

THE WHY OF GEOGRAPHICAL INDICATIONS:

*The transformation of the link between the product and its
place of origin in Europe*



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ABSTRACT

This thesis explores the historical evolution of the nature of the link between a product and its place of origin in the European *sui generis* systems of GI protection, with a specific focus on the EU Regulation 1151/2012 on Geographical Indications for the protection of agricultural products and foodstuffs. It concludes that this link has substantively changed, since the 1930s, when some early forms of *sui generis* GI systems were introduced in southern Europe, especially in France and Italy. While these regimes were based exclusively on the concept of *terroir*, a cipher for the physical link between a product and a place, an empirical analysis carried out in the present work reveals that, today, the history of the product and of its method of production is, statistically, the predominant linking factor. Furthermore, the research shows that the historical link is almost always mentioned in the specifications of EU GI products, when protected both by Protected Designations of Origin (PDO) or Protected Geographical Indications (PGI), which are the two quality schemes provided by EU Law. In particular, the *terroir* element, which characterises PDOs, also appears frequently in PGI specifications, where it should be superfluous, thus suggesting that the differences between these two quality schemes are unclear. Finally, the emergence of the historical element confirms that GIs can contribute to the protection of products that are linked to a geographical area not by physical and environmental factors, but by the socio-cultural traditions of a specific place. Although history can constitute a valid product/link, however, it must be used with caution, as it can be mystified and reconstructed in an arbitrary and unfounded way. This is dangerous, because it can turn GIs into a mere marketing tool, thus damaging the origin function that distinguishes them from the broad family of quality labels.

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Word Count: 85,300 words.

LIST OF ABBREVIATIONS

AO	Appellation of Origin / <i>Appellation d'Origine</i>
AOC	<i>Appellation d'Origine Contrôlée</i>
CAP	Common Agricultural Policy
DOC	<i>Denominazione di Origine Controllata</i>
EC	European Community
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
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
GI	Geographical Indication
IGO	Indication of Geographical Origin
INAO	Institut National de l'Origine et de la Qualité
IPR	Intellectual Property Right
IS	Indication of Source
QIS	Qualified Indication of Source

Tables and Lists

Lisbon Agreement	Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958)
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
TRIPs	Agreement on the Trade-Related Aspects of Intellectual Property Rights (1995)
TSG	Traditional Speciality Guaranteed
UNESCO	United Nations Education, Scientific and Cultural Organisation
WIPO	World Intellectual Property Organization
WTO	World Trade Organisation

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INTRODUCTION

1. Background

Geographical Indications (GIs) are an Intellectual Property Right (IPR) defined by the TRIPs Agreement as ‘(...) indications that identify a good as originating in the territory of a Member, (...), where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.’¹ It can be noted that the text of this definition immediately emphasises the importance of the link between the product and its place of origin. For brevity, we will refer to it as ‘product/place link’. Indeed, this is considered to be the fundamental element that justifies the existence of an intellectual property right aimed at protecting the geographical names of products that are essentially related to a specific area.² Moreover, it is also what differentiates GIs from quality labels in general.³

In the early *sui generis* systems of protection of Indications of Geographical Origin (IGO), such as the French *Appellations d’Origine Contrôlée* (AOC) and the Italian *Denominazione di Origine Controllata* (DOC), *terroir* was the only product/place link. This French term has been defined in many different ways. Nevertheless, generally speaking, it indicates the physical link between a good and a place and, historically, designated the area where a product, normally grapevines,

¹ Art 22(1) TRIPs Agreement. The Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) is the international agreement that established the minimum standards of IP protection that every member state of the World Trade Organisation, i.e. the international organisation that administers it, must implement in its domestic legislation.

² For the origins of this link and its justificatory functions in the GI regime, see Dev Gangjee, *Relocating the Law of Geographical Indications* (CUP 2012).

³ Elizabeth Barham, “‘Translating Terroir’ Revisited: The Global Challenge of French AOC Labeling’ in Dev Gangjee (ed.), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016) 47-48; 53-54.

grew. It was claimed, and it is still claimed by many, that the place, thanks to its physical and natural characteristics, gives the product its distinguishing features. Later, the harmonised EU *sui generis* GI regime for the protection of agricultural products and foodstuffs,⁴ established in 1992 and revised for the last time in 2012,⁵ introduced two quality schemes: Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI).⁶

PDOs are very similar to the traditional French and Italian regimes, therefore providing protection to products that are essentially linked to a specific *terroir*: that is to a particular geographical environment with its inherent natural and human factors.⁷ PGIs, instead, are less demanding in that they merely require something in the quality and/or the reputation and/or any other characteristic of the foodstuff that is essentially attributable to its place of origin.⁸ Hence, PGIs accept a linking factor very different from *terroir*, i.e. reputation, which was introduced in EU Law by the Regulation

⁴ This is only one of the EU Regulations dedicated to Geographical Indications, the others being: (i) Council Regulation (EC) No. 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products; (ii) 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; (iii) Regulation 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks deals with the use of geographical names for spirits.

⁵ The first EU Regulation on GIs for agricultural products and foodstuffs was: Council Regulation No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1992] OJ L208/1. It has been amended twice, once in 2006 and, most recently, in 2012. See, Council Regulation No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJ L93 and 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.

⁶ For a complete description of the EU Law of Geographical Indications, see Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar 2014). For a comparative analysis of different GI regimes, see Delphine Marie-Vivien, *La Protection Des Indications Géographiques: France, Europe, Inde* (Éditions Quae 2012). See also, Matteo Gragnani, 'The Law of Geographical Indications in the EU' (2012) 7 *Journal of Intellectual Property Law & Practice* 271.

⁷ Art 5(1)(b) Regulation 1151/2012.

⁸ Art 5(2)(b) Regulation 1151/2012.

2081/1992, before the TRIPs Agreement turned it into a mandatory minimum standard.

The reputational link descends from the approach of those countries that did not share a tradition of *sui generis* GI protection, such as Germany and the U.K.. These, generally speaking, considered origin to be a matter of consumers' perception, thus protecting geographical names under the law of unfair competition or passing off.⁹ This way of interpreting reputation as a mere subjective element was endorsed by the case law of the European Court of Justice, starting from the famous *Exportur* decision, in which the Court held that the strong reputation enjoyed by a product among consumers is what establishes the product/place link.¹⁰

An empirical analysis carried out in the present work, however, reveals that the specifications of GI products have often demonstrated the existence of a reputational link through the description of the history of the products, of the method of production and/or of their relationship with the designated area. This kind of link, which this work will call an 'historical link' or an 'historical reputational element', has become statistically predominant and appears very frequently in the specifications of both PGI and PDO products, often combined with other linking factors such as *terroir* and the mere commercial reputation of the good.

These results, which suggest a change in the product/place link, have not previously been shown in a substantive piece of scholarship, despite the fact that GIs are becoming an increasingly popular subject of academic debate. In particular, a

⁹ Gangjee (n 1) 115-123.

¹⁰ See, Case C-3/91 *Exportur SA v LOR SA and Confiserie du Tech SA* [1992] ECR I-05529 (*Exportur*), para 28.

considerable amount of research has been dedicated to the innovative functions that they can perform, allegedly better than other IPRs. For instance, it is debated whether they could, at least in some cases, provide protection to traditional knowledge¹¹ and traditional cultural expressions,¹² as well as fostering rural development,¹³ and even

¹¹ Michael Blakeney, 'Protection of Traditional Knowledge by Geographical Indications' in Christoph Antons (ed.), *Traditional knowledge, traditional cultural expressions, and intellectual property law in the Asia-Pacific region* (Kluwer Law International 2009); Teshager W Dagne, *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (Routledge 2015); Daniel J Gervais, 'Traditional Knowledge: Are We Closer to the Answer(s)? The Potential Role of Geographical Indications' (2008) 15 ILSA Journal of International & Comparative Law 551; Shivani Singhal, 'Geographical Indications and Traditional Knowledge' (2008) 3 Journal of Intellectual Property Law & Practice 732. For skeptical opinions, see Susy Frankel, 'The Mismatch of Geographical Indications and Innovative Traditional Knowledge' (2011) 29 Prometheus: Critical Studies in Innovation 253; Brad Sherman and Leanne Wiseman, 'From Terroir to Pangkarra: Geographical Indications of Origin and Indigenous Knowledge' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016).

¹² Daphne Zografos, *Intellectual Property and Traditional Cultural Expressions* (Edward Elgar 2010); Andrea Zappalaglio, 'The Protection of Traditional Knowledge: What Role for Geographical Indications?' (MPhil Dissertation, University of Oxford, 2014). See also, Tomer Broude, 'From Chianti to Kimchi: Geographical Indications, Intangible Cultural Heritage, and Their Unsettled Relationship with Cultural Diversity' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017).

¹³ Giovanni Belletti and Andrea Marescotti, 'Origin Products, Geographical Indications and Rural Development' in Elizabeth Barham and Bertil Sylvander (eds.), *Labels of origin for food: local development, global recognition* (CABI 2011); Dominique Barjolle, 'Geographical Indications and Protected Designations of Origin: Intellectual Property Tools for Rural Development Objectives' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016); Angela Tregear et al., 'Regional Foods and Rural Development: The Role of Product Qualification' (2007) 23 Journal of Rural Studies 12; Dwijen Rangnekar, 'The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe' (UNCTAD-ICTSD 2004) Issue Paper No. 8; Alessandro Pacciani et al., 'The Role of Typical Products in Fostering Rural Development and the Effects of Regulation (EEC) 2081/92' (2001); Petra van de Kop, Denis Sautier and Astrid Gerz, *Origin-Based Products: Lessons for pro-Poor Market Development* (KIT, Amsterdam and CIRAD, Montpellier 2006); Giovanni Belletti and Andrea Marescotti, 'GI Social and Economic Issues' (SINER-GI 2006) D2-WP2; IPDEV, 'Impacts of the IPR Rules on Sustainable Development' (2006); Slavica Samardzic and others, 'Quantitative and Qualitative Effects of Protecting Traditional Agro-Food Products by Geographical Indications' (2013).

See also, 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 Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017); Peter Drahos, 'Sunshine in a Bottle? Geographical Indications, the Australian Wine Industry, and the Promise of Rural Development' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017); Angela Tregear, 'From Stilton to Vimto: Using Food History to Re-Think Typical Products in Rural Development' (2003) 43 Sociologia Ruralis 92. For a skeptical view, see Justin Hughes, 'The Limited Promise of Geographical Indications for Farmers in Developing Countries' in Irene

contributing to the protection of the environment and landscape.¹⁴ Furthermore, in recent times some important pieces of research have focused on the institutional aspects of GI Law and on the role of the State, of the domestic competent authorities and of public investment in shaping the protection provided by these indications of geographical origin.¹⁵ The nature of the reputational link, despite being at the heart of GIs, is an under researched issue in the international legal scholarly literature, however.¹⁶ Indeed, the best current analysis of this matter can be found in the anthropological and sociological literature, especially, although not exclusively, in French academia.¹⁷ Furthermore, the importance of history as an element capable of establishing a product/place link has been rarely discussed before and never proved

Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017).

¹⁴ Genviève Nguyen and others, 'French Quality and Eco-Labeling Schemes: Do They Also Benefit the Environment?' (2004) 2 *International Journal of Agricultural Sustainability* 167; Belletti and Marescotti, 'GI Social and Economic Issues' (n 13) 37. Ministère de l'Agriculture et de la Pêche and INAO, 'Appellations d'Origine Contrôlée & Paysages' (2006) <http://agriculture.gouv.fr/IMG/pdf/inaoetpaysage_0207.pdf>.

¹⁵ Delphine Marie-Vivien et al., 'Are French Geographical Indications Losing Their Soul? Analysing Recent Developments in the Governance of the Link to the Origin in France' (2017) 98 *World Development* 25; Delphine Marie-Vivien and Estelle Biénabe, 'The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review' (2017) 98 *World Development* 1; Delphine Marie-Vivien, 'The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India' (2010) 13 *The Journal of World Intellectual Property* 121; Giovanni Belletti, Andrea Marescotti and Jean-Marc Touzard, 'Geographical Indications, Public Goods, and Sustainable Development: The Roles of Actors' Strategies and Public Policies' (2017) 98 *World Development* 45. See also, Caroline Le Goffic and Andrea Zappalaglio, 'The Role Played by the US Government in Protecting Geographical Indications' (2017) 98 *World Development* 35.

¹⁶ Among the best contributions, see Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture in the Asia-Pacific* (Cambridge University Press 2017). Delphine Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (2013) 4 *WIPO Journal* 191. 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 Pub 2016).

¹⁷ See, as an example, Laurence Bérard et al., 'Les Facteurs Historiques, Culturels, Économiques et Environnementaux Dans La Délimitation Des Zones IGP' in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The socio-economics of Origin Labelled Products in Agri-food Supply Chains: Spatial, Institutional, and Co-ordination Aspects* (Actes et Communications, 2000).

through extensive empirical evidence but only, from time to time, through the presentation of selected case studies.¹⁸

This thesis will contribute to fill this gap in the present literature by analysing in depth the substantive evolution of the product/place link in the European *sui generis* GI systems, from the beginning of the 20th century until the present. In particular, the work will focus on the French and the Italian regimes and, then, on the EU Regulation 1151/2012 on geographical indications for the protection of agricultural products and foodstuffs. It will prove, on the basis of empirical evidence, that this link has changed and expanded over the decades, taking into consideration, more and more, the history of the product, and of the relationship between the place of origin of the good and the human community that lives there. This linking factor, however, has not replaced *terroir*, but rather complements it, thus making the distinction between PDOs, which require the *terroir*-link, and PGIs, for which the reputational element is enough, less clear. Moreover, this work will also adopt an historical approach, in parallel with the empirical one, which will allow a better understanding the evolution of the historical element from the early systems until present.

This thesis is important for at least two main reasons. First, it will confirm with concrete evidence what previous studies have already deduced from the analysis of single case studies or groups of GIs. Second, it will provide support to the idea that this IPR can be based on the historic cultural environment and on the heritage of the

¹⁸ Dominique Barjolle, Stéphane Boisseaux and Martine Dufour, 'Le Lien Au Terroir: Bilan Des Travaux de Recherche' (Institut d'économie rurale 1998); Laurence Bérard and Philippe Marchenay, *Les produits de terroir: entre cultures et règlements* (CNRS Editions (Open Edition) 2004). See also, Gangjee (n 13) and Marie-Vivien, 'A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?' (n 16).

places in which the original goods are produced.¹⁹ This work will also, however, emphasise the problems related to the suitability of history as a valid product/place link and the weaknesses of this element, which can easily be mystified or distorted, thus creating invented traditions and harming the origin function of GIs.

2. Methodology and sources

The thesis will adopt a mixed methodology. In particular, the first two chapters will apply a predominantly historical approach. Chapter 1 is based upon a selection of archival sources, such as parliamentary debates, doctrinal discussions, essays and pamphlets. This material makes it possible to reconstruct the origin of the early *sui generis* systems of IGO protection and to highlight the policy goals on which they were based. The analysis will focus predominantly on the French *Appellations d'Origine Contrôlées* and the Italian *Denominazione d'Origine Controllata*. Similarly, Chapter 2 analyses the period 1985-1995, when the discussions concerning the introduction of a harmonised European GI regime began and the negotiations took place, both inside the European Community and, in parallel, during the Uruguay Round, within the frame of the GATT/WTO. Also in this case, the work has collected a number of sources dating back to the period under analysis, such as books, journal articles, reports, position papers and many more, in order to reconstruct the state of the debate at this time. Chapter 3, instead, is based on empirical analysis. More specifically, the thesis analyses the way in which the product/place link is described

¹⁹ Thus, the work will indirectly support those who have argued that GIs can protect and represent the cultural heritage of a place, see, among the others, Terroirs & Cultures and UNESCO, 'Rencontres Internationales Planète Terroirs' (UNESCO 2005) SC-2007/WS/41; Laurence Bérard et al., *Biodiversité et Savoirs Naturalistes Locaux En France* (CIRAD (Organisme) et al. eds, CIRAD: Iddri: IFB: Inra 2005). See also, Laurence Bérard and Philippe Marchenay, 'Productions Localisées et Indications Géographiques: Prendre En Compte Les Savoirs Locaux Et La Biodiversité' [2006] *Revue Internationale des Sciences Sociales*.

in the specification of every registered PDO and PGI until 31 December 2016, and discusses a variety of trends that emerge from the investigation. In particular, it provides tangible evidence of the importance of the historical link in EU GI rules. Finally, Chapter 4 reflects on the results of the previous chapter and carries out a review of the relevant literature in order to come to original conclusions and suggest some policy prescriptions.

3. Structure

The present thesis is therefore composed of four substantive chapters:

- Chapter 1 analyses the origin and the evolution of the product/place link in the early *sui generis* GI systems in order to assess how similar they are to the present regimes. In particular, it analyses in depth the debates within the French Parliament from 1905 to 1935, and all the relevant discussions on the nature and the functions of the *Appellations d'Origine Contrôlées* until the 1950s, adding details and nuances to the existing literature. Then, the research focuses on the early evolution of the Italian *sui generis* IGO rules, thus introducing a relevant issue previously unknown not only to the literature written in English, but also to a large part of the Italian scholarship. The chapter concludes that while both the early and the current systems have some important features in common, such as the existence of a bureaucratic structure in charge of the examination of the applications, there are also some important substantive differences. For instance, some important goals that characterise the EU GI rules, such as fostering rural development, are missing in the early systems. Moreover, although the crucial concept of *terroir* is today as important as ever, it has undergone a considerable evolution since 1935, when France passed the first law on the protection of AOC.

It is not at all clear, therefore, whether the current concept of *terroir* is the cause or, rather, the consequence of the evolution of *sui generis* GI systems. Furthermore, some scholars argue, not without merit, that the current version of *terroir* differs substantively from its original form.

- Chapter 2 analyses the transition period that led to the introduction of the present EU *sui generis* GI regime in 1992. The analysis builds upon the well-known narrative according to which the current system is seen as being the result of a compromise between the southern and the northern European countries and expands it in an original way. In particular, the chapter shows that it was the European Community, as it then was, that, in 1988, during the Uruguay Round negotiations, proposed the adoption of a system of GI protection that was structurally very similar to the PGI quality scheme and that also mentioned the reputational link. This suggests that the European member states had already agreed on the broad outlines of a GI system that represented a compromise between a broad approach, based on the law of unfair competition, just like the Indication of Source, and a strict one, modelled on the French AOC. Then, the chapter, on the basis of the few archival resources available and some previously unreleased interviews, provides an interpretation of events that took place from late 1991 to June 1992 and suggests an original reconstruction of the developments that led to the adoption of the Regulation 2081/1992 which introduced the EU *sui generis* GI system.
- Chapter 3 features an analysis of the product/place link as it is described in the specifications of all the EU GIs registered before 31 December 2016 and reveals different interesting trends. In particular, the research shows that the history of

the product is used in a very relevant number of cases, alone or, more often, combined with other elements, to demonstrate the existence of the product/place link. Furthermore, this trend is found both in PDO and PGI specifications, thus suggesting that the differences between the two quality schemes have partially blurred, at least as far as the product/place link is concerned.

- Chapter 4 reflects on the findings of the previous chapter and of the whole thesis. It concludes that, from both a practical and theoretical perspective, the historical element can be considered as a valid product/place link. Sometimes, however, it is not enough on its own to demonstrate the origin of a product and, therefore, it must be used carefully in order to avoid serious undesirable consequences. Finally, the chapter suggests some policy prescriptions that can be useful in order to prevent the granting of weak GIs based on a disputable product/place link; presenting these as useful starting points for future research. For instance, it suggests that the function of GI as a label of origin can be preserved only by supporting a narrow interpretation of the linking factors. Links that are merely based on the subjective perception of consumers, therefore, such as the commercial reputation of the product, should not be considered enough on their own.

All Internet references are valid as of 24 December 2017

CHAPTER 1. ORIGINS: THE EARLY FRENCH AND ITALIAN SYSTEMS AND THEIR LEGACY

1. Introduction

1.1. Background

This Chapter will lay the foundations of the present thesis by analysing the rationale on which the early French and Italian models of protection of Indications of Geographical Origin (IGO) were based. The goal is to determine how these administrative regimes have influenced, especially in terms of policy objectives, the present European *sui generis* GI system. In particular, we will focus on EU Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs (Regulation 1151/2012).¹

Today, many distinguished scholars acknowledge the strong link between the EU Protected Denomination of Origin Quality Scheme (PDO) and the older regimes of the two leading countries in the field of *sui generis* GIs, that is the French *Appellation d'Origine Contrôlée* (AOC) and the Italian *Denominazione di Origine Controllata* (DOC).² Furthermore, the influence of the AOC and DOC system has been explicitly recognised by the European Commission, which stated:

¹ Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1.

² Gilles Allaire, François Casabianca and Erik Thévenod-Mottet, 'Geographical Origin and Agro-Food Products' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) 7-8; Caroline Le Goffic, *La Protection Des Indications Géographiques* (LexisNexis 2010) 15-16. See also, Frédéric Pollaud-Dulian, *Droit de la propriété industrielle* (Montchrestien 1999) 894-895.

In 1992 the EU introduced a system to protect and promote traditional and regional food products inspired by existing national systems, for example the French AOC (Appellation d'Origine Contrôlée) and the Italian DOC (Denominazione d'Origine Controllata) systems.³

To what extent is this narrative true? The genesis of the French IGO rules has been investigated from various perspectives: economic,⁴ historical,⁵ anthropological⁶ and legal.⁷ The transition between the previous European IGO protection systems and the present EU *sui generis* GIs has also been discussed before, although there is very limited scholarship on this aspect.⁸ Instead, a detailed analysis of the policy that

³ European Commission, 'European Policy for Quality Agricultural Products' (European Commission 2007) 5.

⁴ With regard to this aspect, the key authority is Alessandro Stanziani. See, Alessandro Stanziani, 'French Collective Wine Branding in the Nineteenth-Twentieth Century' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar 2016); Alessandro Stanziani, 'Information, Quality and Legal Rules: Wine Adulteration in the Nineteenth Century France' (2009) 51 *Business History* 268; Alessandro Stanziani, 'Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France' (2004) 18 *European Journal of Law and Economics* 149.

⁵ Leo A Loubère, *The Wine Revolution in France: The Twentieth Century* (Princeton University Press 2014); Kolleen M Guy, *When Champagne Became French: Wine and the Making of a National Identity* (Johns Hopkins University Press 2003); Leo A Loubère, *The Red and the White: A History of Wine in France and Italy in the Nineteenth Century* (State University of New York Press 1978). See also, James Simpson, 'Selling to Reluctant Dinkers: The British Wine Market, 1860-1914' (2004) 57 *Economic History Review* 80; Garrie, Rémy Pech and European University Institute, *Genèse de La Qualité Des Vins : L'évolution En France et En Italie Depuis Deux Siècles* (Bourgogne Publications 1994); Philippe Roudié, *Vignobles et Vignerons Du Bordelais, 1850-1980* (CNRS 1988); Leo A Loubère (ed), *The Vine Remembers: French Vignerons Recall Their Past ; Interviews* (State Univ of New York Press 1985).

