the seniority and continuity of the GIs already registered under the Lisbon Agreement.

While waiting for the CJEU judgement, Advocate General Szpunar notes that the contested decision creates a situation where the Member States can act alongside the European Union as independent subjects of international public law in areas in which the EU has exclusive competence⁶⁷. Such empowerment would threaten the balance between the Council and the Commission, since the right to accede the Geneva Act granting to any EU Member State was not necessary in order to achieve the objectives set out by the Commission in the proposal for a decision⁶⁸.

The situation is different for the seven Member States that are party to the Lisbon Agreement. These Member States should be authorised to ratify or to accede to the Geneva Act in the interest of the Union. This would ensure the continuity of rights resulting from the existing membership to the Lisbon Agreement mentioned above, within the limit of the exclusive competence of the EU, which remains responsible for ensuring the exercise of the rights and fulfilment of the obligations of the EU and the Member States under the Geneva Act⁶⁹.

⁶⁵ Judgment of the Court of Justice of 25 October 2017, *Commission v Council*, C-389/15, ECLI:EU:C:2017:798.

⁶⁶ Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications [2019] OJ L 271/12.

⁶⁷ C-24/20, Opinion of Advocate General Szpunar, *European Commission v Council of the European Union* [2022] EU:C:2022:404, § 77, 78

⁶⁸ *ibid* § 79-81.

⁶⁹ *ibid* § 105.

Within this perspective, a Member State already party to the Lisbon Agreement is authorised to maintain any existing registration in the International Register. A Member State may also submit further applications for registration under the conditions laid down by Art. 11 Regulation 2019/1753. In particular, the Member State has to notify the Commission of the draft application for registration and the Commission does not issue a negative opinion within two months of such notification.

This degree of oversight (*droit de regard*) granted to the European Commission is the result of a compromised solution in view of the EU's exclusive external competence. In this sense, Art. 11 further clarifies that "a negative opinion may only be issued after consultation with the Member State concerned, and in the exceptional and duly justified cases where the evidence required under point (a) does not sufficiently substantiate that the requirements for registration under the Lisbon Agreement are met, or if the registration would have an adverse impact on the Union trade policy".

As a consequence, not only the European Commission should limit its intervention to 'exceptional and duly justified' circumstances but the issue of a negative opinion should be avoided and any issues resolved together with the Member State. Furthermore, pursuant to Art. 296 TFEU, any negative opinion should provide the reasons on which it is based and should not preclude the submission of a new application concerning the same appellation of origin, if the reasons for the negative opinion have been duly addressed or are no longer applicable.⁷⁰

For the sake of completeness, it should be recalled that bilateral agreements between EU Member States and third countries concerning GI protection are relevant also for trade marks, namely absolute grounds of refusal. Art. 7(1)(j) EUTMR excludes from registration EU trade marks due to international agreements providing for the protection of designations of origin and geographical indications to which the EU Member States are a party.⁷¹ That protection applies to appellations of origin for non-agricultural products protected under the Lisbon Agreement and to agricultural products protected before the EU unitary sectoral protection entered into force.

The role of this provision is to allow EU Member States to perform their obligations negotiated with the third country without imposing any further obligation on the EU.⁷² On a more practical level, as already discussed in section 5.2.1. for the non-agricultural products listed in the bilateral agreements concluded by the EU and third countries, it is important to point out that there is no official EU database listing the non-agricultural GIs protected under international agreements concluded by Member States.⁷³ At this time, the solution adopted by the EUIPO is to rely on observations filed by

⁷⁰ See further Annex II, Proposal for a Regulation of the European Parliament and the Council on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications - Analysis of the final compromise text with a view to agreement 7237/19 of 15 March 2019.

⁷¹ Art. 7(1)(j) of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017.

⁷² See 14/10/1980, C-812/79, *Attorney General v Juan C. Burgoa*, EU:C:1980:231, § 9. In this sense, the third country is not entitled to receive any additional protection for its GIs, irrespectively of the scope of protection of the international agreement concluded by the EU Member State.

⁷³ European Union Intellectual Property Office, Guidelines for examination of European Union trade marks, Part B examination, Section 4 Absolute grounds for refusal, Chapter 10 Geographical indications Art. 7(1)(j) EUTMR, version 1.0 of 1 March 2021, 38 <<https://guidelines.euipo.europa.eu/1922895/1925835/trade-mark->

third parties.⁷⁴

5.3.3. National level: the French *sui generis* GI protection

As already discussed, the fact that there is no EU-wide protection for non-agricultural products allows EU Member States to adopt their own national legislation in this matter. The following paragraphs provide a focus on the French system, chosen for being one of the EU Member States with a GI tradition deeply rooted in the concept of *terroir* that opted for the creation of a *sui generis* system of protection for non-agricultural products.

At the beginning of the 20th century, the French economy was mainly agricultural, with an important tradition related to wine and vine products. A first systematic response to protect wines against fraudulent practices in France dates back to 1905.⁷⁵ Later on, the law of 1919⁷⁶ adopted the notion of appellation of origin and empowered the courts on a case-by-case basis to determine the place of origin of the product. At that time, French law did not limit the protection to certain kinds of products; on the contrary, it allowed the protection of all kinds of products, including handicraft appellations.

A law was passed in 1935⁷⁷ for the creation of a specific system for wines and spirits, with the creation of a National Institute of Appellations of Origin (INAO), within the French Ministry of Agriculture, having exclusive competence to grant appellations of origin. That law provides for the notion of “*appellation d’origine contrôlée*”,⁷⁸ initially limited to wines and spirits and then extended to cheeses. Starting from 1990, the notion has been extended to agricultural, forestry and food products.⁷⁹ The French AOC has therefore never been applied to non-agricultural goods. Despite all international treaties providing international protection to GIs, until recently, there has been no *sui generis* system in France for the protection of GIs for non-agricultural products.⁸⁰

guidelines/chapter-10-trade-marks-in-conflict-with-designations-of-origin-and-geographical-indications--article-7-1--j--eutmr-> (accessed 31 August 2021).

⁷⁴ *ibid* 38.

⁷⁵ Law of 1 August 1905 with a focus on origin labelling.

⁷⁶ Law of 6 May 1919 on the protection of appellations of origin.

⁷⁷ Law Decree of 31 July 1935.

⁷⁸ The AOC follows the same criteria of the European PDO but with a larger scope of protection, allowing the inclusion of products of the forest for example. For a definition see INAO, AOP-AOC <<https://www.inao.gouv.fr/Les-signes-officiels-de-la-qualite-et-de-l-origine-SIQO/Appellation-d-origine-protegee-Appellation-d-origine-controlee>> (accessed 31 January 2022). For a more detailed analysis see Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) 96.

⁷⁹ Art. L641-5 Code Rurale de la Pêche maritime.

⁸⁰ The law of 6 July 1966 established an administrative procedure for the designation of “simple indications of origin” for industrial and agricultural products. These indications can be granted either by a council of State decree or by a court decision. On the basis of local, and constant use, courts may limit the geographical production area and determine the qualities or characteristics of the products. French courts recognized the following indications of origin: “Dentelle du Puy”, Judgment of the civil court du Puy on 19 February 1931; “Mouchoirs et toiles de Cholet”, Court of Appeal of Angers on 17 November 1936; “Poterie de Vallauris”, French Supreme Court on 18 November 1930 and “Emaux de Limoges”, French Supreme Court on 14 November 1950. The following products were recognised by way of Decree: “Monoï de Tahiti”, Decree no. 92-340 of 1st April 1992 and “Huile essentielle de lavande de Haute Provence”, Decree no. 2013-97 of 24 January 2013.

Because of the strong demand of protection from stakeholders, following the misappropriation of the name of the city Laguiole, famous for its knives, the French authorities decided to extend GI protection in order to include manufactured products originating in a given geographical area.⁸¹

The legal basis for protection is given by Arts. L721-2 to L721-10 of the French IP Code.⁸² Art. L721-1, read together with Art. L115-1 of the French IP Code, defines appellations of origin as those signs used to identify a product originating from a certain place, whose quality or characteristics are derived from its geographical origin, including natural and human factors. This article provides a definition aligned with the French tradition, requiring a strong link of the product with *terroir*.

Art. L721-2 defines the concept of geographical indications with a similar wording to that used in the TRIPS Agreement. Geographical indications are defined as place names used to identify products, apart from agricultural products, products of the forest, foodstuffs or sea products, originating from these places and having qualities, reputation or specific characteristics that are essentially attributable to their place of origin. In addition, the conditions for the production or transformation of the products, such as cutting, extraction or manufacture, have to comply with the product specifications.

The definition provided by Art. L721-2 for geographical indications for industrial products and handicrafts (“*indications géographiques protègent les produits industriels et artisanaux*”) requires a link between the product and the territory that is less stringent than that required for the French appellation of origin or for the EU PDOs. In this sense, the French geographical indications for industrial products and handicrafts follow a definition similar to the EU PGIs, since qualities, reputation or specific characteristics are essentially attributable to the place of origin. In addition, raw materials used for the manufacture of the products do not need to come from the defined geographical area.⁸³

The *Institute Nationale de la Propriété Industrielle* is charged with the assessment of product specifications for non-agricultural GIs. In particular, the product specification has to describe the process of preparation and manufacture, including the steps of production or processing which have to take place in the geographical area as well as the elements ensuring the link between the product and the territory.⁸⁴

⁸¹ This case refers to the registration of the trade mark “LAGUIOLE” for cutlery. Laguiole is a name of a town famous for its knives manufacture that dates back in time. The holder of the trade mark started to import low-cost products made in China, characterised by lower qualitative standards. A lawsuit brought by the town against the trade mark holder, but the court recognised “LAGUIOLE” as a generic name. See Paris Court of Appeal, 13 September 2012, n°10/08800. The case was appealed before the French Supreme Court that set aside the previous ruling on the basis of unfair competition. See French Supreme Court of 30 November 2016 no. 14.22.245 <<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000033295713&fastReqId=1069409082&fastPos=1>> (accessed 31 January 2022). Today the registration of Couteau de Laguiole as a French non-agricultural GI is pending. See <<https://base-indications-geographiques.inpi.fr/fr/document/2841>> (accessed 31 January 2022).

⁸² Pursuant to Art. 73 of the Law no. 2014-344 of 17 March 2014 on consumption together with Decree no. 2015-595 of 2 June 2015 concerning provisions on geographical indications protecting industrial products and handicrafts.

⁸³ For a more detailed description of the French system see Guillaume Couet and Martina Isola, ‘France’ in Pierre Kobel, Pranvera Kellezi and Bruce Kilpatrick (eds.) *Antitrust in Pharmaceutical Markets & Geographical Rules of Origin* (Springer 2017) 392.

⁸⁴ Art. 721-7 no. 4 of the French IP Code: « *Le cahier des charges d'une indication géographique précise: la qualité, la réputation, le savoir-faire traditionnel ou les autres caractéristiques que possède le produit*

To date only a few products⁸⁵ have been assessed by the French Intellectual Property Office, but a study highlights the existence of more than 100 possible applications.⁸⁶ A closer look at the rejected applications reveals that the main issue raised by the Office was based on the insufficient link of the product with the territory.⁸⁷ In particular, in the case of “*Espadrille de Mauléon*” the product specifications were not found to be clear enough with regard to the description of the manufacturing process of the soles. These were defined as simple raw materials imported from Asia, while the Office was of the opinion that soles are an essential component of the shoes.⁸⁸ With regard to “Marseille Soap”, the product specifications were considered too broad, potentially including all soaps made in all of France. As drafted, the product specifications could have covered both liquid and solid soap made from vegetable but also animal grease. The Office was of the opinion that traditional Marseille soap comprises only solid soap made from vegetable fat and rejected the application.⁸⁹

The French experience clearly shows that one of the most debated issues concerning the protection of non-agricultural products is their link to origin, further assessed in the following section.

5.4. Link to origin for non-agricultural products

In order to understand the peculiarities of non-agricultural GIs, it is important to identify the different kinds of non-agricultural products which could be susceptible to receiving GI protection. The nature of these products is important when considering the link to a specific geographical area from which they derive specific qualities, characteristics or reputation.

The limitation of the production to a given territory is controversial for many non-agricultural GIs. Non-agricultural products, and in particular handicrafts, may be linked to their geographical origin through historical factors, know-how and practices. This link through human factors is particularly complex, given its variability and the migratory flow that may have concerned a certain geographical area over the centuries.

The strength of the link between the product and the area of production depends on the characteristics of the product itself. The link to the origin must be proven by objective elements. This is easier in some cases, e.g. the mere geographical origin of natural goods, while it is more complex in others,

concerné et qui peuvent être attribués essentiellement à cette zone géographique ou à ce lieu déterminé, ainsi que les éléments établissant le lien entre le produit et la zone géographique ou le lieu déterminé associé ».

⁸⁵ According to the database of the INPI <<http://base-indications-geographiques.inpi.fr/fr/toutes-les-ig>> (accessed 31 January 2022), the office received 18 applications. At this time one (*Espadrille de Mauleon*) has been rejected; 11 have been granted. With regard to the other applications, the public consultation is still pending.

⁸⁶ See Daniel Fasquelle, ‘Rapport fait au nom de la Commission des Affaires Économiques sur la proposition de loi visant à mieux protéger les indications géographiques et les noms des collectivités territoriales (n° 329)’ of 28 November 2012 <<http://www.assemblee-nationale.fr/14/rapports/r0458.asp>> (accessed 31 January 2022).

⁸⁷ On the relevance of the link with the territory and the need to carefully assess it, see Antoine Ginestet, ‘Protected Geographical Indications (PGIs) for Non-Agricultural Products – The French Experience’ 14 June 2017 <<https://euipo.europa.eu/knowledge/course/view.php?id=2921>> (accessed 31 January 2022).

⁸⁸ INPI, Indications géographiques industrielles et artisanales, Casablanca 13-14 December 2017 available at <https://www.origin-gi.com/wp-content/uploads/2018/02/INPI_France.pdf> (accessed 31 January 2022).

⁸⁹ INPI, Decision no. 2018-69, 22 May 2018. The request for transmission of priority questions of constitutionality, filed on 15 March 2019 by the Association Savon de Marseille France, in the context of its appeal against a decision by which the director general of the INPI rejected the request for approval of specifications n° 17- 005 was rejected by the Paris Court of Appeal on 21 June 2019.

such as reputed products. Longstanding production alone is not enough, but human skills and specific know-how conferring on the product its distinctive features must be proven.

The main divide between agricultural and non-agricultural products lies in the different degree of connection between products and *terroir*. As considered under the evolution of the French system, historically GI protection derived from the unique characteristics of the place of origin of the products, according to the unique combination of climate and soil that influenced the quality of the final product. That link has been progressively loosened over the time,⁹⁰ giving emphasis to other characteristics, such as reputation and human factors, including the skills and practices of the local producers.

The research already conducted in this field provides a re-categorisation of non-agricultural GIs, dividing them according to the different link that a product may have with its geographical origin and providing a better contextualisation of the link between products and territory.⁹¹

This categorisation starts with the analysis of natural goods, which are indissolubly connected to their geographical origin in view of their unique natural qualities. The analysis continues with manufactured products, in particular, on the issues raised by the registration of non-agricultural GIs when these products are linked to a given geographical origin essentially through human practices or reputation. The categorisation considers different combinations of natural and human factors of different EU and non-EU non-agricultural products, registered at the national level or likely to be registered in the EU.⁹²

5.4.1. Natural goods

The category of natural goods consists of products having a strong relationship with their geographical area of origin. Here the particular climatic conditions, together with the geological formation of the soil, contribute to the creation of a product having unique qualities.

The category of natural goods, even if not expressly mentioned by international treaties on GIs, or by the EU GI Regulations, is currently employed in some national legislation and registers. For example, with regard to the definition of “goods”, the Indian GI Act under Art. 2 expressly mentions the category of natural goods.⁹³ The same category appears in the Indian register.⁹⁴

An example of a product that could be qualified as natural good is *Botticino Classico* marble,⁹⁵ a high-quality marble with coloured veining on an ivory-coloured base. This marble is quarried only in

⁹⁰ Irene Calboli, ‘Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair(er) System of Protection in the Global Economy?’ in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 23.

⁹¹ For a complete categorisation of the link to origin for non-agricultural GIs see Delphine Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ in Dev Gangjee (ed.), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar 2016) 316.

⁹² oriGIn, Insight Consulting, REDD (n 25).

⁹³ See the Geographical Indications of Goods (Registration and Protection) Act, 1999 No. 48 of 1999 (30th December, 1999).

⁹⁴ See Government of India, Ministry of Commerce & Industry, Office of the Controller General of Patents, Designs & Trade Marks Department of Industrial Policy & Promotion, Registration Details of Geographical Indications.

⁹⁵ Example taken from oriGIn, Insight Consulting, REDD (n 25) 483.

the municipality of Botticino in Italy. Its chemical composition gives the marble its particular characteristics of strength, hardness and translucency. The particular colour of the marble is due to the concentration of organisms that are part of the organic and inorganic inclusions in the paste, composed of carbonatic and predominantly calcareous mud known as “micrite”. The study conducted on behalf of the European Commission highlights that at this time there is no *sui generis* GI protection in Italy for *Botticino Classico* marble. Protection is achieved through trade mark and unfair competition law.⁹⁶

Apart from raw materials, also manufactured products can be linked with their geographical origin. Each possible connection is characterised by a different interaction between natural and human factors, resulting in a different strength of the link. In particular, it is possible to identify different connections. From the strongest to the weakest, these include products linked: first, by way of raw materials and process of production; second, by the process of production together with other natural and/or human factors; and third, by way of reputation.

5.4.2. Manufactured products linked by way of both raw materials and process

Within this category, it is possible to consider the French essence *Absolue Pays de Grasse*,⁹⁷ a natural or intermediate extract used in perfumes, aromas and cosmetics. All the production steps have to take place in the geographical area, starting from the raw materials, a list of 28 plants that are cultivated, picked and extracted currently in the territory. In addition, the description of the development, production and transformation process includes a detailed analysis of the various production steps, from the primary extraction of biomass from the territory to the transformation of the primary extract into an absolute.

From these product specifications, it is clear that the product has a twofold link with the territory. The first one is characterised by the origin of the raw material, the second one is characterised by the local *savoir faire* developed over time in every step of production. Nonetheless, it is possible to observe that the link to the origin of the raw materials is not described with the same degree of precision as the production techniques.⁹⁸ Therefore, it is possible to assume that the geographical origin of the plants, despite being limited within the area of production, is considered less relevant when compared to the extraction and transformation, which are described with greater detail.

5.4.3. By way of natural factors and process

Another way by which the product is connected to its geographical origin is by way of natural factors that are intrinsically linked to the territory and influence in a unique way the quality of the final product. Natural factors consist of some particular conditions, such as soil, climate and altitude of a given geographical area that contribute to the quality of the product, influencing the process of production. An example are French Cholet sheets, recognised as GIs for their unparalleled weight

⁹⁶ The Botticino Classico marble enjoys trade mark protection both at the national and the European level. In particular, it has been registered as certification mark before the Italian Office under collective mark No 982 579, marmo BOTTICINO classico (fig.) and at the European level as collective EUTM No 4 459 574, marmo BOTTICINO classico (fig.). In addition, the marble enjoys protection against unfair competition pursuant to Art. 2598 Italian Civil Code.

⁹⁷ Product specifications *Absolue Pays de Grasse*, registered on 6 November 2020.

⁹⁸ *ibid* 17.

and strength due to the special characteristics of the local water used in bleaching the sheets, together with the practice of stretching the textiles outside on the local clayey meadows.⁹⁹

A looser way in which natural factors can affect the product is shown in the product specifications of the French non-agricultural GI *Linge Basque*,¹⁰⁰ a woven fabric made from natural fibres. Here, the pedoclimatic characteristics and the low irrigation requirements of the geographical area have allowed linen to appear in the wild, developing a weaving tradition firmly rooted in the region. The specific pedoclimatic conditions are at the foundation of the historical origin of linen in the region and its adaptation to the needs of local populations do not affect in a particular way the quality of the raw material. This is implicitly confirmed by the fact that there is no need for the raw materials of *Linge Basque* to be sourced locally.

5.4.4. By way of human factors and production techniques

Handicrafts are generally characterised by a complex mix of skills and practices developed over centuries. For many products, the manufacturing is quite complex and requires a certain mastery of the technique. In these cases, only workmanship can achieve the best results, overcoming the limits and defects typical of machine-made copies. In some cases, the work of different artisans, each one with a different specialisation, is required in the production chain. The way in which different know-hows interact contribute to the uniqueness of the final product and to its territorial link.

This is clearly illustrated by the French GI *Siège de Liffol*,¹⁰¹ recently obtained for chairs originating in an area of the federation of municipalities of Neufchâteau. As regards the origin of the raw materials, the product specifications do not require a specific geographical origin, stating that raw materials have to comply with the current European regulations and with the PEFC certification, promoting a sustainable forest management.¹⁰² That said, it is clear that the centenary *savoir faire* plays a key role in linking the products to their origin.

The product specifications carefully describe all the steps in the production, from the creation of a prototype, to the manufacture and the finishing of the chair. Attention is given also to the upholstery and the new materials and techniques adopted in recent times.¹⁰³ The details of the description demonstrate the sophistication of the skills involved. The method of production is characterised by the work of different artisans all located within the geographical area of production.

As regards the link through human factors four problems have been identified:¹⁰⁴ the first is proving a link that goes beyond a generic presence of collective know-how; the second deals with the transferability of knowledge by way of migration of the artisanal community but also the creation of schools, attracting students from different geographical areas;¹⁰⁵ the third is outsourcing the production to third countries, involving a transfer of skills and know-how; and the fourth deals with

⁹⁹ Delphine Marie-Vivien, *Le droit des Indications Géographiques en Inde, un pays de l'Ancien monde face aux droits français, communautaire et international* (Ecole des Hautes Etudes en Sciences Sociales 2010) 287.

¹⁰⁰ Product specifications Linge Basque, registered on 13 November 2020.

¹⁰¹ Decision No. 2016-221 concerning the registration of the geographical indications “Siège de Liffol”, BOPI 16/48 II of 2 December 2016.

¹⁰² Product specifications Siège de Liffol, registered on 2 December 2016, 25.

¹⁰³ *ibid* 36.

¹⁰⁴ See Julia Rzepecka and others (n 43), 72.

¹⁰⁵ Delphine Marie-Vivien brings the example of the Kancheepuram Silk GI. In the application, it is explained that the weavers migrated from another Indian state 400 years ago, when their villages were destroyed by a natural disaster. See Delphine Marie-Vivien (n 91) 317.

the analysis of registered products and the fact that they usually emphasise compliance with specific quality standards and the requirement of local substantial production stages. Reference to traditional know-how is vague and generally unsubstantiated.

Recent proposals for amendment made by the EC and the EU Parliament concerning a limitation of the assessment of human factors only ‘where relevant’ under Arts. 5 and 7 Regulation 1151/2012, further discussed in section 5 of this chapter, seem to go in this direction.¹⁰⁶ In particular, the link to the territory through natural factors seems strengthened, while human factors are somehow toned down, limited to soil and landscape management, including cultivation practices and human contribution to the maintenance of the natural factors.

Even if human factors are highly susceptible to change, i.e. by way of migratory flows, it can be observed that human factors are influenced by (at least) two aspects: natural factors and human interactions. Know-how is not merely transferred from one geographical area to another; it also has to adapt to a new environment. In addition, human factors are characterised by a collective dimension.¹⁰⁷ Individuals outside the community will not be able to equally reproduce the know-how, including the changes that influenced the specific know-how over time.¹⁰⁸ This is true for products that require manual labour (e.g. laces). These complex skills that are only locally available. The link with human factors seems more difficult to prove for less labour-intensive products (e.g. knives).

With regard to human interactions, it is possible to observe that many GIs are the result of a common effort. Hence, an individual located outside the community will hardly obtain the same product. The *Siège de Liffol* provides an example of the role played by the community of producers. As indicated in the product specifications, a single chair is the result of the collaboration of up to 13 different artisans and specialisations.¹⁰⁹

The link to the territory can be verified through historical records in order to prove the pre-existing know-how and its link to a certain geographical area as part of the local culture. In addition, the level of sophistication of the know-how can impart a real and unique link to the territory, overcoming the lack of natural factors.

5.4.2.4. By way of reputation

Linking a product to its origin by way of reputation represents at the same time an issue and an opportunity. On the one hand, the reputational link contributes to loosening the strength of the geographical link between the product and its area of origin,¹¹⁰ while on the other hand it gives a certain flexibility to the system, allowing the protection of non-agricultural products having a

¹⁰⁶ Proposal for a Regulation of the European Parliament and of the Council (n 28).

¹⁰⁷ For an overview of the collective dimension see Emilie Vandecandelaere, Filippo Arfini, Giovanni Belletti et al., *Linking people, places and products. A guide for promoting quality linked to geographical origin and sustainable geographical indications* (FAO 2009 - 2010) 14. How innovation affects the traditional know-how has been examined in chapter 2 of this book.

¹⁰⁸ *ibid* 202. Laurence Berard and Philippe Marchenay, *From Localized Products to Geographical Indications: Awareness and Action* (2008) 21 <http://ethno-terroirs.cnrs.fr/IMG/pdf/Localized_Products_to_GI.pdf> (accessed 31 January 2022).

¹⁰⁹ Product specification *Siège de Liffol*, registered on 2 December 2016, 17.

¹¹⁰ See Justin Malbon, Charles Lawson and Mark Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary* (Edward Elgar 2014) 336 and Irene Calboli, ‘In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin under TRIPS’ (2014) 6 *The WIPO Journal* 60.

historical link to a certain geographical area.¹¹¹

Reputation is a central element in the definition of GIs contained in the TRIPS Agreement.¹¹² This notion, together with quality and other characteristics of the product, is equally important in identifying a good as originating in a given territory.¹¹³ In this sense, a product is entitled to receive GI protection even when ingredients and raw materials do not originate from the territory, in view of the historical link that the product has with the region that gives to the product its reputation.¹¹⁴

The concept of reputation with regard to GIs is not new in international treaties. Before TRIPS, the Lisbon Agreement had already referred to reputation in a narrower sense through the combined reading of Art. 2(1) and (2). Despite the role played by the “geographical environment”, reputation is used to identify protectable appellations of origin as those geographical names that have given the product its reputation. The notion of reputation is also present in the EU Regulations under the notion of PGIs, that makes available a looser form of connection with the territory.¹¹⁵

The meaning of reputation in the context of GI differs from the concept of reputation as defined under trade mark law.¹¹⁶ Reputation for GIs is not only based on contemporary information, but also on historical records, including the characteristics that gave a product its identity and allowed the creation of the reputation, making it different from other similar products.¹¹⁷ Due to the nature of GIs, the historical analysis should also take the transmission of the traditional knowledge from one generation to another into account, and its evolution, always keeping in mind the specific qualities of the product.¹¹⁸

Products linked to the territory through reputation may raise some concerns with regard to GI protection. An example is the case of the PGI Melton Mowbray Pork Pie.¹¹⁹ The ingredients constituting the pie do not originate from Melton Mowbray, nonetheless the pie is prepared according to traditional methods and enjoys a certain historical reputation. The main difficulty is the delimitation of the production area.¹²⁰

¹¹¹ Dev Gangjee (n 62) 39.

¹¹² Art. 22 (1) TRIPS Agreement.

¹¹³ Dev Gangjee, (n 78) 213. With regard to the link between reputation and territory see further UNCTAD – ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005) 290.

¹¹⁴ Dev Gangjee (n 62) 38.

¹¹⁵ Art. 5 Regulation 1151/2012. Court of Justice of the European Union (CJEU) in 10/11/1992, C-3/91, *Exportur SA v LOR SA and Confiserie du Tech SA* ECLI:EU:C:1992:420 § 28. The Court considered that due to the high reputation of the “Turrón de Jijona” among consumers, this designation is entitled to receive GI protection, notwithstanding the fact that the raw materials are not sourced locally.

¹¹⁶ With regard to the concept of reputation see Pilar Montero García-Noblejas, *Denominaciones de Origen e Indicaciones Geográficas* (Tirant lo Blanch 2016) 154.

¹¹⁷ For a more detailed analysis of the concept of reputation for GIs and the historical evidence, see Dev Gangjee, (n 62) 56.

¹¹⁸ On the role of history see Laurence Berard and Philippe Marchenay (n 108).

¹¹⁹ Council Regulation (EC) No 510/2006 ‘Melton Mowbray Pork Pie’ EC No: UK/PGI/005/0335/13.02.2004 [2008] OJ C85/17. See Gail Elizabeth Evans, ‘The simplification and codification of European legislation for the protection of geographical indications’ in Christophe Geiger (ed.) *Constructing European Intellectual Property: Achievements and New Perspectives* (Edward Elgar 2013) 194.

¹²⁰ The High Court dismissed the opponent’s complaint concerning the description of the geographic area. The application was filed with the Commission for further examination. *Northern Foods Plc v The Department for Environment, Food and Rural Affairs* [2005] EWHC 2971. As considered in the following section, similar issues can be raised also with regard to non-agricultural products. In particular, in the case of raw materials

Notwithstanding the lack of a clear interpretation on this point, it is fundamental to protect consumers' expectations and producers' interests. The socio-economic analysis could provide evidence in defining an area which is larger than the place that gives the name to the product, starting from the point in time when a stable recipe was defined. This could be a starting point from which to enlarge the initial boundary, showing consistent and longstanding use in the neighbouring regions, even without a more "territorially linked" PDO type of evidence.¹²¹

5.5. Options for the protection of non-agricultural products in the EU

Moving from the definition of non-agricultural GIs under international agreements and the protection accorded in the EU, both for EU products and those originating from third countries protected through bilateral agreements, the following sections contain some recommendations regarding the link of non-agricultural products with their territory, the use of EU GI logos, as well as the impact on innovation and trade relationships with third countries.

The policy recommendations, modelled on the same structure adopted for agricultural products, make particular reference to the strength of the link of non-agricultural products with their geographical origin on the basis of the categorisation previously discussed in this chapter.

5.5.1. Option A: Status quo

Currently there is no EU-wide *sui generis* protection for non-agricultural products. Trade mark law is an alternative for the protection of non-agricultural GI products. In particular, by way of derogation from absolute grounds for refusal, producer groups, having the capacity in their own name to have rights and obligations, are entitled to register signs and indications designating the geographical origin of a product through EU collective marks for the entire territory of the European Union.¹²² The same derogation is not applicable to EU certification marks, which indicate that the goods and services comply with a given standard set out in the regulations of use and controlled under the responsibility of the certification mark owner.¹²³ The EU TM Regulation expressly excludes the use of certification marks for the purpose of distinguishing goods or services certified in respect of their geographical origin.¹²⁴

Having said that, rights conferred by a trade mark reveal some differences when compared to the GI *sui generis* system. In particular, the essential function of a trade mark is to identify the goods or

originating outside the area of production and with a change in the traditional way of production, going more and more towards the mechanisation of the process at the expense of the local *savoir faire*. Later on, the legal action was withdrawn and as a result the CJEU did not have the chance to clarify the issue.

¹²¹ Dev Gangjee, 'Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection' (2006) 3 Intellectual Property Quarterly 291.

¹²² Art. 74 Regulation 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark [2017] OJ L154/1. A collective mark is a sign that distinguishes the goods and services of the members of an association from those of other undertakings.

¹²³ On the essential function of the certification mark and the possibility for third parties complying with the standards to use the mark see Pilar Montero García-Noblejas, «Évolution de la protection des signes de qualité de l'Union européenne» (2018) 66 Propriétés Intellectuelles 37 and Pilar Montero García-Noblejas, «Marcas de garantía o de certificación» (2015) 15 La Ley Mercantil, 5.

¹²⁴ Art. 83(1) Regulation 2017/1001.

services covered by the trade mark as originating from a particular undertaking and thus to distinguish those goods or services from those of other undertakings.¹²⁵

While registration fees of a trade mark are not very expensive,¹²⁶ enforcement costs are often very high. An action for infringement of a trade mark must be filed (and paid) by the right holder. The applicant has to prove that the defendant's use of a trade mark creates a likelihood of confusion for consumers about the origin of the product. This is an issue for small and medium-sized enterprises (SMEs). While trade mark enforcement relies on private actions from the right holder, several *sui generis* GI laws provide that public authorities can take action (at their own expense) to enforce protection of a registered GI (*ex officio* protection).¹²⁷ It has been noted that the level of involvement on GI enforcement depends on the Member State. In countries where GIs have an important economic impact, for example France, public authorities are involved in monitoring the market. In other Member States, where GIs have a limited economic impact, the effective role of public authorities in the monitoring is less important, for example in Finland.¹²⁸

Apart from trade mark law, further options for the protection of non-agricultural GI products are decrees or laws protecting a specific product, unfair competition law, unfair commercial practices and misleading advertising. The following paragraphs briefly describe the possible pitfalls raised by these options.

Protection through decrees or laws is not available to all producers because these legal instruments refer to a specific product, such as Bordado da Madeira (Portugal) or Harris Tweed (United Kingdom).¹²⁹ These laws are not available to non-local producers and are conceived more as product

¹²⁵ With regard the difference between trade mark and *sui generis* GI protection cf. Montero Garcia-Noblejas (n 116) 101 and Felix Addor and Alexandra Grazioli, «Geographical Indications beyond Wine and Spirits. A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement» 5 *The Journal of World Intellectual Property* 865. See 20/09/2017, C-673/15 P to C-676/15 P, *The Tea Board v. EUIPO* ECLI:EU:C:2017:702. The CJEU held that there is no difference between the essential functions of collective and individual marks. The fact that the good covered may have the same geographical origin is not relevant under Art. 8(1)(b) EUTMR. In addition, consider Burkhart Goebel and Manuela Groeschl, «The Long Road to Resolving Conflicts Between Trademarks and Geographical Indications» (2014) 104 *The Trademark Reporter* 829.

¹²⁶ Pursuant to Art. 31(2) EUTMR, the application fee for each trade mark depends on the number of classes of goods and services for which registration is sought. The basic fee for the application for an EU collective mark, pursuant to Art. 74 EUTMR, amounts to EUR 1,800. More information <<https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo>> (accessed 31 August 2021). The basic fee for the application for a national mark depends on the fees of each national office. For example the basic fee for the application of a collective mark before the Italian patent and trade mark office amounts to 334 EUR. More information <<http://www.uibm.gov.it/index.php/marchi/registrare-un-marchio-in-italia/quando-registrare-un-marchio-2>> (accessed 31 August 2021).

¹²⁷ For a critic analysis on the pros and cons of trade mark protection when compared to GIs please consider Justin Hughes, 'The Limited Promise of Geographical Indications for Farmers in Developing Countries' in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 61.

¹²⁸ In France, for instance, the correct use of GI names is conducted in restaurants and shops by the French Directorate General for Competition (Direction générale de la Concurrence, de la Consommation et de la Répression des frauds). In case the producers' group identify a misuse, it may directly inform the public authority. See further VVA, AND, Andrea Zappalaglio, Study on control and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU (2021) 114.

¹²⁹ See the Decreto Reglamentar Regional No. 11/86/M, published on 28 June 1986 and the Harris Tweed Act of 20 July 1993.

specifications rather than a tool of intellectual property. Therefore, it will not be feasible for a foreign producer to obtain a decree or a law, setting the parameters for the protection of its products. This solution is mainly aimed at promoting local manufacture or the national craft industry and does not allow producers to obtain protection in territories outside their region/country of origin.

As regards unfair competition, EU law is not a coherent and uniform legislative system. Nonetheless, some aspects have been approximated among EU Member States,¹³⁰ which have adopted national provisions prohibiting acts of unfair competition and thereby complying with the Paris Convention and the TRIPS Agreement.¹³¹ These provisions include the misleading or parasitic use of a GI. The focus of unfair competition law is on practices aimed at obtaining a competitive, or an unfair competitive, advantage by interfering with the normal functioning of the market.¹³² An example is the use of the distinctive signs or GIs of a third party jointly with their true origin or expressions such as “model”, “like” or “type”.¹³³ The consumer in this case is not confused or misled, but the infringer is taking advantage of the reputation achieved in the market by its competitor.

The use of false and misleading GIs determines the creation of a wrong impression among consumers. As a consequence, use of false and misleading GIs allows the adoption of rules on the protection against unfair commercial practices and misleading advertising. The EU reference standard is Directive 2005/29/EC (Unfair Commercial Practices Directive),¹³⁴ which addresses unfair business-to-consumer commercial practices. In particular, taking into account that GIs may be included in commercial communications directed at consumers, this form of advertising leads to the conclusion that unfair business-to-consumer commercial practices may cover the use of GIs in the commercial communications to consumers. An example of misleading commercial practice consists of giving false information to consumers about the main characteristics of the products, including their geographical origin.¹³⁵ False or untruthful information is information that is likely to deceive consumers, causing them to make a transactional decision that they would not have made otherwise.

With regard to misleading and comparative advertising, the EU reference standard is Directive 2006/114/EC.¹³⁶ In determining when an advertisement is misleading, account must be taken of all its characteristics and information about the characteristics of goods, including their geographical origin.¹³⁷ This Directive prohibits the use of misleading indications as to the geographical origin of a product.

¹³⁰ In particular through the fundamental norms provided by the Treaty establishing the European Community and the judicial practice of the CJEU. For more detailed information on this aspect see Frauke Henning-Bodewig, *Unfair Competition Law: European Union and Member States* (Kluwer Law International 2006) 25.

¹³¹ Art. 10 bis of the Paris Convention and Art. 22 TRIPS on the prohibition of acts of unfair competition.

¹³² Cf. Montero Garcia-Noblejas (n 116) 289 and 355.

¹³³ As an example, see Art. 12 of the Spanish law on unfair competition, Ley 3/1991 of 10 January 1991, BOE-A-1991-628.

¹³⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) no 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) [2005] OJ L149/22.

¹³⁵ Art. 6(1)(b) Directive 2005/29/EC.

¹³⁶ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising [2006] OJ L376/21.

¹³⁷ Art. 3(1)(a) Directive 2006/114/EC.

Even if unfair commercial practices and misleading advertising laws have been harmonised in the EU through the directives mentioned above, there is no standardisation of national legislation. Furthermore, the focus is often on the protection of consumers rather than producers. The complexity of proving that an average consumer is deceived (that is often not easy to prove in a foreign system, with a different cultural background), creates some pitfalls for producers to use these provisions in order to defend their products. Therefore, many small producers often refrain from enforcing their claims because of the high costs of litigation.

Similar to what has already been discussed under option E for agricultural products, the lack of a *sui generis* GI system favours higher flexibility to producers regarding the production steps and the origin of raw materials but at the same time results in a loosening of the link to origin.

As regards international trade, the lack of an EU-wide *sui generis* GI protection for non-agricultural products hampers international trade. From the perspective of EU producers, trade marks represent a more expensive alternative than GIs, since they have to file trade mark applications in third countries, bearing registration and enforcement costs. As regards producers from third countries, their non-agricultural products listed in bilateral agreements with the EU or its Member States receive protection pursuant to Art. 7(1)(j) Regulation 1001/2017. This provision serves as objection to registration of a later EU TM and, for the time being, there is no official EU database listing the geographical indications for non-agricultural products protected under international agreements concluded by the EU or its Member States.

The inclusion of non-agricultural products in the lists of GIs from third countries and the text of the recent agreement with China, concerning the review progress made in enlarging the scope of protection of the agreement within two years after its entry into force, show how much emphasis is given to the protection of non-agricultural products in international negotiations.

5.5.2. Option B: Status quo with harmonisation of national GI systems

The study published in 2013 shows different levels of protection for non-agricultural products across the EU. This study identified 13 different national *sui generis* laws for the protection of non-agricultural products, proving the fragmentation of the legal framework, with different scopes, effects and costs of protection among the Member States.¹³⁸

As examined in section 5, France has adopted a provision for the protection of geographical indications for industrial products and handicrafts requiring a link between the product and the territory that is less stringent than the link required for EU PDOs. In this sense, the French geographical indications for industrial products and handicrafts follow a definition similar to PGIs, since qualities, reputation or specific characteristics must be essentially attributable to the place of origin.

Producers face difficulties in getting protection, since procedures of national offices are not uniform and should be studied on a case-by-case basis, before taking any action. National definitions may vary considerably. Some countries have a broader definition; others a narrower one. The result of this lack of harmonisation obliges producers to carefully examine the procedure and the legal requirements that can differ from one Member State to another.