⁶ Laurence Bérard, 'Terroir and the Sense of Place' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016); Laurence Bérard and Philippe Marchenay, *Les produits de terroir: entre cultures et règlements* (CNRS Editions (Open Edition) 2004); Claire Delfosse and Isabelle Lefort, 'Le Terroir, Un Bel Objet Géographique' in Claire Delfosse (ed), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011); Robert C Ulin, 'Writing about Wine: The Uses of Nature and History in the Wine-Growing Regions of Southwest France and America' in Gwyn Campbell and Nathalie Guibert (eds), *Wine, society, and globalization: multidisciplinary perspectives on the wine industry* (1st ed, Palgrave Macmillan 2007); Robert C Ulin, 'Invention and Representation as Cultural Capital: Southwest French Winegrowing History' (1995) 97 *American Anthropologist* 519.

⁷ Gangjee, *Relocating the Law of Geographical Indications* (n 2). See also, Paul Roubier, *Le Droit de La Propriété Industrielle*, vol 2 (Recueil Sirey 1952). See also, Oskari Rovamo, 'Monopolising Names? The Protection of Geographical Indications in the European Community' (University of Helsinki 2006); Stéphane Cartier, 'Terroirs En Nuances' (2004) 11 *Strates*.

⁸ Gangjee, *Relocating the Law of Geographical Indications* (n 2).

underlined the first *sui generis* IGO rules that appeared in Europe compared with the goals of the present regime is currently lacking. However, it is important for the present work. In particular, it allows us to identify the features that existed within the influential national progenitors – especially those relating to policy justifications and institutional arrangements – in order to contrast them with those features which originated in the Community phase of GI protection and which will be analysed in the following chapters.

Moreover, the history of the Italian attempts to protect designations of origin in the 1920s and 1930s has never been comprehensively analysed before, either in the Italian or English historical scholarship.⁹ This chapter will fill this gap. It argues that, from the initial stages, it is possible to identify certain trends that simultaneously influenced both France and Italy. This contradicts, at least partially, the traditional narratives that describe the evolution of the administration-based IGO protection systems as a French story that, eventually, become European. The predominance of the French model will not be denied. In fact, while the AOC which developed in France in the 1930s had not substantively changed until the 1990s,¹⁰ the early Italian regime disappeared and was replaced in the 1963 by a new one based on the French model. However, we will suggest that the emergence of the EU *sui generis* GI rules should be considered the result of a broader set of European experiences that involved

⁹ The early Italian legislation is only briefly mentioned in Giuseppe Martelli, ‘1963/2013: 50 Anni Di DOC Italiane’ (Dipartimento delle politiche competitive, della qualità agroalimentare e della pesca, 2013); Antonio Calò, ‘Il settore vitivinicolo dagli albori del Regno d’Italia alla seconda Guerra Mondiale’ in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d’Otranto* (Edizioni Pugliesi 2010); Italo Cosmo, *Commento Alle Disposizioni Sulle Denominazioni d’origine Dei Vini* (Longo&Zoppelli 1968).

¹⁰ Le Goffic (n 2) 12-18. A chronology of the evolution of the French legislation on AOC is available on the governmental database Gouvernement Français, ‘Legifrance’ (*Legifrance.gouv.fr*) <<http://www.legifrance.gouv.fr>>.

significant legal and regulatory experimentation in at least one other important wine-producing country, i.e. Italy.

Today, one of the key features of EU GIs is their multifunctionality. That is, they are deemed able to perform many different functions and have multiple effects beyond their market dimension.¹¹ Regulation 1151/2012 lists a number of policy goals that EU GIs are meant to achieve.¹² These are: (1) protecting producers from unfair practices¹³; (2) rewarding producer's efforts for making quality niche products whose main feature is the existence of 'an intrinsic link (...) between product or foodstuff characteristics and geographical origin¹⁴'; (3) fostering rural development and diversity¹⁵; (4) informing consumers and undertaking involved in trade about the peculiarities of the goods¹⁶; and (5) fostering respect for Intellectual Property Rights.¹⁷ In addition, it is argued in the literature that they could (6) contribute to the

¹¹ Filippo Arfini, Luis Miguel Albisu and Corrado Giacomini, 'Current Situation and Potential of Geographical Indications in Europe' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) 40-41; Giovanni Belletti and Andrea Marescotti, 'Origin Products, Geographical Indications and Rural Development' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) 78-81. See also, Dwijen Rangnekar, 'The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe' (Issue Paper No. 8, UNCTAD-ICTSD 2004); Dwijen Rangnekar, 'No "lemons" No More: A Sketch on the "Economics" of Geographical Indications' in Carlos María Correa (ed), *Research handbook on the protection of intellectual property under WTO rules* (Edward Elgar 2010); Giovanni Belletti, 'Le Denominazioni Geografiche Nel Supporto All'agricoltura Multifunzionale' (2003) 4 *Politica Agricola Internazionale*.

¹² Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar 2014) 70-74. See also, Matteo Ferrari, 'The Narratives of Geographical Indications' (2014) 10 *International Journal of Law in Context* 222; Matteo Gragnani, 'The Law of Geographical Indications in the EU' (2012) 7 *Journal of Intellectual Property Law & Practice* 271.

¹³ Regulation (EU) No 1151/2012, Recitals 3, 15.

¹⁴ *Ibid*, Recitals 17, 18.

¹⁵ *Ibid*, Recitals 2, 4.

¹⁶ *Ibid*, Recitals 18, 26.

¹⁷ *Ibid*, Recital 19, art 1(1)(c).

construction and preservation of the natural landscapes¹⁸ and (7) at the international level, help to protect traditional knowledge and heritage.¹⁹

This chapter will focus on three of these points: (1) distinguishing products characterised by an intrinsic link to their place of origin and, therefore, sustaining their production through market based rewards; (2) fostering rural development and protecting local heritage; (3) informing and protecting consumers. Instead, we will not focus on the function of IGO rules as an anti-fraud mechanism. In fact, this objective, which the old and the present systems have in common, emerges clearly from the historical sources. Indeed, early *sui generis* IGO rules were introduced in a period in which the market was flooded by counterfeited and adulterated products.²⁰ Furthermore, this function characterises all the systems through which geographical names can be protected, including indications of source and trade marks, therefore it is not a peculiarity of *sui generis* GIs.²¹ However, today the scope of protection for GIs goes much further than just preventing consumer fraud. For instance, EU GI rules

¹⁸ Genevieve Nguyen and others, 'French Quality and Eco-Labeling Schemes: Do They Also Benefit the Environment?' (2004) 2 *International Journal of Agricultural Sustainability* 167; INAO, 'Appellations d'Origine Contrôlée & Paysages' (2006); CIRAD (Organisme) and others (eds), *Biodiversité et Savoirs Naturalistes Locaux En France* (CIRAD : Iddri : IFB : Inra 2005) 41-42. See also, Hristos Vakoufari and others, 'Protected Geographical Indications and the Landscape: Towards a Conceptual Framework' (2014); Armelle Caron and others, 'Biodiversity Conservation as a New Rationale for Localized and Sustainable Agro-Food Systems. The Case of Two French PDO Mountain Cheeses' (2010).

¹⁹ Teshager W Dagne, *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (Routledge 2015); Daphne Zografos, *Intellectual Property and Traditional Cultural Expressions* (Edward Elgar 2010); Michael Blakeney, 'Protection of Traditional Knowledge by Geographical Indications' in Christoph Antons (ed), *Traditional knowledge, traditional cultural expressions, and intellectual property law in the Asia-Pacific region* (Kluwer Law International 2009). For the opposite opinion, see Susy Frankel, 'The Mismatch of Geographical Indications and Innovative Traditional Knowledge' (2011) 29 *Prometheus: Critical Studies in Innovation* 253. See also, Christopher Ray, 'Culture, Intellectual Property and Territorial Rural Development' (1998) 38 *Sociologia Ruralis* 3.

²⁰ See, Subsection 2.1.

²¹ Stanziani, 'Information, Quality and Legal Rules' (n 4). See also, Simpson (n 5).

protect the products against evocation and translation. This is another reason to study the additional policy foundations for such strong protection.

Instead, the issue of *sui generis* IGO rules as tools for protecting products characterised by an intrinsic link with their place of origin, is much more controversial. It will require an analysis of the concept of *terroir*. This French term, always challenging to translate into English, is the operational concept within the doctrine on which the EU *sui generis* GI rules are based. This postulates the existence of a substantial and unique causal link between, on the one hand, a place and a community of producers and, on the other, territory-specific resources (product/place link).²²

Generally, the word *terroir* does not appear in the EU's official documents. However, it is recalled quite explicitly by the Commission, for instance when it states 'protected Designations of Origin (PDO) products (...) have proven characteristics resulting solely from the terrain and abilities of producers in the region of production with which they are associated.'²³ This concept has left traces in Regulation 1151/2012 itself.²⁴ Furthermore, it is a necessary precondition to other functions of GIs that were mentioned above, such as landscape-preservation and rural development.

²² Bertil Sylvander and Gilles Allaire, 'Globalisation and Geographical Indications' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) 107.

²³ European Commission, 'European Policy for Quality Agricultural Products' (n 3) 6. See also, European Commission, 'Geographical Indications' (*European Commission - Trade*) <<http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/geographical-indications/>>.

²⁴ Regulation 1151/2012, Recitals 1, 17, 22.

The literature on *terroir* is extensive.²⁵ Yet, scholars are still divided on the effective role that it played in the development of the French AO system. In fact, leading anthropologists, such as Bérard, consider it an essential element that under laid the whole evolution of the French system.²⁶ By contrast, Stanziani, from an historical-economical perspective, has reconstructed the genesis of this regime bypassing *terroir* completely.²⁷ Finally, experts of agronomy such as Matthews have recently argued that *terroir* is nothing but a myth kept alive for the sake of business.²⁸

Hence, this chapter will contribute to this debate and will show how and to what extent this concept practically influenced the French parliamentary discussions of that time. Moreover, it will investigate whether something similar to the concept of *terroir* influenced the Italian Parliament as well. This will be useful in order to understand whether this concept existed only in France or, instead, was the expression of a general trend that was affecting southern Europe in that period.

It will be concluded that the main feature that the early and the present systems of GI protection have in common is the existence of a rigid bureaucratic

²⁵ See, among the many, Bérard, 'Terroir and the Sense of Place' (n 6); Elizabeth Barham, "'Translating Terroir' Revisited: The Global Challenge of French AOC Labeling' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016); Mark Allen Matthews, *Terroir and Other Myths of Winegrowing* (University of California Press 2015); Thomas Parker, *Tasting French Terroir: The History of an Idea* (University of California Press 2015); Sarah Daynes, 'The Social Life of Terroir among Bordeaux Winemakers' in Rachel Black and Robert C Ulin (eds), *Wine and culture: vineyard to glass* (Bloomsbury 2013); James E Wilson, *Terroir* (University of California Press 2012). See also, Philippe Roudié, 'La Notion de Terroir Viticole En Bordelais' (1995) 43 Cahiers Nantais 65; Pierre Laville, 'Le Terroir, Un Concept Indispensable à l'élaboration et à La Protection Des Appellations d'origine Comme à La Gestion Des Vignobles: Le Cas de La France' [1990] Bulletin de l'OIV 217; Philippe Prévost and others, 'Le Terroir, Un Concept Pour l'action Dans Le Développement Des Territoires' (2014) 1 Vertigo 1.

²⁶ Bérard 'Terroir and the Sense of Place' (n 6) 79.

²⁷ Stanziani, 'French Collective Wine Branding in the Nineteenth-Twentieth Century' (n 4); Stanziani, 'Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France' (n 4).

²⁸ Matthews (n 25).

structure that processes the applications for protection filed by the associations of producers. This revolutionary system is the major legacy of the early systems of IGO protection and it characterises also the present EU *sui generis* GI regime. Furthermore, it is what differentiates *sui generis* GIs from the previous systems, such as trade marks. Another feature that the early administration-based regimes had in common with the present one is the function of protecting producers from unfair practices.

All the other functions listed above, instead, do not entirely belong to the early phase of IGO protection in France and Italy. In particular, it will be argued that, although the concept of *terroir* as it is known today began to emerge in the 1930s, it is essentially the product of a subsequent evolution. Furthermore, objectives such as fostering rural development and preserving tradition do not belong to the evolution of the French and Italian IGO rules. Finally, although the protection of consumers was a goal of the pre-European systems, it was generally considered as a mere indirect consequence of producer's protection. Therefore, the multifunctionality that characterises the modern *sui generis* GIs is a feature that emerged only recently, when this concept was located within the EU Common Agricultural Policy. This will be shown in the next chapter.

In conclusion, the model of *sui generis* GI protection that exists today is, indeed, different from its forefathers. Those, in fact, have introduced the peculiar administrative structure of the system aimed at protecting producers. However, from the point of view of the policy objectives, the early and the present systems are different in many aspects. Therefore, the current shape of EU *sui generis* GI rules must have emerged elsewhere.

1.2 Methodology and sources

This chapter has been drafted following an historical methodology. The research was based on an archival research and on the findings of the leading experts in the field. In particular, the work has focused on the reconstruction of the parliamentary debates of that time and, as much as possible, of the broader social context outside the palace.

With respect to the sources that have been used, the reconstruction of the history of the Italian system is the result of research in the archives of the Italian Parliament. Furthermore, many rare materials, dating back to the 1899-1963 period, were retrieved through a research in the Central Catalogue of Italian Libraries.²⁹

As to the French system, most of the references emerged through research in the digital archives of the French National Library.³⁰ The work focused predominantly, but not exclusively, on the debates of the French Parliament in the 1889 – 1937 period. In addition, the rationale of the French and Italian regimes has been investigated by studying directly the writings of the people who played a key role in designing them, that is Joseph Capus and Baron Le Roy for France and Arturo Marescalchi for Italy. Finally, the analysis is also based on the findings of the massive research conducted by Alessandro Stanziani, who has confirmed his views in an online interview that he granted us, and other leading historians such as Philippe Roudié and many others. The valuable work of Laurence Bérard and other well-known authorities in the field of anthropology has been used as well.

²⁹ ICCU, 'OPAC SBN' (*Catalogo del Servizio Bibliotecario Nazionale*) <<http://www.sbn.it>>.

³⁰ Bibliothèque Nationale de France (*Gallica*) <www.gallica.bnf.fr>.

1.3. Structure

The chapter is divided into 10 sections including the present introduction and the final conclusions:

- Section 2 will briefly outline the context in which the early French legislation came to life. Then, it will summarise the evolution of the legislation on *Appellations d'Origine* (AO) that, eventually, were flanked by the law on the *Appellations d'Origine Contrôlées* (AOC). This is a necessary starting point; however, these issues have been explored before. This is why the explanation will be short;
- Section 3 focuses on the nature of *terroir* and on the different definitions of it that have evolved during the last 150 years. Then, it suggests a map of it in order to emphasise its different nuances;
- Section 4 will focus on *terroir* in France. It will show that before the introduction of AOC this concept had a different meaning from the one that it has had from the 1940s onwards;
- Section 5 will analyse the evolution of the first Italian system of IGO protection. This regime will be compared to the French one, trying to find some common trends between the two. This test will be repeated in the subsequent sections as well;
- Section 6 will be dedicated to the issues of rural development and protection of heritage. Today these two objectives are often associated with GIs. However, it

will be shown that these were not part of the policy of the Italian and French systems;

- Section 7 will briefly analyse whether the French and Italian systems took into consideration the protection of consumers. It will be shown that, contrary to the EU regime, the early systems took into consideration this issue only indirectly;
- Section 8 will identify the features, present in the pre-European *sui generis* regimes, that have been embodied in the current system. It will conclude that these have two points in common: first, the presence of an administrative frame for assessing the applications and granting the GI; and second, the basic anti-fraud function that all the systems of IGO protection have in common. However, the early regimes were not characterised by the multifunctionality that, by contrast, is the key feature of the modern *sui generis* GI systems.

2. The French legislation: brief chronology and context

2.1. Phylloxera and its consequences: adulteration and fraud

The phylloxera crisis and its aftermath, characterised by massive fraud and adulteration of wines, were the events that, at the beginning 20th century, triggered the process that led to the introduction of AO and AOC in France. Phylloxera is an almost microscopic aphid that, originating from North America, feeds on the roots and leaves of grapevines destroying them. As recounted by Robinson, it was first sighted in France in 1863, in a prosperous period for the wine market of that country, and soon became one of the worst plagues ever recorded in the field of viticulture.³¹

³¹ Jancis Robinson (ed), *The Oxford Companion to Wine* (3rd ed, Oxford University Press 2006) 282-283.

In France, the total wine production fell from 84.5 million hectolitres in 1875 to only 23.4 million hectolitres in 1889. Some estimates hold that between two-thirds and nine-tenths of all European vineyards were destroyed.³²

The social and economic consequences of the plague have been described by scholars like Loubère, Guy and Stanziani, therefore we will not recount them in detail.³³ The first consequence of the crisis was that the French market was flooded by adulterated products, for instance watered wine. At the same time, the existing legal tools were not able to prevent counterfeiting, i.e. the use of false indications of origin. These practices were well known and the problem was discussed way before the advent of phylloxera both in France and in Italy.³⁴ However, this plague was unprecedented. Moreover, not only was the quantity of fake wine that marketed massive, but also the type and quality of adulteration techniques had multiplied with the use of new substances that could alter the colour and smell of bad raw materials.³⁵

As a reaction, on 14 August 1889 the French Parliament passed the so called Griffe Law (*Loi Griffe*), from the name of its rapporteur, that established that wine could only be made from fresh grapes, thus outlawing the common practice of making wines with dry raisins.³⁶ Indeed, the fraudulent practices were spread in

³² Ibid, 521-523.

³³ Guy (n 5) Ch 4; Loubère, 'The Red and the White' (n 5) Ch 8, 12; Alessandro Stanziani, 'La Falsification Du Vin En France, 1880-1905: Un Cas de Fraude Agro-Alimentaire' (2003) 2 *Revue d'histoire moderne et contemporaine* 154. See also, Gangjee (n 7) 93-96;

³⁴ See, as examples, Payen, *Compte Rendu Des Travaux de La Société Royale et Centrale D'Agriculture Du 30 Mars 1845 Au 18 Avril 1846* (1846) 11-12; Direttore del comizio agrario di S. Giuliano, *Memoria Sul Commercio Dei Vini Del Piemonte* (Tipografia Speirani e Ferrero 1846).

³⁵ Stanziani, 'La Falsification Du Vin En France, 1880-1905' (n 33) 154-157.

³⁶ *Loi* du 14 Août 1889 ayant pour objet d'indiquer au consommateur la nature du produit livré à la consommation sous le nom de vin, et de prévenir les fraudes dans la vente de ce produit, *JORF* 15 August 1889, 4001.

different sectors and, in addition to the Griffé Law, the French Parliament adopted similar measures in relation to margarine (14 March 1887), fertilizers (4 February 1888), butter (16 April 1897) and other kinds of products.³⁷ However, these provisions were never truly effective.³⁸

Together with adulteration, trade marks and other labels were unable to ensure the identity and quality of the products,³⁹ thus opening the door to many kinds of fraudulent practices.⁴⁰ As a result, in 1900 the sale of adulterated products, the imports of low-quality wine, the fall in prices and the tarnishment of the reputation of French wine led to a fall in the sales of local wines, i.e. the so called *mévente* ('the bad sale').⁴¹ This peak of the wine crisis pushed the winegrowers to pressure the Parliament, forcing it to take effective action.⁴²

³⁷ Barreau de Clermont Ferrand, 'La Fraude Sur Les Produits Alimentaires et Industriels Au Sens de La Loi Du 1er Août 1905: La Genèse D'une Réglementation' (2014) Les colloques du barreau de Clermont-Ferrand: la lutte contre la fraude, un enjeu économique majeur <<http://www.barreau-clermont.avocat.fr/pdf/exposé-loi-du-1er-aout-1905-colloque.pdf>> 3.

³⁸ Barreau de Clermont Ferrand (n 37); Loubère, 'The Red and the White' (n 5) 291-297.

³⁹ In the late 19th/early 20th century France the rules which could be applied for the protection of the indications of origin of wine were obsolete. One was the Law of 28 July 1824 (formally abrogated only in 1993) that provided for a criminal penalty for those who counterfeited or unlawfully replaced the brand or the indication of origin on a product. Another applicable set of provisions was the first French Trademark Law, the Law of 23 June 1857. See, Paul Roubier, *Le Droit de La Propriété Industrielle*, vol 2 (Recueil Sirey 1952) 753-754.

⁴⁰ Stanziani, 'Wine Reputation and Quality Controls' (n 4) 158; Simpson (n 5), 80-81; Gangjee (n 2) 94-96.

⁴¹ Guy (n 5) 124-126; Loubère, 'The Red and the White' (n 5) 297-304. See also Simpson (n 5).

⁴² Gangjee (n 7) 96.

2.2. The French legislation from 1905 to 1935: an outline

The history of the French laws on the protection of the origin of goods passed between 1905 and 1935 has been told before.⁴³ Therefore, only an outline will be provided here, for the sake of completeness.

The Law of 1905⁴⁴ is considered the first modern law on fraud and unfair competition in the trade of foodstuffs and other goods.⁴⁵ It punished those who mislead a contracting party either as to the nature, material qualities and/or composition of any good; either concerning their nature or their origin.⁴⁶ However, it did not specify what ‘origin’ was supposed to mean.⁴⁷ The law of 5 August 1908 tried to fill this gap by specifying that the identification of the areas of origin of a given product had to be done following ‘local, loyal and constant uses’ (*usages locaux, loyaux et constants*).⁴⁸ Thus, between 1907 and 1911, several decrees were adopted in order to define the areas of production of some famous products, among the others Champagne, Cognac and Bordeaux.⁴⁹ However, these choices, often arbitrary and

⁴³ For more information see, Le Goffic (n 2) 12-18; Gangjee (n 7) 96-115; INAO, *Une Réussite Française: L’Appellation d’Origine Contrôlée* (INAO 1985) 15; Roubier (n 39) 756; Joseph Capus, *L’Evolution de La Législation Sur Les Appellations d’Origine: Genèse Des Appellations Contrôlées* (INAO 1947) 11. See also, Florian Humbert, ‘L’INAO, de Ses Origines à La Fin Des Années 1960’ (Université de Bourgogne 2011) 97-101; Henri Noilhan, ‘La Protection Des Nos Appellations D’Origine’ in Syndicat de la Marque d’Origine ‘Pays d’Auge’ (ed), *1er Congrès de l’Origine: Tenu en Pays d’Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992).

⁴⁴ *Loi du 1er août 1905 sur les fraudes et falsifications en matière de produits ou de services*, JORF 5 August 1905, 4813. See also, Simon Auteroche, *Répression Des Fraudes, Falsifications de Denrées Alimentaires, Boissons, Marchandises et Produit Agricoles: Commentaire de La Loi Du 1er Août 1905* (2ème, Bulletin-commentaire 1907).

⁴⁵ Le Goffic (n 2) 13.

⁴⁶ *Loi du 1er août 1905* (n 44) art 1.

⁴⁷ Under art 11, the delimitations should have been made through administrative decrees. *Ibid*, art 11.

⁴⁸ INAO, *Une Réussite Française* (n 43) 15-16, 19.

⁴⁹ It is possible to count up to 350 administrative decrees and 1052 court decisions. See, Gangjee (n 7) 99–102; Le Goffic (n 2) 12–13. See also, Barreau de Clermont Ferrand (n 38) 5.

unclear, were strongly contested by local producers.⁵⁰ As if that were not enough, the grape harvest of 1910 was terrible. All these factors formed an explosive mix and in 1911 several areas, especially the Champagne and Marne regions, were on the brink of revolt.⁵¹ The French Parliament was alarmed.⁵²

In order to correct this system that was proving dysfunctional, Mr Pams, the Minister of Agriculture, on 30 June 1911 brought a bill to the Parliament providing for the judicial delimitation of the areas entitled to use a specific geographical name, thus abrogating the previous administration-based system.⁵³ This was followed, on 22 July 1914, by the results of the Jenouvrier Report (*Rapport Jenouvrier*) that described the function of the AO legislation in very modern terms.⁵⁴ For instance, it described origin products as an expression of the historical heritage of a given community. Unfortunately, this point of view was never enshrined in the French law.

World War I interrupted the debate. After the conflict, France adopted the Law of 6 May 1919.⁵⁵ This is the first law explicitly dedicated to the protection of Appellations of Origin, although the term had been in use since at least 1905.⁵⁶ This law left the determination of the areas of production of an AO product to the

⁵⁰ La Gironde Vinicole, 'Note Remise Par Les Trois Syndicats de La Gironde' (7 April 1911) 65-67; Philippe Roudié, *Vignobles et Vignerons Du Bordelais, 1850-1980* (n 5) 221.

⁵¹ A focus on these dramatic events would exceed the scope of this work. However, a large bibliography is available in the point. Among the others, see Guy (n 5) 158-185; INAO, *Une Réussite Française* (n 48) 15-19; André Louis Simon, *The History of Champagne* (Octopus Books 1971) 106-110; Capus (n 43) 15-16.

⁵² *Chambre*, 10 June 1911, JORF 11 June 1911, 1936; *Chambre*, 11 July 1911, JORF 12 July 1911, 2773.

⁵³ *Chambre*, 30 June 1930, JORF 1 July 1930, 2585; INAO, *Une Réussite Française* (n 43) 19-20.

⁵⁴ Text to n 323.

⁵⁵ *Loi* du 6 mai 1919 relative à la protection des appellations d'origine, JORF 8 May 1919, 4726.

⁵⁶ The archival research reveals that the first who used the term in the French Parliament was probably the President of the Agricultural Commission, Decker-David. See, *Chambre*, 23 February 1905, JORF of 24 February 1905, 490.

judiciary, thus overriding all the previous delimitations.⁵⁷ A definition of AO was not provided;⁵⁸ however, the courts had to identify the extent of the appellations following the ‘local, loyal and constant uses.’⁵⁹ In particular, art 1 of the law read:

(1) Anyone who claims that an appellation of origin is applied to its direct or indirect detriment and against his right to a natural or manufactured product, in contrast with the origin of that product, will have right to a legal action for preventing the use of the name. (...) (3) Based on local, loyal and constant uses, the judge may limit the geographical production area and determine the qualities or characteristics of the product referred to in paragraph 1.⁶⁰

However, this final clause was in practice only a supplement to justify the extension of the appellations in case their boundaries did not overlap with the administrative borders of the department which gave the product its name.⁶¹ Furthermore, in 1925, the *Cour de Cassation*, that is the French Supreme Court, held, in two twin rulings, that local, loyal and constant uses could only be used to identify the boundaries of the appellation. Instead, they did not refer to the quality requirements and manufacturing procedures that the product had to meet.⁶² Therefore,

⁵⁷ INAO, *Une Réussite Française* (n 43) 20; Gangjee (n 7) 103.

⁵⁸ The concept of Appellation of Origin was defined by the French Law for the first time only in 1966 by the *Loi n°66-482 du 6 Juillet 1966 modifiant et complétant la loi du 6 Mai 1919 relative à la protection des Appellations d'Origine*, JORF 7 July 1966, 5781. See also, Dominique Denis, *Appellation d'origine et indication de provenance* (Daloz 1995).

⁵⁹ *Loi du 6 mai 1919* (n 55) art 1. For an anthropologic analysis of the meaning of this clause, see Erica A Farmer, “‘Local, Loyal and Constant’: The Legal Construction of Wine in Bordeaux” in Rachel Black and Robert C Ulin (eds), *Wine and culture: vineyard to glass* (Bloomsbury 2013).

⁶⁰ *Loi du 6 mai 1919* (n 55) art 1, art 1. Original text ‘(1) Toute personne qui prétendra qu'une appellation d'origine est appliquée, à son préjudice direct ou indirect et contre son droit, à un produit naturel ou fabriqué, contrairement à l'origine de ce produit, aura une action en justice pour faire interdire l'usage de cette appellation. (...) (3) Sur la base d'usages locaux, loyaux et constants, le juge pourra délimiter l'aire géographique de production et déterminer les qualités ou caractères du produit visé à l'alinéa 1er.’

⁶¹ Gangjee (n 7) 102-103; Roubier (n 39) 760-762.

⁶² Cass civ 26-27 Mai 1925, D 26.1.218. This interpretation was criticised by Calmèl in *Sénat*, 12 July 1927, JORF 13 July 1927, 909 and Capus (n 43) 24.

the numerous AO granted between 1920 and 1925, often in a questionable way,⁶³ were nothing but mere indications of source that formally indicated the origin of the products without ensuring how this was manufactured in substance.⁶⁴ As a consequence, this system, instead of solving the problem of fraud, made it worse. In fact, it encouraged producers to make low-quality wine within the appellation areas, thus being able lawfully to market it under a prestigious denomination.⁶⁵

Commenting on this period, the French historian Humbert concludes that, *de facto*, this system was unable to protect fine products.⁶⁶ Indeed, in 1925 a scandal broke out concerning Roquefort cheese. In particular, it was discovered that it was almost always made using ordinary cow milk instead of the traditional ewe's milk.⁶⁷ A law had to be passed in order to establish the specification of Roquefort.⁶⁸ We shall return to this point because the parliamentary discussions concerning this law are very important for the history of AOs, especially in regard to the issue of the product/place link.⁶⁹

Following these scandals, a group of politicians, wine producers and experts began to argue that the quality of French wine could be protected only by linking law and agronomy, thus defining the nature of the product instead of just determining

⁶³ Dominique Filhol and Alain Châtelet, 'Historique Des AOC et Pratiques Oenologiques' (DGCCRF - Bureau des Boissons 2001), 4.

⁶⁴ Le Goffic (n 2) 13-14.

⁶⁵ Capus (n 43) 20-28.

⁶⁶ Humbert (n 43) 98.

⁶⁷ INAO, *Une Réussite Française* (n 48) 21; Filhol and Châtelet (n 62) 5; Le Goffic (n 2) 13.

⁶⁸ *Loi du 26 juillet 1925 ayant pour but de garantir l'appellation d'origine du fromage de Roquefort*, JORF 30 July 1925, 7190.

⁶⁹ See, paragraph 4.3.2.

where it had to be made.⁷⁰ This could be done only by restoring the intervention of the public administration in the field.⁷¹ The two key characters in this movement were Joseph Capus, professor of agronomy and deputy from Gironde,⁷² and his friend and advisor Pierre Le Roy de Boiseaumarié, better known as ‘Baron Le Roy’; a lawyer and landowner who later became president of the INAO.⁷³ This doctrine led to the adoption of the Law of 1927,⁷⁴ which modified that of 1919 and: (1) gave a substantive meaning to the expression ‘local, loyal and constant’ uses, present in the Law of 1919. In fact, it provided that the only grapevines which could be used, and the only area of production admitted, were those belonging to such uses and (2) it established the specification for the production of Champagne wine.⁷⁵

Finally, the *Decret-Loi* of 30 July 1935 introduced the *Appellations d’Origine Contrôllées* as a special kind of AOs.⁷⁶ The decree established an administrative body called CNAO (*Comité National des Appellations d’Origine*) that later became the INAO (*L’Institut National des Appellations d’Origine*) that had to determine:

⁷⁰ Capus (n 43) 22-24.

⁷¹ Loubère, *The Wine Revolution in France* (n 5) 127-131.

⁷² Capus was a member of the French parliament from 1919 to 1941 and Minister of Agriculture between 1923 and 1925. Since the beginning of the 1910s he supported the introduction of a protection of designations of origin able to take into consideration the quality of the products and not only their mere names. His thought and theories formed the core of the AOC system. Assemblée Nationale Française, ‘Joseph Capus’ (*Assemblée Nationale Française*) <http://www.assemblee-nationale.fr/sycomore/fiche.asp?num_dept=1429>; Raymond Brunet, ‘M. Joseph Capus’ (1924) 7 *Le Sommelier*.

⁷³ Baron Le Roy, ‘L’Origine’ in Syndicat de la Marque d’Origine ‘Pays d’Auge’ (ed), *1er Congrès de l’Origine: Tenu en Pays d’Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992) 11-17; Georges Kuhnholz-Lordat, *La Genèse Des Appellations d’Origine Des Vins* (Buguet-Comptour 1963) 5-11.

⁷⁴ *Loi* du 22 Juillet 1927 modifie la loi du 6 Mai 1919, JORF 27 July 1927, 7762.

⁷⁵ Le Goffic (n 2) 14; Gangjee (n 7) 106-107; INAO, *Une Réussite Française: L’Appellation d’Origine Contrôlée* (n 48) 23-25; Capus (n 43) 28-29.

⁷⁶ *Decret-Loi* 30 Juillet 1935, Défense du marché des vins et régime économique de l’alcool, JORF 31 July 1935, 8314.

[O]n the basis of the opinion of the syndicates, the conditions of production that the wine (...) will have to satisfy (...). These conditions will concern the area of production, the grapes, (...) the processes of cultivation (...) or distillation.⁷⁷

A description of the details of the functioning of the CNAO/INAO would exceed the purposes of the present section. Therefore, it will only be outlined.⁷⁸ This administrative body was formed by a national and different regional committees, mainly composed of experts and representatives of the wine producers. This institution was, and still is, in charge of analysing the requests for the granting of an AOC filed by local associations of producers, that is the *syndicats*. Then, the specification was drafted as a result of a discussion between the organs of the INAO and the interested local associations.⁷⁹ Finally, the specification was ratified by a ministerial decree, thus becoming part of the French law.⁸⁰ As it will be shown,⁸¹ a similar administrative system also existed in Italy, even if this country has never had an independent *ad hoc* institution in charge of granting protection to IGOs.

Therefore, resorting to a public or quasi-public institution to guarantee the quality and origin of a product was not only a French solution. Rather, it was part of a broader European trend. This innovation is the most important feature that the present EU *sui generis* regime has inherited from these early systems and, as will be

⁷⁷ Ibid, art 21. Original text ‘*le comité national déterminera, après avis des syndicats intéressés, les conditions de production auxquelles devra satisfaire le vin (...) ces conditions seront relatives à l’aire de production, aux cépages (...) aux procédés de culture et de vinification ou de distillation.*’

⁷⁸ For a work entirely dedicated to the history and functioning of the CNAO/INAO, see Humbert (n 43). See also, Baron Le Roy (n 72) 17-23. For an analysis of how the governance of the AOC is progressively transforming, see Delphine Marie-Vivien and others, ‘Are French Geographical Indications Losing Their Soul? Analysing Recent Developments in the Governance of the Link to the Origin in France’ (2017) 98 World Development 25.

⁷⁹ INAO, *Une Réussite Française* (n 48) 27.

⁸⁰ Capus (n 43) 41-42. See also, Elizabeth Barham, ‘Translating Terroir: The Global Challenge of French AOC Labelling’ (2003) 19 Journal of Rural Studies 127, 133-135.

⁸¹ See, section 5.

highlighted, even the bureaucratic steps of the procedure have basically remained unaltered, although today the procedure is divided into two phases, domestic and European.

3. The role of *terroir* in the creation of the AOC model: *terroir* or *terroirs*?

3.1. Framework

Terroir, as anticipated in the introduction,⁸² is one of the key concepts in the field of AOC. In fact, it is part of the doctrine according to which there is a unique and intrinsic link between some products, the so called ‘origin products’ and the peculiar characteristics of the physical and human environment where these goods are made.⁸³ It underlies the current EU GI policy.⁸⁴ Moreover, although being untranslatable, the term and has invaded also the English-written literature, as the Ngram diagram below shows:

Chart 1.1 Use of the term ‘*terroir*’ in English-written literature (1900 - present)



⁸² Text to n 25.

⁸³ Sophie Révillon and Jean-Marc Chappuis, ‘Geographical Indications: Collective Organization and Management’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) 47. See also, Filippo Arfini, Giovanni Belletti and Andrea Marescotti, *Prodotti Tipici E Denominazioni Geografiche: Strumenti Di Tutela E Valorizzazione* (Tellus 2010) 13-16.

⁸⁴ Text to n 23.

However, despite its popularity, the role and function that this term played during the early days of *sui generis* IGO protection in Europe is still controversial. For instance, the leading French anthropologist Laurence Bérard, discussing the roots of the French *sui generis* systems, states that ‘the French AOC (...) system is so inextricably linked with *terroir* that it makes no sense without it, especially where wine is concerned.⁸⁵’ It is also considered the key element that distinguishes GI schemes from simple quality labels, thus contributing in a decisive way to the legitimisation of the institute.⁸⁶ However, other scholars such as Stanziani, provide a completely different interpretation. In fact, he describes the early French regime as the result of the pressure of the wine-producing elite aimed at protecting themselves from the crisis of the French viticulture as well as preserving and enforcing the status quo.⁸⁷

It is argued that an efficient way to understand how much the concept of *terroir* effectively influenced the development of French AO law is to examine the parliamentary discussions of that time, without losing sight of the context outside the palace. By reviewing the arguments put forward for and against AO as well as the language used, it will be possible to understand whether the concept of *terroir* had a true impact on the legislation or it was only a rhetoric myth whose importance has been overrated. The key finding of this analysis is that the concept of *terroir* played a

⁸⁵ Laurence Bérard, (n 6) 79.

⁸⁶ Barham (n 25).

⁸⁷ Stanziani, ‘French Collective Wine Branding in the Nineteenth-Twentieth Century’ (n 4). See also, Ulin, ‘Writing about Wine’ (n 6); Ulin, ‘Invention and Representation as Cultural Capital’ (n 6).

meaningful role in the development of the French policy underling the AOC rules. By contrast, its influence on the Law of 1919, that is the law on AOs, was modest.⁸⁸

From our archival research it emerges that from the late 1920s and, especially, during the 1930s, a new version of the concept of *terroir* emerged. In fact, originally *terroir* had a narrow scope. It was a technical term with a neutral meaning belonging to the lexicon of viticulture and oenology. It indicated the soil where agricultural products were grown and, sometimes, it was employed in a pejorative acceptance. We will sometimes refer to this as ‘*terroir* in the narrow sense’. Then, a new concept of *terroir*, much broader and abstract, gradually emerged. It was characterised by a holistic meaning, referring both to the physical and to the historical environment of a place, including its traditional heritage. This will be called ‘*terroir* in the broad sense’. This version appeared in the parliamentary debates as well, but it did not influence directly the Law on AOC that took into consideration only the concept in the physical sense.⁸⁹

Today, as will be shown in the next subsection, *terroir* is generally, although not always, described by the scientific literature as encompassing both the human and the physical features of a place. This seems the development of the thoughts of Capus who distinguished two kinds of uses: the physical ones, i.e. the soil and the grapes and the human ones, i.e. the procedure that characterised the making of a given wine.

⁸⁸ It is important to clarify that the term *terroir* never appears in the early French legislation, see Bérard (n 6) 76.

⁸⁹ *Decret-Loi* 30 Juillet 1935 (n 75) art 21(1); Bérard (n 6) 76.

According to Capus, these two uses were theoretically distinct but, in practice, they contributed to the protection of an appellation as one.⁹⁰

However, the doctrinal discussions and the conceptualisation of *terroir* began only in the late 1940s and, in general, in the post World War II era. Therefore, the present work argues that the concept of *terroir* as we know it today is not exactly the one that appeared in the parliamentary discussions in France during the 1920s and 1930s as it did not exist yet. Indeed, its conceptualisation took place after 1935 when the Law on AOC was already into force. Therefore, the popularity of the concept of *terroir* is probably the consequence of success of AOC, rather than its cause.⁹¹

3.2. *Terroir* today

3.2.1. *Overview of the concept*

Before focusing on the nature of *terroir* in the period 1900-1940, it is expedient to analyse its current meaning in order to have a clear idea of its evolution. Today, the most authoritative definition of *terroir* is provided by the INAO and reads:

A geographical area with defined boundaries where a human community generates and accumulates across its history a collectively developed knowledge of production based on a system of interactions between a physical and a biological environment. The social and technical itineraries involved confer ‘typicality’, reveal originality and lead to a reputation for a product originating from that geographical area.⁹²

⁹⁰ Capus (n 43) 10. See also, Loubère, *The Wine Revolution in France* (n 5) 123-124.

⁹¹ Alessandro Stanziani agreed with this argument in an interview that he gave us: ‘I completely agree, it was the debate on Appellations of Origin that changed *terroir*, before that it was something else. Gilles Laferté has worked a lot on this issue’. See, Alessandro Stanziani Interview (15 June 2016).

⁹² Original text ‘*Un terroir est un espace géographique délimité, dans lequel une communauté humaine, construit, au cours de son histoire, un savoir collectif de production, fondé sur un système d’interactions entre un milieu physique et biologique, et un ensemble de facteurs*

Different definitions of *terroir* have been provided in various interdisciplinary studies.⁹³ However, this version is widely accepted today by the leading literature as well.⁹⁴ It describes *terroir* as a geographically-defined container that includes the intangible heritage developed by a community through their interactions with the surrounding ecosystem. Therefore, *terroir* appears to be linked to the human experience, rather than to the mere physical features of a place. Indeed, Thomas Parker argues effectively that *terroir* has become ‘psychogeography’⁹⁵. It will be shown that this definition is very different from the original concept of *terroir* in the narrow sense.

Despite being subject to criticism because of its ambiguity,⁹⁶ and sometimes depicted as a myth that must be debunked,⁹⁷ the success of this term is unquestionable. It is deemed a fundamental pillar of the notion of AOC.⁹⁸ Furthermore, it is also considered one of the justificatory reasons for State intervention in this field. This is because origin products are often associated with

humains. Les itinéraires socio-techniques ainsi mis en lieu, révèlent une originalité, confèrent une typicité, et aboutissent à une notoriété pour un bien originaire de cet espace géographique.’ INAO, ‘Guide Du Demandeur’ (April 2015), 27.

⁹³ For a summary, see Bertil Sylvander, François Casabianca and François Roncin, ‘Produits Agricoles et Alimentaires D’origine: Enjeux et Acquis Scientifiques’ (2005) 11-18.

⁹⁴ Some examples: ‘(...) a connection with a "terroir" is a part of the conservation of collective knowledge’, Dominique Barjolle, Bertil Sylvander and Erik Thévenod-Mottet, ‘Public Policies and Geographical Indications’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) 96; ‘Beyond the measurable ecosystem, there is an additional dimension – the spiritual aspect that recognizes the joys, the heartbreaks, the pride, the sweat, and the frustrations of its history’, Wilson (n 25) 27; ‘the natural environment influences the flavours of food and beverages, but ultimately the cultural domain, the foodview, creates the goût du terroir’, Amy B Trubek, *The Taste of Place: A Cultural Journey into Terroir* (University of California Press 2008). See also, Laurence Bérard and Philippe Marchenay, ‘Local Products and Geographical Indications: Taking Account of Local Knowledge and Biodiversity’ (UNESCO 2006);

⁹⁵ Parker (n 25) 155.

⁹⁶ At the end of the 1990s, Diry regarded *terroir* as a vague concept that was far from receiving unanimous support in geographical circles, see Diry quoted by Bérard (n 6) 77.

⁹⁷ Matthews (n 25).

⁹⁸ Text to n 25.

public policy concerns, such as the preservation of heritage and the protection of traditional know-how.⁹⁹ Sometimes it takes a romanticised and idealised form becoming a sort of spiritual element that can hardly be analysed or measured scientifically.¹⁰⁰

This spiritualisation of *terroir* is linked to another novelty. Indeed, today, *terroir* is also connected with the modern concept of ‘typicality’ or ‘typicity’ from the French *typicité*. In spite of being relatively recent,¹⁰¹ it is explicitly enshrined in the INAO’s definition of *terroir* and in the last forty years it has emerged hand in hand with the success of the latter.¹⁰² According to Laferté, it is the sign of a change in the way in which high quality wine is portrayed, thus shifting from the 19th century image of ‘luxury’ and ‘aristocratic character’ to a more modern view of ‘typicality’ and ‘heritage’.¹⁰³ It is another ambiguous term derived from the idea of a typical, or representative product whose characteristics are strongly linked to its place of origin.¹⁰⁴ Finally, some authors identify an alleged causal relationship between the two concepts, i.e. *terroir* confers to a product its ‘typical’ character.¹⁰⁵ However, just

⁹⁹ Barjolle, Sylvander and Thévenod-Mottet (n 92) 95-97; Arfini, Belletti and Marescotti (n 82) 13-16.

¹⁰⁰ Matt Kramer, *Making Sense of Burgundy* (Quill 1990) 39.

¹⁰¹ According to Matthews the term did not exist before 1979, see Matthews (n 25) 195. In any event, it appears neither in the 1970 nor in the 1974 edition of the French Dictionary of Geography, see Pierre George, *Dictionnaire de La Géographie* (1st edn, Presses universitaires de France 1970) and Pierre George, *Dictionnaire de La Géographie* (2nd edn, Presses universitaires de France 1974).

¹⁰² Matthews (n 28) 195-196.

¹⁰³ Gilles Laferté, ‘Regionalism in the Marketing of French Luxury Goods: The Example of Burgundy Wines in the Inter-War Years’ (Centre d’Economie et Sociologie appliquées à l’Agriculture et aux Espaces Ruraux 2012) Working Paper 2012/2.

¹⁰⁴ Marie Thérèse Letablier and François Nicolas, ‘Genèse de La Typicité’ (1994) 14 *Sciences des Aliments* 541.

¹⁰⁵ Allaire, Casabianca and Thévenod-Mottet (n 2) 6.

like in the case of *terroir*, the detractors of the concept of *typicité* point out that it would be nothing but a myth useful for selling products.¹⁰⁶

3.2.2. A possible classification of terroir(s): a tripartite structure

The previous paragraph has shown that few terms are more multifaceted and controversial than the concept of *terroir*. However, we suggest that it is possible to split it into three sub-categories. The first, and today predominant, defines it as a mix of human and physical factors; the second, linked the oldest incarnation of the concept, takes into account only the physical/geological elements of a place; and the third, and broadest, considers *terroir* a cultural distinctive element linked much more to the intangible heritage inherent to a place than to the mere geographical factors.

In the next sections it will be shown that the first, and most common, definition of *terroir* has been developed only from the 1940s onwards, while the origin of the second can be traced back to the period when AO/AOC laws were developed. Finally, we consider the third a relatively recent evolution of the concept, as it is linked to modern issues such as the protection of traditional knowledge and the support to rural development.

Terroir as a dual concept

As it was previously shown, today *terroir* is generally conceived as comprising a human and a physical element. Therefore, here it is only relevant to add that the first scholar who introduced this idea was the influential French historian and geographer Roger Dion who is considered to be the first who described and analysed the

¹⁰⁶

Matthews (n 25) 195-196.

complexity of the concept.¹⁰⁷ In particular, in the 1940s he stressed the importance of the human intervention over the soil.¹⁰⁸

Furthermore, it has already been mentioned that Capus partially anticipated this view. However, he was an agronomist, not an historian or an anthropologist. Therefore, he never truly distanced himself from the traditional views of his field concerning the role of the soil and, in any case, he never discussed *terroir* specifically. We will continue to analyse the work of Capus below.¹⁰⁹

Terroir as a physical element

The dual nature of *terroir* is not always recognised, especially in the field of wine where a naturalistic vision of the concept is still very strong.¹¹⁰ In this case the emphasis is often put on the physical/geological characteristics of the land. The human contribution is only mentioned at a later stage and appears to some extent ancillary to the natural vocation of the soil.¹¹¹ Bérard criticises this approach and as

¹⁰⁷ Bérard (n 6) 77; Florian Humbert, 'Approche Historique Du Processus de Délimitation Des AOC Vinicoles Françaises: Contribution à La Compréhension Des Principes et de l'application d'une Expertise' (2010) 5 Sciences Humaines Combinées <<http://revuesshs.ubourgogne.fr/lisit491/document.php?id=542> ISSN 1961-9936>.