¹³⁸ oriGIn (n. 25) 30.

The adoption of a directive harmonizing the national frameworks might improve this situation, streamlining the national GI systems with regard to non-agricultural products. In particular, this would benefit EU and non-EU producers interested in obtaining protection in various EU Member States. Nonetheless, this option presents major flaws concerning the problem of multiple applications, increase in costs and possible delays. In addition, different GI traditions among EU Member States might create problems of agreeing on a common definition of GI for non-agricultural products, apart from problems of interpretation and lack of coherence of the system, already identified in Chapter 1 for PDOs and PGIs for agricultural products.

A common notion of GI for non-agricultural products would certainly strengthen the link to origin for these products. As regards innovation, the harmonisation of national systems would include the amendment procedures of product specifications. The lack of a supranational body ensuring the coherence of the system might result in a different implementation of these provisions, depending on the various GI traditions of the Member States. As already discussed for agricultural products, the recent proposal of the European Parliament grants a more prominent role to the Member States regarding the approval of standard (minor) amendments, but amendments that are not minor follow the same procedure laid down for registration of GIs, with scrutiny conducted by the EC.

As regards the trade relationship with third countries, together with the harmonisation of national systems, clear rules regarding the EU's competence concerning applications from third countries should be defined. Allowing applications from third countries directed to each Member State might create unnecessary burdens, multiplying application costs and delays. Lacking an EU regulation governing the matter, the implementation of the Lisbon Register could greatly reduce this administrative burden for the seven EU Member States that ratified the Lisbon Agreement.

5.5.3. Option C: *Sui generis* system with a twofold link to origin

The adoption of a *sui generis* system may have positive consequences for production both in terms of economic and non-economic impact, namely incentivising the cooperation among producers and sharing their production knowledge together with cultural protection, already highlighted in Chapter 2. In addition, other positive impacts deriving from the reputation of the products may create spill-over effects to other sectors, such as tourism.¹³⁹

In order to achieve these goals, a solution would be the adoption of a new GI regulation for protection of non-agricultural products modelled on the basis of Regulation 1151/2012 for agricultural products and foodstuffs, or directly through the amendment of the products listed in Annex 1 of Regulation 1151/2012.¹⁴⁰

Opting for a twofold link to origin through PDOs and PGIs would increase consistency between the schemes of agricultural and non-agricultural GIs. This would be in line with the EU's harmonisation policy and would reduce consumers' confusion and improve the visibility of EU quality symbols in the internal market.

Problems identified in section 3 concerning the lack of visibility of the EU quality schemes and the blurred legal definitions of designations of origin and geographical indications contained in

¹³⁹ Julia Rzepecka and others (n 43) 29.

¹⁴⁰ See in this regard the feedback to the roadmap submitted by the Organization for an International Geographical Indications Network (oriGIN) <https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-6308027/feedback/F8892_en> (accessed 31 January 2022).

Regulation 1151/2012 are likely to also occur for non-agricultural products. This would lead to the registration of many PGIs characterised by a strong link to origin that would have justified an application for a PDO. In addition, as shown with the categorisation of non-agricultural products, included in section 5.3 of this chapter, non-agricultural GIs include a wide variety of products with a different link to origin.

As suggested for agricultural products, in order to convey clear information to consumers, the priority is to highlight the origin of the raw materials. Products with a strong link to origin and wholly obtained in the territory, like local raw materials, and those for which natural factors play an important role in the production process, like the Aranmula Metal mirror, may obtain protection as PDOs, while others that do not make use of local raw materials but whose link to origin is mainly based on the methods of production, know-how and human factors and reputation may obtain protection as PGIs.

An exclusive link between the quality of the product and the land exists, in particular, with the least processed products. Stone and marble are probably the best examples, since their quality and characteristics are strictly connected to their geographical area and not convincingly reproduced elsewhere. Even more, it might be said that stone or marble do not simply reflect *terroir*, they literally are *terroir*.¹⁴¹

For other products, the link to origin is particularly challenging as to the territorial delimitation and the link by human factors. In particular, issues concerning the territorial delimitation may compromise the cooperation among producers, required to agree on common specifications. Another problem deals with the fact that many products no longer rely on the use of local raw materials. Faster transportation together with higher production rates may discourage the use of local (and sometimes scarce) raw materials.¹⁴² Issues concerning human factors, already discussed in section 5, can be solved by reference to labour-intensive products, requiring a set of specific skills. Yet, unproven reference to a general know-how should be avoided.

Another problem deals with the definition of specific quality standards by reason of market segmentation.¹⁴³ An example would be the different quality outputs for products aimed at tourists (usually inexpensive and of poor quality) from those directed at connoisseurs and collectors (high-quality versions and usually expensive). Within this framework, not all producers follow the same strategy. Some specialise in specific market segments, while others follow a multi-segment strategy, producing both low- and high-quality products. The production system is also different. Production is usually outsourced for low-quality products, while for high-quality products all production stages are usually located within the region.

A link to origin based on two quality symbols may provide a solution to this problem. Particularly for high-quality products able to serve only a niche market of limited economic relevance but with a strong reputational spill-over effect to lower quality versions, produced by the same or different

¹⁴¹ Justin Hughes, 'Champagne, Feta, and Bourbon: the spirited debate about geographical indications' (2006) 58 *Hastings Law Journal*, 354.

¹⁴² An important exception is porcelain and earthenware products, where the use of local clay often confers specific qualities to the product. See Julia Rzepecka and others (n 43) 72.

¹⁴³ See Julia Rzepecka and others (n 43) 73.

producers. This is not different from the case of the Balsamic vinegar from Modena, already discussed in section 2.2.3.¹⁴⁴

As regards innovation, very stringent product specifications might hamper innovation since producers might be reluctant to experiment with non-traditional designs or new production methods. Trade marks, on the other hand, offer a more flexible solution, leaving producers completely free to define their specifications and the degree of connection with the territory.

Barriers to innovation do not seem to be a major issue given the availability of different IP rights.¹⁴⁵ In particular, producers might segment the market into different product categories: a “traditional” one protected under *sui generis* GIs and a “modern” one protected via trade marks or designs.

As regards international trade, the adoption of a *sui generis* GI system would make international protection of GIs easier and cheaper for EU producers. GI producers from third countries would benefit as well from the new EU-wide protection, favouring the conclusion of bilateral agreements with third countries.

5.5.4. Option D: Twofold link to origin with different levels of protection for PDOs and PGIs

As already discussed in section 3.4 of this chapter, this option is aimed at reducing the blurred difference between PDOs and PGIs by introducing different levels of protection. Two possibilities have been identified: the first deals with the creation of a different legal protection for PDOs and PGIs at the EU level; the second consists of the creation of two levels of protection, at a national and an EU level, for both PDOs and PGIs.

5.5.5. Option E: *Sui generis* system with a single link to origin

This option is aimed at exploring the consequences in adopting a single link to origin, in line with the definition of PGI. As already identified in section 3 of this chapter, adopting a PGI link will solve the problem of the blurred difference between PDOs and PGIs but at the same time may result in a loss of the premium for PDO producers and a milder impact on local development, since PDOs appear to contribute better to the local economy, given their stronger link to the territory.

Despite its strong GI traditions and its concerns for the credibility and visibility of the GI system when it comes to abandoning a PDO link for agricultural products and foodstuffs, France adopted a definition closer to PGIs in its national system for non-agricultural products. This choice is not fully justified by the different intensity of the link to origin, since also non-agricultural products may have a strong link to origin like PDOs, as observed in sections 5.4.1. and 5.4.2.

Adopting a PGI link for non-agricultural products would be inconsistent with the GI system already in place for agricultural products, creating problems of lack of visibility of the EU quality schemes and increasing confusion for the public. This would risk undermining the investments in marketing campaigns aimed at promoting the existing quality symbols carried out by the EU and right holders.

¹⁴⁴ Stefano Magagnoli, ‘L’invenzione “industriale” della tradizione: il cartello dell’Aceto balsamico tradizionale di Modena’ (2005) 3 Food & History 225.

¹⁴⁵ See Julia Rzepecka and others (n 43) 75.

Indeed, the experience of third countries shows that GI protection for non-agricultural products is usually achieved through the same system in place for agricultural products.¹⁴⁶

As regards innovation and international trade, the same consequences already identified in option C for agricultural products are likely to occur. Namely, the adoption of PGIs would loosen the link to origin, providing producers with higher flexibility regarding the steps of production and the origin of raw materials. Similarly, PGIs for non-agricultural products would favour negotiations with those countries adopting a GI definition closer to that contained in the TRIPS Agreement.

Table 10 Advantages and drawbacks of the various options

	Advantages	Drawbacks
Option A: Status quo	<ul style="list-style-type: none"> • Stability of the legislative framework • Definition of the link to origin, TRIPS compliant • More flexibility regarding the origin of raw materials and the production steps • Easier international negotiations with third countries without a GI tradition. 	<ul style="list-style-type: none"> • Less information about the link to origin • Discrimination between different products • Apart from TM, alternative forms of protection are not harmonised in the EU • Lower level of protection, not compliant with Geneva Act • More expensive enforcement (no <i>ex officio</i> protection) and international registration for GI producers • More complex international negotiations with third countries with a GI tradition • No official database listing non-agricultural products • Loosening the link to origin.

¹⁴⁶ For Colombia see Art. 212 of the Decision of the Commission of the Andean Community No. 486, translation available at <<http://www.sice.oas.org/Trade/Junac/Decisiones/DEC486ee.asp#tit12c1>> (accessed 31 January 2022). Here reference is made to natural, agricultural, handicraft, and industrial products.

For India see Art. 2 (1) (e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 No.48 of 1999 (30th December, 1999) <<http://www.ipindia.nic.in/act-1999.htm>> (accessed 31 January 2022). Here GI applies to both goods originating or manufactured in the geographical area.

For Mexico see Art. 156 of the Mexican Industrial Property Law, consolidated version of 18 May 2018 <<https://wipo.lex.wipo.int/en/text/476448>> (accessed 31 August 2021).

China is an exception since has two *sui generis* GI systems. Art. 2 Provisions for the Protection of Products of Geographical Indication refers to ‘products’ in general, while Art. 2 Measures for Administration of Geographical Indications of Agricultural Products apply only to primary agricultural products and the products thereof obtained in agricultural activities. The overlap among the two *sui generis* systems has been widely criticised by the academic literature. *Inter alia*, Wang Xiaobing and Irina Kireeva, ‘The Protection of Geographical Indication in the EU and China: Tracing Causes of Delays in the Ongoing Negotiation on the Co-operative Agreement on Geographical Indications’ (2014) 2 Intellectual Property Quarterly, 129 and Haiyan Zheng, ‘A Unique Type of Cocktail: Protection of Geographical Indications in China’ in Irene Calboli and Ng-Loy Wee Loon (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017), 396.

See Provisions of May 16, 2005, for the Protection of Products of Geographical Indication (promulgated by Order No. 78 of June 7, 2005 of the General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China) <<https://wipo.lex.wipo.int/en/text/181517>> (accessed 31 January 2022). See Measures for Administration of Geographical Indications of Agricultural Products 25 December 2007 <<https://wipo.lex.wipo.int/en/text/182476>> (accessed 31 January 2022).

<p>Option B: Status quo with harmonization of national GI systems</p>	<ul style="list-style-type: none"> • Status quo partially improved • Stronger link to origin (clearer information on the origin of raw materials and production steps). 	<ul style="list-style-type: none"> • Lengthy and non-harmonised procedures, increase in costs and delays • Problems for innovation regarding non-harmonisation for major amendments • Need of clear rules concerning EU competence for non-agricultural products • EU logos not important for third countries • Multiple applications from third countries, risk partially mitigated by common registration procedure under Lisbon Agreement for 7 Member States. 	
<p>Option C: <i>Sui generis</i> system with twofold link to origin</p>	<ul style="list-style-type: none"> • Coherent with current the EU's quality policy • Increased visibility of EU logos • Possible solution to multi-segment strategy • More information to consumers about the intensity of the link to origin • Favour conclusion of bilateral agreements with third countries interested in EU logos. 	<ul style="list-style-type: none"> • Blurred difference PDO/PGI is not addressed by this option • More complex assessment of the link through human factors • No clear understanding of the difference PDO/PGI from non-EU applicants + registration by default as PGI, risk to blurring even further the PDO/PGI difference. 	
<p>Option D: Twofold link to origin with different levels of protection for PDOs and PGIs</p>	<p>D1</p>	<ul style="list-style-type: none"> • Incentive for producers with strong link to origin to apply for a PDO • EU Register will better reflect the PDO/PGI definitions • Possibly stronger link to origin. 	<ul style="list-style-type: none"> • No incentive for producers with looser link to apply for PGI • Discrimination between PDOs and PGIs, contrary to current EU policy • Conflict with Geneva Act • No direct effect on innovation, possibly more PDOs and less flexibility for producers • More complex negotiations with third countries.
	<p>D2</p>	<ul style="list-style-type: none"> • Easier and quicker management of EU applications • Fewer administrative burdens for European Commission and small businesses • Link to origin can be better addressed at national level • Conform to current legislative proposal for standard amendments • More transparent choice of GIs included to be included in bilateral agreements. 	<ul style="list-style-type: none"> • Blurred difference PDO/PGI is not addressed • Trade criteria are hard to define • Possible proliferation of national logos • Re-nationalisation GI system • Disadvantage for producers from EU countries with no GI tradition - harmonisation of national procedures required • Risk of fragmentation for major amendments • Non-EU producers might file national applications (risk mitigated by accession to Geneva Act).
<p>Option E: <i>Sui generis</i> system with single link to origin</p>	<ul style="list-style-type: none"> • Blurred difference PDO/PGI is solved • EU's GI definition closer to TRIPS 	<ul style="list-style-type: none"> • Inconsistency with EU quality policy for agricultural products • Loss of public/private investments 	

	<ul style="list-style-type: none"> • Stronger link to origin compared to status quo but risk of loosening the origin of raw materials and production steps • Easier negotiations with third countries with link to origin similar to EU PGIs • Increasing interest in EU logos in international trade (China). 	<ul style="list-style-type: none"> • Loss of PDOs premium price and impact on biodiversity • Less information to consumers about the intensity of the link to origin.
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Table 11 Analysis of the objectives

The following table evaluates the various options (from the worst to the best achievement of objectives --, -, +/-, +, ++)) on the basis of the different priorities of the EU quality policy for non-agricultural products, namely a need for simpler and clearer information on the link to origin that would address the problem of the blurred difference between PDOs and PGIs, the preservation of a strong link to origin potentially hampered by the modification of the single documents (alias innovation), and the fostering of international trade, taking into account the various advantages and drawbacks of the various options.

Objectives		Simpler and clearer information on the link to origin	Strong link to origin	Foster international trade
Option A: Status quo		--	--	-
Option B: Status quo with harmonisation of national GI systems		-	-	-
Option C: <i>Sui generis</i> system with twofold link to origin		+	+	+/-
Option D: Twofold link to origin with different levels of protection for PDOs and PGIs	D.1	+/-	+	--
	D.2	--	-	+/-
Option E: <i>Sui generis</i> system with single link to origin		+	+/-	+/-

Among the options retained, option C (*sui generis* system with a twofold link to origin) and option E (*sui generis* system with a single link to origin) show the highest achievement of objectives.

Option B is the most problematic because it creates a possible fragmentation of GI protection for non-agricultural products into a multitude of national systems with different GI traditions. Option D.1 and D.2 are made ineffective by the discrimination created between PDOs and PGIs and by the lack of harmonisation of the national systems.

Table 12 Analysis of the interest groups

The following table shows an analysis of the impact that the various options would have on three interest groups, namely consumers, producers (further divided in traditional and innovative

producers), and trading partners of the EU (further divided in countries with and without a GI tradition).

Interest groups	EU Consumers	Producers		Trading partners		
		EU Traditional producers	EU Innovative producers	Non-EU trading partners with GI tradition	Non-EU trading partners without GI tradition	
Option A: Status quo	--	--	+/-	--	++	
Option B: Status quo with harmonisation of national GI systems	+	+/-	+/-	-	0	
Option C: <i>Sui generis</i> system with twofold link to origin	+/-	+	+	++	0	
Option D: Twofold link to origin with different levels of protection for PDOs and PGIs	D.1	0	+/-	+/-	-	0
	D.2	0	+/-	+/-	+/-	0
Option E: <i>Sui generis</i> system with single link to origin	+	+/-	+	++	0	

As already presented in Table 6, options C and E appear to be again the most effective solutions. In particular, a clear definition of PDOs and PGIs together with the harmonisation of national procedures would be able to maximise the visibility of EU logos for almost all the interest groups. The adoption of the definition of PGI, suggested by option E, would simplify the information given to consumers and provide more flexibility to innovative producers, but at the same time would reduce the degree of information available and risk of loosening the link to origin. Option B does not favour EU and non-EU producers because the recognition process risks being influenced by the different GI traditions of the Member States. The discrimination between PDOs and PGIs, offered by option D.1, would benefit PDO producers and would create an incentive to strengthen the link with the territory, but it would affect PGI producers and all those producers that employ raw materials and production steps outside the geographical area of production. The consequences of option D.2 are less clear with regard to the dichotomy innovation/tradition. D.2 puts an emphasis on trade, with a stronger impact on big/small producers rather than on traditional/innovative ones.

The choice between options C and E shows the same issues already analysed with regard to agricultural products, namely the blurred difference between PDOs and PGIs and the intensity of the link to origin. For this reason, option C would have to be complemented with a clarification of the definition of PDO and PGI, already considered under option A for agricultural products. In particular, this would allow an increased visibility of the EU quality signs, together with improved market transparency and consumer information.

Option C could be preferred to option E because it is consistent with the EU's quality policy for agricultural products, allowing a higher premium price and a positive environmental impact. If the

same positive impact due to the stronger link to origin for PDOs could not be achieved for PGIs and the assessment of human factors proves to be particularly problematic, then option E would be preferred.

5.6. Interim conclusions

On April 2022, the EC has published its proposal for a Regulation on GI protection for craft and industrial products, covering both products produced by hand and those produced in a standardised way on mass scale¹⁴⁷. The opportunity is taken to enrich these conclusions with some comments to the proposal and the impact assessment report, further developing the analysis conducted in this chapter.

Aim of the proposal is to create a unitary IP right to provide the same protection across the EU to craft and industrial products and to meet the international obligation under the EU accession to the Geneva Act of the Lisbon Agreement. To this extent, various alternative regulatory methods, like extending the protection in place for agricultural products and foodstuffs to non-agricultural products and a reform of the trade mark system have not been considered adequate¹⁴⁸.

The problems regarding the lack of visibility of EU quality schemes and the loosening of the link to origin do not seem to have been particularly addressed in the proposal. This is quite surprising, since those issues are not limited to agricultural products but affect non-agricultural products as well.

To this extent, two aspects of the proposal will be assessed more in detail: namely, the choice of the PGI quality scheme and the voluntary use of the symbol.

The results of the categorisation of non-agricultural GIs, divided according to the different link that a product has with its geographical origin, show that natural goods have a very strong link and could easily qualify for a PDO. The problem is more complex for manufactured products, in particular, for products essentially linked through human practices or reputation, that could qualify for a PGI. As for agricultural products, the difference could be found in the origin of raw materials, recognising as PDOs those products using local raw materials and as PGIs, the remaining ones.

Nonetheless, Art. 5 of the proposal opts for a single link to origin, setting the same requirements already in place for the PGI scheme under Art. 5 Regulation 1151/2012. This choice has been grounded on the results of the public consultation, on the position of producers' associations and on the results of the empirical analysis, which confirmed that product's history and the distinctive traditional method of production are often essential to distinguish those products qualifying for GI protection from other non-localised variants, therefore, limiting the number of products that would qualify for PDO¹⁴⁹.

¹⁴⁷ Art. 3 COM(2022) 174 final, providing a definition of 'craft products' and 'industrial products'. These terms have been adopted in order to avoid ambiguity and overlaps with the existing regulation on agricultural products distinguishing between the raw material and the final products. For example, leather (falling under Regulation 1151/2012) as opposed to leather shoes (under Regulation on craft and industrial products). See Impact assessment report SWD(2022) 115 final, 30.

¹⁴⁸ The reasons for this choice concern the specificity of the system for agricultural products and foodstuffs (namely EU health and safety rules) and the need for a flexible and cost-effective regime tailored on non-agricultural products. COM(2022) 174 final, 3.

¹⁴⁹ SWD(2022) 115 final, 42.

Indeed, the analysis of objectives and interest groups, conducted in this chapter with a similar methodology adopted for agricultural products, shows that the two most effective options are: the adoption of a *sui generis* system with a twofold (option C) or a single link to origin (option E).

On the one hand, opting for a twofold link to origin (PDO/PGI) would increase consistency between the schemes of agricultural and non-agricultural GIs. This would be in line with the EU's harmonisation policy, reduce consumers' confusion and improve the visibility of EU quality symbols. In addition, a twofold link may provide a solution to market segmentation, recognising as PDOs those niche products with a strong reputational spill-over effect (as for the Aceto balsamico tradizionale di Modena PDO and Aceto balsamico di Modena PGI).

On the other hand, non-agricultural products would probably suffer the same problems of blurred difference between PDOs and PGIs, already discussed for agricultural products. As for agricultural products, the priority would be to highlight the origin of raw materials. Products with a strong link to origin and wholly obtained in the territory, like local raw materials, and those for which natural factors play an important role in the production process may obtain protection as PDOs. Other products that do not make use of local raw materials, but with a link to origin mainly based on the methods of production and reputation, could be recognised as PGIs.

The choice conducted in Art. 5 of the proposal would solve the problem of the blurred difference between PDOs and PGIs but at the same time may result in a loss of the premium for PDO producers and a milder impact on local development, given the stronger link of PDOs to the territory. Moreover, adopting a single link to origin would be inconsistent with the GI system already in place for agricultural products, creating problems of lack of visibility of the EU quality schemes and confusion for the public. Indeed, the experience of third countries shows that GI protection for non-agricultural products is usually achieved with the same system in place for agricultural products.

Another element that should be carefully assessed is the use of the PGI logo. Recital 39 of the proposal, clarifies that the Union symbol used on the packaging should be identical to the one used for agricultural products and foodstuffs established under Commission Delegated Regulation (EU) 664/2014 for the sake of clarity for consumers and to maximise coherence with products protected under other EU GI Regulations. This seem incoherent with Art. 44(2) of the proposal allowing the Union symbol to appear on the labelling and advertising material on a voluntary basis.

The reason for this choice mainly derives from producers' standpoint. It is argued that information about the product's qualities is conveyed mainly by producers by way of a private logo. For this reason, some producers are in favour of a voluntary use of the PGI logo, choosing the logo that they consider most appealing to consumers¹⁵⁰. On the contrary, the mandatory use of the PGI logo may be desirable from the consumers' standpoint, since it may be critical for their purchase¹⁵¹.

This shortcoming has been also highlighted in the Regulatory Scrutiny Board Opinion, urging the EC to clarify its position on the use of a mandatory or voluntary PGI logo, given the fact that the consumer awareness of the PGI logo is low¹⁵².

¹⁵⁰ *ibid*, 40. It is observed that it might not be feasible to place a GI logo on certain products, like diamonds. Nonetheless, the GI logo could be place on the labelling or advertising material.

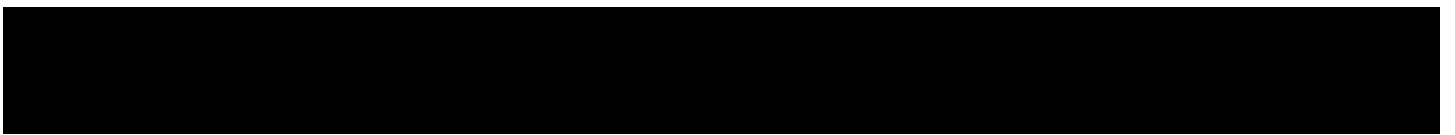
¹⁵¹ *Ibid*, 41.

¹⁵² SEC(2022) 193 final, 2.

In conclusion, even if the adoption of a link to origin modelled on the existing definition of PGI would simplify the information given to consumers and provide more flexibility to innovative producers, reasons of consistency with the existing EU GI Regulations for agricultural products and wines argue in favour of a twofold link to origin. Nonetheless, in order to solve the problem of the blurred difference between PDOs and PGIs and the intensity of the link to origin, this option would have to be complemented with a clearer definition of PDOs and PGIs. On top of that, making compulsory the use of the logos would contribute to increase the visibility of the EU quality signs, together with improved market transparency and consumer information.

The choice of a single link to origin (PGI) would reduce the degree of information available to consumers and risk of loosening the link to origin. For this reason, it should be preferred in case the assessment of natural factors proves to be particularly problematic for non-agricultural products but not in reason of the small number of products that would benefit from the PDO scheme.

Conclusions



At the time of writing these conclusions, GIs are in the spotlight of the public opinion. Producers' and consumers' organisations, together with scholars, are actively promoting or criticising the work of the European Commission, announced in the Action Plan on Intellectual Property, which aimed to put key actions forward to strengthen and make more effective the existing protection system for GIs for agricultural products and, in the meanwhile, consider the opportunity to propose an EU *sui generis* system for non-agricultural GIs.

Within this rapidly evolving scenario, this book is aimed at contributing to the debate with some policy considerations on the visibility of EU quality schemes and the loosening of the link to origin, problems that have been recognised as affecting both agricultural and non-agricultural products.

For this purpose, the main research question, and *leitmotiv* around which the entire book has been built, aims to understand whether and how the difference between the requirements for PDOs and PGIs set in Art. 5 Regulation 1151/2012 is reflected in the EU GI Register. This question has been assessed from different angles, namely through the analysis of the link to origin of EU PDOs and PGIs entered in the EU Register (Chapter 1), the amendment of that link (Chapter 2), and the analysis of the link to origin of products from third countries listed in the GI chapters of bilateral agreements and/or are entered in the EU Register by way of a direct application (Chapter 3).

In other words, is the theoretical difference between PDOs and PGIs actually reflected in the practice of the EU Register?

The existing literature does not provide an answer to this question, which is why a 'pragmatic approach' has been adopted. The results of the qualitative content analysis of EU and non-EU single documents for agricultural products and foodstuffs registered or otherwise protected in the EU are complemented with semi-structured open-ended interviews to answer the various sub-questions addressed in every chapter of this book.

Chapter 1 examines how EU GIs are linked to their geographical origin by way of natural, human and reputational factors. Starting from the legal definition, Art. 5 Regulation 1151/2012 defines the requirements for designations of origin and geographical indications. In particular, according to Article 5, PGIs imply a looser link to origin due to the lower importance attributed to natural factors, hence allowing registration of products whose raw materials come from outside the production area. Despite the clear theoretical distinction between PDOs and PGIs, the results of the qualitative analysis of the single documents for agricultural products and foodstuffs displayed a certain blurring of PDOs and PGIs. In particular, while the legal requirements described in the EU Regulation seem to privilege natural and human factors for PDOs and reputational factors for PGIs, producers tend to provide the same set of information in both circumstances, no matter which quality scheme was chosen. As a consequence, there are many PGIs that have a strong link to origin that can be described as PDO-like.

There are various reasons that could explain this result, starting from the fact that the application form is the same for both quality schemes. Regardless of the fact that a producers' group intends to apply for a PDO or a PGI, the template remains the same and the section on the link to origin is less articulated than the one included in the former templates. Moreover, the EU guidelines on how to compile the single documents provide very limited information when compared to similar guidelines at the national level, namely the French guidelines. Creating more structured templates and more detailed guidelines may help the applicant to better understand the nature of the link to origin of its product and whether it complies with the requirements set for PDOs or PGIs, thus avoiding the

wrongful interpretation made by the Italian authorities of the ‘production, processing and preparation’ requirements for PDOs under Regulation 2081/92, further discussed in section 1.4.2.1.

In addition, the fact that GIs registered early were selected based on pre-existing categories, like the French *Label Rouge*, *Label Regional* and *Certification de Conformité*, with different legal requirements than PGIs and adhered to a different rationale, may have contributed to further blurring of the difference between the two quality schemes.

Interviews with producers’ groups in section 1.5 highlighted further possible reasons for the blurred difference between PDOs and PGIs. More specifically, Regulation No 1151/2012 grants the same legal protection to PDOs and PGIs, and the national phase for registering PDOs is usually more complex and more time consuming than the one set for PGIs. This can lead producers to apply for a PGI because it represents the most straightforward option for getting the same level of protection for their products. In addition, consumers’ confusion and the lack of understanding of the message conveyed by the EU symbols do not constitute an incentive for producers to conduct a complete pros-and-cons analysis on the choice of a specific quality sign.

Besides the blurred difference between PDOs and PGIs concerning their link to origin, attention has been given to how the link to origin is evolving. In other words, what is the difference between PDOs and PGIs concerning the amendment of the single documents?

As revealed by a qualitative content analysis of the amendments of the single documents for processed meat products (class 1.2) in Chapter 2, there is no difference between PDOs and PGIs concerning the method of production: both PDOs and PGIs have been amended providing a higher degree of flexibility to producers. On the other hand, the two quality symbols tend to have a different impact on the provisions concerning origin and use of raw materials. In particular, PDOs kept the provisions concerning the geographical origin of raw materials unchanged. The broad exception pursuant to Art. 5(3) Regulation 1151/2012, which allows raw materials (such as live animals and meat) to come from a larger area, has not been narrowed down with later amendments. Nonetheless, PDOs adopted stricter requirements concerning the characteristics and use of raw materials. Yet, from the single documents for processed meat products, it shows that PGIs still tend to loosen the link to origin for both the geographical origin of the raw materials and their characteristics and use. In particular, some PGIs allowed raw materials to come from outside the area of production and granted more flexibility to producers by amending the provisions concerning the type of meat, use of additives, and weight and age of the animals.

These findings are confirmed by the analysis of the reasons for the amendments of that product. As regards raw materials, PDO producers are more concerned with the respect for traditional practices and the quality of the products, while PGI producers seem more interested in adapting the specifications to the new market needs and new standards of production.

The analysis in Chapter 2 complemented the study on the link to origin, showing that the choice between a PDO and a PGI is not without consequences in view of the future amendments of the product specification and the loosening of the link to origin.

In order to complete the analysis of the difference between PDOs and PGIs, Chapter 3 focused on international trade and, in particular, bilateral agreements concluded between the EU and third countries and the entry in the EU Register of some of the products listed under those agreements. If the difference between PDOs and PGIs is not particularly relevant either for the creation of the lists

of EU GIs in bilateral agreements or for the registration of foreign GIs in the EU, why are there still some foreign GIs asking for a PDO registration?

As regards EU products, the different quality scheme (PDO or PGI) does not seem to play a role in the creation of lists of GIs because no clear preference is expressed for a specific quality scheme by the EU negotiators. The situation does not change from the perspective of non-EU products. GIs included in the lists from third countries do not clearly differentiate between PDOs and PGIs. This is also due to the fact that the EU does not require such distinction in bilateral agreements. According to Art. 11(2) Regulation 1151/2012, the great majority of products would be qualified as PGIs, irrespective of the strength of their link to origin. This would contribute to blurring the difference between PDOs and PGIs, already considered in Chapter 1, and would make the EU system less understandable for both EU and non-EU producers.

Moreover, very few products on the lists of GIs from third countries protected in the EU within the terms of bilateral agreements are included in the EU GI Register. One of the reasons for that is the need to show traceability and controls in the country of origin. Not all producers can meet this requirement.

Recently, the possibility of adding EU quality symbols to the products has been playing a more influential role in the conclusion of bilateral agreements, creating a shift from the centrality of the name (that is the basis for GI protection) to the interest in the GI logo. In the text of the agreement with China, this is proven by the explicit reference to the entry of foreign GIs in the EU Register, by means of a decision on a case-by-case basis concerning their entry as PDOs or PGIs. Despite the proven relevance of EU quality symbols, it still has to be verified whether a case-by-case analysis would clearly draw the line between PDOs and PGIs avoiding a generalisation of foreign GIs into PGIs, as described above.

The qualitative analysis in Chapter 3 of the link to origin for non-EU GIs entered in the EU Register shows that many non-EU GIs are usually registered in the EU as PGIs rather than PDOs. This occurs for various reasons. In addition to those already discussed for EU GIs, two more reasons have been identified specifically for foreign GIs. In particular, it has been observed that foreign applicants tend to register their products under the quality symbol which is closer to the notion of GI adopted in their national system. Usually the choice is made in favour of PGIs, irrespective of the strength of the link to origin that could have allowed them to apply for a PDO scheme. In addition, when registering a GI from a third country by applying directly, applicants tend to opt for a PGI, irrespective of the strength of the link with the territory and the GI tradition of their country. And yet, PDOs are usually chosen for products registered via the competent authorities of the third country (see the example of China) and when the product was registered in the country of origin according to a quality scheme similar to the EU PDO. For direct applications, this may depend a great deal on the context of the registration: for instance, when the application is submitted by a professional, their involvement might be determinant in advising the client and letting them choose a specific quality symbol.

After having analysed the main research question under the lenses of the link to origin of EU PDOs and PGIs, of their amendment, and of the link to origin of products from third countries, the results of the 'pragmatic approach' show that the difference between the legal definitions of PDOs and PGIs is not fully reflected in the EU GI Register. In particular, for EU products, it has been observed that the percentage of PGIs with a strong link to origin compared to the total number of PGIs registered for fruits and vegetables (class 1.6) is particularly high in all countries. For non-EU products,

applicants tend to opt for a PGI, despite the intensity of the link to origin that may justify a PDO or the GI tradition of their country.

It is evident that this scenario has an impact on EU policy objectives regarding agricultural production and rural economy. In particular, rewarding producers and contributing to rural development could be undermined by the blurring of the quality schemes and their lack of visibility, together with the loosening of the link to origin.

A possible solution to this problem could be the clarification of the difference between PDOs and PGIs by improving the soft law tools already in place. This could be done by emphasising in the EU guidelines both the 'causal link' to origin for the various classes of products, together with the amendment of the legal definitions of PDOs and PGIs, and the origin of raw materials. In this sense, PDOs would be reserved to products wholly obtained in the territory, including the production of raw materials, while PGIs would be reserved to products obtained from transformational processes which do not make use of local raw materials. Evidently, this option requires harmonisation of the difference concerning definitions and use of the EU quality symbols in the four EU GI Regulations, also in order to make EU quality symbols clearer and more understandable to consumers.

The problems regarding the lack of visibility of EU quality schemes and the loosening of the link to origin is not limited to agricultural products, but may affect non-agricultural products as well. In particular, opting for a twofold link to origin through PDOs and PGIs would increase consistency between the schemes of agricultural and non-agricultural GIs. This would be in line with the EU harmonisation policy, would reduce consumers confusion, and improve the visibility of EU quality symbols.

Even if the adoption of a link to origin modelled on the existing definition of PGI would simplify the information given to consumers and provide more flexibility to innovative producers, reasons of consistency with the existing EU GI Regulations for agricultural products and wines argue in favour of a twofold link to origin. For this reason, a PGI link to origin should be preferred in case the assessment of natural factors proves to be particularly problematic for non-agricultural products but not in reason of the small number of products that would benefit from the PDO scheme.

The main problem identified in all the chapters of this book is the correct identification of the link to the territory. The analysis conducted in the previous paragraphs shows different degrees of connection with the territory and in some cases a progressive loosening of the link. This creates possible negative consequences for the entire GI system, even for those producers whose products enjoy a stricter link with the territory. In this sense, it is necessary to keep a more rigorous definition of the notion of GI in order to uphold the credibility of the system, thus ensuring correct information is given to consumers on the quality and origin of the products and local development, and avoiding geographical inaccuracy or inconsistency. For example, obliging producers to disclose the actual origin of raw materials and manufacturing steps could avoid misleading the public with regard to the origin of the product.

A product becomes eligible for GI protection not only when it originates from a given area, but also when it complies with certain standards of production that make the product authentic. In this sense, producers have to comply with the criteria laid down in the product specifications, defining the specific qualities, the area of production and the link with the territory. The problem here is the definition of the standards, which may entail a complex collective effort. Once agreement is reached,

the issue becomes the adherence of producers to the codes of practice. A similar breach would damage the reputation and value of the entire GI and may lead to the exclusion of those producers who underperform.

Although a certain degree of standardisation is necessary in order to verify whether the product complies with the standards, at the same time overregulation may unduly restrict innovation. Some authors are of the opinion that the rigidity of the system may render the GI incapable of adapting to the new exigencies in line with technological development and consumer preferences, including some distortive effects derived from protectionist considerations. This might be seen as an advantage only in case of long-established artisanal production methods, while it would be unattractive for the establishment of new rural industries. Other authors are of another opinion and believe that GIs are able to protect collective traditions and, at the same time, reward innovation.

The question posed for both agricultural and non-agricultural products is how to clearly differentiate between a link of the product to its geographical origin only through human factors or reputation (PGI) and a stronger link based on *terroir*, which combines natural and human factors (PDO).

A possible solution to this problem could be the simplification of the concept of link to origin, placing an emphasis on the origin of raw materials. In this sense, PDOs would be reserved to products wholly obtained in the territory, including its raw materials. By contrast, PGIs would be reserved to products obtained from transformational processes which, although strongly linked to the territory by quality characteristics, use of resources, local know-how and historical roots, do not make use of local raw materials.

The text of Regulation 2021/2117, amending Regulation 1151/2012, seems to be in line with the idea of simplifying the concept of a link to origin, emphasising the origin of raw materials. The clarification provided in Recital 12(a), discussed in section 4.4, according to which human factors may be limited to soil and landscape management and cultivation practices, and aimed at maintaining the essential natural factors, could serve to clarify the concept of link to origin, placing an emphasis on natural factors and raw materials as well. This could provide a solution to the ‘fresh products’ that show a very strong link to the territory through natural factors but do not involve specific human factors. As a consequence, a reclassification of the existing PDOs and PGIs is required to give clear information to consumers about the true origin of the product and the raw materials used.

VALORISATION ADDENDUM

1. The societal relevance of this research

Nowadays, consumers show an increasing interest in origin products, produced according to traditional means of production, rather than for mass production. In this light, geographical origin works as a strategic tool for differentiation, moving from commodity markets into more lucrative niche sectors. Needless to say, in order to be successful, the system needs to be clearly understandable to consumers.

The problem concerning the visibility of the EU quality schemes and the strength of the link to origin is not new. A survey conducted in 2000 in the UK shows that the EU quality logos were not recognised by consumers and did not make any particular difference in sales. Since then, the EC started to rethink the functioning of the quality policy for agricultural products, aimed at protecting the names of specific products to promote their unique characteristics, and linked to their geographical origin as well as traditional know-how.

Twenty years later the problem is still unsolved. The 2021 evaluation support study on GIs and TSGs in the EU highlights that 40% of consumers do not perceive any difference in the meaning between PDO and PGI. Understanding and recognition of PDOs and PGIs vary considerably between Member States, but in most Member States the recognition of EU quality schemes is generally lower than recognition of national/regional quality schemes.

In this regard, firstly, the analysis carried out in this study has shown that natural, human, and reputational factors have almost equal importance for both PDOs and PGIs with a consequent blurring of the two schemes. In particular, there are products like fruits and vegetables (class 1.6) that show a very strong link to the territory through both natural and human factors registered as PGIs.

Secondly, as regards innovation, the analysis of the amendments has shown that both PDOs and PGIs for processed meat products (class 1.2) tend to amend the product specifications by providing more flexibility to producers in the methods of production. However, PDOs tend to be more conservative as regards raw materials.

Thirdly, as regards trade, non-EU GIs entered in the EU GI Register by way of bilateral agreements or direct applications, the research has shown that applicants tend to opt for a PGI, irrespective of the strength of the link with the territory and the GI tradition of their country. Yet, PDOs are usually chosen for products registered through the competent authorities of the third country and when the product was registered in the country of origin according to a quality scheme similar to the EU PDO. In the text of the agreement with China, the registration of 100 Chinese products as PGIs inverted the previous trend based on an assessment of the link to origin to qualify some products as PDOs. This new trend seems to lead to a complete generalisation of foreign GIs into PGIs.

2. The beneficiaries of this research

Apart from the academic community, the results of this research are of interest for public authorities, mainly the European Commission and the national authorities in charge of the registration and protection of GIs, but also for GI producers' groups and the broader public.