¹⁰⁸ Roger Dion, *Le Paysage et La Vigne. Essais de Géographie Historique* (Bibliothèque Historique Payot 1990) 225-226. First published in *Publications de la Société Géographique de Lille* (1946).

¹⁰⁹ See paragraph 4.3.1.

¹¹⁰ Humbert, 'Approche Historique Du Processus de Délimitation Des AOC Vinicoles Françaises' (n 105).

¹¹¹ For a recent example of this approach, see René Morlat, Gérard Barbeau and Christian Asselin, 'Facteurs Naturels et Humains Des Terroirs Viticoles Français: Méthode d'étude et Valorisation' (2001) 32 *Études et Recherches sur les Systèmes Agraires et le Développement* 111. For an older example, see Paul Marres, *La Vigne et Le Vin En France* (Librairie Armand Colin 1950).

‘simplistic¹¹²’ and also in the viticultural field, some authors accept the dual conception.¹¹³

However, many sources in the field of wine refer to *terroir* only in physical terms. For instance, the *Dictionnaire de la Géographie*, published in 1970, defines it as a ‘(...) physical portion of land considered from the point of view of agriculture. Thus, a valley floor or a mound are *terroirs*.¹¹⁴’ Furthermore, the British and American monographic works, dictionaries and atlases generally do not take into consideration the human contribution. For instance, the *Oxford Companion to Wine* makes no reference to the human component of *terroir*,¹¹⁵ and neither do the sources to which it refers, some of them French.¹¹⁶ Another example is the important monographic work ‘*Terroir*’ that takes into consideration only elements such as climate and geology.¹¹⁷ Finally, recent anthropological research by Sarah Daynes partially confirms this view. In fact, it reveals that in some areas of France *terroir* indicates a portion of soil and well-identified vines. The work of the *vigneron* is something that gives value to the *terroir* itself and magnifies it, remaining, however, something distinct from it.¹¹⁸

¹¹² Bérard (n 6) 77.

¹¹³ Pascal Ribéreau-Gayon (ed), *Hachette Atlas of French Wines and Vineyards* (Hachette 2000) 28-29.

¹¹⁴ George, *Dictionnaire de La Géographie* (n 34) 416.

¹¹⁵ Robinson (n 31) 693-695.

¹¹⁶ For instance, Pierre Laville, ‘Le Terroir, Un Concept Indispensable à L’élaboration et à la protection des Appellations d’Origine comme à la gestion des vignobles: Le cas de la France’ (1990) *Bulletin de l’OIV* 217.

¹¹⁷ Wilson (n 25). Although it briefly touches upon the non-physical importance of *terroir* at 55.

¹¹⁸ Sarah Daynes, ‘The Social Life of Terroir among Bordeaux Winemakers’ in Rachel Black and Robert C Ulin (eds), *Wine and culture: vineyard to glass* (Bloomsbury 2013) 17-20, 27-29.

Terroir as a cultural element

The third interpretation of *terroir* considers it an intangible cultural element that expresses the heritage and tradition of a community settled in a specific area. The most famous promoter of this view was the association *Terroirs et Cultures*, now dissolved. Its president defined *terroir* as ‘a common good formed by multiple human know-hows’ (*a bien commun composé de multiples savoir faire humains*).¹¹⁹ It presented *terroir* as a holistic tool essential for protecting cultural diversity, fighting starvation, fostering rural development and others.¹²⁰

This way to conceive *terroir* was endorsed by UNESCO. This international organisation in 2005 drafted the following definition, whose text has clearly influenced the INAO:

A Terroir is a geographical limited area where a human community generates and accumulates along its history a set of cultural distinctive features, knowledge and practices based on a system of interactions between biophysical and human factors. The combination of techniques involved in production reveals originality, confers typicity and leads to a reputation for goods originating from this geographical area, and therefore for its inhabitants. The terroirs are living and innovating spaces that can not be reduced only to tradition.¹²¹

Now that the complexity of the modern concept of *terroir* has been analysed, the next subsection will show the starting point. That is, the relevant doctrines and the historical background that influenced the parliamentary discussions in France and the role played by *terroir* in the policy-making process.

¹¹⁹ Dominique Chardon in *Terroirs&Cultures* and UNESCO, ‘Rencontres Internationales Planète Terroirs’ (UNESCO 2005) 13.

¹²⁰ Ibid.

¹²¹ *Terroirs&Cultures*, ‘The Future Needs Terroirs’ (2010).

3.3 The beginning of the parliamentary discussions in France: the ideological and doctrinal background

3.3.1. *The meaning of terroir and its evolution until 1935*

One thing that Italy¹²² and France have in common is the attempt to provide protection for prestigious products, linked to a specific place, since medieval times.¹²³

In modern age France, the term *terroir* began to appear in printed publications such as dictionaries, encyclopaedias and manuals of agriculture and oenology. Generally, the word had no other meaning than ‘soil’ in a very basic sense. No figurative or abstract elements, such as tradition or human contribution, were associated with it.¹²⁴

Furthermore, the expressions *terroir* and *goût de terroir* (taste of *terroir*), were sometimes employed in a pejorative sense and indicated the flaws of a wine. For instance, one of the first universal dictionaries printed in France, first published in 1690, defines *terroir* and *goût de terroir* as:

¹²² For the case of Italy, see Section 4.1 onwards.

¹²³ In France, there were at least two examples of legislative acts passed in order to regulate the production of niche products and confer exclusive rights to their makers. In 1395 Philip the Bold established the conditions for producing Bourgogne Wine. In particular he mandated the use of *pinot noir* grapes instead of *gamay* ones that were more productive but bitter and deemed of lower quality. Later, in 1411 King Charles VI officially protected Roquefort cheese and its territory by granting to its producers an exclusive right on the ripening of the cheese in the caves that characterise the region. The reason was that they had been doing that for a long time. The exclusive right included also the use of the name. See, Robinson (n 31) 114; Kazuko Masui and Tomoko Yamada, *French cheeses* (Dorling Kindersley 2006) 216. See also, Alexis Lichine, *Encyclopaedia of Wines and Spirits* (Cassell 1967) 158.

¹²⁴ For instance, in a treaty on agriculture published in late 18th century, *terroir* was simply considered as the soil where different products could grow, for instance carrots, see François Rozier, *Cours Complet D’agriculture, Théorique, Pratique, économique, et de Médecine Rurale et Vétérinaire, Suivi D’une Méthode Pour étudier L’agriculture Par Principes; Ou, Dictionnaire Universel D’agriculture*, vol 2 (Rue et Hotel Serpente 1791) 575.

Soil considered according to its qualities. (...) It is said that the wine has a taste of *terroir* when it has some disagreeable quality which comes to it due to the nature of the *terroir* where the grapevine is planted.¹²⁵

In 1762, the Dictionary of the French Academy, confirms the pejorative meaning of *terroir*.¹²⁶ In 1816, the wine expert and merchant André Jullien, in his work *Topography of all the known vineyards*, almost always uses *terroir* with a negative meaning.¹²⁷ In 1886, the famous producer of Champagne Louis Perrier stated that the kings of France and England wanted to drink Champagne wine ‘purified by any trace of *terroir*’.¹²⁸

Even at the beginning of the 20th century,¹²⁹ when the legislative attempts to protect appellations of origin in France began, ‘*terroir*’ and ‘taste of *terroir*’ did not yet have a positive meaning yet. For instance, a manual for sommeliers published in 1921 listed the ‘taste of *terroir*’ among the negative characteristics of the wine.¹³⁰ Furthermore, other works published in the 1920s describe *terroir* as a feature that:

¹²⁵ Original text ‘*Terre considérée selon ses qualités. (...) On dit que le vin a un goût de terroir, quand il a quelque qualité desagréable, qui lui vient par la nature du terroir où la vigne est plantée.*’ Antoine Furetière, *Dictionnaire Universel, Contenant Généralement Tous Les Mots François Tant Vieux Que Modernes, & Les Termes Des Sciences et Des Arts* (2nd edn, Arnoud et Reinier Leers 1702) 959-960. Cf Trubek (n 94).

¹²⁶ Académie Française, *Dictionnaire de l’Académie Française*, vol 2 (Vve B Brunet 1762) 825.

¹²⁷ Jullien uses the expression *goût de terroir* thirteen times in his work and always with a negative meaning, see André Jullien, *Topographie de Tous Les Vignobles Connus* (Madame Huzard, imprimeur-libraire 1816) 68, 70, 71, 102, 152, 161, 166, 189, 199, 234, 246, 261, 403. In the English version of the work, which was published abridged in 1824, the glossary entry *goût de terroir* was cut, meaning that it was not deemed necessary for the abridged version, see André Jullien, *The Topography of All the Known Vineyards. Translated from the French and Abridged* (J and WB Whittaker 1824) xi-xvi.

¹²⁸ Louis Perrier, *Mémoire Sur Le Vin de Champagne* (Bonnedame fils 1886) 41.

¹²⁹ For more references from the 19th century, see Matthews (n 25) 160-161.

¹³⁰ P Maigne, *Nouveau Manuel Complet Du Sommelier et Du Marchand de Vin* (Mulo 1921) 220. See also, Paul Maisonneuve, *Le Vigneron Angevin* (Self-Published 1926) 281.

makes a wine worse than another one¹³¹; that needs to be fought¹³²; something that the wine has to lose before being exported.¹³³

This review shows that until the 1920s the term ‘*terroir*’ appeared in the technical manuals and textbooks either as a neutral or, even, as a negative term. In general, it was not as famous and widespread as it became in the 1930s, as the next paragraph will confirm. Therefore, the transformation of the term into a widespread positive concept must have occurred later. It is submitted that this process began in the second half of the 1920s thanks to different factors that will be analysed below.¹³⁴

3.3.2 The 1855 Bordeaux Wine Official Classification

Traditionally, *terroir* did not play any important role in the early classifications of wine. This proves that for a long period of its history the importance of this concept was limited. For instance, the 1855 Bordeaux Wine Official Classification (the ‘Classification’), that is still today a reference point to identify some of the best French wines, did not adopt it as a guiding principle at all.

The Classification was requested by the French Emperor Napoleon III who wanted to display to the visitors of the 1855 *Exposition Universelle de Paris* a selection of the best Bordeaux wines. Hence, an official ranking was necessary. The task was assigned to the local wine-brokers. Those took as an indicator of quality the

¹³¹ Auguste Limasset, *Réglementation Du Vin Dans La Province de Languedoc et Particulièrement à Roquemaure Au XVIIe et Au XVIIIe Siècles* (Seguin 1908) 11.

¹³² Association Nationale d’Expansion Economique, *Semaine Nationale Du Vin. Compte Rendu Des Travaux. Paris 13-18 Mars 1922* (Dubois et Bauer 1922) 321.

¹³³ Paul Maisonneuve, *L’Anjou, Ses Vignes et Ses Vins* (Self-Published 1925) 81.

¹³⁴ See subsections 4.3, 4.4, 4.5.

mere market price of the different brands.¹³⁵ The final result was the division of the top Bordeaux wines into five classes of *crus* (growths), with four *premier crus* (first growths), i.e. the most expensive elite products; fourteen *deuxièmes crus* (second growths) and so on.¹³⁶ It is relevant to notice that the criterion followed for identifying and assessing the quality of the different *crus* (growths) was not inspired by the logic of *terroir*. Rather, it was aimed at distinguishing the wine produced by the top *châteaux* (estates), owned by important noble or bourgeois families, from that made by small winemakers and villagers.¹³⁷

It is true that the 1855 Classification and the Law of 1935 on AOCs do not have much in common.¹³⁸ In fact, one thing is classifying the existing wines on the basis of their prestige on the market place. Another is arguing that the portion of soil where grapes are harvested distinguishes a kind of wine from any other, without considering the consumer's taste. However, *terroir* is not only the element that distinguishes a product, but also what gives a product its peculiar qualities. This was argued by the French Parliament itself in 1936¹³⁹ and confirmed by the authorities quoted above. Therefore, the concept of *terroir* could have been used on that occasion, but another criterion was followed instead. This means that, in the mid-19th century, *terroir* was considered just a term of oenology and agronomy, not important enough to be adopted as the key criterion for distinguishing prestigious wines.

¹³⁵ Robinson (n 31) 175.

¹³⁶ Clive Coates, *The Wines of Bordeaux: And Vintages and Tasting Notes 1952-2003* (Weidenfeld & Nicolson 2004) 44-51.

¹³⁷ Ulin, 'Invention and Representation as Cultural Capital' (n 6) 520-522.

¹³⁸ In this sense we disagree with Robert C Ulin, 'Invention and Representation as Cultural Capital' (n 6) 522-523.

¹³⁹ See Portmann, text to n 154.

3.3.3. The doctrines of Vidal de la Blache and Jules Guyot

The background to the French Parliamentary discussions would not be complete without mentioning Vidal de la Blache and Jules Guyot.

Vidal de la Blache

Vidal de La Blache, who lived between 19th and early 20th century, was an influential scholar, considered one of the fathers of modern ‘human geography’.¹⁴⁰ Although he was never directly involved in the development of AO and AOC law, he was an important theoretician who influenced with his doctrines the concept of *terroir* as well as the rationale of the AO rules.¹⁴¹ In particular, he argued that the society, culture and economy of a geographical area could be fully understood only through the analysis of its physical and environmental characteristics. In fact, all these elements were related and one could explain the other.¹⁴² In his work *Tableau Géographique de la France* (1903) he described France as a ‘geographical being’ (*être géographique*).¹⁴³ As recounted by Bérard:

¹⁴⁰ Thierry Gasnier, ‘Le Local: Une et Divisible’ in Pierre Nora (ed), *Les Lieux de Mémoire* (Gallimard 1992) 507.

¹⁴¹ Bérard (n 6) 75; Guy (n 5) 136-139.

¹⁴² The archival research shows that the idea according to which land, products and the characteristics of local communities were linked was widespread. For instance, a survey conducted by the inspectors of the French Ministry of Agriculture and Commerce in 1845 on the morphology of the territory of the Department of Tarn and on its agricultural products, not only describes the land literally field by field, but it also dedicates an entire section to the ‘Physical and Moral Constitution of the Population’. See, Ministère de l’Agriculture et du Commerce, *Agriculture Française, Par Mm. Les Inspecteurs de l’agriculture Publié d’après Les Ordres de M. Le Ministre de l’agriculture et Du Commerce: Department Du Tarn* (Imprimerie Royale 1845).

¹⁴³ Paul Vidal de La Blache, *Tableau de La Géographie de La France* (1st edn, Hachette 1903) 7.

Vidalian geography focuses on identifying natural regions (*or pays*) and the variety of landscapes and lifestyles (*genres de vie*) encompassed within those areas and resulting from the interaction between human groups and their natural milieus.¹⁴⁴

These arguments are deeply imbued with nationalist rhetoric. They reflect an image of France as the centre of the civilised world also because of its various and precious soils.¹⁴⁵ They were mainstream ideas widely discussed by geographers and sociologists throughout the period of the AO reforms.¹⁴⁶ Indeed, Vidal and his doctrine were even mentioned during the parliamentary debate.¹⁴⁷

Jules Guyot

Jules Guyot was another important character who influenced the French parliamentary debate,¹⁴⁸ and also the Italian oenologists of the late 19th and early 20th century.¹⁴⁹ He is considered by many the founder of modern oenology.¹⁵⁰ His most celebrated work, *Culture de la Vigne et Vinification*,¹⁵¹ was published in 1864. There, he argued that the grapevines (*cépage*) and the soil (*terroir*) were the two key elements that determined the quality of a wine. However, he argued that the former were more important than the latter:

¹⁴⁴ Bérard (n 6) 75.

¹⁴⁵ Guy (n 5) 43.

¹⁴⁶ *ibid.*

¹⁴⁷ Villeneau in *Chambre*, 4 July 1921, JORF 5 July 1921, 3164.

¹⁴⁸ Guyot's work was explicitly mentioned by Calmèl in *Sénat*, 12 July 1927 (n 62) 908.

¹⁴⁹ Zeffiro Ciuffoletti, 'Dall'unità d'Italia alla metà del novecento' in Paolo Nanni (ed), *Storia regionale della vite e del vino in Italia: Toscana* (Polistampa 2007) 87-88.

¹⁵⁰ *Ibid.*

¹⁵¹ Jules Guyot, *Culture de La Vigne et Vinification* (Librairie Agricole de la Maison Rustique 1864). For an English translation, see Jules Guyot, *Culture and Wine Making* (Marie Ludovic tr, Melbourne 1865).

The grapevine (...) is the base of a vineyard (...): *terroir* raises or lowers the quality of the wine, (...) but it never transforms these or those grapes and never changes the order of their respective values.¹⁵²

It is an absolute truth that the passion for *terroir* has managed to confuse the ideas of the best oenologists (...). The concept of *cru* has absorbed that of grape variety whereas it is the latter that dominates the former.¹⁵³

This confirms that still in the 1860s/1870s *terroir* was a neutral and residual concept that became central only later. It was Joseph Capus who reversed this order and considered *terroir* more important than grapes.¹⁵⁴ However, before getting to this point, we will need to understand to what extent the concept of *terroir*, together with the doctrines that have just been mentioned, influenced the French parliamentary debate.

4. The French parliamentary debate on AO and AOC: *terroir* reinvented?

4.1. Framework

The analysis of the French parliamentary debate will show that this concept was reinvented. This occurred when AO were joined by AOC. In fact, as shown above, the former tried only to delimit the boundaries of the areas of production. The latter, instead, pursued the ambitious task of defining and ensuring the substantive nature of the product through an administrative procedure. In this effort, *terroir* became the

¹⁵² Original text '*Le cépage (...) c'est la base d'un vignoble (...) le terroir élève ou abaisse incontestablement la qualité du vin (...) mais il ne transforme pas tels ou tels cépages et n'intervertit jamais l'ordre de leur valeur respective.*' See, Guyot, *Culture de La Vigne et Vinification* (n 154) 53.

¹⁵³ *ibid*, 62. Original text '*c'est là une vérité absolue que la passion du terroir est parvenue à obscurcir au point de troubler les idées des plus savants oenologues (...). L'idée du cru a absorbé l'idée du cépage, tandis qu'en réalité le cépage domine le cru*'.

¹⁵⁴ Text to n 186.

symbol of the holistic link between a product and its place of origin, thus becoming something different from the neutral, and often pejorative, term described earlier.¹⁵⁵

This change was probably due to the transformation of the image of the rural space that was taking place in that period and that led to a new idealised and ‘folklorised’ image of it.¹⁵⁶ In the French Parliament, inspired by Capus, from 1927 onwards these new social trends were mirrored by the growing interest for the protection of the substantive qualities of the products and not only their names. All these innovations contributed to making *terroir* a central concept, different from the one that has been presented above. This evolution can be divided into two phases, the important discussion on the Roquefort AO that took place in 1925, marking the divide between them.

4.2. *Terroir* in the French AO policy: Phase I (1905-1925)

4.2.1. *The period 1905-1913*

In the 1900s the concept of *terroir* appeared sporadically and with unclear meaning. In general, the Parliament adopted the narrow interpretation of the concept that was predominant at that time.¹⁵⁷ Furthermore, the legislation was only aimed at defining the origin of the product from a mere formal perspective. The issue of the substantive product/place link was not debated yet. In particular, during the discussions about the Law of 1905, the term was considered a synonym of *cru* and, in general, of ‘soil’. Thus, it was deemed too narrow and limited to become the criterion to determine the

¹⁵⁵ Text to n 119.

¹⁵⁶ Text to n 210.

¹⁵⁷ Text to n 110.

fraud as to the origin of the product.¹⁵⁸ Later, during the discussions regarding the delimitation of the wine-producing region of Champagne, the term did not lose its standard meaning of ‘soil used for harvesting grapevines’.

Indeed, it is mentioned as a criterion for delimiting an appellation. For instance, the Minister of Agriculture himself argued that the wine-producing region of Champagne (*le terroir de Champagne*) did not precisely overlap with the administrative borders of the department (*la province de Champagne*).¹⁵⁹ However, the parliamentary debates show that *terroir* in the narrow sense, i.e. the features of the soil, was not the criterion adopted for fulfilling the task. In fact, some MPs based their argumentations on historical recounts and trade practices.¹⁶⁰ Alternatively, the claims were supported by quoting authorities. However, these were often influenced by the doctrines of Guyot that relegated *terroir* to marginal roles.¹⁶¹ For instance, Deputy Pozzi, quoting an oenologist named Berger, argued that, ‘independently from the exceptional nature of *terroir*, (...) it is the choice of the grapevines (...) that makes the wine.’¹⁶² Finally, in 1913 we find the first statement regarding the need to protect a product because of its unique link with its place of origin. However, it is an isolated case. On that occasion, Deputy Dumesnil argued: ‘[t]he Chasselas de Fontainebleu is a product that can receive its qualities only from the region of Fontainebleu, in special conditions of *terroir*.’¹⁶³

¹⁵⁸ Courant in *Chambre*, 23 February 1905, JORF 24 February 1905, 498.

¹⁵⁹ See the speech of Ruau, Minister of Agriculture, *Sénat*, 7 July 1908 (n 159) 910.

¹⁶⁰ Péchadre in *Chambre*, 26 February 1909, JO 27 February 1909, 541-542.

¹⁶¹ Text to n 147.

¹⁶² ‘*Indépendamment de la nature exceptionnelle du terroir (...), c’est le choix des cépages (...) qui [fait] le vin.*’ Pozzi in *Chambre*, 26 February 1909, JORF 27 February 1909, 544.

¹⁶³ ‘*Le chasselas de Fontainebleau est un produit qui ne peut puiser ses qualités que dans la seule région de Fontainebleau, dans des conditions de terroir spéciales.*’ *Chambre*, 14 November

4.2.2. *The road to the Law of 1919 and the early 1920s*

In November 1913 the Minister of Agriculture Clémentel announced optimistically to be sure that the Parliament would have solved the ‘nightmare of delimitation’ in two meetings, thus providing protection to AOs.¹⁶⁴ In that period the debate concentrated on the problem of ‘regional delimitations’ (*délimitations régionales*). The Parliament was discussing a system that had to override the previous administrative delimitations by replacing them with judicial ones.¹⁶⁵

According to the initial law proposal, this new system of protection should have taken into consideration the substantive qualities (*qualités substantielles*) of the products.¹⁶⁶ This requirement was strongly criticised because: (1) according to some MPs, the mere geographical origin should have been enough in order to avoid the granting of privileges; (2) the judicial courts were not in the position to distinguish wines on the basis of their substantive qualities.¹⁶⁷ On the opposite side, the inclusion in the law of the reference to the ‘substantive qualities’ of the products was supported on the basis of *terroir*-oriented arguments. According to them, the mere geography

1913, JORF 15 November 1913, 3381. Ironically, this variety of grape was supplanted by others. Now it is cultivated only for ornamental reasons and practically does not exist anymore.