Until now, the European Commission guidelines opted for a strict definition of human factors for PDOs, requiring a description of the superiority of the local methods of production, explaining how they contribute to the specific and distinctive character of the products. The recent amendment to

Regulation 1151/2012 and the clarification of the fact that human factors may be limited to soil and landscape management and cultivation practices, aimed at maintaining the essential natural factors, clarifies the role of human factors as a link to origin, giving an emphasis to natural factors and raw materials as well. The proposed recommendations for agricultural and non-agricultural GIs are mainly addressed to regulators and policy makers responsible for the ongoing and future reform of the GI legal framework.

The recommendations for agricultural GIs, in line with a clarification of the difference between PDOs and PGIs, propose to clarify the GI definitions through an improvement of the soft law tools already in place, namely the EU and national guidelines. In particular, the inclusion of a product-specific approach, based on the classes of products covered by EU Regulation 1151/2012, would allow a clearer understanding of the derogations to locally sourced raw materials for PDOs, the various production steps, and the 'causal link' to origin for the various classes of products. The amendment of the definition of PDOs and PGIs contained in Regulation 1151/2012, emphasising the origin of raw materials, could serve the same purpose already mentioned with the first option. PDOs would be reserved to products wholly obtained in the territory, including the production of the raw material, while PGIs would be reserved to products obtained from transformation processes which do not make use of local raw materials.

Similarly, the recommendations for non-agricultural GIs propose to opt for a twofold link to origin based on PDOs and PGIs to increase consistency with the scheme already in place for agricultural GIs. This would be in line with the EU's harmonisation policy, reduce consumers' confusion and improve the visibility of EU quality symbols. To avoid problems of a blurred difference between PDOs and PGIs, already discussed for agricultural products, products with a strong link to origin and wholly obtained in the territory, like local raw materials, and those for which natural factors play an important role in the production process, may obtain protection as PDOs. Other products that do not make use of local raw materials, with a link to origin mainly based on the methods of production and reputation, could be recognised as PGIs.

Apart from public authorities, this research can be beneficial also to GI producers' groups. Indeed, the lack of visibility of EU quality schemes and the loosening of the link to origin could undermine the policy objectives in relation to agricultural production and rural economy, based on rewarding producers and contributing to rural development. As highlighted in the interviews, the difference between PDOs and PGIs is not particularly clear even to the representatives of producers' groups. Better understanding and recognition of quality schemes may serve to improve communication to consumers, to amend the product specifications, and in some cases even to rethink the choice of the EU quality sign.

As already mentioned, this research can be beneficial not only to GI professionals, whether from the public or private sector, but also to the broader public. Indeed, the aim of the ongoing reform is to get a better understanding and recognition of the EU quality signs to the benefit of consumers. Within this framework, this work attempts to provide a better understanding of the strengths and weaknesses of the EU GI system. Consumers' confusion and the lack of visibility of the EU quality logos can be reduced by highlighting the origin of the raw materials. Products with a strong link to origin and wholly obtained in the territory, with local raw materials, and those for which natural factors play an important role in the production process may obtain protection as PDOs. Other products that do not make use of local raw materials, or with a link to origin mainly based on the methods of production

and reputation, could be recognised as PGIs.

3. The innovative character of the thesis

In light of a reform of the EU GI Regulations, this book attempts to provide a pragmatic approach to the problem, shedding new light on the relationship between GIs and their link to origin. Starting from the notions of PDOs and PGIs, this book assesses whether the theoretical difference between the legal definitions of PDOs and PGIs is reflected in the content of the single documents registered in the EU GI database, under the lenses of the link to origin, innovation and trade.

The ‘pragmatic approach’ refers to the methodology employed. Apart from the literature review, this research attempts to develop an analysis of the legal definitions of GIs based on a qualitative content analysis of the single documents for EU and non-EU agricultural products and foodstuffs registered in the EU. The results of the empirical analysis are then examined and complemented with semi-structured open-ended interviews with producer groups that explore why applicants have opted for a specific quality logo, namely PDO or PGI.

The results of this methodology allow us to develop a more coherent picture of the existing legal and factual framework, providing the basis for the recommendations to further improve the GI system, namely the simpler and clearer information on the link to origin that will address the problem of the blurred difference between PDOs and PGIs, the preservation of a strong link to origin potentially hampered by the modification of the single documents (alias innovation), and the fostering of international trade.

4. Translating the results into activities and products

Apart from the thesis itself, this research will be published in the form of a monograph, as per the requirements set in the fundings of the European Union’s Horizon 2020 Research and Innovation Programme under the Marie Skłodowska-Curie grant agreement No 721733. In order to reach the widest audience, the results of each chapter of the research will constitute the basis for the publication of chapters in edited volumes and papers in academic journals.

The dissemination of the research results has already taken place in the form of a scientific publication (Maurizio Crupi, ‘How to protect Indian products in the European Union: fragmented protection of non-agricultural geographical indications’, 54 (2019) *La Ley Mercantil* 5, a research paper (Maurizio Crupi, ‘Innovating within tradition: are PDOs and PGIs loosening their link to origin?’ (2020) online publication EIPIN-IS website, peer reviewed and awarded 1st Prize by the ECTA Committee and the second place at the EPIP 2020 Young Scholar Award), 15 conferences aimed at reaching not only academics but also GI producers’ groups and practitioners, 1 article in a specialised blog and 2 videos.

5. Implementing the research results

The research results will further be implemented by distributing copies of the thesis and, in due time, of the published monograph, not only to scholars but also to officials and GI producers’ groups that expressed an interest during conferences and interviews.

Lastly, the dissemination activity already conducted during the research will continue to better reach all the various stakeholders and the general public. On the basis of the feedback received over the last three years, participating in conferences (both in person and online), and writing in blogs appear to be the best way to reach stakeholders which do not form part of the academic community. Therefore, at a first stage, this way of implementing the results will be privileged. At a second stage, the results

of the research activity, partially presented at conferences and in blog posts, will be published in academic publications in order to reach scholars and provide peer-reviewed academic contributions to the benefit of the community.

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ANNEXES

ANNEX I A– Templates, summaries and single documents

APPLICATION FOR REGISTRATION: Art. 17

PDO () PGI ()

National file No: ...

1. Competent service of the Member State:

Name:

Tel.: Fax:

2. Applicant group:

(a) name:

(b) address:

(c) composition: producer/processor () other ()

3. Name of the product:

4. Type of product:

5. Description of product: summary of requirements under Art. 4(2)

(a) name:

(b) description:

(c) geographical area:

(d) evidence of origin:

(e) acquisition:

(f) link:

(g) control:

(h) labelling:

(i) national legislative requirements (where applicable):

Publication of an application for registration pursuant to Article 6(2) of Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin

(...)

This publication confers the right to object to the application pursuant to Article 7 of the abovementioned Regulation. Any objection to this application must be submitted via the competent authority in the Member State concerned within a time limit of six months from the date of this publication. The arguments for publication are set out below, in particular under point 4(f) and are considered to justify the application within the meaning of Regulation (EEC) No 2081/92.

COUNCIL REGULATION (EEC) No 2081/92

APPLICATION FOR REGISTRATION: ARTICLE 5

PDO () PGI ()

National file No: [...]

Competent service of the Member State:

Name:

Tel:

Fax:

Applicant:

Name:

Address:

Composition:

Type of product:

Specification:

(summary of the requirement under Article 4(2))

Name:

Description:

Geographical area:

Proof of origin:

Method of production:

Link:

Inspection body:

Labelling:

National legislation requirements:

EC No: [...]

Date of receipt of the full application: [...]

Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(...)

This publication confers the right to object to the application pursuant to Article 7 of Council Regulation (EC) No 510/2006. Statements of objection must reach the Commission within six months of the date of this publication.

SUMMARY

COUNCIL REGULATION (EC) No 510/2006

‘...’

EC No: [...]

PDO () PGI ()

This summary sets out the main elements of the product specification for information purposes.

Responsible department in the Member State:

Name:

Address:

Tel.

Fax

E-mail:

Group:

Name:

Address:

Tel

Fax

E-mail:

Composition:

Type of product:

Specification:

(Summary of requirements under Article 4(2) of Regulation (EC) No 510/2006)

Name:

Description:

Geographical area:

Proof of origin:

Method of production:

Link:

Inspection body:

Name:

Address:

Tel.

Fax

E-mail:

Labelling:

Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(...)

This publication confers the right to object to the application pursuant to Article 7 of Council Regulation (EC) No 510/2006. Statements of objection must reach the Commission within six months from the date of this publication.

SINGLE DOCUMENT

COUNCIL REGULATION (EC) No 510/2006

‘...’

EC No: [...]

PGI () PDO ()

Name:

Member State or third country:

Description of the agricultural product of foodstuff:

- 3.1. Type of product:
- 3.2. Description of the product to which the name in (1) applies:
- 3.3. Raw materials (for processed products only):
- 3.4. Feed (for products of animal origin only):
- 3.5. Specific steps in production that must take place in the identified geographical area:
- 3.6. Specific rules concerning slicing, grating, packaging, etc.:
- 3.7. Specific rules concerning labelling:

Concise definition of the geographical area:

Link with the geographical area:

- 5.1. Specificity of the geographical area:
- 5.2. Specificity of the product:
- 5.3. Causal link between the geographical area and the quality or characteristics of the product (for PDO) or a specific quality, reputation or other characteristic of the product (for PGI):

Reference to publication of the specification:

Publication of an application pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs

(...)

This publication confers the right to oppose the application pursuant to Article 51 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council.

SINGLE DOCUMENT

'...'

EU No:

PDO () PGI ()

Name(s)

Member State or Third Country

Description of the agricultural product or foodstuff

Type of product

Description of product to which the name in (1) applies

Feed (for products of animal origin only) and raw materials (for processed products only)

Specific steps in production that must take place in the identified geographical area

Specific rules concerning slicing, grating, packaging, etc. of the product the registered name refers to

Specific rules concerning labelling of the product the registered name refers to

Concise definition of the geographical area

Link with the geographical area

Reference to publication of the specification

(the second subparagraph of Article 6(1) of this Regulation)

ANNEX I B - List of products for which single documents and summaries have not been found in the EU GI Register

Azeites do norte alentejano
Bitto
Bleu de gex haut-jura / Bleu de septmonce
Budejovické pivo
Budějovický měšťanský pivo
Ceskobudejovické pivo
Emmental français est-central
Époisses
Esrom
Huile d'olive de nyons
Kolymvari Chanion Kritis
Laguiole
Lesvos / mitilini
Mela val di non
Mozzarella di bufala campana
Münchener bier
Nocciola del piemonte / Nocciola piemonte
Pays d'auge
Pecorino romano
Picodon
Radicchio rosso di treviso
Radicchio variegato di castelfranco
Roquefort
Siurana

ANNEX II – Description of codes

1. Landmark

The category Landmark groups the different natural characteristics of the land, apart from the composition of the soil, that contributes to giving a certain quality to the products.

The code hydrology is used to describe the link of the product to the territory based on the particular water system of the territory. An example is provided by the description of the water network of the Bresse region, where the PDO Crème de Bresse is produced:

The geographical area benefits from a dense and omnipresent water network made up of rivers whose sources are on the slopes of the Jura and which are fed by numerous streams or rills¹⁵³.

The code altitude describes the mountainous and hilly reliefs, which contributes to a given climate and to the development of specific flora and fauna, like in the case of the PDO Podkarpacki Miód Spadziowy:

*These soils and the topography (the Carpathian Foothills are located at an altitude of 350-600 m above sea level, and in the Lower Beskids and Bieszczady Mountains elevations reach 850 m above sea level) create ideal habitats for coniferous trees, in particular the European silver fir (*Abies alba*)¹⁵⁴.*

The code location is used to define the particular position of a given area of production, such as the proximity to a lake or mountains, influences the characteristics of the final product.

Slovenia is situated in Central Europe, where four major European geographical zones meet, namely the Alps, the Pannonian Basin, the Dinaric Highlands and the Mediterranean. The geological diversity, variations in relief and the fact that the country straddles the boundaries of four biogeographical regions give rise to a great diversity of flora and fauna, which in turn has also resulted in a wide range of honey types¹⁵⁵.

The code topography represents the link between the product and the area based on the physical appearance of the natural features of the territory, especially the shape of its surface. An example is the topography of the Bresse region which allows the maintenance of a grazing system covering half the agricultural area of the region. The characteristics of the region influence the process of production of the final product and, in particular, the feeding of the herd that must graze at least for a period of 150 days a year¹⁵⁶.

The geographical production area of 'Crème de Bresse' comprises a slightly undulating wooded plain. The contours of the hills are characteristic of the Bresse region, and the

¹⁵³ Crème de Bresse PDO [2013] OJ C335/16 [5.1].

¹⁵⁴ Podkarpacki Miód Spadziowy PDO [2009] OJ C299/18 [5.1].

¹⁵⁵ Slovenski Med PGI [2013] OJ C157/12 [5.1].

¹⁵⁶ See Crème de Bresse (n 153) [3.4 (a)].

*altitude does not exceed 300 meters*¹⁵⁷.

The code scarce human impact is used to describe those quotations showing a minimal human intervention in a certain territory. This is relevant because generally describes the landmark as a green area without pollution. An example is provided by the description of the region of Liébana, where the PDO Miel de Liébana is produced:

*Liébana has a high nature value, which is particularly well preserved and has been changed little by human activity. Tree cover is 41 % and in addition there are now seven protected areas covering more than 32 % of the territory. Two of these are protected at national level – the Picos de Europa National Park and the Área de Protección del Oso Pardo – and five at European level. Of those five, two are SCIs (Río Deva and Liébana) and three are SPAs (Sierra de Peña Sagra, Desfiladero de la Hermida and Liébana)*¹⁵⁸.

The code landmark-general is used for the quotations containing only a general reference to the landmark, without any further specification.

*Due to climatic, geographic and socio-economic conditions, and the difficult links with the rest of the country, the diet of the Barroso region was limited to local products, mainly bread, potatoes and pork*¹⁵⁹.

2. Climate

The category climate groups together the different climatic conditions that are influencing the process of production and consequently the quality of the final product.

The code temperature groups the quotations stating the existence of a particular temperature condition in the region. This contributes to some production steps, such as growing a specific variety of flora and fauna used as raw materials or allowing animals to freely graze in the fields.

*Temperatures conducive to the growth and development of melliferous plants persist throughout all four seasons. The average spring temperature is 11,8 °C, the average summer temperature is 21,1 °C, the average autumn temperature is 11,3 °C and the average winter temperature is 1,0 °C. The average temperature in the growing season (from April to September) is 18,3 °C*¹⁶⁰.

The code rainfall is used for the quotations indicating the specificities of the region regarding the rain.

Annual rains ranging from a low of 650 mm along the coast to 1 000-1 500 mm in the inland plains, reaching 1 800-2 000 mm on Terminillo (the highest mountain in Lazio) and in the Simbruini mountain range. This ensure the best possible conditions for rearing sheep, without stressing the animal. These natural factors make it possible to exploit the natural pastureland and meadows as a food source for the sheep, so imbuing the milk used for cheese-making

¹⁵⁷ See Crème de Bresse (n 153) [5.1].

¹⁵⁸ Miel de Liébana PDO [2015] OJ C347/12 [5.1.1].

¹⁵⁹ Alheira de Barroso - Montalegre PGI [2006] OJ C23/8 [4.6].

¹⁶⁰ See Slavonski Med (n 155) [5.1].

*with particular qualities and establishing an exceptionally favourable synergy in terms of the product's quality and the homogeneous nature of its characteristics*¹⁶¹.

The code humidity is used to indicate the percentage of humidity in a given production area. This is usually relevant when it comes to the seasoning of a given product, allowing the product to be dried in a traditional way.

*The hot, sunny summers the area enjoys favour harvesting operations and, in combinations with the humidity conditions typical of the Ferrara area, allows 'Aglione di Voghiera' to be dried in a slow and gradual fashion*¹⁶².

The code sunshine duration has been identified in order to provide a linking factor regarding the impact of sunlight on the products, mainly with regard to the variety of plants growing in the region used to feed the animals.

*A high average annual temperature and good sunlight are characteristic of the Bory Dolnośląskie area, offering excellent nectarisation, especially in very wet years*¹⁶³.

The code wind is used in a few single documents as linking factors for those geographical areas experiencing particular weather characteristics, this has an impact on the growth of the flora and on the lifecycle of the animals.

*The mean monthly wind speed is greatest in the months of spring (March and April) and lowest in late summer and at the start of autumn (August and September). Winds blow most often from the northwest and southeast, with winds from the southwest and northeast the next most common*¹⁶⁴.

*As a consequence: Bees have a larger amount of nectar available to them in spring. From this they derive energy and are able to resist air currents more easily. In late summer wind strength and the amount of nectar decline, the bees expend less energy in resisting wind and retain it more easily to prepare for hibernation*¹⁶⁵.

The code snowfall, rarely used, describes the impact that cold temperatures have on the product's characteristics.

*The qualities of 'Salmerino del Trentino' derive directly from the geomorphological and climatic conditions of the identified geographical area, especially from the water used, which is plentiful thanks to the permanent presence of snow and ice in the area, highly oxygenated, has a good chemical, physical and biological quality and a low average temperature which is generally under 10 °C between November and March*¹⁶⁶.

The code aridity describes the impact that a certain climatic condition has on the qualitative and

¹⁶¹ Ricotta Romana PDO [2004] OJ C30/7 [4.6].

¹⁶² Aglione di Voghiera PDO [2009] OJ C236/29 [5.1].

¹⁶³ Miód Wrzosowy z Borów Dolnośląskich PGI [2007] OJ C179/15 [4.6].

¹⁶⁴ See Slavonski Med (n 155) [5.1].

¹⁶⁵ See Slavonski Med (n 155) [5.3].

¹⁶⁶ Salmerino del Trentino PDO [2012] OJ C239/11 [5.3].

quantitative potential of a cultivation. This climatic condition has often an impact on local producers, obliging them to adapt their cultivation techniques.

Rainfall is irregularly distributed and concentrated in a few months, mainly in autumn and winter. The Valle del Belice undergoes a good five months of drought¹⁶⁷.

The code climate-general is used for the quotations containing only a general reference to the landmark, without any further specification on how the climate can work as a linking factor.

In this natural area which is rich in honey-producing flora the flower nectar honeys are harvested. They have an exceptional aroma and agreeable taste, in soft colours from clear yellow to amber, revealing the special edaphological-climatic conditions¹⁶⁸.

3. Soil

The category soil is used for defining the specific characteristics of the soil that may serve as a linking factor. This category comprises only two codes. The first one, named composite, deals with the technical information on the composition of the land. The second one, named soil-general using the same methodology adopted above for landmark and climate, groups the quotations that make only a general reference to the specific nature of the soil without any further explanation.

As an example of the first code: *On soils of slate origin with good water retention capacity, reasonable quality pastures are found where annual grasses — frequently perennials (Lolium spp.) — predominate¹⁶⁹.*

As an example of the second code: *Owing to its geographical position in the north-western corner of the Iberian Peninsula, at the cross-roads of two types of climate – Atlantic and ‘meseta’ – Galicia has various weather patterns, which, together with its geological features and soils, its past, its relief and the intervention of man, determine the characteristics of the flora and hence of the honey produced¹⁷⁰.*

4. Raw material

This category identifies the various codes, comprising animals, meat and milk, by-products deriving from the production of other local products, the feed of the animals and plants, located in the territory. This category has been adopted in order to highlight the different impact that natural and human factors have with regard to the production of raw materials.

The code raw material was not included in the previous read through. This code is the result of the split of the original category named raw material into four different codes¹⁷¹. The difference between the code raw materials and by-products is that the code raw materials makes no reference to other processes of production, while the code by-products refers to the use of materials derived from the

¹⁶⁷ Valle del Belice PDO [2003] OJ C277/9 [4.6].

¹⁶⁸ Mel do Alentejo PDO [1996] Dossier No PT/PDO/0017/0252 [f].

¹⁶⁹ Requeijão Da Beira Baixa PDO [2013] OJ C312/26 [5.1].

¹⁷⁰ Miel de Galicia PGI [2005] OJ C30/16 [4.6].

¹⁷¹ Art. 5 (3) Regulation 1151/2012 expressly refers to live animals, meat and milk as raw materials.

process of production of other products within the same area of production.

The production of the milk, whey and fresh cream from the whey as well as of the ricotta must take place within the area referred to in point 4¹⁷².

The code live animals identifies those animals that produce the final product, such as bees with regard to honey. This code excludes non-autochthonous breeds or those breeds that do not present a strong connection with the territory. As an example, see the PDO Miel de Corse:

An original form of beekeeping capitalising on the potential of this environment has developed: bee colonies in Corsica belong to a distinct ecotype which is fully adapted to the environmental conditions. The behaviour of beehives is designed to make the best use of the successive flowering periods of spontaneous growth¹⁷³.

The code meat refers to the autochthonous and non-autochthonous breeds, located in the area of production, whose meat (including fish) constitute the final product, e.g. ham and sausages.

The carcass of slaughtered 'Arnaki Elassonas' lamb displays uniform muscle coverage. It is covered by a thin, uniformly distributed layer of fat. The carcass is light (6,5-10,5 kg), with a very low fat content (1,5 %) in comparison with lambs from other regions (reaching 3 %). Its white to faint pink colour is conditioned by the pH levels, the age of the animal, how it has been fed and its breed. Ellassona lambs give tender, juicy meat with a characteristic aroma and a pleasant smell and taste, even when they are older¹⁷⁴.

The code milk is used for the quotations referring to the milk produced by autochthonous and non-autochthonous breeds, located in the area of production.

'Klenovecký syrec' is produced on salaš farms using raw sheep's or cow's milk with added milk cultures isolated from raw sheep's milk, or using pasteurised sheep's or cow's milk in industrial processing with added milk cultures isolated from raw sheep's milk. It is made mainly from milk from the defined geographical area¹⁷⁵.

The code other raw materials is used to codify the quotations referring to raw materials sourced locally but not included in the above-mentioned categories, such as smoking a sausage with the use of local woods. This code differs from the code plant because the variety is simply sourced locally, there is no mention of a strong and unique link with the territory.

Hessischer Apfelwein' is made from apples (97 %), mainly from Hessen's meadow orchards¹⁷⁶.

The code by-products represents the existence of some components of the final products that are linked to the territory, being the result of the process of production of other products produced in the

¹⁷² Ricotta di bufala PDO [2009] OJ C260/43 [3.5].

¹⁷³ Miel de Corse PDO [1999] OJ C239/2 [4.6].

¹⁷⁴ Arnaki Elassonas PDO [2010] OJ C307/24 [5.2].

¹⁷⁵ Klenovecký Syrec PGI [2014] OJ C269/2 [3.3].

¹⁷⁶ Hessischer Apfelwein PGI [2010] OJ C41/13 [3.3].

same territory.

‘Requeijão da Beira Baixa’ is produced from the whey obtained as a by-product of the production of ‘Queijos da Beira Baixa’, to which potable water and raw sheep's or goat's milk from the geographical area defined below are added¹⁷⁷.

The code feed is used to describe the particular local varieties of plants and pollens used to feed the animals.

‘Podkarpacki miód spadziowy’ is a unique product that is closely linked to the area from which it originates. Its specific characteristics derive from the geographical area, which has natural coniferous forest cover and is typified by a very high proportion of European silver fir (Abies alba)¹⁷⁸.

The code plant is used to describe the autochthonous plant varieties whose product are the main components of the GI (such as olives for oil).

‘Pemento de Mougán’ is the fruit of the local ecotype of Capsicum annum L. known as Pemento de Mougán. It is a semicartilaginous fruit which is green when unripe and red when ripe¹⁷⁹.

5. People

The main category of human factors identifies the following categories: people, production step, and know-how. Despite containing fewer codes than natural factors, the number of quotations pertaining to human factors were observed with the same frequency of those related to natural factors. In particular, human factors combined to account for the 41% of the total codes assigned. The frequency of human factors clearly shows that GI products are often linked to the territory through the producer's know-how and passion.

The category people groups together three codes aimed at identifying the existing linking factors among the community of producers. Firstly, the code group of producers contains quotations on producers' associations, such as the year of creation of the associations and a rough estimation of the number of their members, more than historical events.

As an example of the first code: One of the factors uniting these land areas is that for centuries they have been used to raise buffalo farmed to produce milk to make cheese and ricotta. The geographical area, even after the draining of the swampy areas and the political and administrative changes, has retained many common features, including the tradition and development of a strong productive district in the form of hundreds of buffalo farmers and cheese makers. According to the data of the National livestock register for Teramo (2008), 92 % of Italy's Mediterranean breed buffalo are to be found in this area¹⁸⁰.

¹⁷⁷ Requeijão Da Beira Baixa PDO (n 169) [3.3].

¹⁷⁸ Podkarpacki miód spadziowy PDO [2009] OJ C299/18 [5.3].

¹⁷⁹ Pemento de Mougán PGI [2014] OJ C198/39 [3.2].

¹⁸⁰ Ricotta di bufala (n 172) [5.1].

Secondly, the code infrastructures is used to describe any production or processing facility created by producers to optimize their collective efforts, together with quality assurance frameworks, and other common services, such as a forecast service used to give information on the best harvesting or foraging conditions.

As an example of the second code: *In order to make optimum use of foraging conditions, beekeepers transport their bees to various forage grounds within the geographical area. They keep a close watch on the reports from the nectar forecasting service. This kind of beekeeping results in the production of the various kinds of Kočevski gozdni med mentioned above*¹⁸¹.

Thirdly, the code cultural significance contains quotations on festivals, legends, and events related to a given product. In particular, this code shows the significance of the product to the entire local community, beyond the producers' association. In addition, this code refers to cultural preservation as rationale behind the EU GI policy that could as an incentive for producers to apply for GI protection¹⁸².

As an example of the third code: *The cutting of an 'Aachener Weihnachts-Leberwurst'/'Oecher Weihnachtsleberwurst' by the Mayor of Aachen in the Town Hall signals the start of the season each year. This event demonstrates the importance of the product for local identity and shows that it has a special reputation associated with its origin*¹⁸³.

6. Production step

The category production step groups together various phases of the production, taking place in the territory. Designations of origin and geographical indications have different requirements when it comes to the production steps. While the first ones require all production steps to take place in the defined geographical area, the second ones require at least one of the production steps to be linked with the geographical area¹⁸⁴. In order to better analyze the quotations, two codes have been identified: all the production steps (for PGIs) and the code raw materials from outside the production area (for PDOs).

The first code is used for those PGIs that locate all the production steps in the geographical area, as they were PDOs. Therefore, the raw materials and their processing must take place in the geographical area.

*All stages in the growing and harvesting of 'Limone di Rocca Imperiale' must take place in the identified geographical area*¹⁸⁵.

The second code is used for those PDOs having only the processing of the raw materials taking place in the geographical zone. Raw material may come from a geographical area larger than the defined

¹⁸¹ Kočevski gozdni med PDO [2011] OJ C70/11 [4.6].

¹⁸² Recitals 1 and 5 of the EU Regulation 1151/2012 and Thomas Dylan Acosta (n 38), 57.

¹⁸³ Aachener weihnachts-leberwurst PGI [2015] OJ C312/5 [5.2]. This read through highlighted the unclear definition of reputation and the possible overlapping between the code cultural significance and the code reputation. This will be further assessed in the next reading.

¹⁸⁴ See Artt. 5(1)(c) and 5(2)(c) of the EU Regulation 1151/2012.

¹⁸⁵ Limone di Rocca Imperiale PGI [2011] OJ C157/11 [3.5].

area according to Art. 5(3) EU Regulation 1151/2012.

*The production area comprises some parts of the Autonomous Communities of Andalusia and Extremadura, while processing takes place in the northern third of Huelva province*¹⁸⁶.

7. Know-how

According to the policy objectives of the EU, GIs are aimed at keeping traditions alive through the skills of farmers and local producers¹⁸⁷. The category know-how has been created in order to highlight two different aspects: traditional knowledge and innovation.

Firstly, the code traditional knowledge groups together quotations used to describe the connection of a product with the know-how of a community of producers. Said quotations highlight the traditional character of a given product and the fact that the knowledge is handed down from one generation to the other. In this sense, the quotations put an emphasis on the traditional character of the product/production, without claiming that the product is reputed in reason of said traditional knowledge. Chart 1. presents a further division among the codes traditional knowledge, traditional knowledge – general, and longstanding tradition, further analysed under section 2.2.2. of this book. This sub-categorization is aimed at distinguishing the cases where the single documents made only a general reference to tradition, from the cases where decades of experience would have created a unique ability from the producers' side, contributing to the production skills and knowledge.

*One significant local traditional beekeeping practice concerns the management of the hives. There is no transhumance and the beehives may only be moved from one place to another within the production area*¹⁸⁸.

Secondly, the code innovation refers to the modernization of the process of production that took place over the centuries. In particular, many innovations became the new standard of production, being indissolubly linked to the product as we know it. This code is often observed in the single document as part of process innovation, showing the ability of the local community of producers to innovate within the traditional process of production.

*The rapid expansion of modern beekeeping did not start until 1975, the year in which, thanks to the work of the producer associations, the first real changes took place influencing the know-how of beekeepers and the traditional methods of hive management. The major change to affect beekeeping generally was the changeover from fixed hives to movable hives, mainly multistoreyed hives*¹⁸⁹.

8. Reputation

The category reputation groups four different codes: history of the product, contemporary reputation, historic reputation, and reputation-general. Quotations on reputation are among the most frequent, more than natural factors. A possible reason for this difference is that natural factors, and pedoclimatic

¹⁸⁶ Jamon de Huelva [1996] OJ C246/12 [5].

¹⁸⁷ Recital 1 EU Regulation 1151/2012.

¹⁸⁸ Miel villuercas-ibores PDO [2016] OJ C331/7 [5].

¹⁸⁹ See Miel de Galicia (n 40) [4.6].

quotations in particular, are often described in quantifiable measures, are able to be described with fewer codes and words¹⁹⁰. In addition, producers may be more enthusiastic to detail the link with the history and reputation of their product, rather than statistics describing the geographical environment, according to a romanticized notion of *terroir* and human skills¹⁹¹.

The code history of the product is used to describe the characteristics of the product that gave rise to its reputation¹⁹². The categories production step and know-how refer to producers' know-how, but only the quotations grouped under the code history of the product link reputation to a specific event or a production technique. This code identifies a causal connection with the codes of traditional and technical knowledge.

The reputation of 'Brillat-Savarin' is the result of its commercial success in the early 1930s. It was Henry Androuët, a Parisian cheese-maturer of international repute, who gave the cheese this name, as a tribute to the famous judge Anthelme Brillat-Savarin, author of the book 'Physiologie du Goût' ('The Physiology of Taste'), published in 1830¹⁹³.

The code contemporary reputation refers to quotations used to describe the commercial success of a product, including market price, recent publications and producers' turnover. This information shows that the production is still alive and that the GI continues to serve to consumers to indicate the geographical origin of the products.

As an example of the second code: Œufs de Loué are today still the most expensive on the market. The reputation of these free-range eggs is unequalled in France¹⁹⁴.

In 2001 the Guinness Book of Records issued the Broederschap van de Geraardsbergse Mattentaart with a certificate for having made the largest ever mattentaart¹⁹⁵.

The code historic reputation refers to the information made available in books and historical records on the longstanding existence of the product. The code historic reputation can further be divided into different sections, depending on the source used to document the reputation: official documents (laws and extract from public registries), literary sources (books), oral sources (interviews to local producers), and other means (such as the choice of the patron of the town¹⁹⁶). The code historic reputation – general is used to describe those quotations having only a general reference to the historic reputation of the product, without any further explanation.

¹⁹⁰ See Thomas Dylan Acosta (n 38), 59.

¹⁹¹ Marion Demossier, 'Beyond terroir: territorial construction, hegemonic discourses, and French wine culture' (2011) 17 Journal of the Royal Anthropological Institute 691.

¹⁹² Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link', in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 55.

¹⁹³ Brillat-Savarin PGI [2016] OJ C330/6 [5].

¹⁹⁴ Œufs de loué PGI [2007] OJ C282/30 [4.6].

¹⁹⁵ Geraardsbergse Mattentaart PGI [2006] OJ C3/9 [4.6].

¹⁹⁶ "The existence of a centuries-old tradition of beekeeping in the geographical area is shown by the choice of the patron saint of bees — Saint Ambrose. All we know is that he lived in the 4th century AD, and that he was a bishop and church teacher. In his honour and praise, beekeepers still today ask for healthy bees and a good honey yield. On the altar of the parish church of Stari Trg ob Kolpi there is a large statue of St. Ambrose, who has a beehive woven around his legs". Kočevski Gozdni Med. PDO [2011] OJ C70/11 [4.6].

The product began to earn a good reputation in Kurpie Zielone and Kurpie Białe in the 15th century. Beekeeping in the region dates back to that era. There are many well-documented references to 'miód kurpiowski' over the years — from the royal edict on forest beekeeping (regale bartne) of 1401, through the forest beekeeping law of 1559, by which the conversion from customary to beekeeping law was secured, right up to the present day¹⁹⁷.

Lastly, the code reputation-general is used to classify the quotation were only a general reference to reputation is made, without giving any further details.

The link with the geographical origin is based on the reputation of Quercy lamb in Paris and south-west France¹⁹⁸.

9. Quality or other characteristics

This category aims at classifying the information on the characteristics of the product that are essentially or exclusively (for PDOs) or essentially (for PGIs) attributable to its geographical origin. This category contains two codes: quality or other characteristics and quality or other characteristics – general. While the first one clearly identifies the features of the products that are somehow influenced by its geographical origin, see for example:

Their distinctive physical, chemical, organoleptic and pollen characteristics are derived from the characteristic flora of the area, where, unusually, types of forest and flora that flourish in Atlantic climates coexist with typically Mediterranean and alpine species¹⁹⁹.

The second one makes only a general reference to the excellent qualities of the product, without describing them, as an example:

Whitstable is renowned for the quality of its oysters the meat of which is fat and succulent²⁰⁰.

¹⁹⁷ Miód kurpiowski PGI [2009] OJ C260/38 [5.3].

¹⁹⁸ Quercy lamb PGI [1996] EN/06/95/15980100.P00 (FR) [5.F].

¹⁹⁹ Miel de Liebana PDO [2015] OJ C 347/17 [5.2]/

²⁰⁰ Withstable Oysters PGI [1994] G/GB0371/94/01/25 (EN) [5.F].

ANNEX III.A - PGIs having a strong link to origin

	Name	Country	Class	Natural Factor	Human Factor	Autochthonous (or adapted) breed / local cultivar or ecotype
1	Slavonski kulen	HR	1.1	Yes	Yes	Autochthonous breed + cross
2	Carne de Cantabria	ES	1.1	Yes	Yes	Adapted breed and crosses
3	Carne de Salamanca	ES	1.1	Yes	Yes	Local breeds + crossing
4	Carne de vacuno de pais vasco	ES	1.1	Yes	Yes	-
5	Cordero Manchego	ES	1.1	Yes	Yes	-
6	Ternasco de Aragón	ES	1.1	Yes	Yes	-
7	Ternera de Navarra	ES	1.1	Yes	Yes	90% indigenous breed
8	Agneau de Sisteron	FR	1.1	Yes	Yes	Local hardy breed + crosses
9	Agneau du Limousin	FR	1.1	Yes	Yes	-
10	Agneau du Poitou-Charentes	FR	1.1	Yes	Yes	Indigenous breed + others
11	Bœuf de Bazas	FR	1.1	Yes	Yes	Breeds traditionally farmed in the area
12	Génisse Fleur d'Aubrac	FR	1.1	Yes	Yes	-
13	west country beef	GB	1.1	Yes	Yes	-
14	west country lamb	GB	1.1	Yes	Yes	-
15	Connemara Hill Lamb	IE	1.1	Yes	Yes	-
16	vitellone bianco dell'appennino	IT	1.1	Yes	Yes	-
17	Borrego do Nordeste Alentejano	PT	1.1	Yes	Yes	Regional breed and crosses
18	Carne de Bovino Cruzado dos Lameiros do Barroso	PT	1.1	Yes	Yes	-
19	Cordeiro de Barroso	PT	1.1	Yes	Yes	-
20	Lamb from Baixo Alentejo	PT	1.1	Yes	Yes	Local breeds + crossing
21	Welsh lamb	UK	1.1	Yes	Yes	Influence of traditional welsh breed
22	Jihočeská Niva	CZ	1.3	Yes	Yes	-
23	Gruyère	FR	1.3	Yes	Yes	Traditional local breeds adapted to the soil
24	Raclette de Savoie	FR	1.3	Yes	Yes	-
25	Reblochon	FR	1.3	Yes	Yes	local breeds
26	Saint-Marcellin	FR	1.3	Yes	Yes	-
27	Soumaintrain	FR	1.3	Yes	Yes	-
28	tomme de savoie	FR	1.3	Yes	Yes	-
29	Orkney Scottish Island Cheddar	GB	1.3	Yes	Yes	-
30	Canestrato di Moliterno	IT	1.3	Yes	Yes	-
31	Traditional Welsh Caerphilly	UK	1.3	Yes	Yes	-
32	Miel de Galicia	ES	1.4	Yes	Yes	-
33	Miód drahimski	PL	1.4	Yes	Yes	-
34	Miód Kurpiowski	PL	1.4	Yes	Yes	-
35	Agios Mathaios Kerkyras	GR	1.5	Yes	Yes	Greek varieties
36	Chania Crete	GR	1.5	Yes	Yes	Greek varieties
37	Kefalonia	GR	1.5	Yes	Yes	Greek varieties

38	Lakonia	GR	1.5	Yes	Yes	Greek varieties
39	Olympia	GR	1.5	Yes	Yes	Greek varieties
40	Preveza	GR	1.5	Yes	Yes	Greek varieties
41	Rodos	GR	1.5	Yes	Yes	Greek varieties
42	Samos	GR	1.5	Yes	Yes	10 native varieties + 2 Greek varieties
43	Thasos	GR	1.5	Yes	Yes	Greek varieties
44	Marche	IT	1.5	Yes	Yes	-
45	Olio di Calabria	IT	1.5	Yes	Yes	-
46	Sicilia	IT	1.5	Yes	Yes	-
47	Steirischer Kren	AT	1.6	Yes	Yes	-
48	Brussels grondwitloof	BE	1.6	Yes	Yes	-
49	Plate de Florenville	BE	1.6	Yes	Yes	-
50	Poperingse hopscheuten	BE	1.6	Yes	Yes	-
51	Abensberger Spargel	DE	1.6	Yes	Yes	-
52	Bamberger Hörnla	DE	1.6	Yes	Yes	-
53	Bayerischer Meerrettich	DE	1.6	Yes	Yes	-
54	Beelitzer Spargel	DE	1.6	Yes	Yes	-
55	Bornheimer Spargel	DE	1.6	Yes	Yes	-
56	Dithmarscher Kohl	DE	1.6	Yes	Yes	-
57	Filderkraut	DE	1.6	Yes	Yes	-
58	Schrobenhausener Spargel	DE	1.6	Yes	Yes	-
59	Spargel aus Franken	DE	1.6	Yes	Yes	-
60	Walbecker Spargel	DE	1.6	Yes	Yes	-
61	Lammefjord carrot	DK	1.6	Yes	Yes	-
62	Lammefjordskartofler	DK	1.6	Yes	Yes	-
63	Alcachofa de Tudela	ES	1.6	Yes	Yes	Local cultivar
64	Almendra de Mallorca	ES	1.6	Yes	Yes	-
65	Alubia de La Bañeza-León	ES	1.6	Yes	Yes	local variety
66	Berenjena de Almagro	ES	1.6	Yes	Yes	-
67	Calçot de Valls	ES	1.6	Yes	Yes	-
68	Coliflor de Calahorra	ES	1.6	Yes	Yes	-
69	Esparrago de Huetor	ES	1.6	Yes	Yes	-
70	Esparrago de Navarra	ES	1.6	Yes	Yes	-
71	Faba de Lourenzà	ES	1.6	Yes	Yes	local variety
72	Garbanzo de Fuentesauco	ES	1.6	Yes	Yes	-
73	Grelos de Galicia	ES	1.6	Yes	Yes	local ecotype
74	Judías de el Barco de Ávila	ES	1.6	Yes	Yes	-
75	Lenteja de la Armuna	ES	1.6	Yes	Yes	-
76	Lenteja Pardina de Tierra de Campos	ES	1.6	Yes	Yes	-
77	Melón de La Mancha	ES	1.6	Yes	Yes	-
78	Melón de Torre Pacheco-Murcia	ES	1.6	Yes	Yes	-