¹⁶⁴ *Chambre*, 4 November 1913, JORF 5 November 1913, 3216.

¹⁶⁵ *Chambre*, 13 November 1913, JORF 14 November 1913, 3321; *Chambre*, 14 November 1913 (n 163) 3371. See also, *Sénat*, 19 May 1913, JORF 20 May 1913, 503.

¹⁶⁶ art 1(2) of the 1913 bill, that anticipated many features of the Law of 1919, read ‘It shall be punished (...) whoever uses in bad faith a geographical designation to identify products which differ from those who owe their designation to the local, loyal and constant uses in light of their origin, nature and *substantive qualities*.’ (*‘Sera puni (...) quiconque aura employé de mauvaise foi une dénomination géographique pour désigner des produits différents de ceux auxquels les usages locaux, loyaux et constants ont attribué cette dénomination à raison de leur origine, de leur nature et de leurs qualités substantielles’*), see *Chambre*, 20 November 1913, JO 21 November 1913, 3449. Emphasis added.

¹⁶⁷ See Thierry-Delanoue and of Duc de la Trémoille in *Chambre*, 13 November 1913 (n 165) 3321-3322, 3325-3327; Paul-Meunier in *Chambre*, 14 November 1913, (n 163), 3371-3373; *Chambre*, 20 November 1913 (n 166) 3457-3463; Hébert in *Chambre*, 21 November 1913, JO 22 November 1913, 3495-3495.

was not the decisive factor. Indeed, what really mattered was what the natural vocation of the soil was able to offer. For instance, Jacques-Louis Dumesnil stated ‘the products of the earth borrow from each soil, each climate, each process of cultivation some special qualities.’¹⁶⁸ However, this line was eventually rejected and the Chamber voted in favour of deleting the reference to the ‘substantive qualities’, with a majority of 334 against 203.¹⁶⁹ Therefore, at least until 1913, the idea of protecting the substantive qualities of the products, determined also by *terroir*, was minority. The crucial point was determining the formal scope of the appellation. This could have done by applying different criteria not necessarily related to the link between a product and its *terroir*.

After World War I, during the discussions that eventually led to the adoption of the Law of 6 May 1919, the debate did not mention *terroir* or related issues at all.¹⁷⁰ Thus, the parliament confirmed the position that its majority had already expressed in 1913. As a result, the Law of 1919 neither defined ‘AO’ nor introduced the ‘substantive qualities’ requirement.¹⁷¹ The system protected nothing but the false use of the region’s names.¹⁷² Finally, the contours of the appellations generally overlapped with the boundaries of the *départements* that could be extended in case the name of the products was used outside them by the loyal, local and constant uses.¹⁷³

¹⁶⁸ Original text ‘*Les produits de la terre empruntent à chaque sol, à chaque climat, à chaque procédé de culture des qualités spéciales*’, see *Chambre*, 20 November 1913 (n 172) 3452.

¹⁶⁹ *Chambre*, 21 November 1913, (n 172), 3497.

¹⁷⁰ In fact, the French Parliament was concerned by other issues such as 1) forcing Germany, which had lost the war, to recognise French AOs and 2) preventing the name ‘Champagne’ from falling in public domain. See, *Chambre*, 19 April 1919, JO 20 April 1919, 2145, 2145-2146. See also Bureaux International de l’Union pour la Protection de la Propriété Industrielle, ‘La Question Des Fausses Indications de Provenance et l’Arrangement de Madrid’ (1920) 36 *La Propriété Industrielle* 13, 18.

¹⁷¹ *Loi* 6 Mai 1919 (n 55) art 1.

¹⁷² Le Goffic (n 2) 13.

¹⁷³ Gangjee (n 7) 104; Roubier (n 39) 117.

Some tribunals provided an interpretation of the Law of 1919 that the commentaries of that period described as ‘broad’ (*large*). Thus, they held that the ‘uses’ related to the physical and human characteristics of the winemaking process.¹⁷⁴ However, others considered that the mere commercial uses were enough.¹⁷⁵

In conclusion, in this phase the concept of *terroir* did not play a strong role. Most of the time, it appeared with the very narrow and basic meaning of ‘soil’. The more advanced idea of *terroir* as a place that determined the qualities a product appeared from time to time. However, the doctrine of Guyot, that stated the prevalence of grapes over the soil, was still well present. Nevertheless, the guiding principle during this phase was the bare geographical element. That is, for instance, everything that grows within the boundaries of the old province of Champagne is Champagne and can use the appellation.¹⁷⁶

4.3 The turning point: the protection of Roquefort and the doctrine of Capus

4.3.1. *Joseph Capus and his doctrine*

We have already introduced Joseph Capus, member of the French Parliament from 1919 to 1941 and Minister of Agriculture between 1923 and 1925.¹⁷⁷ Since the beginning of the 1910s he supported the introduction of an IGO system able to take into consideration the quality of the goods and not only their mere area of

¹⁷⁴ *Tribunal de Tonerre*, 27 July 1923 and *Tribunal de Narbonne*, 2 July 1923 in Société de législation comparée, *Annuaire de Législation Française* (Cotillon 1928) 112.

¹⁷⁵ Capus (n 43) 23.

¹⁷⁶ Société de législation comparée (n 180) 112; Roubier (n 39) 780-785.

¹⁷⁷ Text to n 72.

production.¹⁷⁸ In 1947 he explained his doctrine in his book of memoirs, *L'Évolution de la Législation sur les Appellations d'Origine* ('The evolution of the legislation on *Appellations d'Origine*').¹⁷⁹

His doctrine formed the heart of the AOC. In synthesis, he argued that: (1) the only useful 'local, loyal and constant uses' were those that allowed to identify the true product from a substantive perspective;¹⁸⁰ (2) the Law of 1919 was unable to prevent dishonest practices, the most common being the planting of cheap and low quality grapevines. Indeed, it even encouraged them.¹⁸¹ This was due to the fact that this law focused only on the identification of the formal administrative borders of an appellation. Instead, according to him, the solution consisted in joining law and agronomy;¹⁸² (3) Capus, as was very common among agronomists, always considered *terroir* a physical element, i.e. the soil on which a specific kind of grapes are grown.¹⁸³ However, he argued that the appellation was the result of the combination between the physical uses, i.e. the soil and the grapes and the human uses, i.e. the winemaking practices;¹⁸⁴ and (4) finally, Capus, unlike Guyot, considered *terroir*, and not the grapes, as the key element of winemaking. This was probably due to the fact

¹⁷⁸ INAO, *Une Réussite Française: L'Appellation d'Origine Contrôlée* (n 48) 21-22; Capus (n 43) 22.

¹⁷⁹ Capus (n 43).

¹⁸⁰ Ibid, 9-10, 23-24.

¹⁸¹ Capus recounts that in areas of the Gironde like Barsac and Sauternes, winemakers previously producing ordinary red wines, started planting white grapes that, although did not belong to the local uses, were nonetheless granted AO protection. In Médoc, vines that enjoyed good reputation were replaced by franco-american hybrids (now banned) that did not belong to that territory but that were very productive and cheap. See Capus (n 43) 20-22.

However, few researches argue that the Law of 1919 benefited the winemakers, see Olivier Jaquet, 'Les Appellations d'origine et Le Débat Sur La Typicité Dans La Première Moitié Du XXème Siècle: Le Rôle Du Syndicalisme Viti-Vinicole Bourguignon' (2009) 1 Territoires du vin online.

¹⁸² Capus (n 43) 20-22.

¹⁸³ Ibid, 10. See also Kuhnholz-Lordat (n 73).

¹⁸⁴ Capus (n 43) 10; Loubère, *The Wine Revolution in France* (n 5).

that *terroir* could not be stripped away or altered, while the use of a myriad of low-quality grapes was very common.¹⁸⁵

However, the idea that *terroir* was more important than grapes was probably due also to the fact that both Capus and his advisor Le Roy had a vested interest in supporting such a thesis. In fact, Capus was elected in Gironde. This was a *département* traditionally characterised by strong associations of winemakers that had been able to put pressure on the Parliament since the beginning of the 1910s.¹⁸⁶ Le Roy, instead, was himself a winemaker and land-owner, as well as the leader of his community of producers.¹⁸⁷ Hence, they were in contact with the same people who, as it will be shown, between the 1920s and the 1930s transformed the social idea of the rural space.¹⁸⁸ This was linked to the development of the concept of *terroir* as well.

4.3.2. *The Roquefort AO*

The scandal of Roquefort embarrassed the French Parliament, pushing it to take immediate action. Indeed, this prestigious cheese was often made with cow's and not ewe's milk as prescribed by the best usages. Therefore, it was just another example of the fact that the substantive characteristics of the products had to be protected and not only the origin. Furthermore, for the first time, the French Parliament had to discuss a good to which, because of its nature, the wine paradigm could not apply. For the first time, the product/place link was found in the history, tradition and reputation of the

¹⁸⁵ This argument was made in the Senate as well. See, Martin in *Sé debates*, 7 July 1933, JO 8 July 1933, 1729. See also, fn 188.

¹⁸⁶ INAO, *Une Réussite Française* (n 48) 17-19; Loubère, *The Wine Revolution in France* (n 5) 142-145. See also, Gangjee (n 7) 98-100.

¹⁸⁷ Loubère (ed), *The Vine Remembers* (n 5) 165-167.

¹⁸⁸ Text to n 217.

product and not only in the physical characteristics of the environment where it was made. In this regard, Deputy Monsservin stated:

What makes a wine is *terroir*. Here, by contrast, what makes the Roquefort is the cooperation between ewe's milk and ferments that develop the atmospheric and bacteriological conditions that can be found only in the natural caves of Roquefort.¹⁸⁹

This statement is important for at least two reasons: (1) it argued that it was *terroir* in the narrow sense, meaning the soil, that determined the qualities of a product. It is probably a reference to the doctrine of Capus; and (2) unlike wine, Roquefort owed its features to the unique environment in which the raw materials are traditionally processed.

For a thousand years Roquefort has been matured in the caves of the homonym region. In the view of Monsservin, this place was what made this product unique. In fact, he admitted that frequently the cheese made from ewe's milk came to the Roquefort area from fourteen different departments. Nevertheless, according to him, this cheese became Roquefort after maturing in the special environment of the caves.¹⁹⁰ Hence, it is not by chance that Monsservin supported his claim by making detailed reference to the history of the product and the tradition of its making and not only to the physical characteristics of the place itself.¹⁹¹

This case was unprecedented and led to an interesting debate. In fact, some senators, still faithful to the wine paradigm, argued that AO could be granted only to

¹⁸⁹ Original text '*Ce qui fait un vin c'est le terroir. Ici, au contraire, ce que fait le roquefort, c'est cette sorte de collaboration de coopération du lait de brebis et de ferments que développent des conditions atmosphériques et bactériologiques qui ne se rencontrent que dans les caves naturelles de Roquefort.*' See, Monsservin in *Sénat*, 9 June 1925, JORF 10 June 1925, 1141.

¹⁹⁰ Monsservin in *ibid*, 1138-1140.

¹⁹¹ *ibid*.

products linked to the soil of a well-determined geographical area.¹⁹² Otherwise, they argued that AOs would have been based only on reputation and commercial customs and, as a consequence, they would have been too generic to meet the requirements of the Law of 1919.¹⁹³ On the opposite front, senators like Jenouvrier, who had already expressed a forward-looking view about the function of AO protection in his 1914 report,¹⁹⁴ and Duchein, the rapporteur, agreed with Monsservin.¹⁹⁵

In the end, a compromise was reached. In particular, it was decided that Roquefort could only be made from ewe's milk and following the loyal, local and constant uses concerning the place and method of maturing. Moreover, the ewe's milk did not have to be necessarily sourced from the areas of production, but also from other areas 'which present the same conditions of ovine races, grass and climate' (*'présentant les mêmes caractéristiques de races ovines, d'herbage et de climat'*).¹⁹⁶ In this discussion, the concept of *terroir* emerged in a new and more modern form. Indeed, it took the shape of what Dominique Barjolle describes in these terms: 'terroir is a kind of black box: the input is known and the output is obtained but exactly what takes place in between remains a mystery'.¹⁹⁷ Indeed, in 1948 a congress of experts explicitly admitted that the way in which the environmental conditions

¹⁹² Serres in *ibid*, 1141.

¹⁹³ Clémentel in *ibid*, 1142.

¹⁹⁴ Text to n 323.

¹⁹⁵ See Jenouvrier and Duchein in *Sénat*, 9 June 1925 (n 189) 1141-1143.

¹⁹⁶ *Sénat*, 11 July 1925, JORF 12 July 1925, 1505; *Loi* du 26 Juillet 1925 garantissant l'origine de l'appellations d'origine du Roquefort, JORF 30 July 1925, 7190. See also, Léon Freychet, 'Le Roquefort' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), *1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992).

¹⁹⁷ Barjolle, Sylvander and Thévenod-Mottet (n 92) 96.

influence the production of cheese was unknown.¹⁹⁸ Therefore, in this case the deterministic link between the soil and the wine was replaced, at least partially, by a different factor based upon the product's tradition and reputation. In Chapter 3 this thesis will show that this happens almost unavoidably when the wine paradigm is not applicable, i.e. whenever the GI product is not intuitively and directly linked to its area of origin.¹⁹⁹

The result of the debate has also left traces in the modern PDOs. In fact, the text of the Roquefort PDO, that still embodies elements of Monnsorvin's speech, justifies the geographical link between the product and the place in these terms:

Cheese strainers have been found in prehistoric sites in the region. Mentions of Roquefort cheese dating back to the 8th century can be found in many documents, donations, bonds, etc. concerning Rouergue. In the 15th century, Charles VI wrote a letter of patent, confirmed by his successors, in which he mentions the vital need to protect Roquefort. On 31 August 1666, a ruling by the Toulouse Parliament granted the inhabitants of Roquefort-sur-Soulzon the exclusive right to ripen the cheese. It is the only cheese for which the designation of origin has been legally recognised since 1925 (Law of 26 July 1925).

The distinctive characteristics of Roquefort (...) stem partly from the characteristics of the milk obtained from traditional breeds of sheep and fed according to tradition, and partly from the uniqueness of the natural caves in Roquefort-sur-Soulzon, which are formed wholly from the scree at the foothills of the calcareous cliffs in Combalou, where a *miracle of nature* conspires to give Roquefort its unique taste.²⁰⁰

¹⁹⁸ Jean Keilling, 'Les Crus En Matière Latière' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), *1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992).

¹⁹⁹ Text to n 163 in Ch 3.

²⁰⁰ 'Roquefort' PDO [2007] C298/29, [4.6]. Emphasis added.

It is clear that the specification with its poetic clause ‘where a miracle of nature conspires to give Roquefort its unique taste’ does not attempt to justify scientifically or physically any product/place link.

The model of Roquefort AO has become very influential. The evolution of the product/place link in EU GIs will be analysed in Chapter 4. However, it is worth providing an example here. For instance, in the *Prosciutto di Parma* PDO (‘Parma Ham’) raw materials can be sourced from a very broad area.²⁰¹ However, the *Prosciutto di Parma* can be made only in a small part of the Province of Parma because:

The location of this micro-area gives it its characteristic and unique ecological, climate and environmental conditions due to the air from the sea of Versilia which calms as it passes through the olive groves and pine belts in Val di Magra, dries as it crosses the Apennine passes, acquiring the scent of chestnut groves and reaches the production area to dry the ‘Prosciutti di Parma’, lending the hams their exclusive sweet aroma.²⁰²

Just like in the case of Roquefort, also in this case *terroir* reminds us of Barjolle’s magic ‘black box’, rather than a rigid scientific factor. The need to protect the substantive qualities of a product to which the wine paradigm was not applicable led the French Parliament to accept, although with some amendments, a different description of the product/place link. In fact, this focused predominantly on the history and the tradition of the good. It is hard to believe that this way of conceiving the product/place link would have ever been accepted in 1913 or 1919. Thus, the Roquefort case shows that something had changed in the way of conceiving the origin

²⁰¹ ‘Prosciutto di Parma’ PDO [2007] C86/8, [4.3].

²⁰² Ibid, [4.6].

of AO goods. However, this did not change the concept of *terroir* that remained linked to physical and environmental factors only, as the next subsection will show.

4.4. The Law of 1927: Phase II begins.

Capus presented and the bill of the Law of 1927 that was named after him, *Loi Capus* (Law Capus).²⁰³ In his intentions, this provision had to turn AOs into an instrument capable to guarantee not only the formal origin of the product but also its substantive qualities. This could be done by reinterpreting the meaning of ‘loyal, local and constant uses’. These, according to Capus, had to refer to both the physical and human uses that characterised the product.²⁰⁴ This reform partially amended the discipline of AO in general. Moreover, it provided for the specification of Champagne AO.²⁰⁵

The speech by the rapporteur Mr Calmèl was very important. In fact, he explicitly defined the concept of *terroir* before the Senate. He described it as the key factor on which the reform of AO should have been based. In particular, he argued that: (1) the Law of 1919 was dysfunctional, especially after the decisions of the *Cour de Cassation*;²⁰⁶ (2) the decision to remove any reference to the substantive qualities (*qualités substantielles*) of the product from the text of the Law of 1919 was a tragic

²⁰³ *Chambre*, 10 May 1927, JORF 11 May 1927, 1360. See also, *Chambre*, 24 May 1927, JORF 25 May 1927, 1578.

²⁰⁴ *Chambre*, 20 May 1927, JORF 21 May 1927, 1548.

²⁰⁵ *Chambre*, 14 June 1927, JO 15 June 1927, 1859.

²⁰⁶ See Calmèl in *Sénat*, 12 July 1927 (n 62) 909; text to n 61.

mistake;²⁰⁷ (3) the ‘loyal, local and constant uses’ criterion had to be applied to all the key aspects of the production of wine and that *terroir* was the sum of them:²⁰⁸

The wine distinguishes itself through three natural factors. The first is the variety of the grapes, the second is the soil and the third is the climate; these three factors unite into the generic term *terroir* (...).²⁰⁹

Therefore, in 1927, for the first time, *terroir* was officially defined in the French Parliament and presented as a key element on which the AO policy had to be based. Furthermore, it was not narrowly described as the mere ‘soil’ but as the sum of all the physical elements that gave origin to the product, although any reference to the human contribution was still absent. This speech marked the beginning of the success of *terroir* and of the great consideration that this concept enjoyed in the Parliament. Finally, this transformation of the role of *terroir* in the French policy occurred in parallel with a social revolution that was taking place outside the Parliament. This phenomenon will be analysed in the next section.

4.5. The 1930s: the transformation of *terroir* outside and inside the Parliament

4.5.1. *Outside the Parliament*

Before analysing the parliamentary debate of the 1930s, it is important to focus on the transformations that were taking place in the French society during that period. In fact, the social image of the rural space was changing. In this regard, the work of Gilles Laferté is particularly illuminating. This French scholar shows that in the inter-

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid. Original text ‘*Le vin se distingue par des caractères particuliers qui sont dûs à trois facteurs naturels. Le premier est l’encépagement, le deuxième le sol, le troisième le climat; et l’on comprend dans le terme générique du terroir (...).*’

wars period the image of wine as a luxury good that had characterised this drink for all of the 19th century, following the model of Champagne, changed.²¹⁰ Indeed, it was replaced by the folklorisation of the rural space and of the work of the winemakers who were able to break the supremacy of the wine-merchants.²¹¹ This process began in mid-1920s with the organisation of fairs that provided an idealised image of the maker's communities.²¹² Later, it exploded in the 1930s when national and regional committees for the promotion of local wines were established.²¹³ Even if the work of Laferté is focused on Burgundy, there is evidence of the existence of the same trends in other areas of France where even 'Museums of *Terroir*' were inaugurated.²¹⁴ It was in this period that the idea emerged that 'a good product had to be a traditional product from the *terroir*.'²¹⁵

This trend is clearly reflected in different scientific publications, most of which date back to the second half of the 1930s, that is after the introduction of AOC. First of all, *terroir* became a completely positive word or, at least, neutral.²¹⁶ Second, even in scientific publications it acquired a holistic meaning that had little to do with geology and climate. In fact, it was often described as an element that expressed and sustained the soul (*l'âme*) of an area, that is not only its wines, but also: its inhabitants

²¹⁰ Laferté (n 101) 17. See also Guy (n 5) Chapter 2; Ulin, 'Writing about Wine' (n 6) 50-52.

²¹¹ Laferté (n 103).

²¹² *ibid*, 11-16.

²¹³ *ibid*, 16-17.

²¹⁴ Société d'histoire de Chinon Vienne & Loire, *Amis Du Vieux Chinon* (Imprimerie Delaunay-Dehaies 1934) 475-476.

²¹⁵ Laferté (n 101), 17.

²¹⁶ Ministère de l'agriculture, *L'Agriculture Du Département de l'Aude En 1939* (Les Imprimeries Gabelle 1939) 29; Paul Brusset and Pierre Havez, *Album Des Vins de France* (Causse, Graille, Castelnau 1939) 244; Académie de Mâcon, *Annales de l'Académie de Mâcon*, vol 33 (Protat Frères 1938) 2, 104.

and traditions;²¹⁷ the natural vocation of a place;²¹⁸ and the links to its unique historical roots and traditions.²¹⁹

Therefore, *terroir* became something very different from what emerged in the traditional textbooks of agronomy. A good example is the following, quoted from the bulletin of a society for oenological studies:

The peasant winemaker knows his land, stone by stone (...). Better than any scholar, he knows how to record accurate observations, and to confront them with the customs and traditions of the ancestors. (...) Smiling at his wine, purple or gold, this peasant winemaker loves finding there the reward for his efforts (...) the life-blood of his *terroir* and the pride for his bell tower.²²⁰

This use of *terroir* by scientific institutions is unprecedented. It has become a container of the mythical ‘customs and traditions of the ancestors’, thus acquiring a holistic and highly rhetorical meaning. It is highly likely, and the research by Laferté confirms it, that this radical transformation of the concept of *terroir* occurred side by side with the reinvention of the image of the rural space that took place in the same period. This trend was so influential that it also left traces in the parliamentary debate.

²¹⁷ Académie des sciences et lettres de Montpellier, *Bulletin Mensuel de l'Académie Des Sciences et Lettres de Montpellier* (Bibliothèque de l'Académie des Sciences et Lettres 1940) 101; Académie d'agriculture de France, *Comptes Rendus Des Séances de l'Académie D'agriculture de France* (Académie d'Agriculture de France 1940) 541; Paul Brusset and Pierre Havez, *Album Des Vins de France* (Causse, Graille, Castelnaud 1939) 32, 187; Académie d'agriculture de France, *Comptes Rendus Des Séances de l'Académie D'agriculture de France*, vol 25 (Académie d'Agriculture de France 1939) 104.

²¹⁸ Académie d'agriculture de France, *Comptes Rendus* (n 223) 284; Académie d'agriculture de France, *Comptes Rendus Des Séances de l'Académie D'agriculture de France*, vol 25 (Académie d'Agriculture de France 1939) 835.

²¹⁹ Académie de Mâcon (n 222) 23. See also, Ministère de l'agriculture (n 222) 302.