79	Pataca de Galicia	ES	1.6	Yes	Yes	-
80	Patatas de Prades	ES	1.6	Yes	Yes	-
81	Pemento da Arnoia	ES	1.6	Yes	Yes	local ecotype
82	Pemento de Mougán	ES	1.6	Yes	Yes	local ecotype
83	Pemento de Oimbra	ES	1.6	Yes	Yes	local ecotype
84	Pemento do Couto	ES	1.6	Yes	Yes	local ecotype
85	Pimiento Asado del Bierzo	ES	1.6	Yes	Yes	-
86	Pimiento de Fresno-Benavente	ES	1.6	Yes	Yes	-
87	Pimiento de Gernika	ES	1.6	Yes	Yes	local cultivar
88	Pimiento Riojano	ES	1.6	Yes	Yes	-
89	Plátano de Canarias	ES	1.6	Yes	Yes	-
90	Ail de la Drôme	FR	1.6	Yes	Yes	hystorical variety
91	Ail fumé d'Arleux	FR	1.6	Yes	Yes	-
92	Ail rose de Lautrec	FR	1.6	Yes	Yes	-
93	Artichaut du Roussillon	FR	1.6	Yes	Yes	-
94	Asperge des Sables des Landes	FR	1.6	Yes	Yes	-
95	Asperges du Blayais	FR	1.6	Yes	Yes	-
96	Citron de Menton	FR	1.6	Yes	Yes	-
97	Clémentine de Corse	FR	1.6	Yes	Yes	-
98	Echalote d'Anjou	FR	1.6	Yes	Yes	-
99	Farine de blé noir de Bretagne	FR	1.6	Yes	Yes	-
100	Fraise du Périgord	FR	1.6	Yes	Yes	-
101	Fraises de Nîmes	FR	1.6	Yes	Yes	-
102	Haricot Tarbais	FR	1.6	Yes	Yes	-
103	Kiwi de l'Adour	FR	1.6	Yes	Yes	-
104	La pomme de terre de Merville	FR	1.6	Yes	Yes	-
105	Lentilles vertes du Berry	FR	1.6	Yes	Yes	-
106	Lingot du Nord	FR	1.6	Yes	Yes	Adapted to local conditions
107	Melon de Guadeloupe	FR	1.6	Yes	Yes	-
108	Melon du Haut Poitou	FR	1.6	Yes	Yes	-
109	Mogette de Vendée	FR	1.6	Yes	Yes	-
110	Noisette de Cervione	FR	1.6	Yes	Yes	-
111	Petit Épeautre de Haute Provence'	FR	1.6	Yes	Yes	-
112	Poireaux de Créances	FR	1.6	Yes	Yes	-
113	Pommes des Alpes de Haute Durance	FR	1.6	Yes	Yes	-
114	Pommes et Poires de Savoie	FR	1.6	Yes	Yes	-
115	Pruneaux d'Agen	FR	1.6	Yes	Yes	-
116	Riz de Camargue	FR	1.6	Yes	Yes	-
117	Armagh Bramley Apples	GB	1.6	Yes	Yes	-
118	Fenland Celery	GB	1.6	Yes	Yes	-
119	Pembrokeshire Earlies	GB	1.6	Yes	Yes	-

120	Vale of Evesham Asparagus	GB	1.6	Yes	Yes	-
121	Aktinidio Pierias	GR	1.6	Yes	Yes	-
122	Elefantes Kastorias	GR	1.6	Yes	Yes	-
123	Fasolia Vanilies Feneou	GR	1.6	Yes	Yes	-
124	Fassolia Gigantes Elefantes Kato Nevrokopiou	GR	1.6	Yes	Yes	-
125	Fassolia kina Messosperma Kato Nevrokopiou	GR	1.6	Yes	Yes	-
126	Fava Feneou	GR	1.6	Yes	Yes	-
127	Mandarini Chiou	GR	1.6	Yes	Yes	-
128	Milo Kastorias	GR	1.6	Yes	Yes	-
129	Patata Kato Nevrokopiou	GR	1.6	Yes	Yes	-
130	Patata Naxou	GR	1.6	Yes	Yes	-
131	Stafida Ilias	GR	1.6	Yes	Yes	-
132	Stafida Soultanina Kritis	GR	1.6	Yes	Yes	-
133	Lički krumpir	HR	1.6	Yes	Yes	-
134	Gönci kajszibarack	HU	1.6	Yes	Yes	-
135	Makói petrezselyemgyökér	HU	1.6	Yes	Yes	-
136	Szentesi paprika	HU	1.6	Yes	Yes	-
137	Arancia Rossa di Sicilia	IT	1.6	Yes	Yes	-
138	Amarene Brusche di Modena	IT	1.6	Yes	Yes	-
139	Anguria Reggiana	IT	1.6	Yes	Yes	-
140	Arancia del Gargano	IT	1.6	Yes	Yes	-
141	Asparago bianco di Cimadolmo	IT	1.6	Yes	Yes	Local cultivars
142	Asparago di Badoere	IT	1.6	Yes	Yes	-
143	Asparago di Cantello	IT	1.6	Yes	Yes	-
144	Asparago verde di Altedo	IT	1.6	Yes	Yes	-
145	Cappero di Pantelleria	IT	1.6	Yes	Yes	-
146	Carciofo Brindisino	IT	1.6	Yes	Yes	local ecotype
147	Carciofo di Paestum	IT	1.6	Yes	Yes	-
148	Carciofo Romanesco del Lazio	IT	1.6	Yes	Yes	-
149	Carota Novella di Ispica	IT	1.6	Yes	Yes	-
150	Castagna del Monte Amiata	IT	1.6	Yes	Yes	-
151	Ciliegia di Vignola	IT	1.6	Yes	Yes	-
152	Cipolla bianca di Margherita	IT	1.6	Yes	Yes	local ecotype
153	Cipolla Rossa di Tropea Calabria	IT	1.6	Yes	Yes	local ecotypes
154	Clementine del Golfo di Taranto	IT	1.6	Yes	Yes	1 local variety (more in the future)

155	Clementine di Calabria	IT	1.6	Yes	Yes	-
156	Fagiolo Cuneo	IT	1.6	Yes	Yes	-
157	Fagiolo di Lamon della Vallata Bellunese	IT	1.6	Yes	Yes	-
158	Fagiolo di Sarconi	IT	1.6	Yes	Yes	-
159	Fagiolo di Sorana	IT	1.6	Yes	Yes	-
160	Farro della Garfagnana	IT	1.6	Yes	Yes	-
161	fungo di borgotaro	IT	1.6	Yes	Yes	-
162	Insalata di Lusia	IT	1.6	Yes	Yes	-
163	Kiwi Latina	IT	1.6	Yes	Yes	-
164	Lenticchia di Altamura	IT	1.6	Yes	Yes	-
165	Lenticchia di Castelluccio di Norcia	IT	1.6	Yes	Yes	local ecotype
166	Limone Costa d'Amalfi	IT	1.6	Yes	Yes	Local cultivar
167	Limone di Rocca Imperiale	IT	1.6	Yes	Yes	Local cultivar
168	Limone di Siracusa	IT	1.6	Yes	Yes	local cultivar
169	Limone Femminello del Gargano	IT	1.6	Yes	Yes	Local cultivar
170	Limone Interdonato Messina	IT	1.6	Yes	Yes	local cultivar
171	Marrone della Valle di Susa	IT	1.6	Yes	Yes	local ecotype
172	Marrone di Combai	IT	1.6	Yes	Yes	local ecotype
173	Marrone di Mugello	IT	1.6	Yes	Yes	-
174	Marrone di Roccadaspide	IT	1.6	Yes	Yes	ecotype
175	Marroni del Monfenera	IT	1.6	Yes	Yes	local ecotype
176	Mela di Valtellina	IT	1.6	Yes	Yes	-
177	Mela Rossa Cuneo	IT	1.6	Yes	Yes	-
178	Melannurca Campana	IT	1.6	Yes	Yes	Local ecotype
179	Melone Mantovano	IT	1.6	Yes	Yes	-
180	Nocciola di Giffoni	IT	1.6	Yes	Yes	local ecotype
181	Patata del Fucino	IT	1.6	Yes	Yes	-
182	Patata dell'Alto Viterbese	IT	1.6	Yes	Yes	-
183	Patata della Sila	IT	1.6	Yes	Yes	-
184	Patata Rossa di Colfiorito	IT	1.6	Yes	Yes	-
185	Peperone di Senise	IT	1.6	Yes	Yes	-
186	Pera Mantovana	IT	1.6	Yes	Yes	-
187	Pesca di Leonforte	IT	1.6	Yes	Yes	local ecotype
188	Pesca di Verona	IT	1.6	Yes	Yes	-
189	Pesca e Nettarina di Romagna	IT	1.6	Yes	Yes	-
190	Pomodoro di Pachino	IT	1.6	Yes	Yes	-
191	Radicchio di Chioggia	IT	1.6	Yes	Yes	-
192	Radicchio di Verona	IT	1.6	Yes	Yes	-
193	Riso del Delta del Po	IT	1.6	Yes	Yes	-

194	riso nano vialone veronese	IT	1.6	Yes	Yes	-
195	Scalagno di Romagna	IT	1.6	Yes	Yes	-
196	Sedano Bianco di Sperlonga	IT	1.6	Yes	Yes	local ecotype
197	Uva da tavola di Canicatti	IT	1.6	Yes	Yes	-
198	De Meerlander	NL	1.6	Yes	Yes	-
199	Czosnek galicyjski	PL	1.6	Yes	Yes	-
200	Fasola korczyńska	PL	1.6	Yes	Yes	-
201	Jabłka łąckie	PL	1.6	Yes	Yes	-
202	Jabłka grójeckie	PL	1.6	Yes	Yes	-
203	Truskawka kaszubska	PL	1.6	Yes	Yes	-
204	Arroz Carolino das Lezírias Ribatejanas	PT	1.6	Yes	Yes	-
205	Arroz Carolino do Baixo Mondego	PT	1.6	Yes	Yes	-
206	Batata de Trás-os-Montes	PT	1.6	Yes	Yes	-
207	Batata doce de Aljezur	PT	1.6	Yes	Yes	-
208	Cereja da Cova da Beira	PT	1.6	Yes	Yes	-
209	Citrinos do Algarve	PT	1.6	Yes	Yes	-
210	Ginja de Óbidos e Alcobaça	PT	1.6	Yes	Yes	-
211	Maçã da Beira Alta	PT	1.6	Yes	Yes	-
212	Maçã da Cova da Beira	PT	1.6	Yes	Yes	-
213	Maçã de Portalegre	PT	1.6	Yes	Yes	-
214	Meloa de Santa Maria — Açores	PT	1.6	Yes	Yes	-
215	Pêssego da Cova da Beira	PT	1.6	Yes	Yes	-
216	Bruna bönor från Öland	SE	1.6	Yes	Yes	-
217	Ptujski lük	SI	1.6	Yes	Yes	-
218	Puruveden muikku	FI	1.7	Yes	Yes	-
219	Huîtres Marennes Oléron	FR	1.7	Yes	Yes	-
220	West Wales coracle-caught salmon	GB	1.7	Yes	Yes	-
221	West Wales coracle-caught sewin	GB	1.7	Yes	Yes	-
222	Trote del Trentino	IT	1.7	Yes	Yes	-
223	Mostviertler Birnmost	AT	1.8	Yes	Yes	-
224	Elbe-Saale Hopfen	DE	1.8	Yes	Yes	-
225	Hopfen aus der Hallertau	DE	1.8	Yes	Yes	-
226	Tettnanger Hopfen	DE	1.8	Yes	Yes	-
227	Thym de Provence	FR	1.8	Yes	Yes	-
228	Kentish Ale	GB	2.1	Yes	Yes	-
229	Ovos Moles de Aveiro	PT	2.3	Yes	Yes	-
230	'Sel de Guérande	FR	2.6	Yes	Yes	-
231	Sel de Salies-de-Béarn	FR	2.6	Yes	Yes	-

232	Bulgarsko rozovo maslo	BG	2.10	Yes	Yes	-
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ANNEX III.B – PDOs having a loose link to origin (class 1.2)

	Name	Country	Class	Registration	Raw materials from larger area
1	Istarski pršut	HR+SI	1.2	14/10/2015	Yes
2	Lapin Poron kylmäsavuliha	FI	1.2	29/04/2011	No
3	Lapin Poron kuivaliha	FI	1.2	29/10/2010	No
4	Jambon du Kintoa	FR	1.2	02/07/2019	No
5	Jambon noir de Bigorre	FR	1.2	15/09/2017	No
6	Lonzo de Corse	FR	1.2	29/05/2014	No
7	Jambon sec de Corse	FR	1.2	29/05/2014	No
8	Coppa de Corse	FR	1.2	29/05/2014	No
9	Szegedi szalámi	HU	1.2	15/12/2007	Yes
10	Crudo di Cuneo	IT	1.2	17/12/2009	No
11	Soprèssa Vicentina	IT	1.2	19/03/2003	No
12	Salamini italiani alla cacciatora	IT	1.2	08/09/2001	No
13	Pancetta di Calabria	IT	1.2	21/01/1998	No
14	Salsiccia di Calabria	IT	1.2	21/01/1998	No
15	Soppressata di Calabria	IT	1.2	21/01/1998	No
16	Capocollo di Calabria	IT	1.2	21/01/1998	No
17	Culatello di Zibello	IT	1.2	02/07/1996	Yes
18	Valle d'Aosta Lard d'Arnad	IT	1.2	02/07/1996	Yes
19	Valle d'Aosta Jambon de Bosses	IT	1.2	02/07/1996	Yes
20	Prosciutto di Carpegna	IT	1.2	02/07/1996	Yes
21	Pancetta Piacentina	IT	1.2	02/07/1996	Yes
22	Coppa Piacentina	IT	1.2	02/07/1996	Yes
23	Salame Piacentino	IT	1.2	02/07/1996	Yes
24	Prosciutto di San Daniele	IT	1.2	21/06/1996	Yes
25	Prosciutto di Modena	IT	1.2	21/06/1996	Yes
26	Prosciutto di Parma	IT	1.2	21/06/1996	Yes
27	Prosciutto Veneto Berico-Euganeo	IT	1.2	21/06/1996	Yes
28	Salame Brianza	IT	1.2	21/06/1996	Yes
29	Salame di Varzi	IT	1.2	21/06/1996	Yes
30	Prosciutto Toscano	IT	1.2	21/06/1996	Yes
31	Presunto do Alentejo	PT	1.2	26/09/2008	No
32	Presunto de Barrancos	PT	1.2	21/06/1996	Yes
33	Los Pedroches	ES	1.2	03/09/2010	No
34	Jabugo	ES	1.2	27/01/1998	Yes
35	Dehesa de Extremadura	ES	1.2	21/06/1996	No
36	Guijuelo	ES	1.2	21/06/1996	Yes
37	Jamón de Teruel	ES	1.2	21/06/1996	No

ANNEX IV – Interviews with EU producers

ENTRETIEN RACLETTE DE SAVOIE IGP
– TOMME DE SAVOIE IGP – EMMENTAL
DE SAVOIE IGP
16.07.2019

1) Quel est votre rôle au sein de l'ODG ? Veuillez indiquer votre formation académique et professionnelle (avocat, agronome, économiste, etc.).

Je suis ingénieur agricole et je travaille comme responsable administratif de l'ODG qui gère trois IGP (Raclette de Savoie, Tomme de Savoie et Emmental de Savoie). Plus précisément, je m'occupe des dossiers techniques, de la gestion des cahiers des charges, des plans de contrôle et des problématiques d'application des cahiers des charges. Je m'occupe également des problématiques qui touchent la régulation de marché, comme la gestion des volumes.

2) Pouvez-vous décrire les facteurs naturels et humains qui lient le produit au territoire ?

Les conditions de production du lait, encadrées dans les cahiers des charges des trois filières, sont strictement identiques. Par contre, il y a des différences par rapport à la délimitation du territoire. On est IGP en Emmental de Savoie et Tomme de Savoie depuis 1996. À l'époque l'aire géographique était définie comme l'aire administrative du département de la Savoie et de la Haute-Savoie. Avec le travail de mise à jour des cahiers des charges on a fait un travail de réflexion sur le lien entre le produit et le territoire, cela a conduit à modifier l'aire géographique des précédents cahiers des charges. Maintenant l'aire géographique de la Tomme de Savoie et de l'Emmental de Savoie est différente.

Entre les éléments qui fondent le lien à l'origine on peut mentionner la capacité du territoire d'avoir une ressource fourragère abondante, régulière sur l'année. Les trois cahiers de charge prévoient le 100% d'autonomie fourragère en fourrage grossier (herbe, foin, regain) pour les vaches laitières.

INTERVIEW RACLETTE DE SAVOIE PGI
– TOMME DE SAVOIE PGI – EMMENTAL
DE SAVOIE PGI
16.07.2019

1) What is your role within the Collective Management Organisation? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I am an agricultural engineer and I work as administrative manager of the Collective Management Organisation, which manages three PGIs (Raclette de Savoie, Tomme de Savoie and Emmental de Savoie). More precisely, I take care of the technical files, the management of the product specifications, the control plans and the problems of application of the product specifications. I also deal with issues affecting market regulation, such as volume management.

2) Could you describe the natural and human factors that link the product to the territory?

The conditions of milk production, defined in the product specifications of the three cheeses, are strictly identical. On the other hand, there are differences with respect to the delimitation of the territory. We obtained the PGI for Emmental de Savoie and Tomme de Savoie in 1996. At the time the geographical area was defined as the administrative area of the department of Savoie and Haute-Savoie. With the amendment of the product specifications we made a work of reflection on the link between the product and the territory, this led to change the geographical area of the previous product specifications. Now the geographical area of the Tomme de Savoie and the Emmental de Savoie is different.

Between the elements that found the link at the origin we can mention the capacity of the territory to have an abundant feed resource, regular over the year. The three specifications provide for 100% fodder autonomy in roughage (grass, hay, grass) for dairy cows.

En plus, la majeure partie des exploitations peuvent produire des céréales qui sont utilisées dans les exploitations. Donc une grande partie de l'alimentation provient de l'aire géographique. Dans les ressources fourragères la biodiversité joue un rôle important, la Savoie est un territoire qui a toujours été consacré à l'élevage, production et transformation du lait.

Le fait que au moins 75% du lait doit provenir des races traditionnelles (Abondance, Montbéliarde et Tarentaise) va renforcer le lien avec territoire.

2.1) Par rapport aux facteurs humains, les cahiers des charges mentionnent un savoir-faire traditionnel dans la production du lait et dans la fabrication du fromage. Pourriez-vous le décrire brièvement ?

On peut prendre l'exemple de l'IGP Emmental de Savoie. Il s'agit de l'IGP qui a été à la base de l'élément fédérateur des producteurs de lait, dans la construction de la filière. L'Emmental de Savoie est à l'origine de toute la structuration de la production collective dans la Savoie sous forme de coopératives laitières (les exploitations apportent leur lait à la coopérative et la coopérative, équipée du matériel de fabrication, fabrique et vend le fromage). La dimension coopérative est très importante, en fait pour fabriquer l'Emmental de Savoie il faut une quantité importante de lait, une exploitation ne pourrait pas le faire elle-même.

En plus, comme je disais, la zone géographique de l'Emmental de Savoie est plus restreinte par rapport à la première version de l'IGP. Les hauts massifs alpins ont été exclus car pour produire l'Emmental de Savoie il faut avoir la capacité de chauffer les caves, pour que la pâte puisse gonfler et donner lieu à ses ouvertures caractéristiques. Ça n'était possible dans les massifs alpins à l'époque où il n'y avait pas d'électricité.

In addition, most farms can produce cereals that are used on farms. So much of the power comes from the geographical area. In forage resources biodiversity plays an important role, Savoie is a territory that has always been devoted to the breeding, production and processing of milk.

The fact that at least 75% of the milk must come from traditional breeds (Abondance, Montbéliarde and Tarentaise) makes the link with territory stronger.

2.1) With regard to human factors, the product specifications refer to a traditional know-how in the milk production and in the cheese making. Could you briefly describe it?

We can take the example of the PGI Emmental de Savoie. This is the PGI that has been the basis of the unifying element of milk producers, in the construction of the sector. The Emmental de Savoie is at the origin of all the structuration of the collective production in Savoie in the form of dairy cooperatives (the farms bring their milk to the cooperative and the cooperative, equipped with manufacturing equipment, manufactures and sells cheese). The cooperative dimension is very important, in fact the Emmental de Savoie requires a significant amount of milk, a farm could not do it itself.

In addition, as I said, the geographical area of the Emmental de Savoie is more restricted compared to the first version of the PGI. The high alpine massifs have been excluded because to produce Emmental de Savoie it is necessary to have the capacity to heat the cellars, so that the paste can inflate and give rise to its characteristic openings. This was not possible in the alpine massifs at the time when there was no electricity.

3) Lors de la demande d'enregistrement de l'indication géographique, pourquoi a été demandé un IGP ? Aurait-il été possible de demander un AOP ?

À la fin des années 1970, l'Emmental de Savoie était la production dominante en termes de volume dans les départements de Savoie et Haute-Savoie. De manière complètement inattendue, un fromage fabriqué dans l'ouest de la France qui venait s'affiner en Savoie pour revendiquer le nom Emmental de Savoie et détourner sa notoriété. À l'époque, les responsables professionnels et politiques ont fait le choix de protéger le plus rapidement possible la dénomination Emmental de Savoie. Le système plus rapide à l'époque était le Label Régional, qui avait la possibilité d'amener une protection de nom par rapport à une aire de production.

Dans les années 1980, les responsables professionnels se sont intéressés à protéger l'Emmental de Savoie et la Tomme de Savoie comme AOC, mais il y avait une très grosse divergence entre responsables professionnels et ils n'ont pas réussi à se mettre d'accord sur un projet commun pour les méthodes de production, fabrications et affinage. Au début des années 1990, l'UE créait l'IGP, les pouvoirs publics français ont contacté les produits protégés par des Labels Régionaux, dans le cas où ils étaient intéressés à étendre la protection au niveau européen avec une procédure simplifiée. Les responsables professionnels ont accepté et demandé une IGP. Ça a abouti, 15 ans après, à une mise à jour des cahiers de charge de l'Emmental de Savoie et de la Tomme de Savoie et la demande de reconnaissance en IGP pour la Raclette de Savoie sur un cahier de charge partagé et consensuel.

Enfin, les filières ont été IGP malgré elles, sans vraiment qu'il y ait la volonté d'être IGP. L'IGP a permis de structurer le projet des filières, améliorer la qualité et protéger le nom, mais aujourd'hui il y a la volonté de considérer l'AOP. Ça permettra d'être reconnu à niveau équivalent des fromages avec des exigences

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

In the late 1970s, the Emmental de Savoie was the dominant production in terms of volume in the departments of Savoie and Haute-Savoie. In a completely unexpected way, a cheese made in the west of France was refined in Savoie and claimed the name Emmental de Savoie to divert its notoriety. At the time, the professional and political leaders made the choice to protect as soon as possible the name Emmental de Savoie. The fastest system at the time was the Label Régional [Regional Label], which could protect the name of the production area.

In the 1980s, the professional leaders were interested in protecting the Emmental de Savoie and the Tomme de Savoie as AOC [French national quality sign equivalent to PDO], but there was no consensus among them and they failed to agree on a common project for production methods, manufacturing and ripening. In the early 1990s, the EU created the PGI, the French public authorities contacted the products protected by Regional Labels, in case they were interested in extending the protection at European level with a simplified procedure. The professional managers accepted and asked for a PGI. That led, 15 years later, to an update of the product specifications of the Emmental de Savoie and the Tomme de Savoie and the application for recognition of a PGI for the Raclette de Savoie on shared and consensual product specifications.

Finally, the sector obtained the PGI logo, without a real will of becoming a PGI. The PGI has helped structure the sector, improve the quality and protect the name, but today there is the will to consider the PDO. This will allow to be recognized at the same level of other cheeses with important requirements. A PGI is

importantes. L'IGP est perçue comme moins contraignante qu'un AOP, mais nos IGP Savoyardes ont beaucoup des exigences, donc les consommateurs ne comprennent pas la différence.

3.1) Initialement, le choix du Label Régional pour l'Emmental de Savoie et la Tomme de Savoie a été une exigence de protection rapide. Mais pourquoi vous avez choisi le IGP pour Raclette de Savoie enregistrée en 2017 ?

Il y a différentes raisons. La première est que Emmental de Savoie, Tomme de Savoie et Raclette de Savoie ont des producteurs communs. Les producteurs sont tous habilités à produire les trois IGP. Donc il y avait besoin de cohérence, c'est pour ça qu'on a demandé l'IGP pour la Raclette de Savoie.

L'autre raison est que la Raclette de Savoie est un fromage avec une histoire connue depuis les années 1960. Moins d'antériorité par rapport à l'Emmental de Savoie et à la Tomme de Savoie. Aujourd'hui il y a la réflexion de passer en AOP concerne les deux autres produits.

4) Seriez-vous intéressés à demander un AOP ? Et pour quelles raisons ?

Oui. Il y a pas mal des raisons pour passer en AOP. Aujourd'hui on a des cahiers des charges IGP que sont relativement plus contraignants que autres cahiers des charges IGP. Ça n'est pas compris par les producteurs. Les opérateurs qui sont engagés dans nos filières ne comprennent pas pourquoi ils sont que IGP, mais au même temps ils doivent respecter beaucoup des exigences. Il y a besoin d'une clarification par rapport aux opérateurs de notre filière.

Ensuite, dans l'UE il y a deux signes pour protéger l'origine. Est-ce qu'il est vraiment judicieux qu'il y ait deux signes, peut-être qu'il faut en avoir seulement un ? La France estime qu'on a besoin des deux signes car ils sont différents, mais on a besoin d'une véritable distinction entre les signes (des IGP que n'ont pas de contrainte sur l'origine des matières

perceived as less demanding than a PDO, but our Savoyard PGIs have many requirements, so consumers do not understand the difference.

3.1) Initially, the Regional Label for the Emmental de Savoie and Tomme de Savoie has been chosen for a need of fast protection. Why have you chosen the PGI for the Raclette de Savoie recognised in 2017?

There are different reasons. The first is that Emmental de Savoie, Tomme de Savoie and Raclette de Savoie have some producers in common. All producers are entitled to produce the three PGIs. So, there was need for consistency, that's why we asked the PGI for Raclette de Savoie.

The other reason is that the Raclette de Savoie is a cheese with a history known since the 1960s. More recent than the Emmental de Savoie and the Tomme de Savoie. Today there is the thought of switching to PDO for the other two products.

4) Would you be interested in applying for a PDO now? And for what reasons?

Yes. There are a lot of reasons to change to PDO. Today we have product specifications of PGIs that are relatively stricter than other PGIs. This is not understood by the producers. Operators of our sector do not understand why they are only a PGI, but at the same time they have to meet a lot of the requirements. There is a need for clarification in relation to the operators in our sector.

Then, in the EU there are two signs to protect the origin. Is it really wise to keep two signs, maybe one would suffice? France considers that the two signs are necessary because they are different, but we need a real distinction between them (PGIs that do not have a constraint on the origin of raw materials and PDOs that have constraints on the entire

premières et des AOP qui ont des contraintes pour l'ensemble de processus d'élaboration des produits). L'INAO est intéressé que nous nous posons la question de l'AOP car ça permettra de clarifier le positionnement entre les signes AOP et IGP.

Également il y a un autre élément, lié à la stratégie de distribution de nos fromagers. De plus en plus il y a des démarches de la grande distribution qui veulent se démarquer et se basent sur les exigences des cahiers de charge IGP et rajoutent des critères supplémentaires [des exigences supplémentaires sur les aliments autorisés par exemple, ou sur l'interdiction de traite robotisée] en faisant de leur marque de grande distribution quelque chose de plus valorisant que l'IGP. Il y a donc un souci de positionnement dans le marché et la distribution. S'ils estiment qu'il y a besoin de mettre quelque chose en plus par rapport à nos cahiers de charges, ça signifie que les cahiers des charges ne font pas leur travail.

Il y a aussi la volonté de la filière d'être toujours prêt à un processus de modification de cahiers des charges car il y a toujours des nouveaux éléments à prendre en compte, pas seulement des nouvelles pratiques mais aussi des attentes des consommateurs par rapport au bien-être animal et à l'environnement. Des exigences que de moment ne sont pas prises en compte par nos cahiers des charges.

5) Comment jugeriez-vous les informations fournies aux producteurs (par les organismes nationaux et européens) sur la différence entre AOP et IGP, et en particulier sur l'intensité du lien avec le territoire, pour la rédaction du cahier des charges ?

On organise beaucoup des événements pour le grand public et on réalise que la distinction entre AOP et IGP est mal comprise par les consommateurs et les producteurs. La différence dans la définition du règlement européen est minime, on joue sur une notion de terroir et territoire, des notions qui sont très proches. Aujourd'hui, à mon sens, on n'est pas

product development process). INAO is interested that we interrogate ourselves on the possibility to change to a PDO because this would allow to clarify the difference between PDO and PGI.

There is also another element, related to the distribution strategy of our cheese makers. Big retailers, who want to stand out, adopt more and more the requirements of the product specifications of the PGI and add additional criteria [additional requirements on authorized foods for example, or on the prohibition of robotic milking] by making their trade mark something more rewarding than the PGI. There is therefore a concern for positioning in the market and distribution. If they feel that there is need to put something more in relation to our product specifications, it means that the product specifications do not comply with their function.

There is also the willingness of the sector to be always ready for a process of amendment of the product specifications because there are always new elements to consider, not only new practices but also the expectations of consumers in relation to animal welfare and the environment. Requirements that at the moment are not considered by our product specifications.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

We organise many events for the general public and we realized that the distinction between PDO and PGI is poorly understood by consumers and producers. The difference in the definition of the European Regulation is minimal, we play on a notion of *terroir* and territory, notions that are very close. Today, in my opinion, we are not sufficiently informed

assez aiguillés par les organismes nationaux ou européens sur la pertinence des signes de qualité qu'on choisit. A partir du moment où il y a tous les éléments qui viennent de l'aire géographique on aurait dû être aiguillés plutôt vers une AOP et non une IGP. Même nous on a du mal à l'expliquer aux consommateurs. Qu'est-ce que signifie qu'une IGP a un lien moins fort au territoire que l'AOP ? Quand la différence est sur le degré d'intensité du lien à l'origine ça reste plutôt subjective et devient difficile de faire des choix pragmatiques.

5.1) Au niveau français, un groupe de travail a été créé en 2017 à cheval entre le Comité national des appellations laitières, agroalimentaires et forestières et le comité LR IGP STG qui a pour fonction (entre autres) de formuler des recommandations auprès de ces deux comités sur la différenciation entre AOP et IGP. Vous avez eu des rapports avec cet organisme ?

On a eu connaissance de manière indirecte. On a questionné l'INAO, il s'agit d'un groupe de réflexion, sans des actions concrètes. L'INAO c'est plutôt positionné à dire que la grosse différence entre AOP et IGP est l'origine des matières premières. Du moment où la matière première viens de l'aire géographique il faut qu'on accompagne les filières vers l'AOP.

Le travail de reconnaissance pour la raclette de Savoie a commencé en 2008, la phase nationale française est terminée en 2015 et en 2017 il y a eu l'enregistrement au niveau européen donc on n'a pas eu une relation directe avec cet organisme. Je pense que nos cahiers de charges font partie des éléments qui ont poussé l'INAO à engager cette réflexion par rapport à la différence entre AOP et IGP. Ceci est la raison car on nous soutien dans les discussions pour passer en AOP.

6) Quel est votre avis sur le double régime de qualité des produits agricoles et des denrées alimentaires dans l'Union européenne (AOP et IGP) ?

by national or European organizations about the relevance of the quality signs we choose. When all the raw materials come from the geographical area we should have been guided rather to a PDO and not a PGI. Even we have trouble explaining it to consumers. What does it mean that a PGI has a weaker link to the territory than the PDO? When the difference is on the degree of intensity of the link at the origin it remains rather subjective and becomes difficult to make pragmatic choices.

5.1) At the French level, a working group was created in 2017 between the National Committee for Dairy, Agri-Food and Forestry Designations and the LR IGP STG Committee whose function (among others) is to make recommendations to both committees on differentiation between PDO and PGI. Have you had contacts with this Committee?

We have known it indirectly. We asked the INAO, this is a reflection group, without deciding powers. The INAO claims that the main difference between PDO and PGI is the origin of raw materials. When the raw material comes from the geographical area it is necessary to help producers to get the PDO.

Recognition for the Raclette de Savoie began in 2008, the French national phase was completed in 2015 and in 2017 there was registration at the European level so we did not have a direct relationship with this Committee. I think that our specifications are part of the elements that prompted the INAO to engage in this reflection on the difference between PDO and PGI. This is the reason because we are supported in the discussions to move to PDO.

6) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

Je comprends la nécessité d'avoir deux signes de qualité dans le cas où il y a une grande différence entre les exigences demandées aux AOP et les exigences demandées aux IGP. Je suis sceptique par rapport à garder un double régime si l'enjeu européen est la protection du nom y cette protection est identique dans les AOP et les IGP. On est à la croisée des chemins, ou on crée une vraie différence entre les signes pour les légitimer, ou on devrait se poser la question si garder les deux signes.

I understand the need for two quality signs in the case where there is a big difference between the requirements for PDOs and PGIs. I am skeptical about keeping a double regime if the interest of the EU is the protection of the name and this protection is identical in PDOs and PGIs. We are at the crossroads, or we create a real difference between the signs to legitimize them, or we should ask ourselves whether we really want to keep the two signs.

ENTRETIEN SEL DE GUERANDE
25.07.2019

1) Quel est votre rôle au sein du groupement des producteurs ? Veuillez indiquer votre formation académique et professionnelle (avocat, agronome, économiste, etc.).

J'ai une formation en gestion d'entreprise (Diplôme d'Etudes Comptables Supérieures) et en économie (Sciences Economiques). En ce qui concerne mon rôle au sein de la profession des producteurs de sel, j'ai commencé par être administrateur du « Groupement des Producteurs de Sel » à partir de 1976. Lorsque ce Groupement des Producteurs de Sel a été transformé en Coopérative Agricole en 1988, j'ai fait partie des membres fondateurs au sein du Conseil d'Administration avant d'en assumer la Direction de 1990 à 2005. J'ai également été Président de l'Organisme de Défense et de Gestion chargé du Label Rouge (obtenu en 1991) et de l'IGP (obtenue en 2012). A ce jour, en retraite depuis 12 ans, je produis toujours du sel et reste donc membre de la Coopérative et de l'ODG sans autre responsabilité que celle de producteur.

2) Pouvez-vous décrire les facteurs naturels et humains qui lient le produit au territoire ?

Il y a deux facteurs. Premièrement les facteurs pédologiques : l'argile avec laquelle on a construit les premières salines. L'argile, matière imperméable qui permet de faire évaporer l'eau de mer en l'exposant au soleil et au vent, a également la capacité d'emmagasiner la chaleur. Ces facultés permettent de comprendre l'existence de salines à Guérande malgré son positionnement géographique septentrional. Le second facteur est d'ordre climatique : les marais salants de Guérande sont construits dans une presqu'île située au sud de la Bretagne et bénéficient d'un microclimat avec des températures généralement douces et beaucoup de vent en raison des brises de terre et de mer (différence thermique entre la terre et la mer) qui sont très favorables à la production du sel.

INTERVIEW SEL DE GUERANDE
25.07.2019

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I have an education in business management (Diplôme d'Etudes Comptables Supérieures) and economics (Sciences Economiques). Regarding my role among salt producers, I started as a director of the "Groupement des Producteurs de Sel" starting from 1976. When this producers' group was transformed into Agricultural Cooperative in 1988, I was a founding member within the Board of Directors before being the Director from 1990 to 2005. I was also President of the Defense and Management Organization in charge of the Red Label (obtained in 1991) and PGI (obtained in 2012). To date, retired for 12 years, I still produce salt and therefore remain a member of the Cooperative and of the Collective Management Organisation with no other responsibility than that of producer.

2) Could you describe the natural and human factors that link the product to the territory?

There are two factors. Firstly, the soil: the clay with which the first saline was built. Clay is an impermeable material that evaporates seawater by exposing it to sun and wind and has the ability to store heat. These characteristics make it possible to understand the existence of saltworks in Guérande despite its northern geographical position. The second factor is climatic: the salt marshes of Guérande are built in a peninsula located in the south of Brittany and benefit from a microclimate with generally mild temperatures and a lot of wind because of the breezes of earth and sea (difference in temperature between land and sea) which are very favorable to the production of salt.

Sur le plan humain, la présence d'argile a donné naissance à un savoir-faire unique qui s'est perfectionné au cours des siècles à partir des bases d'une technique solaire importée par les romains pour devenir depuis mille ans la seule méthode de production, différente de la technique ignigène de production utilisée précédemment sur le littoral atlantique (évaporation provoquée par la combustion de bois). Le savoir-faire des paludiers (producteurs de sel) de Guérande doit son caractère spécifique à l'ingéniosité nécessaire pour produire du sel dans des conditions beaucoup moins favorables que celles qu'on trouve dans le sud de l'Europe.

La réputation de ce savoir-faire traditionnel a donné naissance au seul centre de formation au métier de la saliculture en activité. Ce centre de formation, créé en 1979, est situé en Presqu'île Guérandaise. Il a permis de former environ 10 producteurs de sel chaque année et de faciliter leur installation sur l'ensemble des bassins de production du littoral Atlantique français.

Ces facteurs naturels et humains, déterminés par les spécificités territoriales de Guérande, donnent au sel des caractéristiques différentes des autres sels. Le sel de Guérande est un sel plus tendre, plus friable, plus fondant, avec des caractéristiques organoleptiques très appréciées par les consommateurs.

2.1) La section 5 du cahier des charges établit que toutes les phases de la production ont lieu dans la zone géographique, correct ?

Oui

3) Lors de la demande d'enregistrement de l'indication géographique, pourquoi a été demandé une IGP ? Aurait-il été possible de demander une AOP ?

Quand nous avons déposé le dossier, l'INAO nous a conseillé de déposer plutôt une demande d'AOP. Il y a deux raisons complémentaires pour avoir choisi l'IGP.

With regard to human factors, the presence of clay has given birth to a unique know-how that has been improved over the centuries from the foundations of a solar technique imported by the Romans to become for a thousand years the only method of production, different from the *ignigène* technique previously used on the Atlantic coast (evaporation caused by wood combustion). The know-how of salt workers in Guérande owes its specific character to the ingenuity necessary to produce salt under much less favorable conditions than those found in southern Europe.

The reputation of this traditional know-how has given birth to the only existing training center for salt farming. This training center, created in 1979, is located in Presqu'île Guérandaise. It has trained about 10 salt producers each year and facilitated their installation in all production areas of the French Atlantic coast.

These natural and human factors, determined by the territorial specificities of Guérande, give the salt characteristics different from other salts. Guérande salt is a softer, more friable, more melting salt, with organoleptic characteristics highly appreciated by consumers

2.1) Section 5 of the product specifications provides that all the production steps take place in the area of production, is it correct?

Yes

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

When we filed the application, the INAO advised us to file an application for a PDO. There are two complementary reasons for choosing the PGI.

La première raison était l'urgence. Lorsque nous avons fait la demande (plusieurs années après avoir obtenu le Label Rouge) le sel de Guérande bénéficiait déjà d'une forte notoriété. En raison de cette notoriété, il existait sur le marché du faux sel de Guérande, en France comme à l'étranger, même au Japon ! Il y avait donc urgence pour nous de faire respecter l'identité du produit... et l'IGP, en termes de délai d'obtention, est beaucoup plus rapide que l'AOP. A l'époque, on pouvait estimer le délai d'obtention pour l'AOP entre dix et douze ans, par contre l'IGP était plus rapide (entre trois et quatre ans).

La deuxième raison est qu'on pensait que notre dossier en AOP aurait demandé un nombre d'années considérable parce qu'il y avait beaucoup de travail à faire pour établir le lien entre le sel et la qualité de l'argile. Il existe en effet différentes sortes d'argile, en particulier en raison de l'éloignement entre les salines et le littoral, et la composition de l'argile n'est pas la même partout sur le bassin de production.

4) Aujourd'hui, seriez-vous intéressés à demander une AOP ? Et pour quelles raisons ?

C'est une question qu'on s'est posée depuis longtemps et qu'on se pose encore aujourd'hui en raison de la multiplication des Indications Géographiques pour le sel.

Quel serait aujourd'hui l'intérêt de l'AOP par rapport à l'IGP ? La question mérite d'être posée en raison de la confusion du grand public entre AOP et IGP. La tendance en termes de perception d'avantages de l'AOP est aujourd'hui assez timide. Est-ce que l'IGP n'a pas autant de valeur que l'AOP ? Est-ce que du côté des consommateurs la perception n'est pas pratiquement la même ? Il s'agit de questions auxquelles nous n'avons pas encore répondu.

The first reason was urgency. When we made the request (several years after having obtained the Red Label) the salt of Guérande already enjoyed a strong notoriety. Because of this notoriety, there was on the market fake Sel de Guérande, in France and abroad, even in Japan! It was therefore a priority for us to protect the identity of the product ... and the PGI, in terms of delay of obtention, is much faster than the PDO. At that time, it was possible to estimate the waiting period for the PDO between ten and twelve years, whereas the PGI was faster (between three and four years).

The second reason is that we thought that our PDO application would have taken a considerable number of years because there was a lot of work to be done to establish the link between salt and the quality of the clay. There are indeed different kinds of clay, especially because of the distance between the salt marshes and the coast, and the composition of the clay is not the same everywhere on the production basin.

4) Would you be interested in applying for a PDO now? And for what reasons?

This is a question that we have been asked ourselves for a long time and that we still ask today because of the multiplication of Geographical Indications for salt.

What would be the interest of a PDO in relation to a PGI today? The question is worth asking because of the confusion of the general public between PDO and PGI. The trend in terms of perception of benefits of PDO is today rather limited. Is the PGI as valuable as the PDO? On the consumer side, is the perception nearly the same or not? These are questions we have not answered yet.

5) Comment jugeriez-vous les informations fournies aux producteurs (par les organismes nationaux et européens) sur la différence entre AOP et IGP, et en particulier sur l'intensité du lien avec le territoire, pour la rédaction du cahier des charges ?

Quand on a fait le choix entre AOP et IGP, la différence entre lien au terroir et lien au territoire était claire. Entre les deux démarches, l'AOP était considérée comme la plus valorisante et perçue de manière hiérarchique, argument qui est de jour en jour plus discutable.

Le sel de Guérande n'est pas un produit transformé, toutes les phases de la production ont lieu dans la zone géographique et nous n'aurions probablement pas eu de problèmes pour obtenir une AOP. Le seul problème était plutôt le délai d'obtention. Après la reconnaissance de l'IGP, l'INAO nous a conseillé de reconsidérer la pertinence d'une démarche en AOP. L'actualité récente nous interroge sur cette pertinence car de nombreux éléments de confusion sont apparus dans la perception et la communication autour des AOP et IGP.

6) Quel est votre avis sur le double régime de qualité des produits agricoles et des denrées alimentaires dans l'Union européenne (AOP et IGP) ?

Depuis que nous avons obtenu l'IGP, le paysage des AOP et des IGP s'est beaucoup compliqué. Il y a de plus en plus de confusion entre AOP et IGP. D'une part, une certaine communication consiste à dire que les IGP sont de sous-AOP. D'autre part, quand on regarde le paysage français des AOP et IGP, on constate que certains opérateurs économiques ont choisi l'IGP alors qu'ils auraient pu obtenir une AOP avec des cahiers des charges parfois plus exigeants. Cette confusion me pousse à dire qu'il est peut-être utile de conserver les deux signes... à condition de mettre fin à cette confusion.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory, for drafting the product specifications?

When we made the choice between PDO and PGI, the difference between link to the *terroir* and link to the territory was clear. Between the two approaches, the PDO was considered the most rewarding and perceived in a hierarchical way, argument which is more and more questionable from day to day.

Sel de Guérande is not a processed product, all phases of production take place in the geographical area and we probably would not have had problems to obtain a PDO. The only problem was the delay of obtention. After the recognition of the PGI, the INAO advised us to reconsider the possibility to file an application for a PDO. The system currently in place makes us doubt on the relevance of this option because many elements of confusion appeared in the perception and the communication about PDOs and PGIs.

6) What is your opinion on the double quality regime PDO and PGI for agricultural products and foodstuffs in the EU?

Since we obtained the PGI, the landscape of PDOs and PGIs has become much more complicated. There is more and more confusion between PDO and PGI. On the one hand, a certain line of communication is to say that PGIs are sub-PDOs. On the other hand, when we look at the French landscape of PDOs and PGIs, we note that some economic operators have chosen the PGI while they could have obtained a PDO with specifications sometimes more demanding. This confusion leads me to say that it may be useful to keep the two signs ... as long as you put an end to this confusion.

A titre d'exemple, à l'époque où les vins ont pu accéder à l'IGP, j'ai eu l'occasion de suivre un certain nombre des dossiers. Certains cahiers des charges étaient très exigeants, beaucoup plus exigeants que certaines AOP, y compris avec l'obligation de mettre en place des commissions organoleptiques, ce qui n'est pas obligatoire pour les IGP. Que penser, dans ce contexte, d'une prétendue hiérarchie entre AOP et IGP ? Sans clarification de la situation actuelle en tenant compte de la réalité constatée sur le terrain, je ne vois pas l'intérêt de garder les deux signes.

For example, when the wines were able to obtain the PGI, I had the opportunity to follow a number of issues. Some specifications were very demanding, much more demanding than some PDOs, including the obligation to set up organoleptic commissions, which is not mandatory for PGIs. What, in this context, to think of an alleged hierarchy between PDOs and PGIs? Without clarifying the current situation in view of the reality observed in the field, I do not see the point of keeping the two signs.

ENTRETIEN SOUMAINTRAIN IGP
30.07.2019

1) Quel est votre rôle au sein de l'ODG ? Veuillez indiquer votre formation académique et professionnelle (avocat, agronome, économiste, etc.).

Je suis animatrice de l'ODG. Je suis salariée d'une autre structure dans le cadre d'un contrat de prestation services pour faire la promotion du produit et travailler sur les sujets décidés par le conseil d'administration.

Je suis ingénieur agroalimentaire. J'étais responsable des projets dans un organisme de certification produits, après j'ai été recruté par des groupes d'entreprises pour faire aboutir des dossiers de reconnaissance des signes de la qualité (AOP, IGP et Label Rouge).

2) Pouvez-vous décrire les facteurs naturels et humains qui lient le produit au territoire ?

On a enregistré notre IGP en 2016, dans le cahier des charges la reconnaissance de ce produit se base principalement sur un savoir-faire de transformation du fromage dans la zone géographique. Il y a des critères de fabrication de caillé lactique et un affinage traditionnel par croute lavée ; cela est lié à la situation météorologique et climatique de la région qui rendait difficile l'affinage et la production d'un fromage sans défauts. Pour cette raison, les producteurs lavaient le fromage pour éviter que des défauts apparaissent sur la croute. Il s'agit d'une technique de lavage particulière, différente des lavages d'autres régions.

Le nom du fromage vient d'une zone où la production du fromage était la meilleure. Cette zone est liée au maintien d'un élevage laitier dans des vallées inondables où les gens sont obligés de conserver des prairies.

En plus, 75% de la ration fourragère vient de la zone géographique et toutes les phases de production laitières et transformation sont faites dans la zone.

INTERVIEW SOUMAINTRAIN PGI
30.07.2019

1) What is your role within the Collective Management Organisation? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I am a facilitator of the Collective Management Organisation. I am an employee of another structure within the framework of a service delivery contract to promote the product and work on the topics decided by the board of directors.

I am agribusiness engineer. I was responsible for projects of products' certification, after that I was recruited by some companies to complete the procedure for recognition of quality signs (PDO, PGI and Red Label).

2) Could you describe the natural and human factors that link the product to the territory?

We registered our PGI in 2016, in the product specifications the recognition of this product is mainly based on know-how of cheese processing within the geographical area. There are criteria for the production of lactic curd and a traditional refining by washed crust; this is related to the meteorological and climatic conditions of the region that made it difficult to produce a cheese without defects. For this reason, the producers washed the cheese to prevent faults appearing on the crust. This is a special washing technique, different from washes from other regions.

The name of the cheese comes from an area where there was the best cheese production. This area is linked to maintaining a dairy farm in floodplain valleys where people are forced to conserve grasslands.

In addition, 75% of the forage ration comes from the geographical area and all phases of dairy production and processing are made in the area.

3) Lors de la demande d'enregistrement de l'indication géographique, pourquoi a été demandé une IGP ? Aurait-il été possible de demander une AOP ?

Au début, une demande en AOC avait été faite par un petit group des producteurs sur le bassin historique. Cette demande n'intégrait pas tous les producteurs et laissait d'un côté un certain nombre d'autres producteurs qui utilisaient la dénomination et qui n'étaient pas trop loin du bassin historique. Il y a eu un conflit et on a déposé un deuxième cahier des charges en AOC et on a demandé à l'INAO d'arbitrer.

La zone était très grande et c'était très difficile de s'entendre, les producteurs fermiers (dans le bassin historique) ne voulaient pas une zone de production laitière (bassin un peu plus éloigné) si grande. L'INAO est revenu vers les deux groupements et a proposé de choisir plutôt une IGP, qui aurait permis d'avoir des zones satellites, pas possible en AOP. Après des années d'échanges, au moment où les producteurs s'étaient mis d'accord, l'INAO a communiqué que s'était plus possible d'avoir des zones satellites, mais on devait choisir une zone continue.

La Commission d'enquête de l'INAO avait relancé la discussion sur la possibilité de choisir une AOP, mais ça faisait déjà beaucoup de temps que la démarche était en route et les producteurs voulaient que le produit fût protégé. La demande en AOP aurait impliqué au moins un an pour compléter l'expertise géographique de la zone et ça aurait pu remettre en discussion la zone avec du temps supplémentaire. À ce moment-là, la priorité était de finaliser la démarche, ceci est la raison pour laquelle on a choisi l'IGP.

Les gens en bassin historique opinaient que quand on s'éloigne de la zone, la production du lait ne s'appuie pas sur les mêmes caractéristiques géographiques et contestaient aussi qu'une zone si grande (avec des terrains légèrement différent) aurait eu un impact différent au niveau gustatif. On n'a pas fait une expertise pour vérifier cet aspect.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

At the beginning, an application for PDO was made by a small group of producers in the historic area of production. This request left outside a number of other producers who used the name and were not too far from the historic area. There was a conflict and a second application for a PDO was filed and the INAO was asked to arbitrate.

The area was very large and it was very difficult to get along, the farmer (located in the historic basin) did not want a big dairy production area (far from the historic area of production). The INAO returned to the two groups and proposed to choose a PGI, which would have allowed to have satellite zones, not possible in the PDO. After years of exchanges, when the producers found an agreement, the INAO communicated that it was no longer possible to have satellite zones, but we had to choose a continuous zone.

The INAO Commission of Inquiry reopened the discussion on the possibility of choosing a PDO, but the process was too long under way and the producers wanted the product to be protected. The PDO application would have taken at least a year to complete the geographic expertise of the area and it could have brought back into discussion the delimitation of the area, requiring extra time. At that time, the priority was to complete the process, this is why we chose the PGI.

People in the historic area of production claimed that moving away from that area, milk production does not rely on the same geographical features and also contested that such a large area (with slightly different land) would have had a different impact on taste. We did not make an expertise to verify this aspect.

4) Aujourd'hui, seriez-vous intéressé à demander une AOP ? Et pour quelles raisons ?

Oui, on a un cahier des charges qui est très exigeant, au même niveau que des AOP. En plus on est sur une zone de pâturage qui confère des caractéristiques particulières au produit. Il est parfois compliqué d'expliquer pourquoi on est IGP et pas AOP, surtout si on considère qu'on est plus exigeants sur la production du lait que d'autres AOP françaises.

On considère que c'est dommage de ne pas être arrivé jusqu'à l'AOP. Peut-être parce que l'AOP est plus connu, notamment en France, mieux connu et mieux reconnu (dans le sens de plus prestigieux et plus facile à expliquer) qu'une IGP.

On pense que le Soumaintrain mériterait une AOP car la production laitière est faite dans la zone, donc il n'est pas seulement un produit de savoir-faire. Peut-être qu'une AOP ne serait pas plus intéressante au niveau commercial, mais très probablement ça serait plus intéressante au niveau de la reconnaissance du produit auprès du consommateur, car il y a plus des communications qui sont faites sur le signe AOP que sur le signe IGP.

5) Comment jugeriez-vous les informations fournies aux producteurs (par les organismes nationaux et européens) sur la différence entre AOP et IGP, et en particulier sur l'intensité du lien avec le territoire, pour la rédaction du cahier des charges ?

On n'est pas satisfait de notre organisme national car il adopte une position d'inspection plutôt qu'une position de conseil. Nous avons besoin d'aide sur l'expertise géographique afin de démontrer le lien avec le territoire. On a fait une demande à l'INAO pour passer en AOP et on nous a répondu que peut-être que ça ne serait pas possible car notre IGP est trop récente et on ne pourrait pas garder notre cahier des charges.

4) Would you be interested in applying for a PDO now? And for what reasons?

Yes, we have very demanding product specifications, at the same level of PDOs. In addition, we are on a grazing area that gives special characteristics to the product. Sometimes it is complicated to explain why we are a PGI and not a PDO, especially if we consider that we are more demanding on the production of milk than other French PDOs.

It is considered a pity not to have reached the PDO. Perhaps because the PDO is better known, especially in France, better known and better recognized (in the sense of more prestigious and easier to explain) than a PGI.

We believe that Soumaintrain deserves a PDO because milk production is made in the area, so it is not just a product of know-how. Perhaps a PDO would not be more interesting commercially, but most likely it would be more interesting at the level of recognition of the product before the consumers, because there are more communications that are made on PDOs than on PGIs.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

We are not satisfied with our national body because it adopts an inspection position rather than an advisory position. We need help on geographic expertise to demonstrate the link with the territory. We asked INAO to switch to PDO and we were told that maybe it would not be possible because our IGP is too recent and we could not keep the same product specifications.

Peut-être qu'il faut être plus exigeants au niveau de lien avec le territoire, par exemple on pourrait essayer d'améliorer l'autonomie alimentaire des troupeaux. Le problème est que la zone n'est pas excessivement grande et avec le changement climatique il faut être sûr qu'on aura l'autonomie nécessaire. Il faut mieux argumenter le lien géographique, il n'y a pas que des facteurs naturelles mais aussi d'autres facteurs pour définir le territoire de manière plus large : il y a une homogénéité des pratiques agricoles sur les différentes exploitations, après on devrait améliorer les pratiques pour sélectionner les espèces florales et avoir des meilleurs résultats gustatifs, on aura besoin d'aide pour mieux orienter les cahiers des charges mais on ne le trouve pas sur notre organisme national. La communication avec l'UE est très compliquée, dans le processus de validation IGP on n'a pas eu des contacts directs avec l'Union Européenne. L'UE communique avec le Ministère de l'Agriculture, le ministère transmet à l'INAO et après au groupement des producteurs. En plus dans le système français, le groupement des producteurs fait des propositions à l'INAO qui valide. Si l'INAO n'est pas d'accord il peut aller au-delà de ce que propose le groupement.

On devrait mieux comprendre la différence entre AOP et IGP et ce qu'on doit démontrer pour avoir une AOP, car quand on compare d'autres cahiers des charges français on estime que notre cahier des charges est déjà assez exigeant et mériterait une AOP.

5.1) Au niveau français, un groupe de travail a été créé en 2017 à cheval entre le Comité national des appellations laitières, agroalimentaires et forestières et le comité LR IGP STG qui a pour fonction (entre autres) de formuler des recommandations auprès de ces deux comités sur la différenciation entre AOP et IGP. Vous avez eu des rapports avec cet organisme ?

Maybe we have to be more demanding regarding the link with the territory, for example we could try to improve the food autonomy of the herds. The problem is that the area is not excessively large and with climate change you have to be sure you will have the necessary autonomy. We have to better prove the geographical link, there are not only natural factors but also other factors to define the territory more broadly: there is a homogeneity of agricultural practices on the different farms, in addition we should improve practices to select the floral species and have better taste results, we will need help to better draft the product specifications but we are not helped by our national body. Communication with the EU is very complicated, in the PGI recognition process we did not have direct contact with the European Union. The EU communicates with the French Ministry of Agriculture, the Ministry forwards to INAO and after to the producers' group. In addition to the French system, the producers' group makes proposals validated by the INAO. If the INAO does not agree, it can decide beyond what has been proposed by the producers' group.

We should better understand the difference between PDO and PGI and what we must prove in order to obtain a PDO, because when comparing other French product specifications we believe that our specifications are already quite demanding and deserve a PDO.

5.1) At the French level, a working group was created in 2017 between the National Committee for Dairy, Agri-Food and Forestry Designations and the LR IGP STG Committee whose function (among others) is to make recommendations to both committees on differentiation between PDO and PGI. Have you had contacts with this Committee?

On a eu des contacts avec l'INAO pour nous informer sur l'activité de ce groupe de travail, la réponse est que ce groupe de travail a pour objectif de clarifier ce que dans l'avenir mérite une AOP ou une IGP, donc ne sert pas à revenir sur les dossiers déjà décidés.

6) Quel est votre avis sur le double régime de qualité des produits agricoles et des denrées alimentaires dans l'Union européenne (AOP et IGP) ?

Je ne suis pas favorable à regrouper les deux signes. Il y a certains produits, comme par exemple le fromage Brillat-Savarin IGP, qui méritent leur IGP. Le Brillat-Savarin est produit dans une petite zone et avec le signe de qualité on reconnaît le savoir-faire des producteurs locaux. Si le double système n'existait plus, le fromage devrait être protégé avec une marque et des contrôles privés. Je pense que le système des IGP s'est beaucoup développé est c'est une juste reconnaissance pour certains produits.

Au niveau européen il y a aussi un autre signe qui protège le savoir-faire mais n'est pas associé à une zone géographique (les Spécialités Traditionnelles Garanties). Je crois que ça serait plutôt la STG qu'on devrait reformer (le nombre très réduit de produits enregistrés démontre que ce signe n'a pas bien été compris).

We have had contacts with the INAO to ask information about the activity of this working group. The answer is that this working group aims to clarify what in the future deserves a PDO or a PGI, so it cannot be ask clarifications on already decided cases.

6) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

I am not in favor of grouping the two signs together. There are certain products, such as Brillat Savarin PGI cheese, which deserve their PGI. Brillat Savarin is produced in a small area and with the sign of quality we recognize the know-how of local producers. If the dual system no longer existed, the cheese should be protected with a trade mark and private controls. I think the PGI system has developed a lot and it's a fair recognition for some products.

At European level there is also another sign that protects the know-how but is not associated with a geographical area (Traditional Specialties Guaranteed). I think it would rather be the TSG that we should reform (the very small number of registered products shows that this sign was not well understood).

INTERVISTA CANESTRATO DI
MOLITERNO IGP
26.07.2019

1) Qual è il suo ruolo all'interno del Consorzio? Si prega di indicare brevemente la propria formazione accademica e professionale (es. avvocato, agronomo, economista, ecc.).

Sono il Presidente del Consorzio per la tutela del formaggio Canestrato di Moliterno IGP. La mia qualifica professionale è quella di agronomo.

2) Potrebbe descrivere i fattori naturali e umani che vincolano il prodotto al territorio?

Il Canestrato di Moliterno ha assunto questo nome per le caratteristiche naturali favorevoli alla stagionatura del formaggio. L'IGP è stato ottenuto perché la fase di stagionatura del formaggio deve avvenire esclusivamente a Moliterno. Le condizioni climatiche presenti in ambienti idonei alla stagionatura (i fondaci) fanno sì che il prodotto acquisisca caratteristiche organolettiche uniche.

Oltre ai fattori naturali vi sono i fattori umani. Il Canestrato di Moliterno fa rivivere una tradizione di produzione e stagionatura del formaggio tramandata nei secoli dai maestri casari moliternesì.

Il latte con cui si produce il formaggio (non meno del 70% di latte ovino e non più del 30% di latte caprino) deve provenire da animali allevati sul territorio. L'area geografica è costituita da circa 60 comuni della Basilicata, in provincia di Potenza e Matera. L'area geografica risulta essere piuttosto ampia, questa è una delle ragioni per cui è stata scelta l'IGP e non la DOP. L'idea è stata quella di dare ampio respiro alla produzione ma anche rispetto della tradizione, limitando la stagionatura ad una sola parte dell'area geografica.

Anche l'alimentazione degli animali deve avvenire sul territorio, basandosi su fieni localmente prodotti, evitando mangimi che possono dare una deviazione delle caratteristiche del latte.

INTERVIEW CANESTRATO DI
MOLITERNO PGI
26.07.2019

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I am the President of the producer's group for the protection of the cheese Canestrato di Moliterno PGI. I am an agronomist by profession.

2) Could you describe the natural and human factors that link the product to the territory?

Canestrato di Moliterno has taken on this name due to the natural characteristics favorable to the aging of the cheese. The PGI was obtained because the cheese ripening phase must take place exclusively in Moliterno. The climatic conditions present in environments suitable for ripening (called fondaci) mean that the product acquires unique organoleptic characteristics.

In addition to natural factors there are human factors. Canestrato di Moliterno brings to life a tradition of cheese production and ripening, handed down over the centuries by the Moliterno cheese masters.

The milk used to make the cheese (no less than 70% of sheep's milk and no more than 30% of goat's milk) must come from animals raised on the territory. The geographical area consists of about 60 municipalities in Basilicata, in the province of Potenza and Matera. The geographical area appears to be quite large, this is one of the reasons why the PGI (and not the PDO) was chosen. The idea was to give wide scope to the production but also respect for tradition, limiting the aging to only one part of the geographical area.

Also the feeding of the animals must take place in the area, based on locally produced hay, avoiding feed that can deviate the characteristics of the milk.

Gli animali sono costituiti principalmente dalle razze ovine “Gentile di Puglia” e “Gentile di Lucania” e dalle razze caprine “Garganica” e “Ionica”, che sono razze autoctone, oltre che da incroci derivati dalle due razze principali.

3) Al momento della registrazione dell'indicazione geografica, perché è stata richiesta una IGP? Sarebbe stato possibile richiedere una DOP?

L'IGP è stata richiesta al fine di avere una maggiore area di produzione e per dare, limitando la stagionatura a Moliterno, un più forte legame con il territorio di provenienza. Richiedere una DOP per un formaggio che si produceva in paesi piuttosto distanti da Moliterno avrebbe potuto creare problemi con riferimento all'eterogeneità del prodotto. In particolare, non si è voluta concedere una DOP perché i comuni erano troppi e l'area geografica era troppo ampia, si è pertanto optato per l'IGP che ha permesso di dare al formaggio il nome di Moliterno.

3.1) Dal database della Commissione Europea si rileva che il formaggio Canestrato Pugliese DOP ha un'area di produzione molto più ampia rispetto al Canestrato di Moliterno IGP, perché questa differenza?

Il Canestrato Pugliese DOP coinvolge l'intera regione Puglia, che possiede caratteristiche di colture agrarie molto eterogenee. Con il nome di Canestrato di Moliterno si è voluta dare un'indicazione più precisa di un formaggio proveniente da un'area più specifica rispetto all'intera regione Basilicata.

Il Ministero ha suggerito di seguire la strada dell'IGP che era l'unica che poteva dare il nome di Moliterno al formaggio. Al momento della domanda di riconoscimento del Canestrato di Moliterno ci fu un'opposizione di due grosse aziende a carattere nazionale che avevano registrato come marchio il nome di Moliterno nel 1987 e si opposero alla registrazione dell'IGP successiva. Il Ministero suggerì la strada dell'IGP per poter superare

The animals consist mainly of the "Gentile di Puglia" and "Gentile di Lucania" sheep breeds and the "Garganica" and "Ionica" goat breeds, which are native breeds, as well as cross-breeds derived from the two main breeds.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

The PGI was requested in order to have a greater production area and to give, by limiting the aging in Moliterno, a stronger link with the origin. Applying for a PDO for a cheese that was produced in areas quite distant from Moliterno could have created problems with reference to the heterogeneity of the product. In particular, it was not granted a PDO because the municipalities were too many and the geographical area was too wide, so it was decided to apply for the PGI, which allowed to name the cheese Moliterno.

3.1) The database of the European Commission shows that the Canestrato Pugliese PDO cheese has a much wider production area than the Canestrato di Moliterno PGI, what is the reason for this difference?

The Canestrato Pugliese PDO involves the entire Puglia region, with very heterogeneous agricultural crops. With the name Canestrato di Moliterno it was wanted to give a more precise indication of the origin of the cheese, coming from a more specific area rather than the entire Basilicata region.

The Ministry suggested to follow the PGI road which was the only one that allowed the name Moliterno to the cheese. At the time of the application for recognition of the Canestrato of Moliterno there was an opposition by two large national companies that had registered the name of Moliterno in 1987 as a trade mark and opposed the registration of the later PGI. The Ministry suggested the road of the PGI in order to overcome

l'ostacolo della registrazione del marchio Moliterno.

4) Ad oggi, il consorzio sarebbe interessato a richiedere una DOP? E per quali ragioni?

No. Per il momento la produzione viene facilmente collocata sul mercato, pertanto non ci siamo interrogati sulla possibilità di richiedere una DOP. Ritengo che con la DOP renderemmo meno rilevante il nome di Moliterno. L'IGP consente una maggiore produzione e consente di sottolineare la valenza della stagionatura che deve avvenire solo a Moliterno evidenziando il forte legame con il territorio.

5) Come giudica le informazioni fornite ai produttori (da organizzazioni nazionali ed europee) sulla differenza tra DOP e IGP, e in particolare sull'intensità del legame con il territorio, al momento della redazione dei disciplinari di produzione?

Le informazioni sono abbastanza buone alla fonte, ma spesso si fermano a livello amministrativo, non riuscendo a raggiungere le piccole aziende agricole. Spesso per i coltivatori diretti DOP e IGP costituiscono maggiori fastidi burocratici e amministrativi.

6) Qual è la sua opinione sul doppio regime di qualità DOP e IGP per i prodotti agricoli e alimentari nell'Unione europea?

Ritengo che il doppio regime di qualità sia positivo perché consente di ottenere una gamma diversificata di prodotti. Un doppio regime di qualità consente di avere una maggiore produzione e favorire le aree rurali più svantaggiate. Oggigiorno i consumatori sono molto più attenti a quello che consumano e collegano DOP e IGP a qualità e tracciabilità.

The obstacle of the registration trade mark Moliterno.

4) Would you be interested in applying for a PDO now? And for what reasons?

No. For the moment the production is easily placed on the market, therefore we did not inquire about the possibility of applying for a PDO. I believe that with the PDO we would make the name of Moliterno less relevant. The PGI allows for greater production and allows us to underline the value of the ripening that must take place only in Moliterno highlighting the strong link with the territory.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

The information is quite good at the source, but often stops at the administrative level, failing to reach small farms. Often for direct farmers PDO and PGI are major bureaucratic and administrative problems.

6) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

I believe that the double quality regime is positive because it allows us to obtain a diversified range of products. A double quality regime allows for greater production and favors the most disadvantaged rural areas. Nowadays consumers are much more attentive to what they consume and link PDO and PGI to quality and traceability.

INTERVISTA LIMONE DI SIRACUSA IGP
16.07.2019

1) Qual è il suo ruolo all'interno del Consorzio? Si prega di indicare brevemente la propria formazione accademica e professionale (es. avvocato, agronomo, economista, ecc.).

Ho lavorato come consulente esterno per il Consorzio del Limone di Siracusa dal 2011 al 2014, dal 2016 l'assemblea dei soci mi ha eletto come suo primo direttore.

Per quanto riguarda la mia formazione accademica, ho studiato scienze internazionali e diplomatiche e studi europei, ho seguito un master in marketing internazionale presso l'istituto del commercio estero e una specializzazione in progettazione europea all'ISPI di Milano, dopo aver fatto una prima esperienza di progettazione con la Commissione Europea in India. Mi sono avvicinato al Limone di Siracusa dopo la creazione dell'IGP partecipando a progetti e a bandi di finanziamento per conto del Consorzio.

2) Potrebbe descrivere i fattori naturali e umani che vincolano il prodotto al territorio?

I fattori naturali sono legati sostanzialmente al *terroir*. Nell'area geografica di produzione ci sono, infatti, delle condizioni che hanno fatto sì che il limone trovasse un suo habitat ideale. Tra queste possiamo sicuramente annoverare l'abbondanza delle acque e la vicinanza al mare (in particolare, il prodotto non può essere coltivato ad altezze superiori ai 210 metri sul livello del mare e a più di 10 km di distanza dalla costa).

A questo si aggiunge una selezione naturale e le tecniche di coltivazione degli ultimi 400 anni, tramandate di generazione in generazione spesso oralmente, creando un legame indissolubile con il territorio.

INTERVIEW LIMONE DI SIRACUSA PGI
16.07.2019

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I worked as an external consultant for the producers' group of the Limone di Siracusa from 2011 to 2014, from 2016 the members' assembly elected me as its first director.

As for my academic background, I studied international and diplomatic sciences and European studies, I followed a master's degree in international marketing at the foreign trade institute and a specialization in European design at the ISPI in Milan, after having had a first experience with the European Commission in India. I approached the Limone di Siracusa after the creation of the PGI by participating in projects and calls for funding on behalf of the producers' group.

2) Could you describe the natural and human factors that link the product to the territory?

Natural factors are essentially related to the *terroir*. In fact, in the geographical area of production there are ideal conditions for the growth of the lemon. Among these we can certainly count the abundance of water and the proximity to the sea (in particular, the product cannot be grown at heights above 210 meters on the sea level and more than 10 km away from the coast).

To this is added a natural selection and cultivation techniques of the last 400 years, handed down from generation to generation often orally, creating an indissoluble link with the territory.

Occorre altresì considerare che la varietà femminello ha più fioriture durante l'anno, ciascuna con caratteristiche differenti. Non tutte le piante di limone godono di questa peculiarità. Ci sono 6 IGP di limone riconosciute dall'Unione Europea in Italia e altre 3 nel resto dell'Europa (Francia, Spagna e Portogallo), la cultivar femminello è presente oltre che a Siracusa anche nel Gargano.

Tutti questi prodotti sono stati registrati come IGP.

2.1) Nel disciplinare sono indicati tre diversi metodi di coltivazione: convenzionale, integrato e biologico, potrebbe spiegare come questi si conciliano con le pratiche tradizionali?

Lasciamo agli agricoltori la possibilità di poter gestire liberamente questo aspetto. Quello che vorremmo far comprendere al consumatore è che il nostro prodotto IGP è sempre commestibile nella sua interezza (buccia inclusa). Questa la ragione per cui sono vietati trattamenti con cere e conservanti post-raccolta, a prescindere dal metodo di coltivazione utilizzato. In breve, un limone convenzionale IGP è probabilmente migliore di un limone biologico non IGP.

3) Al momento della registrazione dell'indicazione geografica, perché è stata richiesta una IGP? Sarebbe stato possibile richiedere una DOP?

Sarebbe sicuramente stato possibile richiedere una DOP e a suo tempo i miei predecessori provarono a richiedere una DOP. Cosa sarebbe cambiato? Vent'anni fa quando è stato creato il consorzio il mercato del limone era in difficoltà, non c'era nessuna aggregazione orizzontale e si stavano progressivamente aprendo altri mercati. All'epoca si pensava principalmente al mercato del fresco e si decise di optare per un'IGP in quanto questa avrebbe lasciato le porte aperte per il futuro sviluppo di questo comparto. A posteriori questa è stata una fortuna.

It should also be considered that the femminello variety has more blooms during the year, each with different characteristics. Not all lemon plants enjoy this peculiarity. There are 6 PGIs of lemon recognized by the European Union in Italy and 3 in the rest of Europe (France, Spain and Portugal), the femminello cultivar is present not only in Syracuse but also in the Gargano.

All these products have been registered as PGIs.

2.1) In the product specifications there are three different production methods: conventional, integrated and organic. Could you explain how these are in line with traditional practices?

We leave the possibility for farmers to freely manage this aspect. What we would like the consumer to understand is that our PGI is always edible in its entirety (skin included). This is the reason why treatments with waxes and post-harvest preservatives are prohibited, regardless of the cultivation method used. In short, a conventional PGI lemon is probably better than a non-PGI organic lemon.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

It would certainly have been possible to request a PDO and at the time my predecessors tried to request a PDO. What would have changed? Twenty years ago when the consortium was created, the lemon market was in trouble, there was no horizontal aggregation and other markets were gradually opening up. At the time we mainly thought about the fresh market and it was decided to opt for a PGI as this would have left the doors open for the future development of this sector. In retrospect this was a fortunate choice.

Il processo produttivo avviene all'interno dell'area geografica definita, ma abbiamo lasciato la possibilità ai molti utilizzatori della denominazione protetta di poter trasformare questo frutto in altri prodotti, anche al di fuori dell'area geografica di produzione. Non avremmo mai potuto attirare grandi aziende che usano il nostro limone e lo fanno arrivare in tutto il mondo. Se avessimo scelto una DOP li avremmo dovuti costringere a lavorare all'interno della reale, cosa poco fattibile.

3.1) Quindi la scelta non è stata dovuta alla maggiore rapidità per ottenere una IGP o una diversa percezione da parte dei consumatori, quanto un maggiore flessibilità nel processo di trasformazione.

La scelta dell'IGP non fu dovuta ad una maggiore celerità nel processo di riconoscimento. Nel nostro caso sono passati undici anni dalla richiesta al riconoscimento. Non appena fu creato il consorzio del Limone di Siracusa ne fu creato un secondo che per i primi cinque anni rivendicava una maggiore legittimità, conflitto che è poi stato risolto in via amministrativa.

Personalmente non cambierei il fatto che la trasformazione del prodotto possa avvenire al di fuori dall'area geografica. Questo fattore ci sta permettendo di acquisire sempre più notorietà sul mercato italiano e straniero, però rifletterei sulla possibilità di confezionare al di fuori della reale.

Sarebbe possibile restringere la reale di confezionamento (lavorazione del frutto fresco) all'interno della reale di produzione (raccolta del limone, lavorazione, confezionamento e spedizione). Questo sarebbe possibile in quanto l'IGP richiede che almeno una fase della produzione avvenga nell'area geografica. Requisito confermato dalla giurisprudenza del Prosciutto della foresta nera IGP, in cui i produttori intendevano produrre e confezionare all'interno della reale pur essendo IGP. Al momento non c'è consenso tra i produttori, alcuni vorrebbero limitare il confezionamento all'interno della regione, altri all'interno di province limitrofe.

The production process takes place within the defined geographical area, but we have left the possibility to the users of the protected denomination to be able to transform this fruit into other products, even outside of the geographical production area. Otherwise, we could never have attracted large companies that use our lemon and get it all over the world. If we had chosen a PDO we would have had to force them to work within the area, which is not feasible.

3.1) Therefore the PGI has not been chosen for the faster granting process or for a different perception by consumers but for having more flexibility in the transformation process.

The choice of the PGI was not due to faster recognition process. In our case eleven years have passed since the request for recognition. As soon as the Limone di Siracusa consortium was created, a second one was created which for the first five years claimed greater legitimacy, a conflict that was then solved by administrative means.

Personally, I would not change the fact that the transformation of the product can take place outside the geographical area. This factor is allowing us to gain more and more reputation on the Italian and foreign market, but I will reflect on the possibility of packaging outside the area.

It would be possible to restrict the actual packaging (processing of the fresh fruit) within the production area (lemon harvest, processing, packaging and shipping). This would be possible as the PGI requires that at least one phase of production takes place in the geographical area. Requirement confirmed by the jurisprudence of the Schwarzwälder Schinken PGI, in which the producers intended to produce and package within the area despite being a PGI. At the moment there is no consensus among the producers, some would like to limit packaging within the region, others within neighboring provinces.

4) Ad oggi, il consorzio sarebbe interessato a richiedere una DOP? E per quali ragioni?

Alcuni soci sono interessati a richiedere una DOP. L'importante è avere una visione collettiva incentrata sul bene del prodotto. Personalmente non aggiungerei una DOP a una IGP, questo non farebbe altro che creare più confusione e divisioni tra i soci. Per il momento penserei di diffondere l'IGP e andrei a lavorare sui controlli e sulla qualità. Ricordiamo che il Limone di Siracusa IGP rappresenta solo il 10% della produzione locale di limoni. Molti produttori continuano a preferire la certificazione "organic" in quanto più richiesta dai mercati. La sigla IGP non è molto conosciuta.

5) Come giudica le informazioni fornite ai produttori (da organizzazioni nazionali ed europee) sulla differenza tra DOP e IGP, e in particolare sull'intensità del legame con il territorio, al momento della redazione dei disciplinari di produzione?

Molti produttori non hanno consapevolezza dell'importanza delle indicazioni geografiche. Occorre effettuare iniziative sul territorio volte ad ottenere una maggiore conoscenza dei segni di qualità europei in modo da evitare che l'IGP rimanga una sigla vuota.

All'interno del mercato europeo non c'è ancora un livello di informazione sufficiente su queste sigle. Stiamo lavorando su quest'aspetto. Attualmente siamo membri di un'associazione nazionale che raggruppa molti consorzi italiani e soci dell'unica ONG con sede a Ginevra (oriGIn) che si batte per la diffusione e protezione delle indicazioni geografiche nel mondo.

6) Qual è la sua opinione sul doppio regime di qualità DOP e IGP per i prodotti agricoli e alimentari nell'Unione europea?

A mio avviso, tra DOP e IGP, cui si aggiungono le STG, non vi è confusione quanto piuttosto mancanza di informazione.

4) Would you be interested in applying for a PDO now? And for what reasons?

Some members are interested in applying for a PDO. The important thing is to have a collective vision focused on the good of the product. Personally, I would not add a PDO to a PGI, this would do nothing but create more confusion and divisions among the members. For the moment I would like to spread the PGI and I would go to work on controls and quality. Recall that the Syracuse PGI Lemon represents only 10% of the local production of lemons. Many producers continue to prefer the "organic" certification as they are more in demand on the markets. The acronym PGI is not very well known.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

Many producers are not aware of the importance of geographical indications. It is necessary to carry out initiatives on the territory aimed at obtaining a greater knowledge of European quality signs in order to avoid that the IGP remains an empty acronym.

Within the European market there is not yet a sufficient level of information on these acronyms. We are working on this aspect. We are currently members of a national association that brings together many Italian producers' groups and members of the only NGO based in Geneva (oriGIn) that is fighting for the dissemination and protection of geographical indications in the world.

6) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

In my opinion, between PDOs and PGIs, to which the TSGs are added, there is no confusion but rather a lack of information.

Molti consorzi sono piccoli e non possono fare adeguate campagne di informazione. L'UE invece dovrebbe investire in campagne di comunicazione volte ad una corretta informazione dei significati di queste sigle. IGP suona vuoto se non si comprendono le caratteristiche intrinseche del prodotto e il suo vincolo con il territorio.

Many producers' groups are small and cannot carry out adequate information campaigns. Instead, the EU should invest in communication campaigns aimed at correctly informing about the meanings of these acronyms. PGI sounds empty if the intrinsic characteristics of the product and its link with the territory are not understood.

ENTREVISTA CORDERO MANCHEGO
IGP
23.07.2019

23.07.2019

1) ¿Cuál es su rol dentro del Consejo Regulador? Por favor, indique su formación académica y profesional (abogado, agrónomo, economista, etc.).

Mi nombre es Francisco Alfaro, soy licenciado en veterinaria y actualmente soy el secretario técnico de la IGP Cordero Manchego. Me encargo de todos los aspectos técnicos del uso de la IGP, de la cría de los corderos y de la gerencia en si del consejo regulador.

2) ¿Podría describir los factores naturales y humanos que vinculan el producto con el territorio?

El principal factor que vincula el producto con el territorio es la oveja de raza manchega, una oveja autóctona de la región de la Mancha y que diariamente sale a pastar los recursos naturales del suelo, según la época del año.

Un porcentaje (no la totalidad) de la alimentación de la oveja procede del territorio porque en un momento de la fase productiva (por ejemplo, durante la lactación) la alimentación de la oveja se suplementa con piensos concentrados.