²²⁰ Original text: ‘*Le paysan vigneron connaît sa terre pierre par pierre (...). Mieux que tous les savants, il sait accumuler les observations sagaces et précises, et les confronter avec les usages et les traditions qu'il tient des ancêtres (...). En souriant à son vin, pourpre ou doré, ce paysan vigneron aime à y trouver la récompense de ses peines, (...) le sang vivant de son terroir et la fierté de son clocher.*’ L Semichon, ‘Les Conquêtes et Les Reculs de l'Oenologie’ in Société scientifique d'hygiène alimentaire (ed), *Bulletin de la Société scientifique d'hygiène alimentaire et d'alimentation rationnelle de l'homme* (Masson et C 1937) 117. See also, Académie d'agriculture de France, *Comptes Rendus Des Séances*, vol 24 (n 224) 252-253; Brusset and Havez (n 223) 32.

4.5.2. Inside the Parliament

During the first half of the 1930s the legislative process that led to the introduction of the AOC kicked off. Following the ideas of Capus, the bill pursued the goal of protecting the substantive qualities of the products, and not only ensuring their formal origin, and introducing an administrative body, the CNAO (later INAO) that could ensure this.²²¹

This emphasis on the substantive qualities of the products and, therefore, their peculiar link with their place of origin, led different members of the Parliament to define *terroir* and *terroir*-products in a new way. For instance, in 1931 Alexandre Piquemal distinguished between trade-uses and the substantive qualities of wine. Then, he attacked wine-merchants:

(...) trade has perverted the taste of the consumer. Today one produces standard wines (...) and gets to the point of removing the qualities of the wine related to its origin, the taste of *terroir*, the mellowness, the fruitiness that distinguish each wine and that are characteristic of each region.²²²

This quotation shows that the emancipation of the producers from the sellers was, indeed, influencing the parliamentary debate. Later, from the discussions of 1933 emerges another proof that the concept of *terroir* in the broad sense was well present in the minds of the MPs:

And the scent, the flavour, and that peculiar taste of *terroir* of our Massif Central (...) with the wild taste of lava, the smell of wind which brings the scent of country flowers are not the characteristics of

²²¹ See the explanation of Capus himself in *Sé debates*, 31 December 1937 (n 154) 1489.

²²² *Chambre*, 11 June 1931 (n 154) 2959. Original text '(...) le négoce a perverti le goût du consommateur. On fabrique maintenant des vins standard (...) et on arrive ainsi à supprimer les qualités d'origine du vin, le goût du terroir, la volouté, la fruité que possède chaque vin, qui sont particuliers à chaque région.'

our wines the red colour of which enlightens the eyes of the beautiful girls and wins the hearts of men?²²³

In the same session, the rapporteur of the agricultural commission Eugène Rouart argued that the wines put on the market were the expression of two alternative cultures. On the one hand, the ‘tradition of the ancestors’ (*la tradition ancestrale*) represented by *terroir*-products, and, on the other, the general agriculture (*agriculture générale*) characterised by a high degree of industrialisation.²²⁴ This new way of talking about *terroir* mirrors the transformations that were taking place outside of the Parliament and shows that this new social context was, indeed, influencing the French law maker.

In conclusion, this is the approach to *terroir*, and the meaning given to it, by the French Parliament in the 1930s, the speech of Calmel in 1927. If we compare it with the way in which this concept was treated, and often neglected, during the 1905-1919 period, there will emerge a picture of how much the interpretation of this concept had changed. Finally, the analysis above shows that the key elements that gradually led to emergence of the modern definitions of *terroir*, composed of both natural and human elements, appeared only at the beginning of the 1930s. However, the dual nature of *terroir* was conceptualized only some years later, as it will be explained below.

²²³ Original text ‘*Et le parfum, et la saveur, et ce gout particulier de terroir de notre Massif Central (...), avec le gout sauvage de la lave, l’odeur meme du vent qui apporte avec lui le parfum des fleurs agrestes, ne seraient-ce donc pas des caractéristiques de notre vin dont la couleur vermeille illumine les yeux des jolies filles et gagne le coeur des hommes?*’ Baptiste Marrou in *Sénat*, 6 July 1933 (n 154) 1659.

²²⁴ Marrou in *ibid*, 1653-1654.

4.6. Conclusions on *terroir*

This section has contributed to the debate regarding *terroir* and its historical evolution. Today, this concept is internationally well-known and its influence can be recognised in the current EU GI Law.²²⁵ This part of the work has analysed the evolution of the French parliamentary debate, in order to understand what role *terroir* concretely played in the evolution of AO and AOC. Moreover, other historical sources have been used for reconstructing the broader context that was surrounding these political discussions.

It has emerged that *terroir* undertook a long journey that, eventually, became a triumphal march. This concept moved from being a neutral, and sometimes pejorative, technical term (1905-1919), to an essential element of the physical uses on which an AO was based (Capus doctrine), to the term that indicated all the physical and environmental conditions that contributed to the making of an AO-product (1927), to a holistic and spiritualised container of the history and soul of a place (1930s onwards). This is a remarkable transformation, especially considering that, as recounted by the illustrious historian Philippe Roudié, in different regions *terroir* that had never made part of the traditional lexicon of winegrowers. For instance, in the famous wine-making area of Bordeaux: ‘The concept of *terroir* has never been part of the slang bordelaise, unlike *château*, a more recent term that replaced the term *cru*.²²⁶’ This thesis agrees with Laferté and argues that this quick transformation was linked to

²²⁵ Text to n 3.

²²⁶ ‘*Le terroir n’appartient pas au vocabulaire bordelais, à la différence de château, terme plus récent qui a remplacé celui de cru.*’ Roudié, ‘La Notion de Terroir Viticole En Bordelais’ (n 25) 65.

the deep social transformation that the social and cultural image of the countryside was undergoing in the very same period.²²⁷

However, the main conceptualisations of *terroir* appeared after the introduction of AOCs in 1935. In particular, the most common definition of this concept, as a mix of physical and human factors related to a specific place, emerged only in the 1940s. Moreover, until the beginning of the 1940s, *terroir* was used only in the field of wine.²²⁸ It was only at a later stage that it also began to be used in the context of other products such as cheeses.²²⁹ Today, instead, *terroir* is applied to all agricultural products.²³⁰ Finally, it is meaningful to remark that the present dual version of the concept, comprising both natural and human elements, appeared in the French Law only in 1966.²³¹ This suggests that the modern definition of *terroir* emerged gradually after, and not before, World War II.

In conclusion, *terroir* as it is known today is, in many aspects, different from the concept that we have seen defined in the French Parliament in the 1927-1935

²²⁷ Laferté (n 103).

²²⁸ Indeed, as show above, Monnservin made a distinction between *terroir* and the factors that linked Roquefort to its place of origin, thus confirming that the former linking element belonged to the field of winemaking exclusively. See, text to n 189.

²²⁹ Georges Bréart, 'La Définition et La Protection de La Qualité et de L'origine Des Fromages Français' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), *1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992); Freychet (n 202); Keilling (n 203).

²³⁰ Belletti and Marescotti (n 11); Bérard and Marchenay, *Les produits de terroir* (n 18).

²³¹ The definition was introduced by the *Loi 66-482* which, evidently inspired by the Lisbon Agreement, defined AO as 'the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due to the geographical environment, including natural and human factors.' Original text '*Constitue une Appellation d'Origine la dénomination d'un pays, d'une région ou d'une localité servant à désigner le produit qui en est originaire et don la qualité ou les caractères sont dus au milieu géographique comprenant des facteurs naturels et des facteurs humains*'. See, *Loi 66-482* (n 58). See also, Laurence Bérard and Philippe Marchenay, 'La France: un pays précurseur' in Laurence Bérard and Philippe Marchenay (eds), *Les produits de terroir: entre cultures et règlements* (CNRS Editions (Open Edition) 2004).

period. Therefore, the international success that this concept is enjoying nowadays, is probably more the consequence rather than the cause of the rise of *sui generis* GI systems in Europe and in third countries.

In the next section, the Italian model of protection of IGOs, developed in the 1920s and 1930s, will be analysed for the first time in English scholarly literature. It will be shown that France was not the only country in search of innovative solutions in this field. Therefore, the origin of the European *sui generis* GI rules should not be sought in the French history alone, but rather in the context of a broader regional trend. We will start by investigating whether a concept equivalent to *terroir* influenced the Italian debate as much as it did the French one. This will make it possible to understand whether this had an impact only on the policy of one State or was already influential on a broader scale.

5. The rise of IGO rules: a French or a European history? The case of Italy

5.1. Background: the Italian situation

Currently, Italy and France are the two leading countries in Europe in the field of GIs.²³² Italy, just like France, prides itself on a long-standing tradition of winemaking.²³³ Furthermore, another feature that Italy and France have in common is some early experience in laws or decrees for the protection of highly reputed products considered important for the national trade and prestige. The French experience has

²³² Robinson (n 31) 365.

²³³ For images, materials and comments on the ancient winemaking tradition of Italy, see Arturo Marescalchi and Giovanni Dalmasso, *Storia Della Vite e Del Vino in Italia*, vol 1 (Gualdoni 1938).

been described in the previous section. With respect to Italy, the most important of these historical acts is the Edict of Cosimo III de Medici,²³⁴ Grand-Duke of Tuscany passed on 24 September 1716.²³⁵

However, in the late 19th and early 20th century, the situation on the wine market in these two countries was very different. In fact, while France was experiencing a successful period that was interrupted only by phylloxera,²³⁶ in Italy the production techniques were underdeveloped,²³⁷ the rural areas were poor, and the low quality made the largest majority of wines unfit for export.²³⁸ Sources of that period show that the problem was well-known and debated among the experts²³⁹ and even discussed in monographic works.²⁴⁰ Finally, both the Government and the experts knew that the largest majority of Italian winemakers did not have enough

²³⁴ 'Bando sopra la Dichiarazione de' confine delle quattro Regioni Chianti, Pomino, Carmignano e Vald'Arno di Sopra' ('The declaration of the boundary lines of the regions Chianti, Pomino, Carmignano, e Val d'Arno di Sopra') <http://upload.wikimedia.org/wikipedia/commons/b/ba/Bando_cosimo_III_vino_toscano.jpg>

²³⁵ This act was passed in a period of deep crisis of the Tuscan agriculture. The Grand-Duke, worried about the worsening of the quality of the wine, decided to delimit the boundaries of the best wine-producing regions of his Duchy: Chianti, Pomino, Carmignano, e Val d'Arno di Sopra with an accuracy that reminds us of the modern wine specifications.

See, Sallustio A Bandini, *Discorso Sopra La Maremma Di Siena* (Lazzeri 1877); Andrea Menzione, 'Riordinamenti Colturali E Mutamenti Strutturali Nelle Campagne Toscane Fra XVII E XVIII Secolo' in Franco Angiolini, Vieri Becagli and Marcello Verga (eds), *La Toscana nell'età di Cosimo III: atti del convegno, Pisa-San Domenico di Fiesole (FI), 4-5 giugno 1990* (EDIFIR 1993) 21-25. Different information on this historical reform can be found on Agraria.org: Istruzione Agraria Online, 'Atlante Dei Vini Italiani DOCG, DOP E IGP' (*Agraria.org: Istruzione Agraria Online*) <<http://www.agraria.org/vini/>>; Consorzio vino Chianti Classico, 'Consorzio Vino Chianti Classico' <<http://www.chianticlassico.com>>; Consorzio Vino Chianti, 'Chianti' (*Chianti*) <<http://www.conorziovinochianti.it>>.

²³⁶ Robinson (n 31) 282.

²³⁷ Emilio Sereni, *Storia Del Paesaggio Agrario Italiano* (Laterza 1961).

²³⁸ Zeffiro Ciuffoletti (n 149) 88-89; Giuseppe Poli, 'La viticoltura pugliese in Età Moderna' in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d'Otranto* (Edizioni Pugliesi 2010) 519-527; Loubère, 'The Red and the White' (n 5) 259-264; Giorgio Pedrocchi, 'La Vigne et Le Vin En Italie' in Garrie, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994) 40-41.

²³⁹ Marescalchi and Dalmaso (n 233) 582; Direttore del comizio agrario di S. Giuliano (n 30).

²⁴⁰ Giuseppe Rossi, *Progetto Onde Stabilire Un Commercio Dei Vini Toscani Coll'estero E come Si Può Mettere Ad Esecuzione* (Ranieri Prospero 1833).

technical knowledge about how to make a high-quality product and that, as a consequence, quantity was always preferred over quality.²⁴¹ In the second half of the 19th century, the phylloxera crisis exploded in France. However, it arrived in Italy later and with relatively less devastating effects.²⁴² The crisis of the production of wine in France allowed Italian producers to flood the French market with low quality wine, unfit for consumption, and good only to be mixed with local products, thus leading to an increment in the quantity of wine that was produced but not in its quality.²⁴³

However, just like in France, fraud and adulteration became serious problems. The Italian Parliament had to admit that large quantities of wine were produced by adding sugar or chemicals to low quality musts, by using dry raisins and so on.²⁴⁴ Furthermore, the Parliament acknowledged the serious problem of fraud on the wine market that often consisted in the fraudulent use of false indications of origin.²⁴⁵ Therefore, at the beginning of the 20th century, Italy, just like France, had to take action in order to solve the wine anarchy. The first reaction, in 1899, consisted in the presentation of a bill on the legislative definition of ‘wine’, following the model of the French Griffe Law. The bill was presented in 1899²⁴⁶ and the law was passed in

²⁴¹ Assunta Trova, ‘I Congressi Enologici Italiani Nell’ottocento’ in Mario Da Passano and others (eds), *Le Vite e il Vino*, vol 2 (Carocci 2000); Loubère (n 27) 46-47, 66-67. See also Piero Gribaudi, *L’Italia e Le Grandi Potenze Mondiali* (2nd edn, Società Editrice Internazionale 1934).

²⁴² As it emerges from the figures provided by Salvatore Mondini, *Produzione E Commercio Del Vino in Italia* (Hoepli 1899) 23-26. See also, Paolo Cau, ‘Alle Origini Della Viticultura Contemporanea in Sardegna: La Fillossera Da Accidente Fatale Ad Acceleratore Del Cambiamento’ in Mario Da Passano and others (eds), *Le Vite e il Vino*, vol 2 (Carocci 2000).

²⁴³ Ezio Ritrovato, ‘Sviluppo dei mercati vinicoli dopo il 1860’ in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d’Otranto* (Edizioni Pugliesi 2010) 533-537.

²⁴⁴ *Camera, Dibattiti Parlamentari*, 13 December 1899, 765-768.

²⁴⁵ *Ibid*, 771-772.

²⁴⁶ *Ibid*.

1904.²⁴⁷ However, the debate reveals the pessimism of the Parliament due to the fact that both the French and the Austro-Hungarian legislation had already proven to be ineffective.²⁴⁸ In the same occasion, Deputee Calissano presented a proposal for a law on the use of false indications of origins in the market.²⁴⁹ However, his initiative had no follow up until 1921.

5.2. The Italian model in the 1920s

5.2.1. *The characteristics of the model: the consortia*

The first Proposal for a law on the protection of wine designations was presented to the Italian parliament by Arturo Marescalchi, an important professor of agronomy, and discussed on 15 and 16 December 1921.²⁵⁰ The French Law of 1919 had established a system of protection of AOs based on the decisions of the courts.²⁵¹ By contrast, this Law Proposal chose a model of protection based on the initiative of the *consorzi di tutela*, i.e. consortia for the protection of wine, thus introducing a bottom-up approach that seems to anticipate the AOC regime. The system had to protect *vini tipici* ('typical wines').

According to the first article of the bill, 'the producers of a specific typical wine can establish a consortium for the protection of the designation of the

²⁴⁷ *Camera, Dibattiti Parlamentari*, 28 June 1904, 14752; *Legge* 11 Luglio 1904 n.388, portante disposizioni per combattere le frodi nella preparazione e nel commercio dei vini, GURI 26 July 1904 n.388.

²⁴⁸ Ottavi in *Camera* (n 244) 768-770.

²⁴⁹ *Camera* (n 247) 14754.

²⁵⁰ *Camera, Atti parlamentari*, 15 December 1921, 2490; *Camera, Atti Parlamentari*, 16 December 1921, 2535.

²⁵¹ Text to n 59.

product'.²⁵² The statutes of the *consorzi* had to be ratified by an *ad hoc* decree of the Ministry of Agriculture that also had to monitor their activity.²⁵³ Art 2 did not provide a definition of 'designation' but only focused on the concept of 'typical wines', by providing that '(...) typical wines are the genuine wines whose characteristics result from the type of grapevines, the zone of production or the methods of production and that remain identical for the same type of wine.'²⁵⁴

It can be noticed that, just like in modern *sui generis* GI regimes, the Italian system provided for the intervention of the public administration both for approving the statutes of the consortia, and therefore the specifications, and monitoring their functioning. Furthermore, while at that time the French AO system was based on the delimitation of the areas of production operated by the judiciary, in Italy the *consorzi* should have been the real engine of the system. Among others, they should have had the following functions:²⁵⁵ (1) admit the members through a decision of their board; (2) monitor so that the members of the consortium did not sell under the protected name a kind of wine made without respecting the specification; (3) promote the development of the local production; (4) promote the diffusion of the wine on the internal and foreign markets; (5) conduct studies and researches in order to increase the quantity and the quality of the traditional wine; (6) register their own collective trade marks. Finally, the law did not explicitly state that only the members of the

²⁵² *'I produttori (...) di un determinato vino tipico possono costituirsi in consorzio per la tutela della denominazione del loro prodotto.'* Camera (n 250) 2491.

²⁵³ Ibid.

²⁵⁴ Original text *'sono considerati vini tipici i vini genuini che abbiano speciali caratteristiche derivanti dal vitigno, dalla località di produzione o dai metodi di fabbricazione e che si conservino per lo stesso tipo.'* It is important to notice that in article 2 the distinctive features of the 'typical wines' seems to be alternatives because the provision reads '(...) type of grapevines, the zone of production *or* the methods of production'. However, the implementing regulation 1440/1927 replaced the 'or' with an 'and', thus, probably, correcting an imperfection of the initial text.

²⁵⁵ Camera (n 250) 2491.

consortia could make the wine characterised by a designation of origin. However, the system seems to have been conceived in order to create a sort of corporation or cartel. In particular, the consortia had the monopoly on the export of the wine.²⁵⁶

It is interesting to notice that, contrary to France, Italy has never introduced a special body for the administration of the designations of origin. Indeed, in its first draft the bill proposed the establishment of a ‘Central Committee’ (*Comitato Centrale*) for the application of the law,²⁵⁷ the functioning of which was not specified in the bill. Therefore, there is no way of knowing how this bureau dedicated to the application of the law would have worked. However, the proposal for the introduction of this *Comitato Centrale* was rejected during the parliamentary discussion. In fact, it was considered only a surplus of bureaucracy, in contrast with the exigency of simplifying the Italian administration.²⁵⁸

5.2.2. The characteristics of the model: the delimitation of the designations

The bill was presented to the Parliament a few months before the fascist coup d’état of October 1922. Then, it came into force in 1924²⁵⁹ and was finally implemented in 1927 through the *Regio Decreto* 1927 n.1440.²⁶⁰ This *Decreto* is particularly important because it established how the system should have worked in practice.

In particular, it defined the *vini tipici* as wine whose superior quality was due to ‘(...) the type of grapevines, the zone of production and the methods of

²⁵⁶ Ibid, 2492.

²⁵⁷ Ibid, 2493.

²⁵⁸ Ibid.

²⁵⁹ *Regio Decreto Legge* 6 Marzo 1924 n. 497, disposizioni per la difesa dei vini tipici, GURI 24 April 1924 n.97. It was converted in law by the *Legge* 18 Marzo 1926 n. 562, GURI 3 May 1926, n. 102.

²⁶⁰ *Regio Decreto*, 23 June 1927 n.1440, GURI 26 August 1928. See also, Cosmo (n 9) 5-6.

production.’ (*derivanti dal vitigno, dalla località di produzione o dai metodi di fabbricazione*).²⁶¹ Then, it divided these wines into three categories: *Vini Speciali* (Special Wines); *Vini da Pasto Superiori* (Superior Dining Wines); *Vini da Pasto Fini* (Fine Dining Wines).²⁶² The first typology was considered ‘special’ because it had to be regulated by an *ad hoc* decree.²⁶³

As for the second and the third categories, instead, the delimitation of the areas of production was left to the statutes of the consortia,²⁶⁴ while the Decree provided for some broad guidelines.²⁶⁵ In particular, as a general rule the wines had to be produced only in the area that bore their geographical names. However, it could be extended to neighbouring areas known for producing the wine under the same denomination and that featured identical geological and environmental conditions.²⁶⁶ This rule was stricter for Special and Superior wines and more permissive with fine wines.²⁶⁷ It can be noticed that the Italian law did not refer to loyal, local and constant uses. By contrast, more accurately, it made reference to geological and environmental conditions only, thus excluding, at least in theory, a delimitation made on the basis of mere trade practices. Finally, it confirmed that the statutes of the consortia had to be approved by a decree of the Ministry of Economy.²⁶⁸

²⁶¹ Ibid, art 1.

²⁶² Ibid, art 2.

²⁶³ Ibid, art 3.

²⁶⁴ Ibid, 14(1)(a)(b).

²⁶⁵ Ibid, arts 4 and 5.

²⁶⁶ Ibid, art 6.

²⁶⁷ Ibid.

²⁶⁸ Ibid, arts 12, 13.

This way of establishing the areas of the designations raised the protests of important wine-producers and politicians such as Baron Bettino Ricasoli, the inventor of Chianti. He observed that this system was too vague and arbitrary to guarantee the origin and quality of the wines.²⁶⁹ However, in 1938, the rapporteur of the law, Mr Marescalchi, explained that:

We preferred resorting to an indirect form of protection, because at that time the rigorous delimitation of the areas of production was deemed inexpedient due to the technical difficulties that such operation would have involved.²⁷⁰

Therefore, Marescalchi clarified that the system of protection was essentially a bottom-up model of self-regulation. Producers could discuss and identify all the wines having common characteristics and that, therefore, could be labelled under the same geographical name. The State did not intervene directly at the beginning of the process but only at a later stage.

5.3. The reforms of the 1930s and the demise of the system

5.3.1. *The Law of 1930*

These provisions were first amended by the Royal Law Decree 62/1930,²⁷¹ which eventually became the Law 1164/1930 concerning ‘Provisions for the protection of

²⁶⁹ Raymond Flower, *Chianti: The Land, the People, and the Wine* (Rev ed, C Helm 1988) 199-201.

²⁷⁰ Arturo Marescalchi and Claudio Marescalchi, *Viticultura, Vino, Vini Tipici* (Unione Tipografico-Editrice Torinese 1938) 16. Original text ‘*Si preferiva ricorrere ad un mezzo indiretto di protezione, non sembrando allora opportune la delimitazione geografica rigorosa delle zone di produzione, per le difficoltà di carattere tecnico che tale operazione avrebbe implicato (...).*’

²⁷¹ *Regio Decreto Legge* 11 Gennaio 1930 n.62, contenente disposizioni per la difesa dei vini tipici italiani.

the typical Italian wines'.²⁷² The bill was presented to the Parliament by its rapporteur, Deputee Pavoncelli. He explained that these amendments were necessary because the *consorzi* had often been unable to agree on the delimitation of the areas of production.²⁷³ He added that these areas could not be delimited through 'mutual agreements and concessions' (*accordi e concessioni reciproche*).²⁷⁴ Therefore, the original bottom-up approach that had been followed previously was replaced by a procedure according to which the areas of production had to be identified (or rather imposed) directly by the Ministry of Agriculture in accordance with the guidelines of the fascist regime.²⁷⁵

As for the consortia, their functions and internal structure remained unaltered.²⁷⁶ Indeed, many of these were established in that period and substantially the system was still based on them.²⁷⁷ The law specified that there could be only one consortium of producers for each type of wine and that each consortium had an obligation to adopt a trademark related to the denomination of the product.²⁷⁸ The official constitution of the consortia could be authorised only with the approval of the Ministry of Agriculture and only after that the areas of production of the wine had been defined by a ministerial decree.²⁷⁹

²⁷² *Legge* 10 Luglio 1930 n.1160 recante disposizioni per la difesa dei vini tipici italiani, GURI 18 August 1930, n.192. It converted in law the *Regio Decreto Legge*, 11 Gennaio 1930 n.62.

²⁷³ *Camera, Atti parlamentari*, 11 June 1930, 3; Marescalchi and Marescalchi (n 270) 16-17.

²⁷⁴ *Camera* (n 273) 3.

²⁷⁵ *Ibid.*

²⁷⁶ *Legge* 10 Luglio 1930 n.1160 (n 272) art 3.

²⁷⁷ *Cosmo* (n 9) 5-6.

²⁷⁸ *Legge* 10 Luglio 1930 n.1160 (n 272) arts 5(1), 6.

²⁷⁹ *Ibid*, art 2(2)

Furthermore, the reform introduced a new definition of *vino tipico*, inspired by the French model.²⁸⁰ In its new form, the definition was:

(...) typical wines [are] wines (...) that, having an origin ascertained on the basis of the place of production, the soil, the grapevines and the techniques of preparation, are characterised by constant organoleptic features (...)²⁸¹

Finally, it emerges that the Italian policy-maker, just like the French one, began to prefer wine producers to sellers. Indeed, Pavoncelli stated the latter could only use a collective mark already granted to a group of producers as these were the only ones who had to be credited for making the product.²⁸² Thus, art 1 of the Law of 1930 provides that the producers can create an association for the protection of the typical wine and the traders can only join them under the rules of the association itself.²⁸³

5.3.2. *The Law of 1937*

This was the legislation that, according to some, placed Italy at the forefront of the field of protection of wine's indications of origin.²⁸⁴ However, in the 1930s, the exacerbation of the fascist regime brought this model to an end.²⁸⁵ In fact, a new

²⁸⁰ Camera, *Atti parlamentari*, 11 June 1930, 2.

²⁸¹ Original text: '*sono considerati vini tipici i vini (...) i quali avendo origine accertata per località di produzione, per terreno, per vitigni e per sistemi di preparazione abbiano caratteri organolettici costanti (...).*' Camera, *Atti Parlamentari*, 25 June 1930, 2906; Legge 10 Luglio 1930 n° 1160 (n 24) art 2(1).

²⁸² Camera (n 273) 5.

²⁸³ Ibid, art 1(1),(2).

²⁸⁴ Calò, 'Il settore vitivinicolo dagli albori del Regno d'Italia alla seconda Guerra Mondiale' (n 9) 579-580.

²⁸⁵ Stefano Dindo and Luca Andretto, 'Compiti e Funzioni Dei Consorzi Di Tutela Con Riconoscimento Erga Omnes' (2014).

reform was passed in 1937²⁸⁶ that: (1) appropriated to the State the function of certifying a wine as ‘typical’ and to provide a collective trade mark for it²⁸⁷; (2) abrogated the law 1164/1930 and all the *consorzi* that were established in accordance with it.²⁸⁸ However, this law was never implemented. As a result, in 1937 the *consorzi* mentioned above did not exist anymore, together with the legislation on the protection of wine IGOs.²⁸⁹ *De facto*, at the end of the 1930s Italy had returned to its starting point with no legislation of the indications of geographical origin at all.

5.4 The Italian system of GI protection of wines: and outline

A detailed description of the Italian GI rules for wines would exceed the scope of this work. However, since the English literature on this point is very scarce, providing an outline of the legislation of the world leading country in the field can be a useful contribution.

The first Italian law on the designations of origin of wines adopted after World War II was the Decree of the President of the Republic 930/1963 ‘on the protection of the designations of origin of musts and wines.’²⁹⁰ The definition ‘*vini tipici*’ was considered too generic and was abandoned.²⁹¹ The structure of the system is entirely based on the French tradition while the rationale and structure of the original early Italian legislation disappeared. However, unlike the French law, the

²⁸⁶ *Legge* 10 Giugno 1937 n.1266 recante provvedimenti per la viticoltura e la produzione viticola, GURI 24 June 1937 n.1079.

²⁸⁷ *Ibid*, art 41.

²⁸⁸ *Ibid*, art 53.

²⁸⁹ Cosmo (n 9) 6; Martelli (n 9) 1.

²⁹⁰ *Decreto del Presidente della Repubblica* 12 Luglio 1963 n. 930 recante norme sulla tutela delle denominazioni d’origine dei mosti e dei vini, GU 15 July 1963.

²⁹¹ Cosmo (n 9) 7.

Decree introduced three labels of protection: Simple Designation of Origin (*‘Denominazione d’Origine Semplice’* ‘DOS’); Controlled Designation of Origin (*‘Denominazione di Origine Controllata’* ‘DOC’) and Controlled Designation of Origin Guaranteed (*Denominazione di Origine Controllata e Garantita* ‘DOCG’).

This structure was already present in the original law proposal and no information was provided in order to explain this choice.²⁹² However, it can be presumed that in the 1960s the DOC status, which corresponds to the French AOC, was conceived as the minimum standard of protection for quality wines, while the DOS corresponded to the simple AO.²⁹³ Therefore, it was necessary to add a higher level for distinguishing the very best DOCs, i.e. the DOCG. In particular, these two categories were defined as follows:

DOC is reserved to wines that meet the conditions and requirements provided by their specifications.

DOCG is reserved to wines of exceptional quality (...) that comply with the requirements provided for each of them by their specifications.²⁹⁴

The Law of 1963 was subsequently amended of many occasions until its latest version, the Legislative Decree 61/2010.²⁹⁵ Coherently with the European provisions, it has regrouped the DOC and DOCG designations under the PDO scheme and has introduced *ex novo* the Protected Geographical Indication (PGI) for wine. The DOS

²⁹² Camera, Documenti n.4173, 9 Ottobre 1962, 1.

²⁹³ Decreto del Presidente della Repubblica 12 Luglio 1963 n. 930 (n 290) art 3.

²⁹⁴ Ibid, art 4. Original text: *‘Le denominazioni di origine “controllate” sono riservate a vini che rispondono alle condizioni ed ai requisiti stabiliti, (...), nei relativi disciplinari di produzione. Le denominazioni di origine “controllate e garantite” sono riservate a vini di particolare pregio (...) che rispondono alle condizioni ed ai requisiti stabiliti, per ciascuna di esse, nei relativi disciplinari di produzione.’*

²⁹⁵ Decreto Legislativo 8 Aprile 2010 n. 61, tutela delle denominazioni di origine in attuazione dell'articolo 15 della legge 7 luglio 2009, GU 26 April 2010 n.96.

disappeared. A complete analysis of the provisions of the Legislative Decree 61/2010 would exceed the purposes of this paper. However, it is important to emphasise that the law fully clarifies the difference and the hierarchy between DOC, DOCG and PGI. In particular, the self-explanatory art 8 provides that:

1. DOCG is reserved for wines already recognized as DOC for at least ten years that are deemed of particular value due to the intrinsic qualitative characteristics and the acquired market appeal, and have been requested, in the last two years, by at least the fifty-one per cent of winemakers in the area (...).
2. DOC is reserved for wines from areas already protected, even under a different designation, as PGI for at least five years when the protection has been requested in the last two years by at least the thirty-five per cent of the winegrowers (...) representing at least thirty-five per cent of the relevant area of production. (...)
3. The granting of PGI protection is reserved for wines belonging to their respective growing zones provided that the applicants represent at least the twenty per cent of the relevant growers and the twenty per cent of all the vineyards (...).
4. The granting of a DOCG must require compliance with specifications more restrictive of those for DOC wines.
5. The granting of DOC must require compliance with specifications more restrictive than those for PGI wines previously claimed.²⁹⁶

²⁹⁶

Original text ‘*Art. 8(1) Il riconoscimento della denominazione di origine controllata e garantita è riservato ai vini già riconosciuti a DOC e a zone espressamente delimitate o tipologie di una DOC da almeno dieci anni, che siano ritenuti di particolare pregio, per le caratteristiche qualitative intrinseche e per la rinomanza commerciale acquisita, e che siano stati rivendicati, nell'ultimo biennio, da almeno il cinquantuno per cento dei soggetti che conducono vigneti (...) che rappresentino almeno il cinquantuno per cento della superficie totale dichiarata allo schedario viticolo idonea alla rivendicazione della relativa denominazione. (...). (2) Il riconoscimento della denominazione di origine controllata è riservato ai vini provenienti da zone già riconosciute, anche con denominazione diversa, ad IGT da almeno cinque anni e che siano stati rivendicati nell'ultimo biennio da almeno il trentacinque per cento dei viticoltori interessati e che rappresentino almeno il trentacinque per cento della produzione dell'area interessata. (...). (3) Il riconoscimento della indicazione geografica tipica è riservato ai vini provenienti dalla rispettiva zona viticola a condizione che la relativa richiesta sia rappresentativa di almeno il venti per cento dei viticoltori interessati e del venti per cento della superficie totale dei vigneti oggetto di dichiarazione produttiva nell'ultimo biennio. (4) Il riconoscimento di una DOCG deve prevedere una disciplina viticola ed enologica più restrittiva rispetto a quella della DOC di provenienza. (5) Il*

5.5. *Terroir* in Italy?

The term *Terroir* has become frequently used in Italy in recent times. This Ngram diagram shows this trend.



However, did a similar concept exist in Italy during the 1900-1940 period analysed above? Answering this question will make it possible to understand whether *terroir* was only a French category or was an expression of a more general trend that eventually influenced EU Law as well.

In Italy, just like in France, between the late 19th and early 20th century, different scientific works that distinguished the soils of wine-producing regions on the basis of their geological differences were published.²⁹⁷ Furthermore, the Italian experts of agronomy were strongly influenced by the doctrines of the French oenologists such as Guyot.²⁹⁸ Finally, there is evidence that shows that fairs displaying the products of the local farmers, including wines and varieties of grapes,

riconoscimento di una DOC deve prevedere una disciplina viticola ed enologica più restrittiva rispetto a quella della IGT precedentemente rivendicata.

²⁹⁷ For a bibliography, see Arturo Marescalchi, *Scritti Agrari* (Unione Tipografico-Editrice Torinese 1934) 172-180.

²⁹⁸ Ciuffoletti (n 149) 87.

flourished in the 1930s.²⁹⁹ Therefore, the Italian social and scientific background, especially in the field of oenology, is similar to and much influenced by the French one.

Moreover, as shown above, in the Law of 1924 the area of origin of a *vino tipico* was defined as the place bearing the name of the designation plus the neighbouring areas characterised by an identical condition of soil and environment. Then, the Law of 1930 made reference to the soil and climate conditions that gave the wine its typical features.³⁰⁰ Therefore, the concept of *terroir* in the narrow sense that can be found in the French experience can also be found in Italy.

However, the importance of identifying a rigid one-to-one correspondence between a product and its place of origin did not characterise the Italian policy as much as the French. For instance, the concept of *cru* has never existed in Italy. The only equivalent to this French word, that stands for the smallest unit of soil where wine is produced, for instance a single vineyard or a specific part of it, is the *menzione geografica* (geographical mention). This term, however, is still today very rare and is a feature of few types of wines, especially Barolo.³⁰¹

Finally, in Italy there is no trace of a broad debate both inside and outside the Parliament as there was in France. In fact, during the 1920s, the Italian lawmaker

²⁹⁹ Annalisa Bianco and others, 'Fonti documentarie dell'Archivio di Stato di Lecce' in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d'Otranto* (Edizioni Pugliesi 2010) 349-352.

³⁰⁰ See Paragraph 5.3.1.

³⁰¹ Wine News, 'Barolo' (*Wine News*, 20 November 2015) <<http://www.winenews.it/news/40622/le-menzioni-geografiche-aggiuntive-di-barolo-e-di-barbaresco-sono-ancora-un-unicum-nellitalia-del-vino-un-modello-che-si-pone-al-vertice-della-piramide-qualitativa-e-che-dovrebbe-essere-presoad-esempio-anche-dalle-altre-grandi-denominazioni>>.

considered the *sui generis* provisions on *vini tipici* as a form of indirect protection. This did not completely change in the first-half of the 1930s, although the governmental control became stronger. Overall, the system was conceived as a sort of bottom-up self-regulation aimed at fostering the exports of wine as well as the national economy as a whole.³⁰² Therefore, the product/place link never took the holistic and nationalist shape that it is possible to find in France. In addition, the scientific debate that flourished in France from the 1940s and that led to the creation of the modern concept of *terroir* did not leave relevant traces in the Italian debate.

In conclusion, both in Italy and in France the legislation on IGO protection presents the influence of the concept *terroir* in the narrow sense. This is probably due to the fact that the theory of oenology in these two countries had many points in common, although the Italian wine-producing sector was more underdeveloped. However, the debates and the social importance gained by *terroir* starting from the 1930s remain, until recent, features unique to France.

The next two sections will investigate whether in these early regimes there was already a trace of two other broad objectives that are featured in the present EU GI systems. Those are: (1) fostering rural development; (2) protecting tradition and (3) protecting consumers. It will be shown that neither of these traits belonged to IGO rules from the beginning. Therefore, these can be considered a product of the EU experience.

³⁰² Matteotti in *Camera* (n 250); *Camera* (n 273).

6. Rural development and traditional technical knowledge in the early systems

6.1 Preference for innovation over tradition and rural development

In the period under analysis here, some remarkably forward-looking official stances regarding the functions of IGO rules emerged. However, the concepts of rural development and traditional knowledge, now so widespread, did not exist in that period. In fact, the former emerged in Europe during the mid-1970s,³⁰³ while the latter is the result of a complex evolution that began in the 1950s.³⁰⁴ Therefore, the overall system was not designed for these purposes.³⁰⁵

In particular, there is one difference between the early French and Italian systems and the present one: today GIs are considered multifunctional tools often associated, among other things, with the protection, conservation and sustenance of the history and tradition;³⁰⁶ instead, in the 1920s and 1930s IGO protection regimes developed in a context that valued innovation above all. This fact is not sufficiently highlighted by the literature; however, it emerges from the historical materials. First of all, it is important to remind ourselves that many kinds of wines that today are very famous and prestigious, between 19th and early 20th century had no tradition at all. With respect to the Italian situation, it has already been shown that even the public authorities were aware that the quality of the domestic production of wine was, on

³⁰³ Joseph A McMahon, *EU Agricultural Law* (Oxford University Press 2007) 69-71.

³⁰⁴ Andrea Zappalaglio, 'Traditional Knowledge: Emergence and History of the Concept at International Level' <<http://ssrn.com/abstract=2554132>>.

³⁰⁵ Stanziani, 'French Collective Wine Branding in the Nineteenth-Twentieth Century' (n 17) 13-15. See also, Laferté (n 103).

³⁰⁶ Regulation 1151/2012, Preamble recitals 1, 2, art 1(2)(b), art 3(1)(3). In particular, see the discipline of Traditional Specialities Guaranteed in *ibid*, Preamble recitals 34-38, Title III.

average, low.³⁰⁷ Furthermore, some wines that today are very famous, barely existed in late 19th century. For instance, Chianti wine was invented by Baron Ricasoli only in the 1870s.³⁰⁸ In the same period the designation ‘Brunello di Montalcino’ appeared on the markets.³⁰⁹ In France, Champagne started being regularly produced as a sparkling wine only in the first half of the 19th century and the Champagne industry developed in the second half of the same century, shortly before the arrival of phylloxera.³¹⁰ In any case, as noticed by Loubère, whenever a tradition, i.e. a corpus of knowledge handed down from generation to generation, existed, that was detrimental to the quality of the production because the content of the technical knowledge was obsolete and technically wrong.³¹¹

Indeed, the phylloxera crisis, together with the technical and scientific efforts to defeat the parasite, led to a profound reform in viticulture and to a reorganisation of rural areas.³¹² In Italy, for instance, Ricasoli rebuilt his vineyards almost completely.³¹³ The destruction of many vineyards by phylloxera was even welcomed and the parasite was defined ‘*salutare, benefica, rivoluzionaria*’ (‘useful, beneficial, revolutionary’).³¹⁴ In France, not only did phylloxera have devastating effects but

³⁰⁷ Text to 239.

³⁰⁸ Robinson (n 31) 162-163, 576; Flower (n 269) 188-194.

³⁰⁹ Kerin O’Keefe, *Brunello Di Montalcino: Understanding and Appreciating One of Italy’s Greatest Wines* (University of California Press 2012) 39.

³¹⁰ Tom Stevenson, *Christie’s World Encyclopedia of Champagne & Sparkling Wine* (Fully rev and updated ed, Absolute 2003) 11-14; Robinson (n 31) 150-151.

³¹¹ Loubère, ‘The Red and the White’ (n 5) 55-56. See also, Ciuffoletti (n 149) 88-89; Poli (n 238) 519-523.

³¹² Loubère, ‘The Red and the White’ (n 5) Ch 9; Trova (n 241); Marescalchi and Dalmasso (n 237) 597.

³¹³ Giuliana Biagoli, ‘Du Vin “Navigato” Au Vin Commercial En Toscane (XVIIIè-XIXè Siècles)’ in Garrie, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l’évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994) 32-33.

³¹⁴ Cau (n 242) 761-764.

important wine-producing areas, including the Champagne region, were devastated by World War I.³¹⁵ Thus, the context in which the 1919 and 1935 reforms took place was focused on reinvention and reconstruction, and not on preservation.

This trend must not be confused with being a predecessor of the concept of rural development. In fact, today Regulation 1151/2012 refers to rural development in harmony with the past.³¹⁶ By contrast, in France, the fact that AOs were not based on the local history at all is peacefully admitted.³¹⁷ However, what is rarely emphasised is the crucial importance of AOs in designing the new face and organisation of the French viticultural areas. In Burgundy, 18 wholly new appellations were introduced.³¹⁸ Furthermore, some areas were massively extended. For instance, the Côte du Rhône AOC, granted in 1937, encompassed 118 municipalities. However, in only 28 of them wine was traditionally produced.³¹⁹ Finally, and most importantly, in 1919 France passed some measures in order to rebuild the countryside destroyed by the war;³²⁰ however, AOs never appeared in this debate. Evidently, they were not considered a tool able to play a role in this regard. In

³¹⁵ Guy (n 5) 186-187.

³¹⁶ Regulation 1151/2012, Recital 1.

³¹⁷ Philippe Roudié, 'Le Rôle de l'histoire Dans l'élaboration de l'appellation Viticole En France' in Gilbert Garrier, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994).

³¹⁸ Laferté (n 103) 9.

³¹⁹ Jacques Maby, 'Loi, Marché, Ténacité Vigneronne: Les Fondements Humains D'une Viticulture de Qualité Dans Le Gard Rhodanien' in Garrie, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994) 85-87.

³²⁰ *Sénat*, 24 January 1919, JORF 25 January 1919, 25

fact, as shown above, they were only mentioned as an instrument to protect France from German counterfeited wine.³²¹

In conclusion, while the modern EU *sui generis* GI regime is often associated with the conservation of traditional practices and with rural development, the context in which the early IGO rules emerged was completely different from and unrelated to this policy objective.

6.2. A collection of important forward-looking opinions

In the debate on the nature of AOs and on the scope of their protection, there were some speeches that showed a forward-looking conception of the nature of IGO rules. Although they have not left a trace in the law provisions of that period, they are historically important. Indeed, they show that in the debate regarding the goals of IGO protection there were different opinions, some of them very modern.

It is suggested that it is not by chance that these ideas were supported by men who were strongly in favour of AOs. In the Jenouvrier Report, the senator Léon Jenouvrier described the rationale of AOs using terms that recall the current notion of traditional knowledge and heritage:³²²

The reputation of a product is the result of the prolonged efforts of subsequent generations. They fought and worked every day to make it better, in the village, in the town, sometimes in the whole region, positively contributing, day by day, to make it considerably better.³²³

³²¹ See, fn 170.

³²² It is interesting to compare Jenouvrier's words with the definition of Traditional Knowledge provided by WIPO today, see WIPO, 'Traditional Knowledge' <<http://www.wipo.int/tk/en/>> accessed 9 January 2014.

³²³ Jenouvrier Report in Capus (n 43) 19. Original text: '*La renommé qui s'attachait ainsi à des produits était le résultat et la recompense des efforts prolongés de générations successives.*

More than ten years later, it is not surprising that Jenouvrier supported the proposal of Monsservin concerning AO protection for Roquefort cheese.³²⁴ In the debate, Monsservin emphasised the importance of AOs for the sustenance of rural communities in poor areas:

(...) It is mainly for the survival of poor regions that [AO protection] constitutes an indispensable resource that could not be forsaken. Some years ago I travelled the Aveyron Causses and the Larzac plateau, with state engineers and entrepreneurs of the railways construction sector (...). I heard them say (...) ‘Why railways in this country? Where sheep graze men cannot live.’ Well! Thanks to the industry of Roquefort, families of farmers still live where sheep graze (...).³²⁵

A similar argument was presented, some years later, by MP Roberto Prearo, during the discussions on the first Italian law on the *Denominazioni d’Origine* in 1963. In particular, he argued that:

I believe that (...) the protection of origin wines will encourage winemakers living in several hilly areas that are abandoned or being abandoned where fine wines, well known all over the world, have always been produced, to find new faith and trust in order to start producing again.³²⁶

Therefore, our historical research excludes that issues such as rural development and the preservation of traditional knowledge formed part of the policy

Elles avaient lutté et travaillé toujours pour miex faire, dans la paroisse, dans la commune, parfois dans toute la région, apportant chaque jour à oeuvre de la veille une amélioration sensible.’

³²⁴ Text to 194.

³²⁵ *Sénat*, 9 June 1925 (n 189) 1139. ‘(...) c’est surtout à l’existence des régions pauvres qu’elle apporte une ressource indispensable et qui ne pourrait être remplacée. (...) Il y a quelques années, je parcourais les Causses aveyronnais et le plateau de Larzac, avec des ingénieurs de l’Etat et des entrepreneurs de constructions de lignes de chemin de fer (...) je les entendais déclarer (...) “Pourquoi des chemins de fer dans ce pays? Là où broute le mouton l’homme ne peut plus vivre”. Eh bien! Grâce à l’industrie du Roquefort, là où broute la brebis (...) des familles paysannes vivent encore (...).’

³²⁶ *Camera, Atti parlamentari*, 23 January 1963, 10. Original text ‘Ritengo (...) che la difesa dei vini di origine incoraggerà i viticoltori di tante zone collinari abbandonate o in via di abbandono e dove si sono sempre prodotti e si producono vini pregiati conosciuti in tutto il mondo, a riprendere con fiducia la coltivazione.’

of the early AO or DOC rules. However, from the same research it emerges that some of the major supporters and creators of these early IGO rules had already a broader and more complex idea of the function and the potential of this regime.