Entre los factores humanos que vinculan el producto con el territorio se tiene que considerar que el pastor manchego es una profesión que se ha transmitido de padre en hijo a lo largo de los siglos.

En relación con las fases de producción del producto: el nacimiento y engorde de los corderos tiene que ser dentro de la zona geográfica, pero el sacrificio puede ser fuera de la zona. De momento de los cuatro mataderos autorizados todos están dentro de la zona geográfica.

2.1) El artículo 11 del Reglamento del Cordero Manchego del 1995 establece que

INTERVIEW CORDERO MANCHEGO PGI

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

My name is Francisco Alfaro, I have a degree in veterinary and I am currently the technical secretary of the PGI Cordero Manchego. I take care of all the technical aspects of the use of the PGI, the raising of the lambs and the management of the regulatory council itself.

2) Could you describe the natural and human factors that link the product to the territory?

The main factor that links the product to the territory is the sheep of the Manchego breed, a native sheep from the region of La Mancha that daily goes out to graze the natural resources of the soil, according to the time of the year.

A percentage (not the totality) of the feeding of the sheep comes from the territory because during a certain phase of the production (for example, during lactation) the feeding of the sheep is supplemented with concentrated feed.

Among the human factors that link the product with the territory, it must be considered that the La Mancha pastor is a profession that has been transmitted from father to son over the centuries.

With regard to the production phases of the product: the birth and fattening of the lambs has to be within the geographical area, but the slaughtering can be outside the area. At the moment all the four authorized slaughterhouses are within the geographical area.

2.1) Pursuant to Art. 11 of the Regulation of Cordero Manchego of 1995 the

la zona de sacrificio tiene que coincidir con la zona de producción. ¿Correcto?

Si, se trata de una modificación del pliego de condiciones.

2.2) A nivel español el Cordero Manchego era una “Denominación Específica”, ¿que significa?

Se trata de un termino que solo tenia protección a nivel español y era un equivalente a la IGP europea. Un producto vinculado al territorio en que algunas fases podían tenerse fuera de la zona de producción.

3) A la hora de solicitar el registro de la indicación geográfica, ¿por qué se solicitó una IGP? ¿Hubiera sido posible solicitar una DOP?

Se solicitó una IGP y no una DOP por el tema de la transformación del animal vivo en carne. El sacrificio de los corderos, la conservación de la carne en cámaras frigoríficas y la posterior preparación de platos preparados, son experiencias que nos faltaban en la región. Más concretamente, tenemos empresas preparadas en la Mancha para la transformación de la carne, pero en su día se pensó que hubiera sido mejor abrirse a otras regiones con vocación más industrial. Actualmente no estamos comercializando estos tipos de productos, es una previsión que tenemos para el futuro.

Además, el asesoramiento jurídico que tuvimos en su día nos asesoró que todas las carnes a nivel europeo y español se protegían con IGP y no DOP.

4) ¿Estarían interesados ahora en solicitar una DOP? ¿y por cuales razones? 4.1) La modificación del pliego de condiciones que permite que los mataderos estén situados fuera de la zona geográfica parece ir en sentido contrario. ¿Correcto?

De momento no nos hemos planteado el asunto. El producto se adapta perfectamente a los

slaughtering area is the same of the production area. Is it correct?

Yes, the product specifications have been modified later on.

2.2) In Spain Cordero Manchego was a “Denominación Específica”, what does it mean?

It was a term used at the Spanish level similar to the EU PGI. A product linked to the territory where some phases could take place out of the area of production.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

It was requested a PGI and not a PDO because of the transformation of live animals into meat. In the region we lacked experience regarding the slaughtering of the lambs, the preservation of the meat in cold stores and the subsequent preparation of prepared dishes. More specifically, we have companies in La Mancha for the transformation of meat, but at that time it was thought that it would have been better to open up to other regions with a more industrial vocation. We are not currently marketing these types of products, it is a forecast that we have for the future.

In addition, the legal advice we had at that time advised us that all meats at European and Spanish level were protected with PGIs and not with PDOs.

4) Would you be interested in applying for a PDO now? And for what reasons? 4.1) The amendment of the product specifications allowing the slaughterhouses to be placed out of the production area seems to go on the opposite direction. Is it correct?

For the time being we did not consider this possibility.

requisitos de la IGP y además en los últimos años ha mejorado mucho la percepción de los consumidores frente a las IGP.

En relación a los mataderos, se ha reconocido que siendo una IGP no era necesario limitar el sacrificio a la zona geográfica, esto permite sacrificar los animales fuera de la zona de producción.

La recién modificación del 15 de julio ha permitido adaptar el pliego a la legislación actual. Por ejemplo, en el antiguo reglamento se hablaba de edad de los corderos y peso vivos de los corderos, en realidad ambos parámetros están en correlación con el peso en canal de los corderos. También se hablaba de un reposo obligatorio de doce horas antes del sacrificio, pero la ley establece que el animal tiene que permanecer el mínimo tiempo posible en el matadero. Además, hemos aumentado de un kilo el peso de la canal porque hay ciertos mercados en que gusta más un cordero con más peso.

5) ¿Como juzgaría la información facilitada a los productores (desde los organismos nacionales y europeos) sobre la diferencia entre DOP e IGP, y en particular sobre la intensidad del vínculo con el territorio, para la redacción de los pliegos de condiciones?

Desde el principio hemos optado por la IGP. Nuestros productores son los mismos del Queso Manchego, y saben que de sus ovejas salen dos productos, un queso DOP y carne IGP. Los productores tienen bien asumido que en el día de mañana sus ovejas podrían sacrificarse en otra región y seguirían mereciendo el signo IGP.

6) ¿Cuál es su opinión sobre el doble régimen de calidad DOP e IGP para los productos agrícolas y alimenticios de la Unión Europea?

The product complies with the legal requirements for the PGI, moreover recently consumers' perception on PGIs has considerably improved.

In relation to slaughterhouses, being a PGI, it was not necessary to limit the slaughter to the geographical area, this allows animals to be slaughtered outside the production area.

The recent amendment of July 15 allows adapting the product specifications to the current legislation. For example, in the old regulation it was mentioned the age of the lambs and the live weight of the lambs, in fact both parameters correlate with the carcass weight of the lambs. It was also mentioned a mandatory 12-hour rest before slaughter, but the law states that the animal must remain as short as possible in the slaughterhouse. In addition, we have increased the weight of the carcass by one kilo because there are certain markets that prefer a heavier lamb.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory, for drafting the product specifications?

From the beginning we have chosen the PGI. Our producers are the same of Queso Manchego, and they know that their sheep produces two products, a PDO cheese and PGI meat. The producers have well assumed that tomorrow their sheep could be slaughtered in another region and would still deserve the PGI sign.

6) What is your opinion on the double quality regime PDO and PGI for agricultural products and foodstuffs in the EU?

En mi opinión, cuando se empezó con los signos de calidad, había una cierta confusión entre DOP y IGP, sobre todo porque las denominaciones de origen existían desde hace tiempo. En algunos casos las IGP estaban percibidas como productos de calidad inferior. Con los años se ha ido utilizando el término no solo a nivel de la legislación, pero también a nivel de productores y consumidores, con muchas campañas y esfuerzos de comunicación.

In my opinion, at the beginning of the quality signs, there was some confusion between PDOs and PGIs, especially since the designations of origin existed for a long time. In some cases, PGIs were perceived as inferior products. Over the years the term has been used not only at the level of legislation, but also at the level of producers and consumers, with many campaigns and communication efforts.

ENTREVISTA LENTEJA DE TIERRA DE
CAMPOS IGP
12.07.2019

1) ¿Cuál es su rol dentro del Consejo Regulador? Por favor, indique su formación académica y profesional (abogado, agrónomo, economista, etc.).

Javier Alonso Ponga, director técnico del Consejo Regulador de la Indicación Geográfica Protegida (IGP) Lenteja de Tierra de Campos, soy doctor en biología e ingeniero técnico agrícola. Desde que acabé mi formación académica me he dedicado a la mejora de las legumbres.

2) ¿Podría describir los factores naturales y humanos que vinculan el producto con el territorio?

El producto está vinculado al territorio porque se produce en la demarcación de la IGP. A partir de los años 80 del siglo pasado el producto desapareció de muchas zonas de producción. En el año 2000 algunas cooperativas quisieron retomar el cultivo y crear una figura de calidad. La Junta de Castilla y León apoyó el proyecto y subvencionó el estudio justificativo del vínculo entre producto y territorio. Hoy en día, el consejo regulador a relanzado el sector y la relación entre agricultores y envasadores.

Hablando del vínculo natural, es importante notar que las parcelas destinadas al cultivo de la lenteja están a una altitud por debajo de 750 metros. Estas parcelas también cumplen unos parámetros en lo que respecta a materia orgánica, fósforo y potasio.

Hablando de los factores humanos, los cultivadores adoptan la técnica de la alternancia (no pueden cultivar dos años seguidamente la misma parcela). El riego está contemplado por casos de sequía, no es una técnica habitual.

INTERVIEW LENTEJA DE TIERRA DE
CAMPOS PGI
12.07.2019

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

Javier Alonso Ponga, technical director of the Regulatory Council of Protected Geographical Indication (PGI) Lenteja de Tierra de Campos, I am a doctor of biology and an agricultural technical engineer. Since I finished my academic studies I have dedicated myself to the improvement of legumes.

2) Could you describe the natural and human factors that link the product to the territory?

The product is linked to the territory because it is produced in the geographical area of the PGI. From the 80s of the last century the product disappeared from many production areas. In 2000, some cooperatives wanted to resume the production and create a quality sign. The Junta de Castilla y León supported the project and subsidized the study of the link between product and territory. Today, the producers' group has relaunched the sector and the relationship between farmers and packers.

With regard to natural factors, it is important to note that the plots destined for the cultivation of the lentil are at an altitude below 750 meters. These plots also meet some parameters regarding organic matter, phosphorus and potassium.

With regard to human factors, growers adopt the technique of alternation (they cannot cultivate the same plot two years immediately). Irrigation is contemplated by cases of drought, it is not a usual technique.

El nombre de la IGP ha cambiado de “Lenteja Pardina de Tierra de Campos” a “Lenteja de Tierra de Campos” porque esto llevaba a confusión muchos consumidores. Se empezaba a identificar la lenteja como pardina y no con su procedencia geográfica.

Todas las fases de producción tienen lugar en el área geográfica. En cuanto a los precocinados que se contemplan en el artículo 12 del reglamento, no se hizo el estudio justificativo y por tanto no se recoge nada al respecto en nuestro pliego de condiciones. Si que se hacen precocinados de Lenteja de Tierra de Campos pero en ese caso nosotros sólo garantizamos que lo que va en el tarro es lenteja de Tierra de Campos, no garantizamos como se ha hecho el proceso de precocinado (por tanto no garantizamos si en el autoclave estuvo veinte minutos o treinta, si el líquido de gobierno es con más o menos sal etc...). En este sentido se pueden encontrar lentejas precocinadas procedentes de la IGP Lenteja de Tierra de Campos, sin el sello de la UE, porque nunca se hizo el estudio justificativo y la UE no avala el precocinado.

Los agricultores entregan el producto directamente (sin almacenarlo en su casa) a los envasadores cuyas empresas están situadas, mayoritariamente, fuera de la zona geográfica de producción.

3) A la hora de solicitar el registro de la indicación geográfica, ¿por qué se solicitó una IGP? ¿Hubiera sido posible solicitar una DOP?

No fue posible registrar una DOP porque al momento de la registración de la IGP los envasadores estaban fuera de la zona geográfica. El entendimiento de la época era que todas las fases de producción (incluyendo el envasado) tuviesen que hacerse en la demarcación. Esta es la razón porque no se ha solicitado una DOP.

4) ¿Estarían interesados ahora en solicitar una DOP? ¿y por cuales razones?

The name of the PGI has changed from “Lenteja Pardina de Tierra de Campos” to “Lenteja de Tierra de Campos” because this led to confusion for many consumers. The lentil began to be identified as pardina and not with its geographical origin.

All production steps take place in the geographical area. As for the precooked foods that are contemplated in Art. 12 of the regulation, there was no justification study and therefore nothing is collected in this regard in our specifications. There are precooked Lenteja de Tierra de Campos but in that case we only guarantee that what goes in the jar is Lenteja de Tierra de Campos, we do not guarantee how the process has been done (therefore we do not guarantee if in the autoclave was twenty minutes or thirty, if the government liquid is with more or less salt etc ...). In this sense you can find pre-cooked lentils from the PGI Lenteja de Tierra de Campos, without the EU seal, because it was never done the justification study and the EU does not endorse the precooked lentice.

Farmers deliver the product directly (without storing it at home) to the packers whose companies are mostly located outside the geographical area of production.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

It was not possible to register a PDO because at the time of registration of the PGI the packers were outside the geographical area. At that time, the understanding was that all phases of production (including packaging) had to be done in the area of production. This is the reason why a PDO has not been requested.

4) Would you be interested in applying for a PDO now? And for what reasons?

No sabría decir. Solicitar una DOP no supondría necesariamente ventajas concretas, como por ejemplo inducir a otras empresas a instalarse en la comarca. El sector de la legumbre es un sector con márgenes comerciales pequeños. Pasar de IGP a DOP significaría empezar un procedimiento de modificación y eventualmente un nuevo estudio justificativo, necesitando el acuerdo por parte de los productores y nuevos gastos.

Además, solicitar una DOP tendría el riesgo de cotar el crecimiento. Nosotros tenemos también empresas pequeñas que comercializan en la zona de Salamanca. Si solicitamos una DOP y nos acotan donde tienen que estar las empresas envasadoras no podríamos seguir trabajando en esta zona.

5) ¿Como juzgaría la información facilitada a los productores (desde los organismos nacionales y europeos) sobre la diferencia entre DOP e IGP, y en particular sobre la intensidad del vínculo con el territorio, para la redacción de los pliegos de condiciones?

Un problema actual es que las IGP no tienen visibilidad frente al consumidor. Los consumidores perciben las DOP como productos de mejor calidad/prestigio, sin entender la diferencia entre DOP e IGP. Algunos desconocen completamente el acrónimo IGP. Desde los organismos oficiales se tiene que dar más visibilidad a las IGP como figura de calidad vinculada al territorio.

6) ¿Cuál es su opinión sobre el doble régimen de calidad DOP e IGP para los productos agrícolas y alimenticios de la Unión Europea?

Los productos no transformados y que no sean perecederos, como es el caso de la lenteja, podrían asimilarse a una DOP. Es igual que el producto sea registrado como DOP o como IGP, las características organolépticas las dan el suelo y el cielo de la comarca, la zona de envasado no tiene importancia porque no influye sobre la calidad.

I don't know. Applying for a PDO would not necessarily entail concrete advantages, such as inducing other companies to settle in the region. The legume sector has small sales margins. Changing from PGI to PDO would mean starting an amendment procedure and eventually a new justifying study, requiring the agreement from the producers and new expenses.

In addition, a PDO could limit the growth. We also have small companies that sell in the Salamanca area. If we request a PDO and they limit us where the packaging companies have to be, we should stop working in this area.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

A current problem is that PGIs have no visibility to the consumer. Consumers perceive PDOs as products of better quality / prestige, without understanding the difference between PDO and PGI. Some completely ignore the acronym PGI. The official organisms must give more visibility to PGI as a quality sign linked to the territory.

6) What is your opinion on the double EU quality regime PDO and PGI for agricultural products and foodstuffs in the EU?

Non-processed and non-perishable products, such as lentils, could be assimilated to a PDO. It is the same as the product is registered as a PDO or as a PGI, the organoleptic characteristics are given by the soil and sky of the region, the packaging area does not matter because it does not influence the quality.

ENTREVISTA PIMIENTO ASADO DEL
BIERZO IGP
29.07.2019

1) ¿Cuál es su rol dentro del Consejo Regulador? Por favor, indique su formación académica y profesional (abogado, agrónomo, economista, etc.).

Soy el Director Técnico del Consejo Regulador y tengo una formación como Ingeniero Agrónomo.

2) ¿Podría describir los factores naturales y humanos que vinculan el producto con el territorio?

El cultivo del pimiento y su asado en el Bierzo tiene una gran tradición, desde el siglo XVII, siendo un vínculo a las familias bercianas, pues en todas las casas se cultivaban y asaban los pimientos. Fueron las amas de casa bercianas quienes iniciaron la tradición del pimiento asado del Bierzo. Estas lo propagaron por todo el territorio español enviándolos a sus familiares, amigos, conocidos, etc. De esta forma comenzaron a apreciar sus excelencias, dando nombre y fama a los pimientos asados del Bierzo.

El pimiento del Bierzo no es una variedad, el ecotipo del Bierzo es una característica genotípica de una comarca que indica una población genéticamente diferenciada típica de la comarca del Bierzo.

En relación a los factores naturales, La zona geográfica delimitada se encuentra situada en el centro de la comarca del Bierzo, en el extremo noroeste de la provincia de León, y por tanto de la Comunidad Autónoma de Castilla y León. Es una comarca de 1600 km² caracterizada por un microclima de intercambio entre el clima atlántico y el clima de la meseta. El suelo tiene un PH entre 5 y 7 y es una zona a fuerte vocación hortofrutícola (en la misma región hay la Manzana Reineta del Bierzo DOP, las marcas de garantía de la Pera Conferencia del Bierzo, la Cereza del Bierzo y de la Castaña del Bierzo)

INTERVIEW PIMIENTO ASADO DEL
BIERZO PGI
29.07.2019

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I am the Technical Director of the Producers' Group and I have a degree as Agricultural Engineer.

2) Could you describe the natural and human factors that link the product to the territory?

The cultivation of the pepper and its roast in Bierzo has a long tradition, since the seventeenth century, being a link to the Bercian families, in whose houses the peppers were grown and roasted. Bercian housewives initiated the tradition of roasted pepper in Bierzo. They spread it throughout the Spanish territory by sending them to their relatives, friends, acquaintances, etc. This is how they began to appreciate its excellence, giving name and fame to the roasted peppers of the Bierzo.

The Bierzo pepper is not a variety, the Bierzo ecotype is a genotypic characteristic of a region that indicates a genetically differentiated population typical of the Bierzo region.

In relation to natural factors, the geographical area is located in the center of Bierzo, in the northwest corner of the province of León, and therefore of the Autonomous Community of Castilla y León. It is a region of 1600 km² characterized by a microclimate of exchange between the Atlantic climate and the climate of the plateau. The soil has a PH between 5 and 7 and is an area with a strong fruit and vegetable vocation (in the same region there is the Manzana Reineta del Bierzo DOP, and the guarantee marks of the Pera Conferencia del Bierzo, la Cereza del Bierzo and the Castaña del Bierzo)

que confiere particulares características organolépticas al producto.

En relación a los factores humanos, el cultivo del pimiento es tradicionalmente muy vinculado con el territorio. A nivel familiar todas las casas cultivan y asan el pimiento para su propio consumo. A nivel del consejo el asado se hace en chapas más grande de las chapas domesticas o en hornos que queman la piel del pimiento. Luego los pimientos van a una mesa de selección y las empleadas pelan manualmente el pimiento sin meter el producto en el agua. Luego se pasa a la fase de esterilización.

3) A la hora de solicitar el registro de la indicación geográfica, ¿por qué se solicitó una IGP? ¿Hubiera sido posible solicitar una DOP?

Nuestra primera solicitud fue una DOP, puesto que estábamos convencidos de los vínculos del producto al territorio, pero no pudo ser, y aunque todas las fases del proceso (cultivo y transformación), se realizan en la Comarca, no se demostró el vínculo del ecotipo del pimiento al territorio, concediéndonos una IGP.

En particular, el pimiento se plantó fuera de la comarca, se comparó con las plantas de la comarca y no había diferencias significativas. Se podía haber seguido investigando el asunto para demostrar el vínculo cualitativo entre producto y territorio, pero no se hizo.

3.1) En el 2010 fue aprobada una modificación del pliego de condiciones que prevé un cambio en las fases de producción y transformación. En particular se admite todas las fases de producción tienen lugar en el área geográfica pero la transformación del producto se puede hacer fuera. ¿Porque se ha modificado?

Había una empresa en su momento que estaba fuera del área geográfica. El área geográfica no abarca todo el Bierzo, 17 municipios sobre los 34 en total. Quisimos abrir la zona para que esta empresa entrase. Actualmente esta empresa industria ha cesado su actividad y

That gives particular organoleptic characteristics to the product.

In relation to human factors, pepper cultivation is traditionally closely linked to the territory. On a family level everyone grows and roasts the pepper for their own consumption. At the producers' group level, the roast is made in larger plates of the domestic plates or in ovens that burn the skin of the pepper. Then the peppers go to a selection table and the employees manually peel the pepper without putting the product in the water. Then it goes to the sterilization phase.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

Our first request was a PDO, since we were convinced of the product's link to the territory, but it could not be, and although all the phases of the process (cultivation and transformation), are carried out in the Region, the link of the pepper ecotype to the territory was not demonstrated, granting us an PGI.

In particular, the pepper was planted outside the region, compared with the plants in the region and there were no significant differences. The matter could have been investigated to demonstrate the qualitative link between product and territory, but it was not done.

3.1) In 2010, a modification of the product specifications that changed the production and transformation phases was approved. In particular, it is admitted that all the production phases take place in the geographical area but the transformation of the product can be done outside. Why has it been modified?

There was a company at the time that was outside the geographical area. The geographical area does not cover the entire Bierzo, 17 municipalities out of 34 in total. We wanted to open the area allowing this company

todas las fases de producción y transformación están dentro de la zona geográfica.

4) ¿Estarían interesados ahora en solicitar una DOP? ¿y por cuales razones?

No lo planteamos. Ambas son de reconocimiento europeo y tienen el mismo nivel de protección.

5) ¿Como juzgaría la información facilitada a los productores (desde los organismos nacionales y europeos) sobre la diferencia entre DOP e IGP, y en particular sobre la intensidad del vínculo con el territorio, para la redacción de los pliegos de condiciones?

La información facilitada es bastante pobre.

6) ¿Cuál es su opinión sobre el doble régimen de calidad DOP e IGP para los productos agrícolas y alimenticios de la Unión Europea?

Me parece bien que haya un doble régimen de calidad diferenciado por la intensidad del vínculo (por ejemplo, la IGP Botillo del Bierzo en que la materia prima procede de fuera de la zona geográfica de producción, se protege la elaboración del producto). Lo único que creo que al principio se concedían más DOP.

El proceso de reconocimiento de la IGP se ha llevado a cabo con la Junta Castilla y León en los años 2000, en un periodo en que se concedieron muchas DOP. Así que creo que se intentaron poner algunas limitaciones al registro de DOP, requiriendo un vínculo más fuerte con el territorio que no pudimos demostrar (diferentemente de la Manzana Reineta del Bierzo PDO que demostraron características organolépticas únicas debidas al vínculo con el territorio).

to enter. Currently this company ceased its activity and all phases of production and transformation take place within the geographical area.

4) Would you be interested in applying for a PDO now? And for what reasons?

We did not consider the issue. Both are of European recognition and have the same level of protection.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

There is little information.

6) What is your opinion on the double EU quality regime PDO and PGI for agricultural products and foodstuffs in the EU?

It seems good to me that there is a double quality regime differentiated by the intensity of the link (for example, the Botillo del Bierzo PGI in which the raw material comes from outside the geographical area of production, the making of the product is protected). Nonetheless, I believe that at the beginning more PDOs were granted.

The process of recognition of the PGI has been carried out with the Municipality of Castilla y León in the 2000s, in a period in which many PDOs were granted. I think they tried to put some limitations on the PDO registry, requiring a stronger link with the territory that we could not demonstrate (differently from the Bierzo PDO Reineta Apple that demonstrated unique organoleptic characteristics due to the link with the territory).

ENTRETIEN AGNEAU DU POITOU-
CHARENTES IGP
17.07.2019

**1) Quel est votre rôle au sein de l'ODG ?
Veuillez indiquer votre formation
professionnelle (avocat, agronome,
économiste, etc.).**

Je suis directrice de l'ODG depuis le 1^{er} juillet 2019, auparavant j'étais chargée des certifications au sein de ce même ODG. Je m'occupais de l'application du cahier des charges et des plans de contrôle pour l'ensemble de la filière. Aujourd'hui je participe avec la gouvernance de l'ODG aux décisions qui peuvent être prises par rapport à la filière et à la démarche qualité.

Par rapport à ma formation je suis ingénieur agronome avec une spécialité sur les liens entre les agricultures, les territoires et leur développement.

**2) Pouvez-vous décrire les facteurs naturels
et humains qui lient le produit au territoire ?**

L'Agneau du Poitou-Charentes présente un lien direct au territoire par le mode d'élevage pratiqué. Il s'agit d'un élevage en semi-plein air, les troupeaux pâturent pour une partie de l'année et pendant l'hiver ils restent à l'intérieur en bâtiment à cause des conditions météorologiques défavorables. L'élevage reste sur des zones bocagères, c'est à dire des petites parcelles entourées de haie où d'autres productions agricoles sont difficilement envisageables.

Le lien indirect au territoire est déterminé par les races indiquées dans le cahier des charges. Il s'agit des races qui sont historiquement présentes sur le territoire avec des croisements qui permettent aux éleveurs d'obtenir une certaine qualité de viande et des animaux adaptés aux conditions pédoclimatiques du territoire. L'âge d'abattage des animaux dépend des éleveurs (minimum 70 jours). La durée de pâturage minimale est de 7 mois. Pour la

INTERVIEW AGNEAU DU POITOU-
CHARENTES PGI 17.07.2019

**1) What is your role within the producers'
group? Please briefly mention your
academic and professional background
(lawyer, agronomist, economist, etc.).**

I have been director of the producers' group since July 1, 2019, previously I was in charge of certifications within this same group. I was in charge of applying the specifications and control plans for the entire sector. Today I participate with the governance of the producers' group in the decisions that can be taken in relation to the supply chain and the quality measures.

In relation to my background, I am an agricultural engineer with a specialty in the links between agriculture, territories and their development.

**2) Could you describe the natural and
human factors that link the product to the
territory?**

L'Agneau du Poitou-Charentes has a direct link to the territory through the breeding method. It is a semi-open-air breeding, the herds graze for part of the year and during the winter they remain indoors in buildings due to unfavorable weather conditions. Livestock farming remains in bocage areas, i.e. small plots surrounded by hedges where other agricultural production is difficult to envisage.

The indirect link to the territory is determined by the breeds indicated in the specifications. These are breeds that are historically present in the territory with crosses that allow breeders to obtain a certain quality of meat and animals adapted to the pedoclimatic conditions of the territory. The slaughter age of the animals depends on the breeders (minimum 70 days). The minimum grazing period is 7 months. For the

provenance des fourrages, la zone IGP avait été retenue du fait de périodes de sécheresse au niveau des zones de production. Le fait de mettre zone IGP et pas d'exploitation permettait de pouvoir trouver d'autre fourrages dans la zone, mais dans la totalité des cas (hors des périodes de sécheresse) c'est l'éleveur qui produit lui-même la paille et le fourrage pour ses animaux. En générale, l'agneau reste toujours avec sa mère sauf pendant les dernières semaines de sa vie pour la phase de finition pour avoir une qualité bouchère optimale. Le fourrage sera vert ou sec en relation au moment de l'année.

Toute les phases de production, abattage inclus, sont réalisées dans l'aire géographique IGP.

3) Lors de la demande d'enregistrement de l'indication géographique, pourquoi a été demandé une IGP ? Aurait-il été possible de demander une AOP ?

Le choix de l'IGP est lié à la structure de notre filière. Dans les années '80, la vente de viande provenant du Royaume Uni, avec un prix plus compétitif, a fait tomber le marché local. La filière ovine a beaucoup souffert pour cette concurrence et on s'est posés la question de structurer le marché et segmenter l'offre utilisant la réputation du produit et déposant une marque commerciale qui mentionnait l'origine de production. Dans les années suivants, les responsables professionnels ont choisi une certification de conformité produit (CCP), une démarche qui permettait de garantir un certain nombre de caractéristiques liées à la production, abattage etc. Quand l'ODG a été mise en place on a voulu avoir un signe de qualité mentionnant l'origine géographique. Comme on avait déjà une CCP, avec un cahier des charges qui s'apparaissait à ce qu'on connaît aujourd'hui, l'IGP était la seule possibilité juridique à l'époque.

L'Agneau du Poitou-Charentes a aussi le Label Rouge. Dans les filières viandes, le Label Rouge est très reconnu par les consommateurs français.

origin of the fodder, the PGI zone had been selected due to periods of drought in the production zones. The fact of putting a PGI zone and no exploitation made it possible to find other fodder in the zone, but in all cases (except during periods of drought) it is the breeder who produces the straw himself and fodder for his animals. In general, the lamb always stays with its mother except during the last weeks of its life for the finishing phase to have an optimal butchery quality. The fodder will be green or dry depending on the time of year.

All production phases, slaughter included, are carried out in the PGI geographical area.

3) When the application for registration of the GI was made, why a PGI was requested? Would have been possible to apply for a PDO?

The choice of the PGI is linked to the structure of our sector. In the 1980s, the sale of meat from the United Kingdom, with a more competitive price, caused a crisis in the local market. The business has suffered a lot for this competition and the question arose of structuring the market and segmenting the offer using the reputation of the product and filing a trademark that mentioned the origin of production. In the following years, the management chose a product conformity certification (CCP), an approach which made it possible to guarantee a certain number of characteristics linked to production, slaughter, etc. When the producers' group was set up, we wanted to have a quality sign mentioning the geographical origin. As we already had a CCP, with specifications that appeared to what we know today, the PGI was the only legal possibility at the time.

Agneau du Poitou-Charentes also obtained the Label Rouge. In the meat sectors, the Label Rouge is highly recognized by French consumers.

3.1) Qu'est-ce qu'empêchait la démarche en AOP ?

En la filière viande il y a très peu d'AOP, les filières se sont plus orientées vers l'IGP, car on valorise plutôt un savoir-faire et pas un lien au terroir. Je pense qu'aurait été possible d'aller vers une AOP, mais l'IGP était plus adaptée à la manière ou était structure la filière.

3.2) Donc il n'y avait pas une impossibilité juridique, mais on a préféré l'IGP pour raisons de rapidité et simplicité et flexibilité ?

Oui, par ailleurs dans le cas d'une AOP ce sont des frontières naturelles qui déterminent la zone d'appellation ce qui n'était pas le cas pour notre IGP.

4) Aujourd'hui, seriez-vous intéressé à demander une AOP ? Et pour quelles raisons ?

Aujourd'hui je ne crois pas que ce soit un sujet d'intérêt, eu égard à la délimitation de la zone d'appellation et son origine administrative. L'AOP n'est pas forcément un signe qualité très répandu et connu dans la filière viande. En fait, dans le secteur ovin il y a seulement une AOP le Prés-salés du Mont-Saint-Michel. Comment on pourrait justifier le passage en AOP ? C'est vrai qu'on a toutes les étapes de production et abattage dans la zone géographique, mais le lien au territoire est plutôt mis en relation avec la génétique des animaux et le mode d'élevage, par contre l'AOP réponds à des critères pédoclimatiques plus étroits.

5) Comment jugeriez-vous les informations fournies aux producteurs (par les organismes nationaux et européens) sur la différence entre AOP et IGP, et en particulier sur l'intensité du lien avec le territoire, pour la rédaction du cahier des charges ?

Nous faisons des actions de promotion pour le grand public, par contre on n'informe pas les producteurs sur la différence AOP/IGP, mais plutôt sur la différence entre IGP et Label

3.1) What was preventing you from getting a PDO?

In the meat sector, there are very few PDOs, the sectors are more oriented towards the PGI, because we value rather a know-how and not a link to the terroir. I think it would have been possible to go for a PDO, but the PGI was more suited to the way the sector was structured.

3.2) So it was not legally impossible, but you preferred the PGI for reasons of speed and simplicity and flexibility?

Yes, moreover for a PDO are the natural borders that determine the geographical area, which was not the case for our PGI.

4) Would you be interested in applying for a PDO now? And for what reasons?

Today I do not believe that this is a subject of interest, given the delimitation of the appellation area and its administrative origin. The PDO is not necessarily a very widespread and well-known quality sign in the meat industry. In fact, in the sheep sector there is only one PDO, the Prés-salés du Mont-Saint-Michel. How could we justify the switch to AOP? It is true that we have all the stages of production and slaughter in the geographical area, but the link to the territory is rather related to the genetics of the animals and the farming method, on the other hand the PDO responds to narrower pedoclimatic criteria.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

We do promotional actions for the general public, we do not inform producers about the difference PDO/PGI, but rather about the difference between IGP and Label

Rouge. Parfois on a des questions posées par des producteurs qui sont à la limite de la zone IGP et on va expliquer comment a été fait le zonage IGP de la démarche et quels critères ont été pris en compte.

6) Quel est votre avis sur le double régime de qualité des produits agricoles et des denrées alimentaires dans l'Union européenne (AOP et IGP) ?

Je trouve que le double régime est complémentaire. Sur des produits comme le vin et fromage, les filières ou l'AOP est plus répandu peuvent protéger un terroir avec des caractéristiques physiques spécifiques. Dans les filières IGP, on préserve plutôt un savoir-faire. Le lien au territoire est plus indirect que dans le cas de l'AOP, mais permet de rendre nos entreprises non délocalisables.

Le fait d'avoir un savoir-faire protégé par une IGP, par rapport à l'élevage et aux abattoirs, nous permet d'avoir une densité d'abattoirs localement présents et des avantages indirectes en termes de bien-être animal. L'IGP nous permet de préserver cette économie locale. Le fait d'avoir un mode d'élevage proche à l'IGP voisin (Agneau du Limousin) n'empêche pas que nos produits présentent des différences qui résultent des différents savoir faire par rapport aux techniques appliqués par les éleveurs.

6.1) Qu'est-ce que c'est pour vous la complémentarité entre AOP et IGP ?

Quand je parle de complémentarité entre AOP et IGP je ne pense pas aux démarches concurrentes (différents signes pour la même classe des produits), mais je pense que l'AOP est plutôt adapté à des filières comme vins et fromage et l'IGP à la filière viande (donc complémentarité entre les deux signes par rapport à produits différents).

C'est vrai que parfois on regarde certaines IGP que dans le fonctionnement et dans le lien au territoire sont très proche à une AOP. C'est aussi vrai que dans certains cas l'AOP pour la viande est justifié, mais pas dans notre cas.

Red. Sometimes we have questions asked by producers who are at the border of the PGI zone and we will explain how the IGP zoning of the process was done and what criteria were taken into account.

6) What is your opinion on the double EU quality regime PDO and PGI for agricultural products and foodstuffs in the EU?

I find that the dual regime is complementary. For products such as wine and cheese, PDO is more widespread and can protect a terroir with specific physical characteristics. In the PGI sectors, we rather preserve a know-how. The link to the territory is more indirect than in the case of the PDO, but makes it possible to make our companies non-relocatable.

The fact of having a know-how protected by a PGI, in relation to breeding and slaughterhouses, allows us to have a density of locally present slaughterhouses and indirect advantages in terms of animal welfare. The PGI allows us to preserve this local economy. The fact of having a breeding method close to the neighboring PGI (Agneau du Limousin) does not prevent our products from presenting differences which result from the different know-how in relation to the techniques applied by the breeders.

6.1) What do you mean with complementarity between PDO and PGI?

When I speak of complementarity between PDO and PGI I am not thinking of competing approaches (different signs for the same class of products), but I think that PDO is rather suited to sectors such as wine and cheese and PGI to meat sector (therefore complementarity between the two signs in relation to different products).

It is true that sometimes we look at certain PGIs that in their operation and in the link to the territory are very close to a PDO. It is also true that in some cases the PDO for meat is justified, but not in our case.

L'Agneau du Poitou-Charentes est plutôt lié au territoire avec le savoir-faire des producteurs, nos produits se basent sur les races traditionnelles du territoire, mais ces races peuvent aussi exister ailleurs, il n'y a pas une qualité de prairies typique du Poitou-Charentes on est sur des zones bocagères communes.

Agneau du Poitou-Charentes is rather linked to the territory with the know-how of the producers, our products are based on the traditional breeds of the territory, but these breeds can also exist elsewhere, there is not a typical grassland quality Poitou-Charentes, we are in common wooded areas.

ENTRETIEN ASSOCIATION FROMAGES
DE TERROIRS (CAMEMBERT DE
NORMANDIE AOP)

06.05.2020

1) Quel est votre rôle au sein de l'Association Fromages de Terroirs ? Pourriez-vous décrire brièvement votre formation professionnelle et/ou académique (avocat, agronome, économiste, etc.).

J'ai créé l'Association Fromages de Terroirs en 2001 pour défendre les fromages au lait cru en France. Je considérais que les fromages fermiers artisanaux étaient en danger, pour cette raison j'ai créé l'association et j'en suis actuellement la présidente.

Par rapport à ma formation professionnelle, j'ai fait une école de journalisme à Paris et j'ai pratiqué le métier pendant une quinzaine d'années en presse régionale et télévision. Ensuite, j'ai complété mon expérience professionnelle avec du conseil en communication et relations media pour des entreprises, ce qui m'a bien aidé à développer la communication de l'Association.

2) Selon vous, la modification du cahier de charges de l'AOP Camembert de Normandie aurait renforcé ou affaibli le lien du produit avec le terroir ? Pourquoi ?

Si on avait accepté la pasteurisation dans l'AOP ça aurait sans doute affaibli le lien au terroir car le lait cru est le marqueur absolu du terroir. Le lait cru oblige les producteurs à gérer la matière vivante et aussi à avoir des pratiques d'élevage plus respectueuses à la fois des animaux et du terroir. En revanche la pasteurisation ouvre la porte à l'agriculture intensive et à la pratique d'élevage intensive car la logique devient le volume et non pas la qualité. Aujourd'hui, avec tous les enjeux climatiques et de biodiversité la pasteurisation n'est plus une alternative intéressante pour le fromage AOP qui devraient être au 100% lait cru.

INTERVIEW ASSOCIATION FROMAGES
DE TERROIRS (CAMEMBERT DE
NORMANDIE PDO)

06.05.2020

1) What is your role within the Association Fromages de Terroirs? Could you briefly describe your professional and/or academic background (lawyer, agronomist, economist, etc.).

I created the Association Fromages de Terroirs in 2001 to defend raw milk cheeses in France. I considered that artisanal farm cheeses were in danger, for this reason I created the association and I am currently its president.

In relation to my professional background, I went to journalism school in Paris and I practiced the profession for fifteen years in the regional press and television. Then, I completed my professional experience with consulting in communication and media relations for companies, which helped me to develop the communication of the Association.

2) In your opinion, the modification of the specifications of the PDO Camembert de Normandie would have strengthened or weakened the link of the product with the terroir? Why ?

If we had accepted pasteurization in the PDO, it would undoubtedly have weakened the link to the terroir because raw milk is the absolute marker of the terroir. Raw milk obliges producers to manage living matter and also to have farming practices that are more respectful of both animals and the land. On the other hand, pasteurization opens the door to intensive agriculture and intensive breeding practices because the logic becomes volume and not quality. Today, with all the climate and biodiversity issues, pasteurization is no longer an interesting alternative for PDO cheese, which should be 100% raw milk.

Une telle modification du cahier aurait aggravé la confusion des consommateurs et aurait été durement critiquée par l'ensemble des producteurs européens (pas seulement français).

3) Avez-vous des exemples d'autres AOP françaises qui utilisaient exclusivement du lait cru et désormais ont adopté une combinaison de lait cru et lait thermisé ou pasteurisé ?

Sur 46 AOP, presque la moitié autorisent la pasteurisation du lait. Par rapport au volume, deux tiers de la production sont fait avec du lait cru. En fait le volume de production du fromage au lait cru reste important grâce au Comté, sans compter le Comté la pasteurisation est majoritaire en volume.

Le principe de la pasteurisation est accepté en France, donc en effet, le Camembert aurait pu adopter la pasteurisation du lait. Néanmoins, ça aurait été le premier cahier de charge déjà écrit en 100% lait cru à accepter la pasteurisation. Les autres cahiers de charge qui acceptent la pasteurisation (par exemple, Maroille, Fourme de Montbrison, Époisses, etc.) ont été écrits directement en mixte, admettant lait cru et pasteurisation.

Le sens de l'histoire aujourd'hui est plutôt d'aller vers le lait cru. Il y a l'exemple du Chabichou du Poitou, avec un cahier de charges qui admettait originellement le lait cru et pasteurisé, qui a demandé de passer au 100% lait cru, car on avait noté un abaissement de la qualité et un détournement des consommateurs. Savencia Fromage & Dairy, un gros industriel qui fabrique du Chabichou, a annoncé vouloir quitter l'AOP en cas d'adoption d'un cahier des charges exclusivement basé sur le lait cru. Dans ce cas, les AOP resteraient réservées à l'artisanat, au fermier, aux petites PME en retrouvant les fermiers qui avaient claqué la porte de l'AOP à l'époque.

4) Pourquoi, pour mieux différencier les produits, on n'a pas créé une IGP pour le Camembert cœur de gamme et une AOP pour le Camembert haut de gamme ?

Such a modification of the specifications would have aggravated the confusion of consumers and would have been harshly criticized by all European producers (not only French).

3) Do you have examples of other French PDOs which used exclusively raw milk and have now adopted a combination of raw milk and thermised or pasteurised milk?

Out of 46 PDOs, almost half authorize the pasteurization of milk. In terms of volume, two thirds of production is made with raw milk. In fact, the volume of production of raw milk cheese remains high thanks to the Comté, without counting the Comté, pasteurization is the majority in volume.

The principle of pasteurization is accepted in France, so indeed, Camembert could have adopted the pasteurization of milk. Nevertheless, it would have been the first specification already written in 100% raw milk to accept pasteurization. The other specifications that accept pasteurization (for example, Maroille, Fourme de Montbrison, Époisses, etc.) were written directly in mixed, admitting raw milk and pasteurization.

The direction of history today is rather to go towards raw milk. There is the example of Chabichou du Poitou, with specifications that originally admitted raw and pasteurized milk, which asked to switch to 100% raw milk, because they had noted a lowering of quality and a diversion of consumers. Savencia Fromage & Dairy, a large industrialist who manufactures Chabichou, has announced that it wants to leave the PDO in the event of the adoption of specifications based exclusively on raw milk. In this case, PDOs would remain reserved for craftsmen, the farmer, small SMEs by finding the farmers who had slammed the door of the PDO at the time.

4) Why, to better differentiate the products, they did not create an IGP for the mid-range Camembert and an AOP for the top-of-the-range Camembert?

L'INAO ne voulait pas faire coexister une AOP et une IGP, solution qui aurait pu différencier clairement le segment. Ils ont voulu tout de suite faire un compromis et créer une grande AOP qu'aurait arrangé les intérêts de tout le monde, en particulier des plus gros. Toutes les autres pistes n'ont pas été explorées. À la filière laitière locale, on a donné une réponse négative par rapport à l'option IGP sans donner trop d'explications.

5) Quel est votre opinion sur le futur du Camembert de Normandie ?

Suite au refus du CNAOL par rapport à la coagulation et standardisation et le vote négatif de l'ODG, l'Association, suite à un travail médiatique et d'information publique, insiste sur la création d'une IGP lait pour créer une filière lait de qualité et une meilleure rémunération aux producteurs.

En particulier, nous avons proposé de ne pas modifier le cahier de charge pour l'AOP mais de créer un lait de Normandie IGP. Cette solution pourrait différencier un Camembert AOP d'un Camembert industriel, ce dernier étant toutefois réalisé avec du lait de Normandie qui permet de définir un territoire et un cahier de charges avec un protocole d'élevage (plus de vaches normandes) pour les producteurs laitiers qui veulent rentrer dans un contexte de valorisation.

Le débat continue.

The INAO did not want a PDO and a PGI to coexist, a solution which could have clearly differentiated the segment. They immediately wanted to make a compromise and create a large PDO that would have suited everyone's interests, especially the biggest ones. All other avenues have not been explored. At the local dairy chain, they gave a negative response to the PGI option without giving too many explanations.

5) What is your opinion on the future of Camembert de Normandie?

Following the refusal of the CNAOL in relation to coagulation and standardization and the negative vote of the ODG, the Association, following media and public information work, insists on the creation of a milk PGI to create a milk sector quality and better remuneration for producers.

In particular, we proposed not to modify the specifications for the PDO but to create a Normandy PGI milk. This solution could differentiate a Camembert PDO from an industrial Camembert, the latter being however made with milk from Normandy which makes it possible to define a territory and a specification with a breeding protocol (more Norman cows) for dairy producers who want to enter into a context of valuation.

The debate continues.

ENTREVISTA MIEL DE GALICIA IGP
05.08.2019

1) ¿Cuál es su rol dentro del Consejo Regulador? Por favor, indique su formación profesional (abogado, agrónomo, economista, etc.).

Soy la presidenta del Consejo Regulador Miel de Galicia y soy veterinaria especializada en apicultura. Mi rol dentro del Consejo Regulador consiste en la defensa y aplicación del reglamento, vigilancia fomento y control de la calidad, poniendo en valor este producto diferenciado además de dirigir su promoción.

2) ¿Podría describir los factores naturales y humanos que vinculan el producto con el territorio?

De cara a los factores naturales, el producto esta íntimamente ligado con el territorio. Las particulares características del suelo granítico, las condiciones climáticas y las distintas floraciones se repercuten en las características organolépticas de la Miel de Galicia. En razón de estas condiciones la Miel de Galicia es un producto completamente diferenciado del resto de la península ibérica.

De cara a los factores humanos, tenemos apicultores que recogen la miel de forma totalmente tradicional, primando la calidad del producto en todo el proceso de extracción y envasado. No está permitida la `pasteurización de la miel y no hay transformación del producto, todas las fases de producción están hechas en la manera más artesanal posible. Por ejemplo, la miel se recoge de forma artesanal preferentemente con escape de abejas o aire, sin utilización abusiva del ahumador y nunca empleando productos químicos repelentes para las abejas. No se permite la pasteurización de la miel para que se mantengan todas sus propiedades, la mayoría de las envasadoras hace realizan todos los procesos de forma manual.

INTERVIEW MIEL DE GALICIA PGI
05.08.2019

1) What is your role within the Regulatory Council? Please indicate your professional background (lawyer, agronomist, economist, etc.).

I am the president of the Galician Honey Regulatory Council and I am a veterinarian specialized in beekeeping. My role within the Regulatory Council consists of defending and applying the regulations, monitoring, promoting and controlling quality, valuing this differentiated product as well as directing its promotion.

2) Could you describe the natural and human factors that link the product with the territory?

In terms of natural factors, the product is closely linked to the territory. The particular characteristics of the granite soil, the climatic conditions and the different blooms have repercussions on the organoleptic characteristics of the Miel de Galicia. Due to these conditions, Miel de Galicia is a completely different product from the rest of the Iberian Peninsula.

Regarding human factors, we have beekeepers who collect honey in a completely traditional way, prioritizing the quality of the product throughout the extraction and packaging process. Pasteurization of honey is not allowed and there is no transformation of the product, all phases of production are made in the most traditional way possible. For example, honey is collected by hand, preferably with bee exhaust or air, without abusive use of the smoker and never using bee repellent chemicals. The pasteurization of honey is not allowed so that all its properties are maintained, most of the packaging machines do all the processes manually.

La Miel de Galicia tiene una clara vinculación histórica al territorio y reputación además de un gran patrimonio etnográfico. Se piense por ejemplo a la albariza, una construcción rural a cielo abierto de forma ovalada, conformada por muros altos de piedra con el fin de proteger las colmenas y dificultar la entrada de animales (principalmente osos). Estas construcciones, como reflejo de la época, permanecen visibles y en algunos casos todavía utilizables hoy, en muchas áreas de montaña.

Además, todas las fases de producción, transformación y envasado tienen lugar en el área geográfica.

3) A la hora de solicitar el registro de la indicación geográfica, ¿por qué se solicitó una IGP? ¿Hubiera sido posible solicitar una DOP?

Pues yo de aquella aún no estaba en la IGP, pero por lo que me comentan desde la Consellería que la tramitó, existía en la legislación española previa a la regulación europea, luego se determinó la equivalencia entre denominación de origen y DOP, de un lado, y denominación específica e IGP, de otro lado.

Yo creo que se hubiera podido solicitar una DOP sin ningún problema, sobre todo porque como ya expliqué todas las fases son dentro del territorio. También es verdad que era más fácil acreditar el vínculo con el territorio como IGP que como DOP. Sobre todo, si se toma en cuenta que el área geográfica de la IGP Miel de Galicia es amplia y distinta. De todas formas, ser IGP no supone ser de menor categoría, el grado de protección es exactamente el mismo. Y destacar que en el caso de las IGP hay detrás una reputación del producto que también es muy importante y, en nuestro caso así lo es, pues ya se nombraba la Miel de Galicia en el Códice Calixtino y además hay mucho patrimonio etnográfico, etc..

4) ¿Estarían interesados ahora en solicitar una DOP? ¿y por cuales razones?

Miel de Galicia has a clear historical link to the territory and reputation as well as a great ethnographic heritage. Think, for example, of the albariza, an open-air rural construction in an oval shape, made up of high stone walls in order to protect the hives and make it difficult for animals (mainly bears) to enter. These constructions, as a reflection of the time, remain visible and in some cases still usable today, in many mountain areas.

In addition, all the phases of production, transformation and packaging take place in the geographical area.

3) When requesting the registration of the geographical indication, why you applied for a PGI? Would it have been possible to apply for a PDO?

Well, I was not yet in the PGI at that time, but from what they tell me from the public body that processed it, it existed in the Spanish legislation prior to European regulation, then the equivalence between appellation of origin and PDO was determined, on the one hand, and specific denomination and IGP, on the other hand.

I believe that a PDO could have been requested without any problem, above all because, as I have already explained, all the phases are within the territory. It is also true that it was easier to prove the link with the territory as PGI than as PDO. Above all, if you take into account that the geographical area of the PGI Miel de Galicia is wide and different. In any case, being a PGI does not mean being of a lower category, the degree of protection is exactly the same. And it should be noted that in the case of PGIs, there is a reputation behind the product, which is also very important and, in our case, it is, since Miel de Galicia was already named in the Codex Calixtinus and there is also a lot of ethnographic heritage, etc..

4) Would you now be interested in requesting a PDO? and for what reasons?

Creo que se conocen más las DOP que las IGP. Nosotros intentamos transmitir al consumidor que ambas son sinónimo signos de calidad y origen; y que otorgan el mismo nivel de protección para los productos amparados. La diferencia más importante es que en la IGP todas las fases de producción no tienen que ser dentro de la misma área geográfica. Pero aunque la Miel de Galicia sea IGP, tenemos todas las fases de producción, transformación y envasado dentro del área geográfica, como se puede comprobar en el pliego.

De momento no creo que estemos interesados a pasar a DOP, en particular por toda la documentación administrativa que este cambio conllevaría. Además de momento estamos trabajando sobre una modificación del pliego de condiciones, y por lo que sabemos de otros ya es bastante complicada a nivel administrativo.

5) ¿Como juzgaría la información facilitada a los productores (desde los organismos nacionales y europeos) sobre la diferencia entre DOP e IGP, y en particular sobre la intensidad del vinculo con el territorio, para la redacción de los pliegos de condiciones?

Se supone que los productores tendrían que ser más formados por estar dentro del sector. Pero, en realidad, hay bastantes productores que no conocen la diferencia entre DOP e IGP, incluso gente que se da de alta en la Miel de Galicia y preguntan porque somos IGP y no DOP.

Pienso que hay un poco de confusión entre los dos logotipos. Desde mi punto de vista la información no tendría que estar dirigida tanto a diferenciar entre DOP e IGP, más bien se debería transmitir a productores y consumidores que ambas son figuras de calidad diferenciada, y en nuestro caso lo que es la Miel de Galicia y su diferencia en términos cualitativos debida a su origen.

Y lo que comentan muchas veces es que realmente no tienen información o la información no se transmite de la forma adecuada, creo que aunque se hagan campañas de divulgación no llegan a todos.

I think PDOs are better known than PGIs. We try to convey to the consumer that both are synonymous signs of quality and origin; and that grant the same level of protection for the covered products. The most important difference is that in the PGI all phases of production do not have to be within the same geographical area. But although Miel de Galicia honey is a PGI, we have all the phases of production, transformation and packaging within the geographical area, as can be seen in the specifications.

At the moment I don't think we are interested in moving to a PDO, particularly because of all the administrative documentation that this change would entail. In addition, at the moment we are working on a modification of the specifications, and from what we know of others it is already quite complicated at the administrative level.

5) How would you judge the information provided to producers (from national and European bodies) on the difference between PDO and PGI, and in particular on the intensity of the link with the territory, for the drafting of the specifications?

It is assumed that the producers would have to be more trained to be within the sector. But, in reality, there are quite a few producers who do not know the difference between PDO and PGI, including people who register with Miel de Galicia and ask why we are PGI and not PDO. I think there is a bit of confusion between the two logos. From my point of view, the information should not be aimed so much at differentiating between PDO and PGI, rather it should be conveyed to producers and consumers that both are figures of differentiated quality, and in our case, what is Miel de Galicia and its difference in qualitative terms due to its origin.

And what they comment many times is that they really do not have information or the information is not transmitted in the right way, I think that even if they do outreach campaigns they do not reach everyone.

6) ¿Cuál es su opinión sobre el doble régimen de calidad DOP e IGP para los productos agrícolas y alimenticios de la Unión Europea?

Pues creo que a lo mejor no tendríamos que ir tanto a la diferenciación DOP e IGP sino más a la unión de los dos sellos de calidad. Entonces más que estar informando y formando a los consumidores y poner tanto empeño en la diferenciación entre DOP e IGP sería más beneficioso enseñar que ambos son sellos de calidad, que tienen el mismo nivel de protección y transmitir la diferencia en términos cualitativos debida al origen de los productos.

6) What is your opinion on the dual PDO and PGI quality regime for agricultural and food products in the European Union?

Well, I think that perhaps we should not go so much to the PDO and PGI differentiation but rather to the union of the two quality symbols. So rather than informing and educating consumers and putting so much effort into differentiating between PDO and PGI, it would be more beneficial to teach that both they are quality symbols, which have the same level of protection and convey the difference in qualitative terms due to the origin of the products.

INTERVISTA OLIO DI CALABRIA PGI
05.08.2019

1) Qual è il suo ruolo all'interno del Consorzio? Si prega di indicare brevemente la propria formazione accademica e professionale (es. avvocato, agronomo, economista, ecc.).

Sono Presidente del Consorzio di Tutela dell'IGP Olio di Calabria. La mia qualifica professionale è quella di ragioniere.

2) Potrebbe descrivere i fattori naturali e umani che vincolano il prodotto al territorio?

Occorre innanzitutto sottolineare che l'IGP Olio di Calabria è riservata all'olio ottenuto da olive provenienti da cultivar autoctone. Inoltre, tutte le fasi del processo di produzione: coltivazione, raccolta, oleificazione avvengono all'interno della zona geografica delimitata.

Con riferimento ai fattori naturali, il clima temperato ad estate secca che caratterizza il territorio regionale è particolarmente favorevole alla coltivazione delle olive. Le alte temperature, ed i prolungati periodi di siccità estiva, rappresentano un importante fattore ambientale che interviene nella determinazione di alcuni indici di qualità del prodotto, quali il contenuto fenolico e la composizione acidica, con particolare riferimento ai valori dell'acido oleico che assicurano specificità al prodotto.

Con riferimento ai fattori umani, i gesti d'impianto, le forme d'allevamento, i sistemi di potatura e la irrigazione degli oliveti destinati alla produzione dell'IGP Olio di Calabria sono quelli tradizionalmente usati o, in ogni modo, atti a non modificare le caratteristiche delle olive e dell'olio.

La raccolta delle olive deve essere effettuata nel periodo compreso tra il 15 settembre ed il 15 gennaio dell'annata di produzione olearia. È d'obbligo la raccolta delle olive direttamente dalla pianta, sia essa realizzata manualmente, per il tramite di ausili meccanici di agevolazione, o con scuotitori, mentre è vietato l'utilizzo delle olive cadute naturalmente sul terreno e sulle reti permanenti.

INTERVIEW OLIO DI CALABRIA IGP
05.08.2019

1) What is your role within the Consortium? Please indicate briefly your academic and professional background (e.g. lawyer, agronomist, economist, etc.).

I am President of the Consortium for the Protection of Olio di Calabria PGI. As regards my professional qualification I am an accountant.

2) Could you describe the natural and human factors that link the product to the territory?

First of all, it should be emphasized that the IGP Olio di Calabria is reserved for oil obtained from olives from indigenous cultivars. In addition, all stages of the production process: cultivation, harvesting, oil making take place within the defined geographical area.

With reference to natural factors, the temperate climate with dry summer that characterizes the regional territory is particularly favorable to the cultivation of olives. The high temperatures, and the prolonged periods of summer drought, represent an important environmental factor that intervenes in the determination of some product quality indices, such as the phenolic content and the acidic composition, with particular reference to the oleic acid values that ensure specificity to the product.

With reference to human factors, the planting layouts, the forms of farming, the pruning systems and the irrigation of the olive groves intended for the production of the Olio di Calabria PGI are those traditionally used or, in any case, capable of not modifying the characteristics of olives and oil.

The olive harvest must be carried out in the period between September 15 and January 15 of the oil production year. It is mandatory to harvest the olives directly from the plant, whether it is done manually, by means of mechanical facilitating aids, or with shakers, while it is forbidden to use olives that have fallen naturally on the ground and on permanent nets.

3) Al momento della registrazione dell'indicazione geografica, perché è stata richiesta una IGP? Sarebbe stato possibile richiedere una DOP?

Non ci siamo posti il problema di richiedere una DOP Olio di Calabria. Non solo il territorio sarebbe stato troppo grande, ma vi sarebbero stati problemi con riferimento alle DOP più piccole situate all'interno dello stesso territorio che avrebbero corso il rischio di sparire.

Sarebbe inoltre stato decisamente restrittivo richiedere una DOP per quanto riguarda i quantitativi disponibili. La DOP identifica un determinato comune e una determinata quantità produttiva, con limitazioni precise. Avendo già registrato delle DOP per l'olio in Calabria (Lametia, Bruzio e Alto Crotonese) abbiamo preferito optare per l'IGP, avendo così a disposizione un diverso segno di qualità. La IGP dà più flessibilità preservando la qualità del prodotto, anche con riferimento a volumi di produzione più elevati. L'aver ottenuto la registrazione dell'Olio di Calabria dà la possibilità a chi opera all'interno del territorio della DOP di vendere il proprio prodotto sotto l'IGP. Concretamente, la DOP identifica una cultivar specifica di un dato territorio, mentre la IGP no. Per esempio, un'azienda con 3000 piante, di cui 1000 cultivar autoctone di un determinato comune e altre no, non può ottenere la DOP perché le diverse cultivar non possono coesistere.

4) Ad oggi, il consorzio sarebbe interessato a richiedere una DOP? E per quali ragioni?

No

4.1) Qual è il rapporto che si è venuto a creare tra la IGP Olio di Calabria e le DOP più piccole (Lametia, Bruzio, Alto Crotonese)?

3) When registering the geographical indication, why you applied for a PGI? Would it have been possible to apply for a PDO?

We did not ask ourselves the problem of requesting a DOP Olio di Calabria. Not only would the territory have been too large, but there would have been problems with reference to the smaller PDOs located within the same territory which would have run the risk of disappearing.

It would also have been very restrictive to request a PDO as regards the quantities available. The PDO identifies a specific municipality and a specific production quantity, with precise limitations. Having already registered PDOs for oil in Calabria (Lametia, Bruzio and Alto Crotonese), we preferred to opt for the PGI, thus having a different sign of quality available.

The PGI gives more flexibility while preserving the quality of the product, even with reference to higher production volumes. Having obtained the registration of Calabria oil gives the possibility to those who work within the PDO territory to sell their product under the PGI. Concretely, the PDO identifies a specific cultivar of a given territory, while the PGI does not. For example, a company with 3000 plants, of which 1000 native cultivars of a given municipality and others not, cannot obtain the PDO because the different cultivars cannot coexist.

4) To date, would the consortium be interested in applying for a PDO? And for what reasons?

No

4.1) What is the relationship that has been created between the PGI Olio di Calabria and the smaller PDOs (Lametia, Bruzio, Alto Crotonese)?

Le DOP hanno una autonomia propria e una collocazione su mercati diversi. Non c'è sovrapposizione o concorrenza, piuttosto c'è una complementarità dovuta ad una identificazione particolare dei diversi prodotti, con grandi differenze in termini di quantitativi di produzione. Le DOP sono più di nicchia con un diverso impatto sul mercato. L'IGP è una realtà più grande, nel nostro caso regionale, e conferisce una connotazione più precisa all'identità olivicola della regione e non di un singolo territorio che risulta sconosciuto alla maggior parte dei consumatori.

Inoltre, può darsi che una certa produzione di olive dentro ad una DOP che non obbedisce ai rigidi requisiti del disciplinare possa trovare sbocco nell'IGP, dando vita ad un rapporto di complementarità tra i due segni di qualità. O magari per una questione di mercato i produttori situati all'interno della DOP potrebbero preferire di vendere il loro prodotto sotto l'IGP.

5) Come giudica le informazioni fornite ai produttori (da organizzazioni nazionali ed europee) sulla differenza tra DOP e IGP, e in particolare sull'intensità del legame con il territorio, al momento della redazione dei disciplinari di produzione?

Abbiamo attinto ai regolamenti europei e alla legislazione in vigore. Il rapporto con gli organismi nazionali e con gli esperti del settore ci ha permesso di ricostruire la storia del prodotto e le sue caratteristiche e proprietà organolettiche al fine di redigere il disciplinare di produzione.

6) Qual è la sua opinione sul doppio regime di qualità DOP e IGP per i prodotti agricoli e alimentari nell'Unione europea?

PDOs have their own autonomy and a position on different markets. There is no overlap or competition, rather there is a complementarity due to a particular identification of the different products, with great differences in terms of production quantities. PDOs are more niche with a different impact on the market. The PGI is a larger reality, in our regional case, and gives a more precise connotation to the olive-growing identity of the region and not to a single territory that is unknown to most consumers.

Furthermore, it may be that a certain production of olives within a PDO that does not obey the strict requirements of the specification may find an outlet in the PGI, giving rise to a complementary relationship between the two signs of quality. Or perhaps for a question of the market, producers located within the PDO may prefer to sell their product under the PGI.

5) How do you judge the information provided to producers (by national and European organizations) on the difference between PDO and PGI, and in particular on the intensity of the link with the territory, at the time of drafting the production regulations?

We have drawn on European regulations and existing legislation. The relationship with national bodies and with experts in the sector has allowed us to reconstruct the history of the product and its characteristics and organoleptic properties in order to draw up the production specification.

6) What is your opinion on the dual quality regime PDO and PGI for agricultural and food products in the European Union?

Si tratta di due segni di qualità che possono coesistere perché fanno riferimento a distinte aree territoriali e prevedono diversi requisiti per la loro registrazione. In questo senso, una IGP si differenzia rispetto ad una DOP.

Nel momento in cui le caratteristiche e i requisiti di DOP e IGP sono chiaramente distinguibili, il doppio regime di qualità permette di differenziare prodotti con caratteristiche diverse che fanno parte di un territorio e delle sue tradizioni.

These are two quality signs that can coexist because they refer to distinct territorial areas and provide for different requirements for their registration. In this sense, a PGI differs from a PDO.

When the characteristics and requirements of PDOs and PGIs are clearly distinguishable, the double quality regime makes it possible to differentiate products with different characteristics that are part of a territory and its traditions.

ENTRETIEN SAINT-MARCELLIN IGP
23.07.2019

**1) Quel est votre rôle au sein de l'ODG ?
Veuillez indiquer votre formation
professionnelle (avocat, agronome,
économiste, etc.).**

Je suis chargée des missions et communication. Je suis en charge du fonctionnement de l'ODG, tout ce qui est fonctionnent administrative, comptable, l'animation des conseils d'administration et des assemblées générales. Je suis également en charge de la gestion des dossiers techniques, notamment au niveau de la qualité des produits (qualité du lait et qualité des fromages). Je m'occupe aussi du marketing et de la communication.

Par rapport à ma formation, j'ai un bac+3 dans le domaine agricole-agroalimentaire. J'ai également un BTS et un certificat de spécialisation. Après je me suis spécialisée en marketing et communication avec des formations courtes.

2) Pouvez-vous décrire les facteurs naturels et humains qui lient le produit au territoire ?

Par rapport aux facteurs naturels, l'aire de production du Saint-Marcellin est une aire géographique très précise qui comprend des parcs naturels régionaux. On est sur un territoire avec des températures tempérées et assez marqué par le vent. On est à peu près sur le même territoire de l'AOP noix de Grenoble, ici le vent jouait un rôle important car permettait le séchage des noix et permettait aux fromagers de mettre à sécher le Saint-Marcellin.

Au niveau de l'élevage, on est sur un territoire où l'alimentation du troupeau est en autonomie locale, 80% de la matière sèche vient de la zone.

INTERVIEW SAINT-MARCELLIN PGI
23.07.2019

1) What is your role within the ODG? Please indicate your professional background (lawyer, agronomist, economist, etc.).

I am in charge of missions and communication. I am in charge of the operation of the ODG, all that is administrative, accounting, the animation of the boards of directors and the general assemblies. I am also in charge of managing technical files, particularly in terms of product quality (milk quality and cheese quality). I also take care of marketing and communication.

Concerning my training, I have a bac+3 in the agricultural-food industry. I also have a BTS and a certificate of specialization. Afterwards, I specialized in marketing and communication with short courses.

2) Can you describe the natural and human factors that link the product to the territory?

Compared to natural factors, the production area of Saint-Marcellin is a very precise geographical area which includes regional natural parks. We are in a territory with temperate temperatures and quite marked by the wind. We are almost on the same territory of the AOP walnuts of Grenoble, here the wind played an important role because allowed the drying of the nuts and allowed the cheese makers to dry the Saint-Marcellin.

At the livestock level, we are in a territory where the feeding of the herd is locally produced, 80% of the dry matter comes from the area.

Au niveau historique, le Saint-Marcellin remonte au 1870 et était lié au marché de Saint-Marcellin où il y avait des petits producteurs qui vendaient leur fromage. Au début c'était un fromage de lait de chèvre, après il y avait un mélange de lait de vache et de chèvre pour terminer avec exclusivement lait de vache. On est parti avec des petits producteurs qui se sont spécialisés pour vendre aussi dans les villes proches de Saint-Marcellin. En restant toujours avec une méthode de transformation assez fermière.

Au niveau du traitement du lait, on travaille avec du lait cru et du lait thermisé, on n'admette pas du lait pasteurisé.

Toutes les phases de la production, transformation et affinage ont lieu dans la zone IGP.

3) Lors de la demande d'enregistrement de l'indication géographique, pourquoi a-t-elle été demandée une IGP ? Aurait-il été possible de demander une AOP ?

Au début quand les professionnels ont commencé à travailler sur un signe de qualité, ils ont fait la première demande en AOP. Deux points ont bloqué le dossier: premièrement l'alimentation des animaux, les agriculteurs utilisaient la technique de l'enfilage (technique de conservation des végétaux) d'herbe et de maïs ; deuxièmement la thermisation du lait, pour obtenir l'AOP il faut que le produit soit exclusivement au lait cru. La démarche a été très longue et pour débloquer le dossier ils sont passés en IGP.

4) Aujourd'hui, seriez-vous intéressé à demander une AOP ? Et pour quelles raisons ?

4.1) Il y a-t-il d'autres producteurs en AOP qui utilisent la thermisation et l'enfilage ?

AOP plus anciennes comme l'AOP Sain Nectaire et Camembert utilisent l'ensilage et pasteurisent le lait, après quand on a déposé le dossier Saint Marcellin c'était plus possible. Aujourd'hui retourner sur la démarche AOP et IGP est hors de question.

Historiquement, Saint-Marcellin date de 1870 et était lié au marché de Saint-Marcellin où il y avait des petits producteurs qui vendaient leur fromage. Au début c'était un fromage de lait de chèvre, après il y avait un mélange de lait de vache et de chèvre pour terminer avec exclusivement lait de vache. On est parti avec des petits producteurs qui se sont spécialisés pour vendre aussi dans les villes proches de Saint-Marcellin. En restant toujours avec une méthode de transformation assez fermière.

Au niveau du traitement du lait, on travaille avec du lait cru et du lait thermisé, on n'admette pas du lait pasteurisé.

Toutes les phases de la production, transformation et affinage ont lieu dans la zone IGP.

3) When applying for registration of the geographical indication, why was a PGI requested? Would it have been possible to apply for a PDO?

At the beginning when the professionals started to work on a quality sign, they made the first request for PDO. Two points blocked the file: first animal feed, farmers used the threading technique (plant preservation technique) grass and corn; secondly the thermisation of the milk, to obtain the PDO the product must be exclusively raw milk. The process was very long and to unblock the file they opted for a PGI.

4) Today, would you be interested in applying for an AOP? And why ?

4.1) Are there other PDO producers who use thermisation and threading?

Older PDOs such as Sain Nectaire PDO and Camembert use threading and pasteurize the milk, after when we filed the Saint Marcellin this was no longer possible. Today, it is out of question to go back to the PDO.

On est tous conscients, au niveau des professionnels, que l'AOP est plus connu par les consommateurs que l'IGP. Si demain il y avait une démarche de basculement de l'IGP sur l'AOP on se poserait la question. En France le CNAOL fait pas mal de communication sur l'AOP et ça aiderai à développer la notoriété de notre signe.

5) Comment jugeriez-vous les informations fournies aux producteurs (par les organismes nationaux et européens) sur la différence entre AOP et IGP, et en particulier sur l'intensité du lien avec le territoire, pour la rédaction du cahier des charges ?

Je n'ai pas l'impression qu'il y a énormément d'information sur ce point. Moi la première, quand je suis arrivée dans l'univers des signes de qualité, j'ai mis un moment avant de comprendre la différence entre IGP et AOP. Surtout si on pense que toutes nos étapes de production sont faites dans la zone géographique. On doit expliquer régulièrement la raison pour laquelle on est une IGP et pas une AOP, la différence entre les deux signes n'est pas toujours évidente.

5.1) Initialement vous avez commencé une démarche en AOP. Pendant la démarche vous avez découvert qu'il y avait des phases de production qui n'étaient pas en ligne avec la moderne conception d'AOP. Peut-être que les informations fournies aux professionnels de l'époque n'étaient pas trop claires ? Au contraire peut être qu'ils auraient initié une démarche en IGP.

Oui, je pense que là-dessus on manque d'information et que la différence AOP et IGP n'est pas trop claire.

We are all aware, at the professional level, that the PDO is better known by consumers than the PGI. If tomorrow there was a changeover from PGI to PDO, we would ask ourselves the question. In France, the CNAOL does a lot of communication on the PDO and that will help to develop the notoriety of our sign.

5) How would you judge the information provided to producers (by national and European bodies) on the difference between PDO and PGI, and in particular on the intensity of the link with the territory, for the drafting of the specifications?

I don't think there's a lot of information on this. When I arrived in the world of quality signs, it took me a while to understand the difference between PGI and PDO. Especially if we think that all our production steps are done in the geographical area. We must regularly explain the reason why we are a PGI and not a PDO, the difference between the two signs is not always obvious.

5.1) Initially you started with a PDO. During the process you discovered that there were production phases that were not in line with the modern design of a PDO. Perhaps the information provided to professionals at the time was not too clear? On the contrary, perhaps they would have initially requested a PGI.

Yes, I think that there is a lack of information on this and that the difference between PDO and PGI is not too clear.

5.1) Au niveau français, un groupe de travail a été créé en 2017 à cheval entre le Comité national des appellations laitières, agroalimentaires et forestières et le comité LR IGP STG qui a pour fonction (entre autres) de formuler des recommandations auprès de ces deux comités sur la différenciation entre AOP et IGP. Vous avez eu des rapports avec cet organisme ?

No, je n'ai pas connaissance des rapports avec ce groupe de travail.

6) Quel est votre avis sur le double régime de qualité des produits agricoles et des denrées alimentaires dans l'Union européenne (AOP et IGP) ?

Personnellement, je travaille beaucoup sur la communication et le marketing et je trouve que tous ces signes de qualité sont confus dans la tête du consommateur. Déjà entre AOP et IGP, les différences sont compliquées à expliquer, en plus en France il y a d'autres signes comme le label rouge et d'autres marques territoriales qui se rajoutent. Il faudrait faire un effort sur la communication de ces signes de qualité car la différence soit claire aux consommateurs.

5.1) At the French level, a working group was created in 2017 between the National Committee for Dairy, Agri-food and Forest Designations and the LR IGP STG Committee, whose function (among other things) is to make recommendations to these two committees on the differentiation between PDO and PGI. Have you had any relationship with this organization?

No, I am not aware of any relationship with this working group.

6) What is your opinion on the dual quality regime for agricultural products and foodstuffs in the European Union (PDO and PGI)?

Personally, I work a lot on communication and marketing and I find that all these signs of quality are confused in the consumer's head. Already between PDO and PGI, the differences are complicated to explain, in addition in France there are other signs such as the red label and other territorial marks which are added. An effort should be made on the communication of these signs of quality because the difference is clear to consumers.

ENTRETIEN GENISSE FLEUR
D'AUBRAC IGP
05.08.2019

**1) Quel est votre rôle au sein de l'ODG ?
Veuillez indiquer votre formation
professionnelle (avocat, agronome,
économiste, etc.).**

J'ai une formation en tant qu'ingénieur agronome. Mon rôle au sein de l'ODG se partage entre tâches d'administration et d'animation, qui consistent en faire connaître les signes de qualité.

**2) Pouvez-vous décrire les facteurs naturels
et humains qui lient le produit au
territoire ?**

Au niveau des facteurs naturelles, il y a un facteur race, c'est à dire la rusticité de la mère qui est de race Aubrac. On conserve cette rusticité pour élever des animaux au pâturage une grande partie de l'année et on apporte un croisement Charolais pour les qualités bouchères.

En plus on est sur un territoire qui a des contraintes environnementales qui font qu'on ne peut pas élever les animaux d'une manière différente de celle qu'on fait aujourd'hui. C'est à dire que nos éleveurs sont pour la majorité naisseur et pas engraisseur, car ils n'ont pas la possibilité de faire de céréales. En créant l'ODG la volonté était d'encourager l'engraissement sur le territoire.

Toutes les phases de la production, inclus l'abatage, ont lieu dans la zone. Par rapport au fourrage il doit être issu de l'exploitation ou référencé par la fleur d'Aubrac, dans ce dernier cas il ne vient pas forcément du territoire. Généralement comme le bassin de la Fleur d'Aubrac c'est l'Aubrac, le fournisseur d'aliment produisent des aliments référencés dans les usines sur le terroir ou en proximité. Mais il n'y a pas une obligation que le fourrage doit procéder de la zone.

**3) Lors de la demande d'enregistrement de
l'indication géographique, pourquoi a été
demandé une IGP ? Aurait-il été possible de
demander une AOP ?**

INTERVIEW GENISSE FLEUR
D'AUBRAC PGI
05.08.2019

**1) What is your role within the ODG? Please
indicate your professional background
(lawyer, agronomist, economist, etc.).**

I have a background as an agricultural engineer. My role within the ODG is divided between tasks of administration and promotion, which consist in making the quality signs known.

**2) Can you describe the natural and human
factors that link the product to the territory?**

In terms of natural factors, there is a breed factor, i.e. the hardiness of the mother who is Aubrac breed. We keep this hardiness to raise animals on pasture for a large part of the year and we bring a Charolais cross for meat qualities.

In addition, we are in a territory that has environmental constraints that mean that we cannot raise animals in a different way from the one we do today. That is to say that our breeders are for the most part breeders and not fatteners, because they do not have the possibility of making cereals. By creating the ODG the desire was to encourage fattening on the territory.

All phases of production, including slaughter, take place in the area. In relation to the fodder, it must come from the farm or be referenced by the Fleur d'Aubrac, in the latter case it does not necessarily come from the territory. Generally as the Fleur d'Aubrac basin is Aubrac, the feed supplier produces feed referenced in factories on the land or nearby. But there is no obligation that the fodder must come from the area.

**3) When applying for registration of the
geographical indication, why you applied
for a PGI? Would it have been possible to
apply for a PDO?**

L'AOP était trop contraignante par rapport à la zone géographique. Le problème pour demander une AOP est que le sol des différentes zones de l'Aubrac n'est pas suffisamment homogène. En plus il s'agit d'une zone assez large pour une AOP (313 communes dans quatre départements) et réduire la zone géographique aurait été extrêmement compliqué.

4) Aujourd'hui, seriez-vous intéressé à demander une AOP ? Et pour quelles raisons ?

Non, voir réponse point 3.

5) Comment jugeriez-vous les informations fournies aux producteurs (par les organismes nationaux et européens) sur la différence entre AOP et IGP, et en particulier sur l'intensité du lien avec le territoire, pour la rédaction du cahier des charges ?

Même moi, je n'étais pas très au courant de la différence qui existe entre les deux. Dans notre cahier de charge, même si on n'est pas une AOP, on a fait en sorte que l'animal soit élevé et abattu dans la zone (c'est qui normalement fait la différence entre AOP et IGP, à part la densité de la zone).

Honnêtement, je pense que AOP et IGP sont assez méconnus des éleveurs et des consommateurs, qui ne savent pas bien à quoi correspond. S'agissant des signes de qualité, les consommateurs connaissent extrêmement bien le Label Rouge.

6) Quel est votre avis sur le double régime de qualité des produits agricoles et des denrées alimentaires dans l'Union européenne (AOP et IGP) ?

Je crois que ça porte à confusion car même les producteurs ne font pas la différence. L'AOP est beaucoup plus contraignant que l'IGP mais les consommateurs ne le savent pas, dès lors devient compliqué justifier le prix d'un produit par rapport à un autre. Chaque signe a ses contraintes mais la différence n'est pas claire et on perd complètement les consommateurs.

The PDO was too restrictive in relation to the geographical area. The problem with applying for a PDO is that the soil in the different areas of Aubrac is not sufficiently homogeneous. In addition, it is a fairly large area for a PDO (313 municipalities in four departments) and reducing the geographical area would have been extremely complicated.

4) Today, would you be interested in applying for a PDO? And why ?

No, see answer point 3.

5) How would you judge the information provided to producers (by national and European bodies) on the difference between PDO and PGI, and in particular on the intensity of the link with the territory, for the drafting of the specifications?

Even I was not very aware of the difference between the two. In our specifications, even if we are not a PDO, we have ensured that the animal is raised and slaughtered in the area (this is what normally makes the difference between PDO and PGI, apart from the density of the area).

Honestly, I think that PDO and PGI are relatively unknown to breeders and consumers, who don't really know what they mean. When it comes to quality signs, consumers are extremely familiar with Label Rouge.

6) What is your opinion on the dual quality regime for agricultural products and foodstuffs in the European Union (PDO and PGI)?

I think it's confusing because even the producers don't know the difference. The AOP is much more restrictive than the IGP but consumers do not know it, therefore becomes complicated to justify the price of a product compared to another. Each sign has its constraints but the difference is not clear and we completely lose consumers.

ANNEX V – Interviews with non-EU producers

ENTREVISTA CAFÉ DE COLOMBIA
01.08.2019

1) ¿Cuál es (o ha sido) su rol dentro del Consejo Regulador? Por favor, indique su formación profesional (abogado, agrónomo, economista, etc.).

Inicialmente, fui invitado ocasional al comité nacional de cafeteros cuando se trataban temas de denominación de origen. A partir del 2009, y hasta el año 2015, fui invitado permanente a las sesiones del comité. También participaba de forma permanente a las reuniones de la Comisión de Propiedad Intelectual a la cual se delegó el tema del registro de la IGP Café de Colombia en la UE.

En relación a mi formación profesional, tengo una formación en economía y un MBA, después he cursado una maestría en derecho y una especialización en evaluación de intangibles.

2) ¿Su país [en este caso Colombia] tiene un sistema de protección de las IGs? ¿Podría describirlo brevemente?

La Decisión 486 de la Comunidad Andina no prevé una diferenciación entre indicación geográfica y denominación de origen como la ley europea. Las denominaciones de origen cubren todos los estadios desde el procesamiento total dentro el territorio hasta el procesamiento parcial en el territorio. Para propósitos prácticos en la ley colombiana no hay la palabra indicación geográfica, entonces de cara al registro europeo una denominación de origen colombiana puede registrarse como una DOP o una IGP.

INTERVIEW CAFÉ DE COLOMBIA
01.08.2019

1) What is (or what has been) your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

Initially, I was occasionally invited at the meetings of the National Committee of Coffee Growers to discuss issues related to Denomination of Origin. From 2009 until 2015, I was permanently invited at the committee sessions. I also participated permanently in the meetings of the Intellectual Property Commission in charge of the issue of registering the PGI Café de Colombia.

In relation to my professional education, I have a background in economics and an MBA, then I have completed a master's degree in law and a specialization in evaluation of intangible assets.

2) Does your country have a *sui generis* GI protection system? Could you briefly describe it?

Decision 486 of the Andean Community does not provide for a differentiation between geographical indication and designation of origin as in EU law. [Colombian] Designations of origin cover all stages from total processing within the territory to partial processing in the territory. For practical purposes, the expression 'geographical indication' does not exist in Colombian law. Therefore, a Colombian designation of origin can enter the EU Register as a PDO or a PGI.

La Decisión 486 en lo que se refiere a las Denominaciones de Origen está reglamentada de forma diferente en los diferentes países andinos. En el caso de Colombia la superintendencia de Industria y Comercio exige además de los elementos formales y de la demostración de la relación calidad del producto y origen probada, un reglamento de uso y la definición de la entidad que asumirá el control (o la delegación) de la expedición de las autorizaciones de uso de la DO. Esta es muy importante pues en el caso colombiano el estado (que es titular de todas las denominaciones de origen) le delega bajo ciertas condiciones a la entidad privada que demuestra legítimo interés colectivo de sus beneficiarios en asumir las riendas de la DO con una perspectiva privada y de negocio.

3) ¿Podría describir los factores naturales y humanos y las fases de la producción que vinculan el producto con el territorio?

El pliego colombiano y el europeo desarrollan mucho el tema de la reputación del producto con el territorio.

En relación a los factores naturales se tiene que mencionar la cantidad y la distribución de la lluvia a lo largo del año, influenciada por la topografía del territorio, que permite la producción o cosecha de café a lo largo del año. Hay también una cultura de calidad que se traduce en el tema de la cosecha selectiva (que es también consecuencia de más de una estación de lluvia en el año), un sistema institucional de calidad que permite trazar el producto desde su región de origen hasta los mercados finales.

Decision 486 regarding designations of origin is regulated differently in the different Andean countries. In Colombia, the Superintendence of Industry and Commerce requires, in addition to the formal elements and the demonstration of the relationship between product quality and proven origin, a regulation of use and the definition of the entity that will assume control (or the delegation) of the issuance of authorizations to use the DO. This is very important because in Colombia the State (which is the owner of all the designations of origin) delegates their use to the private entity that demonstrates the legitimate collective interest of its beneficiaries in assuming the reins of the DO with a business perspective.

3) Could you describe the natural and human factors that link the product to the territory and the production steps that take place in the area of production?

The Colombian and European product specifications greatly develop the issue of reputation of the product with the territory.

In relation to natural factors, the quantity and distribution of rainfall throughout the year must be mentioned, influenced by the topography of the territory, which allows the production or harvest of coffee throughout the year.

There is also a quality culture that translates into the theme of selective harvesting (which is also the consequence of more than one rainy season in the year), a quality institutional system that allows the product to be traced from its region of origin to the end markets.

Al ser la primera indicación geográfica de un país tercero registrada en la UE, el pliego de Café de Colombia tenía algunas diferencias en relación a las IG europeas. La relación entre calidad y territorio está demostrada por elementos científicos más que culturales, como se puede encontrar en las denominaciones regionales de Café en Colombia. El elemento de tradición y cultura (muy presente en las IG europeas) tiene un peso y una relevancia distinta, proporcionado a los eventos históricos del país.

Tenemos otro elemento de diferencia en relación a la definición de territorio. una definición que tiene altitud, latitud, delimitaciones políticas (ej. provincias) y rango de altitud.

4) ¿Porque el producto se ha registrado en la UE? ¿Cuales son las ventajas y las desventajas?

La decisión de registrar la IGP en la UE fue una decisión propia del Café de Colombia, no fue consecuencia de un acuerdo bilateral o de un acuerdo de cooperación. Para entender las razones de esta decisión se tiene que hacer una digresión en relación al concepto de origen del producto, desde una perspectiva de comercio internacional o arancelaria. Las reglas de origen de los tratados de comercio (OMC. Multilaterales o bilaterales) atribuyen el origen utilizando diferentes principios o doctrinas. La doctrina del valor agregado, por ejemplo, considera que el origen del producto tiene lugar en la zona en que ocurren suficientes fases de producción y ensamble, aun que los componentes procedan de otro territorio. Al contrario, el principio de totalmente obtenido, en particular para los productos agrícolas, considera que el producto está totalmente obtenido en el lugar donde fue cultivado. El principio de transformación substancial considera que el origen arancelario se adquiere en el sitio donde el producto se transforma.

Being the first geographical indication of a third country registered in the EU, the product specification of Café de Colombia had some differences in relation to European GIs. The relationship between quality and territory is demonstrated by scientific rather than cultural elements, as can be found in the regional designations of coffee in Colombia. The element of tradition and culture (very present in European GIs) has a different weight and relevance, proportionate to the country's historical events.

We have another element of difference in relation to the definition of territory. a definition that has altitude, latitude, political boundaries (eg provinces) and altitude range.

4) Why you registered your products in the EU? What are the main pros and cons encountered?

The decision to register the PGI in the EU was a decision of Café de Colombia, it was not the consequence of a bilateral agreement or a cooperation agreement. To understand the reasons for this decision, a digression must be made in relation to the concept of origin of the product, from the perspective of international or tariff trade. The rules of origin of trade agreements (WTO. Multilateral or bilateral) attribute the origin using different principles or doctrines. The doctrine of added value, for example, considers that the origin of the product takes place in the area where sufficient production and assembly phases occur, even if the components come from another territory. On the contrary, the principle of totally obtained, in particular for agricultural products, considers that the product is totally obtained in the place where it was grown. The principle of substantial transformation considers that the tariff origin is acquired in the place where the product is transformed.

En relación al comercio de café, los países productores consideran que el producto está totalmente obtenido en el país de origen. Los países importadores opinan que el proceso de tostón implica una transformación substancial, por lo tanto, el origen del café es el lugar donde tiene lugar el proceso de tostión o solubilización. Aunque estos principios se supone aplican solo al comercio, pueden tener consecuencias en el etiquetado del producto puesto que las autoridades de etiquetado pueden utilizarlos para propósitos de aplicar sus normas. Vale la pena recordar que en el campo del etiquetado cada país tiene una autoridad y puede interpretar estos temas de atribución de origen de forma diferente. En general, cuando se aplica la doctrina de la transformación sustancial en los grandes centros de consumo de café, un café colombiano tostado en un país europeo o norteamericano se consideraría un café del país donde se tostó, y así lo reflejaría su etiquetado. Para poder mencionar el origen colombiano del café se hace una excepción para propósito de etiquetados que está vigente pero puede ser suprimida en cualquier momento si varía el contexto o las circunstancias políticas. Por lo tanto, había el riesgo de perder, en la comunicación con los consumidores, la mención ‘colombiano’ según la interpretación de las distintas autoridades de etiquetados en referencia a la doctrina de transformación sustancial. En otras palabras después de inmensos esfuerzos de comunicación y de control de calidad Colombia estaba en riesgo de “perder su origen”. Una forma de evitar este riesgo es la de mantener la relevancia y prevalencia, por la vía de la propiedad intelectual, de la existencia del origen.

In relation to the coffee trade, the producing countries consider that the product is totally obtained in the country of origin. Importing countries believe that the roasting process involves a substantial transformation, therefore, the origin of coffee is the place where the roasting or solubilization process takes place. Although these principles are supposed to apply only to trade, they may have consequences for product labelling since labelling authorities may use them for purposes of enforcing their standards. It is worth remembering that in the field of labelling, each country has an authority and can interpret these attribution of origin issues differently. In general, when the doctrine of substantial transformation is applied in large coffee consumption centers, a Colombian roasted coffee in a European or North American country would be considered a coffee from the country where it was roasted, and this would be reflected in its labelling. In order to mention the Colombian origin of coffee, an exception is made for the purpose of labelling that is in force but can be deleted at any time if the context or political circumstances vary. Therefore, there was the risk of losing, in communication with consumers, the ‘Colombian’ mention according to the interpretation of the different labelling authorities in reference to the doctrine of substantial transformation. In other words, after immense communication and quality control efforts, Colombia was at risk of “losing its origin”. One way to avoid this risk is to maintain the relevance and prevalence, through intellectual property, of the existence of the origin.

Otros motivos están asociados con razones clásicas para registrar la denominación de origen, como mislabeling, competencia desleal, abuso de reputación etc. En este campo la defensa del origen en EU por esta vía es menos costosa (considerando también la protección de oficio) que en otros países como por ejemplo en Estados Unidos donde era necesario luchar contra las marcas que quieren registrar la palabra Colombia para café aun cuando existiese una marca de certificación registrada. Precisamente gracias a la notoriedad del caso de Café de Colombia en Europa incluso la USPTO aceptó modificar sus manuales de examinador para evitar este tipo de casos.

5) A la hora de solicitar el registro de la indicación geográfica, ¿por qué se solicitó una IGP? ¿Hubiera sido posible solicitar una DOP?

Las denominaciones de origen en Colombia no implican que todas las fases tengan lugar en el mismo territorio (como la DOP europea). La fase de tuestión del café se puede hacer fuera del área geográfica para razones comerciales y de distribución del producto.

Cabe recordar que Colombia es el tercer país productor de café en el mundo y, por lo tanto, tiene que tener una estrategia comercial distinta de la de otros países con producciones mas pequeñas, como por ejemplo Jamaica. En nuestro caso, no había la posibilidad en corto plazo de tostar todo nuestro producto en Colombia y distribuirlo empacado a todos los países donde se exporta sin el concurso de tostadores internacionales. Necesitábamos que la industria tostadora europea viera nuestra estrategia de defensa del origen y entendiese que se podía generar valor también para tostadores europeos.

Other reasons are associated with classic reasons for registering the designation of origin, such as mislabelling, unfair competition, abuse of reputation etc. In this field, defense of origin in the EU through this route is less expensive (also considering ex officio protection) than in other countries, such as the United States, where it was necessary to fight against brands that want to register the word Colombia for coffee, even when There is a registered certification mark. Precisely thanks to the notoriety of the Café de Colombia case in Europe, even the USPTO agreed to modify its examiner manuals to avoid this type of case.

5) At the time of registration, why you applied for a PGI? Would have been possible to apply for a PDO?

Designations of origin in Colombia do not imply that all phases take place in the same territory (such as the European PDO). The roasting phase of coffee can be done outside the geographical area for commercial and distribution reasons of the product.

It should be remembered that Colombia is the third country producing coffee in the world and, therefore, it must have a different commercial strategy from that of other countries with smaller productions, such as Jamaica. In our case, there was no possibility in the short term of roasting all our product in Colombia and distributing it packaged to all the countries where it is exported without the competition of international roasters. We needed the European roasting industry to see our defense of origin strategy and understand that value could also be generated for European roasters.

A nivel teórico hubiera sido posible solicitar una DOP poniendo todas las fases de transformación incluyendo la torrefacción en Colombia, pero esto hubiera generado otros problemas pues en la práctica se convertiría en un producto de nicho y se afectaría la demanda de café colombiano que están tostando y comercializando café 100% colombiano de buena fe. La decisión de ir en IGP es un claro balance no solo del origen de la producción, pero también de la necesidad de optimizar la distribución del café colombiano a el mayor número posible de consumidores en el mundo.

6) ¿Estarían interesados ahora en solicitar una DOP? ¿y por cuales razones?

Podría haber una propuesta de mercadeo frente a productos tostados en origen aunque tendría un espacio comercial reducido en las condiciones actuales dado los costos de distribución. De hecho hay muchos tostadores colombianos haciendo este negocio pero su penetración en los mercados internacionales no se ha incrementado sustancialmente. Al realizar un ejercicio comercial y estratégico es necesario entender que no debemos limitarnos al análisis del punto de vista de la propiedad intelectual. Tomar decisiones solo con ese foco puede favorecer a que los tostadores comercialicen solamente mezclas, mientras que al producto de café colombiano le interesa que los consumidores consuman orígenes únicos.

At a theoretical level, it would have been possible to request a PDO by putting all the stages of transformation, including roasting in Colombia. This would have generated other problems, since in practice it would become a niche product and would affect the demand for Colombian coffee that they are roasting and marketing 100% Colombian coffee in good faith. The decision to go to PGI is a clear balance not only of the origin of the production, but also of the need to optimize the distribution of Colombian coffee to the largest possible number of consumers in the world.

6) Today, would you be interested in applying for a PDO? And for what reasons?

There could be a demand for roasted products at origin, although it would have a reduced commercial space under current conditions given the distribution costs. In fact, there are many Colombian roasters doing this business, but their penetration in international markets has not increased substantially. When carrying out a commercial and strategic exercise, it is necessary to understand that we should not limit ourselves to the analysis of the intellectual property point of view. Making decisions with only that focus can favor roasters to market only blends, while Café de Colombia is interested in consumers consuming unique origins.

7) ¿Cómo juzgaría la información facilitada a los productores (desde los organismos nacionales y europeos) sobre la diferencia entre DOP e IGP, y en particular sobre la intensidad del vínculo con el territorio, para la redacción de los pliegos de condiciones?

En general las diferencias entre DOP e IGP son claras. Hay también unas diferencias prácticas, que pueden tener consecuencias comerciales y en la cadena de valor y de distribución según el producto en cuestión. En el caso del café creo que es mejor optar para una IGP, mas fácil en términos de acceso al mercado, y eventualmente migrar en DOP.

Desde el punto di vista del consumidor puede tener un riesgo de confusión. Los recursos de la UE para explicar a los consumidores de varios países con distintos idiomas son limitados. Podría hacerse campaña de mercadeo utilizando códigos QR u otras estrategias digitales que lleven más información al consumidor.

8) ¿Cuál es su opinión sobre el doble régimen de calidad DOP e IGP para los productos agrícolas y alimenticios de la Unión Europea?

En mi opinión, Café de Colombia tendría que mantenerse IGP mientras algunos cafés regionales podrían migrar a DOP. Esto depende de las circunstancias del caso concreto y el desarrollo de sus cadenas de distribución para definir más estrategias de valor agregado.

7) How would you judge the information provided by the EU on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory for drafting the product specifications?

In general, the difference between DOP and PGI are clear. There are also practical differences, which may have commercial and value chain and distribution consequences depending on the product in question. In the case of coffee, I think it is better to opt for a PGI, easier in terms of market access, and eventually migrate in PDO.

From the consumer's point of view, there may be a risk of confusion. EU resources to explain to consumers in various countries with different languages are limited. You could do a marketing campaign using QR codes or other digital strategies that bring more information to the consumer.

8) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

In my opinion, Café de Colombia would have to remain PGI while some regional coffees could migrate to DOP. This depends on the circumstances of the specific case and the development of its distribution chains to define more value-added strategies.

INTERVIEW FENALÅR FRA NORGE

24.02.2020

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I am the head of the board, FFN is a consortium grouping 5 companies, which is the holder of the PGI in Norway. I am a food Scientist, graduated from the agricultural university in Norway (NMBU). As for my professional background, I am research director in the largest meat company in Norway.

2) Does your country have a *sui generis* GI system? Could you briefly describe your national GI system?

Norway has adopted a *sui generis* GI system modelled on the EU GI Regulation. In order to export Norwegian products in the EU market, we have decided to apply for EU logos that are known by the EU consumers

3) Could you describe the natural and human factors that link the product to the territory and the production steps that take place in the area of production?

Historically, in Norway there were few pigs, but we have had domesticated sheep and lamb for thousand of years, so the meat used for dry curing was mainly lamb. This is clearly reflected in the product specifications of 'Fenalår fra Norge', the raw material is leg of lamb or mutton born, raised and slaughtered in Norway.

The application for the Norwegian PGI started in 2006. A historian was contacted to find out whether this production was limited to Norway or if was common also to other neighboring countries. The conclusion of the study is that as long as we have documentation (around 900 years) the production of dry cured leg of lamb (Fenalaar fra Norge) is spread all around Norway.

The production of 'Fenalår fra Norge' has been part of the Norwegian traditions for the last 900 years. The knowledge and expertise of making 'Fenalår fra Norge' has been handed down through generations, gaining expertise on how production should be adapted to local conditions, such as salting process, temperature, humidity and wind/air conditions.

The accumulated knowledge of selecting the right quality of mutton thighs, how to massage the thighs, the know-how of salting- and drying process to get the mild salty taste, and the right consistency, are all important factors for the renowned quality of 'Fenalår fra Norge'.

Additional designation such as 'Traditional' or 'Matured' identify the different quality of the products. In particular, the term 'Matured' identifies a niche product with a longer processing time and due to this higher price than Traditional.

4) Why you registered your products in the EU? What are the main pros and cons encountered?

The main reason, as already mentioned, is to export the product to the EU and the fact that the customers demands it. Another reason is that the EU symbol is more known in Norway than the Norwegian logo. In particular, different dry cured products bearing the EU symbol are imported in Norway, giving visibility to the EU symbols before Norwegian consumers.

5) At the time of registration, why you applied for a PGI? Would have been possible to apply for a PDO?

Yes, it would have been possible to apply for a PDO. We applied for a PGI because it has a better regulation (more legal protection) than a PDO. In particular, PGI producers have to follow the product specifications more strictly, producers cannot use the logo without permission from the consortium and the PGI have a stronger juridical protection than PDO.

Fenalaar have been produced all over Norway for a very long time. This means Norway is the geographical area not a city, valley or small region of the country. The five consortium are situated in different citites/communities in Norway sothern, western and mid Norway. If we applied for a PDO we would have to apply for five different PDOs.

6) Today, would you be interested in applying for a PDO? And for what reasons?

No, it hasn't been discussed and I don't think it will be discussed in the future. In addition, our application is quite recent (2017), I think it is too early to re-discuss the quality symbol.

7) How would you judge the information provided by the EU on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

The difference is clear to producers and to the consortium. The Norwegian system mirrors the EU one, therefore, we receive a lot of information from Norwegian authorities as well.

Norwegian consumers don't know the difference between PDOs and PGIs. They easily recognize the trade mark but can hardly associate it to a specific quality symbol.

8) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

I don't have a really good answer to this question because I don't have a deep knowledge of the PDO system.

INTERVIEW TØRRFISK FRA LOFOTEN

13.02.2020

1) What is your role within the producers' group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

As regards my education, I have a degree in economics. I have been working for a company producing stock fish for 13 years. Starting from this November, I started working for the Consortium, in particular promoting the PGI Tørrfisk Fra Lofoten in Italy.

2) Does your country have a sui generis GI system? Could you briefly describe your national GI system?

GI system is organized by the Stiftelsen Norsk Mat (Norwegian Food Foundation) national certification body in Norway. The application for the recognition of the GI at the national level started in 2002. The Norwegian GI was granted in 2007, in 2014 we obtained the EU PGI label. The Norwegian GI system is similar to the EU one, with both PDOs and PGIs.

3) Could you describe the natural and human factors that link the product to the territory and the production steps that take place in the area of production?

The production starts in winter, during fish migration in cold temperature waters from the Barents Sea to Lofoten and Vesterålen, giving a muscular and slim fish of high-quality.

In that time of the year, from January to April, the climatic conditions are ideal for naturally drying the fish outside. Starting from May and June, the fish is stored inside warehouses, where it continues its maturation until the end of summer. Natural drying of fish has taken place in Lofoten since Vikings. The knowledge of drying and grading has been handed down by generations in Lofoten and is an important part of Norwegian heritage.

All the manufacturing process takes place in Lofoten, but the fish can be captured also in Vesterålen (province beside Lofoten).

4) Why you registered your products in the EU? What are the main pros and cons encountered?

Before the registration of the PGI, we experienced a decrease in sales. In particular, stock fish was a commodity and producers were competing in the market through price and not quality. The PGI label would have allowed us to achieve a premium price in reason of our quality.

4.1) How you obtained your PGI in the EU? Through a direct registration or a cooperation agreement?

Maybe the consortium filed a direct registration to the EU.

5) At the time of registration, why you applied for a PGI? Would have been possible to apply for a PDO?

When we were applying for the quality label we were thinking of applying for a PDO but there was very little migration of fish to Lofoten. To be able to keep the production we had to enlarge the fishing zone, including neighboring areas, namely Vesterålen.

6) Today, would you be interested in applying for a PDO? And for what reasons?

Today the fish is back to Lofoten, therefore, we could apply for a PDO. If we want to get a PDO we should change our product specifications and re-start the recognition process. The problem is that the process has been quite long and changing the quality label is not perceived as an issue. As regards the future, I don't think we would apply for a PDO.

6.1) Have you considered to have a regional PGI together with a local PDO?

No. Today our efforts are mainly aimed at increasing the recognition of the product in the Italy, one of our biggest markets.

7) How would you judge the information provided by the EU on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

In Italy there is a big divide between PDO and PGI but I am not sure if everyone understands the difference between the two labels.

In Norway, on the contrary, there is poor understanding of the EU quality labels. These are mainly known through imported products.

8) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

I think it is useful but it takes time to communicate the difference. The case of the Aceto Balsamico di Modena is a good example where the quality labels help differentiating among different products.

INTERVIEW KOPI ARABIKA GAYO PGI

23.07.2019

1) What is your role within the producers group? Please briefly mention your academic and professional background (lawyer, agronomist, economist, etc.).

I am in charge of the General Secretary of Gayo Coffee Protection Society. We registered our product in the EU as a PGI under the name of Kopi Arabika Gayo, through a Trade Cooperation Facility project between the EU and the Ministry of Law and Human rights of Indonesia. Concerning my background, I am an economist.

2) Does your country have a sui generis GI system? Could you briefly describe your national GI system?

Yes, it is Law of the republic of Indonesia number 20 of 2016 on marks and geographical indications.

3) Could you describe the natural and human factors that link the product to the territory and the production steps that take place in the area of production?

There are natural and human factors that link the products to the territory. These are the elevation of the land, from 900 until 2000 m above the sea level, and the human skills on planting, maintaining the coffee tree, pruning, roasting that influence on the quality of the product.

‘Kopi Arabika Gayo’ is coffee, which satisfies the national standards, processed by the typical ‘Sumatra semi-washed method’ also known as ‘wet hulling’ method, and which has the following characteristics: uniform taste, bright acidity. In addition, ‘Kopi Arabika Gayo’ presents characteristics of unique complexity flavour and aroma, such as nutty, caramelly, chocolaty, fruity, light acidity, full body and long finish.

The colour of the bean before wet hulling is white greyish, after wet hulling, the colour of the bean is blue to bluish green.

All the production steps (semi-washed and fully washed) takes place in the production area.

4) Why you registered your products in the EU? What are the main pros and cons encountered?

We wanted to achieve legal protection in the EU. This is fundamental to export our product in the EU and to protect ourselves against the use of similar names or similar products. For example, Ethiopia registered ‘Amaro Gayo’ for coffee in the UK, this creates a risk of confusion for consumers.

5) At the time of registration, why you applied for a PGI? Would have been possible to apply for a PDO?

We have chosen a PGI in order to be able to roast our green beans also in other areas outside the zone of production. In this sense the PGI gives more flexibility.

6) Today, would you be interested in applying for a PDO? And for what reasons?

We applied for the PGI because we are also interested in exporting green beans. We have limited facilities and for the time being we cannot roast all the coffee beans we produce.

If in the future we will be able to carry on all production steps in the zone, we would apply for a PDO. The idea is to meet the expectations of those consumers interested in buying a coffee fully produced in Indonesia.

7) How would you judge the information provided by the EU on the difference between PDOs and PGIs, and in particular on the intensity of the link with the territory?

The PDO is used for products whose production takes place entirely in the zone while the PGI is used for those products having at least one production step taking place in the geographical area of production.

8) What is your opinion on the double (PDO and PGI) EU quality regime for agricultural products and foodstuffs?

In Indonesia we don't have a double link to origin, our definition is closer to the one of PGI. In my opinion, the double link to origin can ensure the quality of product and make clear to the consumer that processing takes entirely place in a given geographical area.

ANNEX VI – GIs often included in bilateral agreements

1	Nürnberger Bratwürste
2	Guijuelo
3	Jamón de Huelva
4	Jamón de Teruel
5	Salchichón de Vic
6	Canards à foie gras du Sud-Ouest: Chalosse
7	Jambon de Bayonne
8	Cotechino Modena
9	Zampone Modena
10	Bresaola della Valtellina
11	Mortadella Bologna
12	Prosciutto di Parma
13	Prosciutto di S. Daniele
14	Prosciutto Toscano
15	Szegedi téliszalámi
16	Tiroler Speck
17	Danablu
18	Φέτα
19	Mahón-Menorca
20	Queso Manchego
21	Comté
22	Reblochon
23	Roquefort
24	Camembert de Normandie
25	Brie de Meaux
26	Emmental de Savoie
27	Provolone Valpadana
28	Taleggio
29	Asiago
30	Fontina
31	Gorgonzola
32	Grana Padano
33	Mozzarella di Bufala Campana
34	Parmigiano Reggiano
35	Pecorino Romano
36	Queijo S. Jorge
37	Queijo Serra da Estrela
38	Gouda, Holland
39	Edam Holland
40	Idiazábal

41	Καλαμάτα
42	Σητεία Λασιθίου Κρήτης
43	Baena
44	Sierra Mágina
45	Aceite del Baix Ebre-Montsía
46	Aceite del Bajo Aragón
47	Antequera
48	Priego de Córdoba
49	Sierra de Cádiz
50	Sierra de Segura
51	Sierra de Cazorla
52	Siurana
53	Les Garrigues
54	Huile d'olive de Haute-Provence
55	Steirisches Kürbiskernöl
56	Ελιά Καλαμάτας
57	Cítricos Valencianos
58	Pruneaux d'Agen
59	Mela Alto Adige
60	Steirischer Kren
61	Pêra Rocha do Oeste
62	Huîtres de Marennes-Oléron
63	Žatecký Chmel
64	Hopfen aus der Hallertau
65	Azafrán de la Mancha
66	Aceto balsamico Tradizionale di Modena
67	Aceto balsamico di Modena
68	České pivo
69	Českobudějovické pivo
70	Bayerisches Bier
71	Münchener Bier
72	Nürnberger Lebkuchen
73	Lübecker Marzipan
74	Jijona
75	Turrón de Alicante
76	Μαστίχα Χίου
77	Huile essentielle de lavande de Haute-Provence

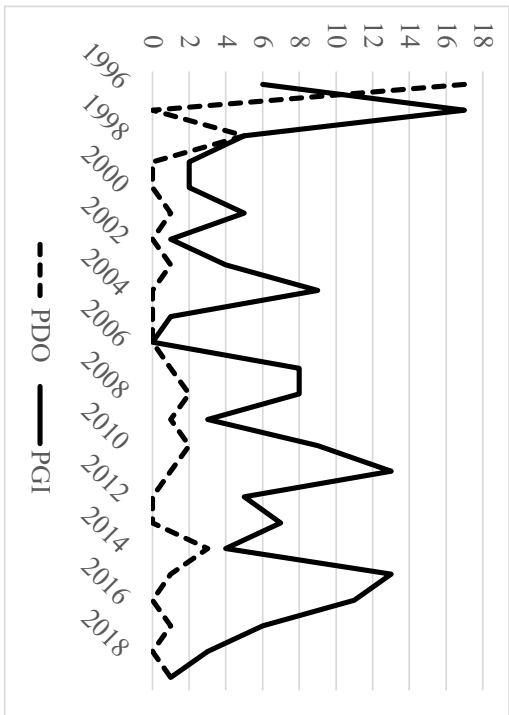
ANNEX VII – Analysis of GIs listed in bilateral agreements

Table 1. Analysis of GI lists concerning the percentages of PDOs contained in bilateral agreements.

Class	TOT	PDO	Armenia 1216	Moldova 856	Ukraine 813	Georgia 804	Mexico 190	Canada 144	SADC 110	Costa Rica 88	Singapore 84	Japan 72	South Korea 60	Vietnam 59	Peru Colombia 34
1.1	162	25,92%	26,03%	23,21%	23,42%	23,63%	0,00%	-	-	-	-	-	-	-	-
1.2	176	20,45%	21,47%	28,00%	28,12%	28,12%	39,53%	40,00%	43,48%	52,63%	41,18%	46,67%	50,00%	41,66%	42,85%
1.3	235	80,42%	82,38%	89,09%	91,22%	91,66%	86,21%	87,50%	87,88%	88,89%	90,90%	84,61%	94,73%	85,71%	86,67%
1.4	46	73,91%	73,17%	76,00%	76,00%	76,00%	50,00%	-	-	-	-	-	-	-	-
1.5	133	86,46%	87,50%	87,03%	86,79%	86,00%	83,87%	92,59%	91,67%	90,00%	100,00%	90,90%	100,00%	87,50%	100,00%
1.6	377	39,78%	39,72%	42,72%	42,28%	42,28%	42,10%	27,27%	50,00%	50,00%	9,09%	33,33%	25,00%	33,33%	50,00%
1.7	45	28,88%	28,20%	22,22%	22,22%	22,22%	0,00%	50,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%	0,00%
1.8	57	64,91%	69,56%	70,37%	73,07%	73,07%	63,63%	62,50%	57,14%	100,00%	60,00%	60,00%	100,00%	66,66%	100,00%

Table 2. Analysis of PDOs and PGIs for products under class 1.2 registered in the EU database at 1st January 2020.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	
PDO	17	0	5	0	0	1	0	1	0	0	0	1	2	1	2	1	0	0	3	1	0	1	0	0	1
PGI	6	17	5	2	2	5	1	4	9	1	0	8	8	3	9	13	5	7	4	13	11	6	3	1	



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● WORK EXPERIENCE

10/2021 – CURRENT – Luxembourg, Luxembourg

2ND ASSISTANT - CABINET SPINEANU-MATEI – COURT OF JUSTICE OF THE EUROPEAN UNION

- Analysis and follow-up of legal files, preparation and follow-up of deliberations and hearings, update of case monitoring tables and electronic agenda;
- Contribution to the drafting of preliminary reports on Intellectual Property in French;
- Case-law and doctrinal research on Intellectual Property.

02/2021 – 03/2021 – Luxembourg, Luxembourg

RÉFÉRENDAIRE - CABINET SPINEANU-MATEI – GENERAL COURT OF THE EUROPEAN UNION

Interim contract (1 month) - In charge of three orders on Community designs.

09/2020 – 02/2021 – Luxembourg, Luxembourg

TRAINEE - CABINET SPINEANU-MATEI – GENERAL COURT OF THE EUROPEAN UNION

- Contribution to the drafting of preliminary reports and draft judgements on EU trade marks and Community designs in French;
- Contribution to the presentation "Conflict between trade marks and designs", Case Law Conference, EUIPO, October 2020;
- Case-law and doctrinal research on various Intellectual Property issues.

09/2017 – 08/2020 – Alicante, Spain

RESEARCH ASSISTANT - COMMERCIAL LAW DEPARTMENT – UNIVERSITY OF ALICANTE

- Lecturer on EU trade marks and Community designs, including supervision of master's thesis on Intellectual Property;
- Research on Geographical Indications, namely scope of application of EU Regulation No 1151/2012, amendment of product specifications, and analysis of GI provisions contained in Free Trade Agreements;
- 4 months research stays at Cirad (research center based in Montpellier) and oriGIn (NGO based in Geneva);
- Member of the academic committee of IP conferences organised by the Commercial Law Department.

10/2016 – 08/2017 – Alicante, Spain

LEGAL ASSISTANT TRAINEE - 3RD BOARD OF APPEAL – EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (EUIPO)

- Decision drafting in English, Italian, and Spanish on European Union trade marks and Community designs;
- Member of the organization committee of the annual conference of the Boards of Appeal ('IP Case Law Laboratory');
- Participation in the Designs Knowledge Circle;
- Contribution to the book on mediation edited by the Boards of Appeal.

06/2016 – 09/2016 – Alicante, Spain

TRAINEE LAWYER – HOGAN LOVELLS LAW FIRM

- Drafting opposition and cancellation briefs, proceedings before the EUIPO;
- Drafting business-to-business letters in infringement proceedings, cease and desist letters, and trade mark co-existence and settlement agreements;
- Case law research, preparation of files on proof of use and reputation.

09/2014 – 07/2015 – Milan, Italy

TRAINEE LAWYER – TREVISAN & CUONZO LAW FIRM

- Drafting coexistence and license agreements of trade marks and patents;
- Case law research on patent infringement and unfair competition, litigation before Italian courts.

02/2013 – 05/2013 – Milan, Italy

LEGAL INTERN – ROSSOTTO & PARTNERS LAW FIRM

Case law research on intellectual property and civil law, infringement proceedings before Italian courts.

● **EDUCATION AND TRAINING**

09/2017 – CURRENT

JOINT PH.D. IN INTELLECTUAL PROPERTY LAW – University of Alicante - Maastricht University

Ph.D. funded by EU Horizon 2020 under the Marie Skłodowska-Curie Programme (grant agreement N. 721733).

Dissertation: 'A pragmatic approach to the link to origin: EU PDOs and PGIs for registration, innovation and trade in origin products', supervisors Prof. Dr. Pilar Montero Garcia-Noblejas, Prof. Dr. Anselm Kamperman Sanders; co-supervisor Dr. Anke Moerland.

Research focused on EU Regulation n. 1151/2012, namely on the difference between Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs). The methodology includes an analysis of over 1000 EU GI product specifications, comparison of GI provisions of Free Trade Agreements, around 20 interviews with EU and non-EU producer groups, and issues concerning the harmonisation of registration procedures among EU Member States.

Research stays at Cirad (Montpellier) and oriGIn (Geneva).

EQF level 8

09/2015 – 07/2016 – Alicante, Spain

MAGISTER LVCENTINVS LLM – University of Alicante

Master programme on Intellectual Property, awarded with half-scholarship.

Master Thesis: 'Towards a Digital Single Market: Free Flow of Data as a Tool for Enhancing Cloud Computing', supervisor Dr. Carmen Maria Garcia Mirete.

EQF level 7

09/2008 – 04/2015 – Milan, Italy

COMBINED BACHELOR AND MASTER IN LAW (LAUREA MAGISTRALE IN GIURISPRUDENZA) – Università Commerciale L. Bocconi

Master thesis: 'Patent Arbitration: a European Comparative Analysis', supervisor Prof. Laurent Manderieux. Exchange Program at Université Paris XII (France), classes and final exams in French.

EQF level 7

● PUBLICATIONS

Publications

- Maurizio Crupi, 'Book review - Andrea Zappalaglio: The Transformation of EU Geographical Indications Law: The Present, Past and Future of the Origin Link' (2021) 52 *International Review of Intellectual Property and Competition Law* 1135;
- Co-editor in Anselm Kamperman-Sanders and Anke Moerland (eds), *Intellectual Property as a Complex Adaptive System: the Role of IP in the Innovation Society* (Edward Elgar 2021);
- Maurizio Crupi, 'Innovating within tradition: are PDOs and PGIs loosening their link to origin?' awarded 1st prize at ECTA Student Awards 2020 and 2nd classified at EPIP Scholar Award 2020;
- Maurizio Crupi, 'How to Protect Indian Products in the European Union: Fragmented Protection of Non-Agricultural Geographical Indications' (2019) 54 *La Ley Mercantil* 5;
- Maurizio Crupi, 'Dispute Resolution Boards', in Théophile Margellos and others (eds), *Mediation: Creating Value in International Intellectual Property Disputes* (Wolters Kluwer 2018).

● TEACHING ACTIVITIES

2021 - Intellectual Property and Competition Law (cod. 20143) - Bocconi University (Milan)

Teaching assistant in charge of class debates and exam correction in English.

2020 - Intellectual Property and Competition Law (cod. 20143) - Bocconi University (Milan)

Teaching assistant in charge of class debates and exam correction in English.

2019 - Propiedad Industrial e Intelectual en Industrias Creativas (cod. 43609) - University of Alicante

Teaching module No 2 on industrial property and competition law in Spanish.

2018 - Derecho Mercantil I (cod. 19015) - University of Alicante

Teaching on distinctive signs and aesthetic creations in Spanish.

● LANGUAGE SKILLS

Mother tongue(s): **ITALIAN**

Other language(s):

	UNDERSTANDING		SPEAKING		WRITING
	Listening	Reading	Spoken production	Spoken interaction	
ENGLISH	C2	C2	C2	C2	C2
FRENCH	C2	C2	C2	C2	C1
SPANISH	C2	C2	C2	C2	C1

Levels: A1 and A2: Basic user; B1 and B2: Independent user; C1 and C2: Proficient user

● **CONFERENCES AND PRESENTATIONS**

23 October 2021 - 'Blended "teaching" methodology: a solution or a new problem?'

Presentation at the 13th Anniversary EIPTN Conference 2021, Madrid.

1 June 2021 - 'L'Estratègia: com innovar sense perdre la tradició'

Presentation at the Forum on quality foodstuffs organised by PRODECA (online).

31 May 2021 - 'A Pragmatic Approach to the Link to Origin: EU PDOs and PGIs for registration, innovation and trade in origin products'

Presentation at the conference 'Vision(s) for intellectual property in Europe: the role of research' (online).

12 March 2021 - 'Geographical Indications and the Protection of Origin Products'

Presentation at the LTEC-EIPIN conference (online).

1 February 2021 - 'Introduction to the Community Design'

Presentation at the 'XI Community Design Intensive Module' organised by the University of Alicante and EUIPO (online).

10 September 2020 - 'Innovating within tradition: are PDOs and PGIs loosening their link to origin?'

Presentation of research findings at the European Policy for Intellectual Property conference (online).

25 June 2020 - 'PDOs and PGIs: a pragmatic approach to the link to origin'

Presentation research findings at the EUIPO Conference 'Fostering Innovation in Europe: Intellectual Property Policies and Law' (online).

20 May 2020 - 'Product specifications and their amendment'

Lecture at Magister Lvcentinvs (online).

22 January 2020 - 'PDOs and PGIs: a more pragmatic approach to the link to origin'

Presentation at EIPIN Doctoral Seminar, Maastricht University.

13 November 2019 - 'PDO and PGI how to link a product to its origin'

Presentation at Consejo Regulador Turrón de Alicante, Jijona (Alicante).

8 October 2019 - 'PDOs and PGIs: a more pragmatic approach to the link to origin'

15 min presentation followed by discussion with all attendees at 3rd edition of the Journée de la jeune recherche en propriété intellectuelle at Université Paris II.

29 June 2019 - 'It is never too late for... ATLAS.TI'

30 min presentation on research methodology at CEIPI, Strasbourg.

17 May 2019 - 'Geographical Indications for Agricultural Products and their Link to Origin'

Presentation at CIRAD followed by discussion with attendees (Montpellier).

4 April 2019 - 'Innovating within Tradition: Geographical Indications for Agricultural Products and Handicrafts'

Presentation at EIPIN Doctoral Seminar, at Queen Mary University of London.

8 March 2019 - 'Practicum Design: 'Table leg''

Discussion of a case on invalidity of a registered community design before the Board of Appeal of the EUIPO (Alicante).

15 November 2018 - 'Geographical Indications: how to link the product to its origin'

Presentation at the IGIR lunch seminar (Maastricht University).

3 September 2018 - 'How to Innovate within Tradition? Geographical Indications for Handicrafts'

Presentation at Max Planck Institute during the Intellectual Property and Economic Theory Seminar (Munich).

27 April 2018, 'Governance of Production and Technologies for Geographical Indications'

Presentation at EIPIN Doctoral Seminar at the University of Strasbourg followed by comments from Prof. Yann Basire (Strasbourg University) and discussion with attendees.

6 November 2017 - 'Geographical Indications: a spurring or hampering device for innovation in agribusiness'

Presentation at 'IPKM Macau IP Seminar', Macau.

- **JOB-RELATED SKILLS**

Job-related skills

- Good command of various IP databases, such as Darts-ip, InfoCuria, eSearch plus, and eSearch Case Law;
- Familiar with Alfresco/Sharedox document management software of the EUIPO;
- High degree of availability, good team spirit as well as ability to adapt to increases in workload, all while respecting the deadlines. High degree of responsibility, autonomy, rigor, organisation and discretion.