7. Protection of the consumer

Today, the EU GI rules mention explicitly the protection of consumers as one of their main objectives.³²⁷ Was this a function of early AOC and DOC as well? On this point Stanziani maintains that the answer to this question is ‘no’. According to this scholar, the AO/AOC rules were systems developed by elites in order to protect the status quo and assure themselves a constant source of income.³²⁸ There are some elements that confirm this argument. Indeed, it has already been noted that the laws on AO and AOC were basically designed and promoted by persons like Capus and Le Roy who had a strong vested interest in the matter. Moreover, since 1913, the parliamentary debates shows that the Law of 1905 was considered primarily in favour of consumers. Therefore, producers and their representatives were asking for a set of provisions only dedicated to them.³²⁹ Furthermore, during the most important sessions of discussions on the development of both AO and AOC law, there was at least one member of the French Parliament who invited his colleagues to take into consideration the position of the consumers and reminded the relevance of the law for them as well.³³⁰ However,

³²⁷ Regulation 1151/2012, art 1(1)(b). This goal has been present in EU GI Law since the adoption of the first regulation, see 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] OJ L208/1, Preamble recital 4.

³²⁸ Stanziani, ‘French Collective Wine Branding in the Nineteenth-Twentieth Century’ (n 17); Stanziani, ‘Information, Quality and Legal Rules’ (n 4). Indeed, in 1937, Joseph Capus himself frankly argued that one of the flaws of the Law of 1919 was to allow newcomers to build new vineyards and sell wine under the very same name as established and prestigious producers. See, Capus in *Sénat*, 31 December 1937 (n 154) 1489.

³²⁹ Duc de la Tremoille, 13 November 1913 (n 165) 3325.

³³⁰ Dariac in *Chambre*, 14 November 1913 (n 163) 3375; Géo-Gérald in *Chambre*, 27 November 1913, JORF 28 November 1913, 3607; De Bon in *Chambre*, 19 April 1919 (n 170) 2147; de

no member of the Parliament ever discussed in depth the importance of these rules for consumers,³³¹ thus confirming that these were primarily made for producers by people often very close to them.³³² Indeed, some members of the Parliament protested because the interests of the consumers were rarely taken into consideration during the debate.³³³ Finally, this trend is confirmed by the Italian experience. In fact, from the analysis of the parliamentary debates, it emerges that the Italian IGO rules were considered a measure for protecting wine producers from fraud and unfair competition as well as for enhancing the exports of Italian wine.³³⁴ There is no trace of a speech that addressed the importance of these provisions for the consumers.

However, this work suggests that, although these provisions were not directly aimed at protecting consumers, they, nevertheless, did not neglect them. Rather, they provided an indirect form of protection. In fact, consumer policies began to emerge in Europe only from the 1970s onwards.³³⁵ Before that, in this field, the policy-makers generally followed the principles of neoclassical economics, thus protecting

Mun in *Chambre*, 24 April 1919, JORF 25 April 1919, 2179; Monsservin in *Sénat*, 9 June 1925 (n 189) 1142; Bender in *Chambre*, 13 July 1927, JORF 14 July 1927, 2682; Calmel in *Sénat*, 12 July 1927 (n 62) 909-910.

³³¹ The only substantive speech on the importance of AOC for consumers, especially for the labels that distinguished AOC wines, was delivered by senator Marcel Donon only in 1937, see Donon in *Sénat*, 31 December 1937, JORF 2 January 1938, 1490.

³³² Text to n 184.

³³³ De Bon in *Chambre*, 24 April 1919 (n 330) 2174-2175.

³³⁴ Matteotti in *Chambre* (n 257) 2492; *Camera, Atti Parlamentari* n.476-A, 30 March 1930; *Senato, Atti Parlamentari* n.554-A, 13 June 1930.

³³⁵ A landmark document in this field was the 'Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy' [1975] OJ C92/1. For an overview on the EU Consumer Policy, see Freie Universität Berlin, 'European Consumer Law: History and Future of European Consumer Policy' (*Freie Universität Berlin - Fachbereich Rechtswissenschaft - Institut für Internationales Privatrecht*) <http://userpage.fu-berlin.de/~rjanal/lehre/consumer/2_history.html>.

producers in order to provide also indirect protection to consumers.³³⁶ Therefore, we believe that it correct to state that the early IGO systems, unlike the present EU *sui generis* one, were not designed to address the issue of consumers' protection as this policy goal did not exist yet. However, they did provide indirect protection to consumers and, in that period, this was already an interesting step forward, which must not be underestimated or denied.

8. What is the legacy of the French and Italian systems?

The analysis of the objectives of the early IGO systems, compared with those of the modern *sui generis* GIs, has shown that, from the point of view of policy goals, these regimes were indeed different from the modern one. In particular, the multifunctionality that nowadays is a key feature of the GI regime was absent in the first *sui generis* regimes. Those, in fact, were essentially systems aimed at protecting the producers against fraud. This is one of the few functions that the old and the new system have in common. In the next chapter it will be shown that the multifunctional nature of *sui generis* GIs began to emerge when this concept was located in the complex context of the EU Common Agricultural Policy.

However, there is one innovation that characterises the present *sui generis* GIs and that descends directly from the early systems. It is the idea of introducing a public institution in charge of processing the applications and granting protection at the end of an administrative procedure. This mechanism was completely unprecedented and clearly distinguished this system from indications of source or trade marks.³³⁷

³³⁶ This was stated by Stantiani himself in a conversation that he had with us, see Interview with Alessandro Stanziani (n 90).

³³⁷ Stanziani, 'Wine Reputation and Quality Controls' (n 4).

Furthermore, this bureaucratic procedure is not only a matter of form. In fact, it is a key element for the construction of the idea of ‘origin product’ and confers authority and reliability upon the whole mechanism.³³⁸

The idea of establishing an administrative system for granting IGO protection was developed both in France and in Italy, although these countries followed different routes. As was shown,³³⁹ the former tried to delimit the boundaries of the AO areas first through an administrative and, later, a judicial procedure. Finally, a bottom-up system was introduced in which producers’ associations applied for protection which could be granted by a specialised administration, the INAO, after a bureaucratic procedure. Italy, instead, tried to adopt a bottom-up approach from the beginning, even before France. However, because the local consortia were not able to find an agreement on the content of the specifications, it opted for a new authoritarian approach which, however, was never implemented. Only in 1963 did Italy adopt the DOC regime, based on the French AOC experience.³⁴⁰

The present EU GI system has adopted this solution in an identical way. Indeed, the national procedure for the examination of the applications has remained practically the same, although today this domestic phase is followed by a European

This is also the key element of the divide between the EU policy and those of countries, such as the US, that do not accept a *sui generis* protection of GIs. See, Barham (n 25) 48-50; Elizabeth Barham, Jim Bingen and Claire C Hinrichs, ‘Geographical Indications in the USA’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011); Jim Chen, ‘A Sober Second Look at Appellations of Origin: How the United States Will Crash France’s Wine and Cheese Party’ (1996) 5 *Minnesota Journal of Global Trade* 29. See also, Caroline Le Goffic and Andrea Zappalaglio, ‘The Role Played by the US Government in Protecting Geographical Indications’ (2017) 98 *World Development* 35.

³³⁸ Barham (n 80) 62-66.

³³⁹ Text to n 78.

³⁴⁰ Text to n 290.

one.³⁴¹ For instance, the content of the application, and especially of the specification, has remained substantively identical. This emerges from the comparison between the requirements of arts 7 and 8 Regulation 1151/2012 and those established by the French and Italian legislation of the 1920s and 1930s, which had not changed in its key elements before the introduction of Regulation 2018/1992.³⁴² Indeed, despite the different object of the protection, because the EU Regulation does not protect wines, the specifications must include: the name of the product, its characteristics, the characteristics of the place of production, a description of the methods of production and all the details of the applicants.³⁴³

Therefore, the functioning of the administration in charge of assessing the applications for an AOC/DOC has been embodied in the modern EU GI regime. This is the main feature that the old and the modern systems have in common. The assessment of the influence of the concept of *terroir*, however, is more problematic. In fact, it is true that the idea that the *sui generis* protection of IGOs had to be based on the product/place link emerged in the French legislation and, to a much lesser extent, in the Italian one. However, *terroir* has undergone an important evolution since the post-war period. Therefore, the modern concept of *terroir*, so widespread and successful, does not overlap with the one that was discussed in the 1920s and 1930s and defined by the French Law only in 1966.

³⁴¹ Regulation 1151/2012, art 50.

³⁴² This can be deduced from the content of AOC/DOC specifications granted before 1992. See, as an example, *Décret n.83-778 du 31 août 1983 relatif à l'appellation d'origine 'Camembert de Normandie'*, JORF 2 September 1983, 2699; *Decreto del Presidente della Repubblica 1955 n.1269, Disciplinary di produzione della Denominazione d'Origine del formaggio 'Parmigiano Reggiano'*, GU 22 December 1955, n.295.

³⁴³ Compare arts 7 and 8 Regulation 1151/2012 with *Pièces nécessaires à la constitution d'un dossier relatif à une demande d'appellation contrôlée*, AN F/10/5364 in Humbert (n 43) 148-149 and *Regio Decreto*, 23 Giugno 1927 n. 1440, GU 26 August 1927, art 14. Cf INAO, 'Cahier des charges de l'appellation d'origine (modèle)' (November 2014).

9. Conclusion

This Chapter has analysed the rationale on which the early French and Italian models of IGO protection were based and compared it with the modern EU system. This test was conducted in order to determine how these administration-based regimes have influenced, especially in terms of policy objectives, the present European GI rules, in particular, Regulation 1151/2012.

It has been found that the policy of the early French system, whose key features remained unaltered at least until the 1990s, was substantively different from the one on which the modern *sui generis* GIs are based. In particular, the feature of multifunctionality, that nowadays is a distinctive trait of GI rules, did not characterise the pre-European systems. The key innovation of the latter that was embodied in the EU GI rules is the presence of an administration that grants protection after a lengthy bureaucratic procedure. Another point in common is the anti-fraud function of the system. Finally, the early regimes provided only indirect protection to consumers and were not explicitly addressed to them. The analysis of the early Italian *sui generis* IGO legislation, unprecedented in the English, but also in the Italian literature, has confirmed this analysis.

Therefore, even if the European Commission itself recognises the link between the AOC/DOC and the present EU GI rules, the relationship between these systems is much more nuanced. In particular, some of the key functions that the modern GI system seeks to achieve, especially the fostering of rural development, and, in general, the attribute of multifunctionality, can be considered the product of the European experience only. The transition between the pre-European and the European system of GI protection will be discussed in the following chapter.

CHAPTER 2. FROM THE OLD GI REGIMES TO THE NEW ONE: THE GENESIS OF REGULATION 2081/1992

1. Introduction

1.1 Background

This chapter will discuss the period spanning from 1985 to 1992 during which the European Union moved from a system where geographical names of foods and agricultural products were protected by different regimes and different standards, to a single *sui generis* one. This was introduced by the Council Regulation 2081/1992 ('Regulation 2081/1992'),¹ which features two main linking factors: *terroir*, which was analysed in depth in the previous chapter, and the reputational link, which will be treated in the next. This chapter, therefore, will analyse the different factors that played a role during this 7-year period in the creation of the present EU GI model for the protection of agricultural products and foodstuffs. Particular emphasis will be placed on the importance of the EU Common Agricultural Policy (CAP), of the Uruguay Round, and of the negotiations between the different member states between 1991 and 1992.

The political reasons, and the content of the negotiations, that led to the current GI rules have already been investigated in previous works. The most important contribution in this regard is the one by Gangjee, who demonstrated that this system is a synthesis of the southern European approach, based on the concept of Appellation of Origin ('AO') and on the *terroir* link, and the German tradition, based

¹ Council Regulation (EEC) No 2081/1992 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1992] OJEC L208/1.

on a subjective communicative logic.² Older materials, published during the negotiations, confirm this argument. In particular, Brouwer, in an important article published in 1991, summarises the contrasts between the project of the Commission and the member states.³ Moreover, he criticised PGIs, considering them to be only a device to reconcile the French/Italian position and the German one, thus allowing the negotiations to come to a positive outcome.⁴ Finally, Marina Kolia in two short articles written, respectively, shortly before and after the adoption of Regulation 2081/1992, described the difficulties experienced during the negotiations and the role played in them by the key member states, especially France and Germany.⁵

This chapter will contribute to the existing literature by providing a more complete recount of the events from the 1985 reform of the CAP until the registration of the first GI products in the EU register. In particular, it will highlight the role of the CAP in shaping the objectives and goals of the GI regime. Moreover, it will suggest that the origins of this regime must be traced back to the proposal that the Commission presented in the context of the Uruguay Round in 1988, thus showing that a general agreement between the single member states was already in place. Finally, the work will attempt to reconstruct the events that led to the successful conclusion of the negotiations for Regulation 2081/1992 and will deduce that the evolution of the provisions on PGIs played a decisive role.

² Dev Gangjee, *Relocating the Law of Geographical Indications* (CUP 2012) 223-237. See also, Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link' (n 16).

³ Onno Brouwer, 'Community Protection of Geographical Indications and Specific Character as a Means of Enhancing Foodstuff Quality.' (1991) 28 *Common Market Law Review* 615, 615, 618-619.

⁴ *ibid*, 633, 645-646.

⁵ Marina Kolia, 'Monopolising Names: EEC Proposals on the Protection of Trade Descriptions of Foodstuffs' [1992] *European Intellectual Property Review* 233; Marina Kolia, 'Monopolising Names of Foodstuffs: The New Legislation' [1992] *European Intellectual Property Review* 333.

1.2 Methodology and sources

This chapter, like the previous one, applies a historical approach in order to highlight some relevant details about the transition period from the decentralised protection of GIs, entirely left to the domestic legislation of the member states, and the present harmonised system. The arguments are built predominantly on the basis of the original institutional sources dating back to the examined period. In particular: (1) the evolution of the CAP and its influence on the objectives of the EU GIs have been investigated on the basis of the policy papers of the European institutions published between 1985 and 1992, as well as on the official review of the CAP published by the Commission. (2) The *travaux préparatoires* of the TRIPs Agreement, published by the WTO in 2006, were analysed in order accurately to outline the proposals that were put forward by the European Community, as it then was, especially at the early stage of the negotiation. (3) With regard to the negotiations leading to Regulation 2081/1992, this thesis has gathered all the materials directly available on the online platforms, such as EUR-Lex.⁶ Other documents, meanwhile, were specifically requested from the archives of the Commission and of the European Parliament. Unfortunately, many internal documents, such as reports submitted by individual member states, or working position papers, which would have been very useful for the goals of the present research, have never been published and are thus not available.⁷ Nonetheless, on the basis of the collected materials, the thesis tries to deduce some aspects of the negotiations that were never fully clarified and suggests a reconstruction of the events.

⁶ 'EUR-Lex: Access to European Union Law' (*EUR-Lex*) <<http://eur-lex.europa.eu/homepage>>.

⁷ In general, the documents that were not drafted by EU institutions, for instance the reports and papers submitted by individual member states, were never published and cannot be retrieved from the archives. This is confirmed by Brouwer (n 3) fn 9-11.

With regard to the scholarly literature, the work makes reference, especially, but not exclusively, to materials published at the time of the events. For instance, an important contribution by Cohen Jehoram is used to reconstruct the legislation of the central/northern European countries before 1992.⁸ In addition, the works of Kolia and Brouwer, mentioned above, are quoted in relation to the negotiations leading to Regulation 2081/1992, together with other materials, such as the acts of the WIPO GI Symposium held in Wiesbaden in 1991.⁹ Furthermore, other sources have been selected in order to highlight the comments and the expectations of the European negotiators during the Uruguay Round.¹⁰ Finally, the best works on the CAP and its history were consulted, especially those by MacMahon.¹¹

Finally, this chapter, just like the preceding one, makes use of some original materials. In particular, Prof Jörg Reinbothe, who negotiated the TRIPs agreement on behalf of the EC, in an email interview, provided some interesting insights concerning the points that the European member states had already discussed and on which they had already agreed, in 1988, that is two years before the proposal of the Commission in respect to Regulation 2081/1992. Moreover, in an exchange of emails, Prof Roland Knaak confirmed some of the chapter's deductions about the role of Germany among the central/northern European countries and, in particular, of the group of scholars

⁸ Herman Cohen Jehoram (ed), *Protection of Geographic Denominations of Goods and Services* (Sijthoff & Noordhoff 1980).

⁹ WIPO, 'Symposium on the International Protection of Geographical Indications Organised by the World Property Organization (WIPO) in Cooperation with the Government of the Federal Republic of Germany' (WIPO 1991) WIPO/GEO/WI/91/8 Rev.

¹⁰ Jörg Reinbothe and Anthony Howard, 'The State of Play in the Negotiations on Trips (GATT/Uruguay Round)' (1991) 5 *European Intellectual Property Review* 157; Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations* (World Trade Organization 2015).

¹¹ Joseph A McMahon, *EU Agricultural Law* (Oxford University Press 2007); Caoimhín MacMaoláin, *Food Law: European, Domestic and International Frameworks* (Hart Publishing 2015).

and policymakers led by Karl F. Beier who advocated for a broad system of GI protection, in contrast to the southern AO model.

1.3 Structure

The chapter is divided into six sections, including the present introduction and the conclusions. The four substantive sections are structured as follows:

Section 2 describes the background that led to the negotiation and the adoption of the first EU regulation on *sui generis* GIs for foodstuffs and agricultural products. In particular, it analyses: (1) the links between the latter and the reform of the EU Common Agricultural Policy; (2) the divergent approaches adopted in Europe regarding the protection of geographical names that, generally speaking, placed southern and northern countries in opposition to each other; (3) the problems raised by the case law of the European Court of Justice on the relationship between the protection of indications of geographical origin and the free movement of goods within the common market.

Section 3 emphasises the importance of the drafts concerning the protection of GIs submitted by the European Community in the context of the Uruguay Round, especially between 1988 and 1990. Indeed, in this period the first common position of the EC member states emerged, which anticipated many aspects of Regulation 2081/1992. Hence, this demonstrates that the first compromises and discussions among European countries began before 1991-1992.

Section 4 analyses the evolution of the discussions that led to the adoption of Regulation 2081/1992 and, drawing upon the available materials, suggests that the

outcome of the negotiations was not only the result of a north/south compromise, but also of an agreement among different northern countries.

Section 5 anticipates some of the findings of the next chapter and, on the basis of a statistical analysis, shows that, although the EU *sui generis* regime represents a compromise between all the most important member states, the system was, at least at the beginning, exploited almost exclusively by southern European countries. This shows that, even as late as 1996, the central/northern European countries were not yet used to a registration-based *sui generis* system of GI protection.

2. The path to EU GIs: the CAP and the existing systems of protection

2.1 The CAP laid the foundations of the policy of the EU GI system

In the previous chapter it was concluded that the policy on which the present EU GI system is based has a few elements in common with the previous *sui generis* systems existing in Europe, especially the French and the Italian ones. In particular, it was shown that these have in common a bureaucratic architecture in charge of examining the applications and the goal of protecting producers. Furthermore, the concept of *terroir*, which was central to the old French and Italian systems, was enshrined in the current regime, although this concept had undergone substantial evolution, especially after 1935 when the French Law on *Appellation d'Origine Contrôlées* was introduced. On the other hand, the old French and Italian systems only indirectly took account of the protection of consumers, and goals such as rural development, the protection of agricultural diversity, environmental sustainability, and so on, were completely absent. In contrast, today, these are mentioned right at the beginning of

the preamble of the latest version of the EU GI Regulation, i.e. Regulation of the European Parliament and of the Council 1151/2012 ('Regulation 1151/2012').¹²

These new goals were introduced by the reforms to the CAP since 1985, and to which Regulation 2081/1992 explicitly refers.¹³ It is impossible, therefore, to understand the policy on which the EU GI regime is based, and the extent to which it is innovative compared to the previous *sui generis* systems, without analysing the reforms that took place to EU CAP since 1985. In particular, it will be shown that the EU GI Regulation is a direct consequence of the reform of the CAP, and that goals such as the protection of origin products in order to foster the rural economy and agricultural diversity, descend from that reform.¹⁴ In turn, however, as has been observed by Schwab, the general goals of the CAP would not be achievable without GI rules.¹⁵

2.1.1 The Green Paper (1985)

The 1985 Green Paper, entitled 'Perspectives for the Common Agricultural Policy' (the 'Green Paper'),¹⁶ focused on the problem of the decline of the European agriculture and put forward a new model of green agriculture and economy, stressing the social importance of farming.¹⁷ Although GIs are not explicitly mentioned, this is

¹² Regulation (EU) 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, Preamble Recitals 1-5.

¹³ Regulation 2081/1992, Preamble Recital 2.

¹⁴ *ibid.*

¹⁵ Bertold Schwab, 'The Protection of Geographical Indications in the European Economic Community' (1995) 17 *European Intellectual Property Review* 242, 242.

¹⁶ European Commission, 'Perspectives for the Common Agricultural Policy' (1985) COM(85) 333 final.

¹⁷ For a focus on this concept, see European Commission, 'Social Europe: Seminar on the Social Aspects of the Common Agricultural Policy' (European Commission 1987) 3/89.

understandable considering that the guidelines provided in the report are quite broad and the possible solutions to the identified problems are not outlined in detail. The goals set out in the Green Paper anticipate, however, some of the key concepts that were later enshrined in the Preamble of Regulation 2081/1992. In particular, the Green Paper stated that the decline of agriculture in Europe was due to ageing farmers, the depopulation of rural areas, lack of investment and other factors.¹⁸ It added that the traditional pillars of the CAP¹⁹ could not stop this negative trend. Hence, the Green Paper stated that innovative choices had to be made in the context of EU rural development.²⁰ In particular, it supported the project of a ‘green Europe’ based on family farms and small-sized agricultural enterprises.²¹

Strategically, the main goal of the future plans of the Community became the preservation of the tradition of agriculture and farming that had characterised the European territory for centuries and, at the same time, the development of a new concept of the ‘farmer’.²² It was from this perspective, that the idea was first put forward that farmers were in the best position to become the true managers of rural

¹⁸ European Commission, ‘Perspectives for the Common Agricultural Policy’ (n 16), [11]-[17]. For a very critical analysis on the effects of the CAP until 1985, see Wolfram Engels and others, ‘The CAP Is Destroying the EEC’ [1985] *Economic Affairs* i.

¹⁹ This Chapter will not focus on the evolution of the CAP in the period preceding 1985 as this would exceed the scope of the present research. For a good introduction to the history of the CAP, see European Commission, ‘The Common Agricultural Policy: A Story to Be Continued’ (2012). For a detailed monograph, see McMahon (n 11), Ch 2. See also Wyn Grant, *The Common Agricultural Policy* (trans. to digital print, Palgrave 2003); Christopher Ritson and David R Harvey (eds), *The Common Agricultural Policy* (2nd ed, CAB International 1997); Wendy Price, *The Common Agricultural Policy* (Association of EDC Librarians 1989).

²⁰ European Commission, ‘Perspectives for the Common Agricultural Policy’ (n 16), v – vii.

²¹ *Ibid*, ii.

²² Sociologists and rural economist introduced the concept of ‘pluriactivity’. This means that farmers were shifting from part-time work to a full-time but extremely variegated engagement in which they were also becoming sellers of products, owners of tourist accommodation and so on. See, Anthony M Fuller, ‘From Part-Time Farming to Pluriactivity: A Decade of Change in Rural Europe’ (1990) 6 *Journal of Rural Studies* 361.

areas.²³ This was crucial because creating a common agricultural market without sacrificing diversity and while preserving small-scale niche production was a difficult challenge.²⁴ In particular, the Green Paper argued that Europe had to prevent the depopulation of rural areas because the preservation of traditional agriculture was of paramount importance for the protection of the environment, as well as for fostering a harmonious development of the whole region.²⁵ It was also noted that this strategy would have been profitable because consumers were willing to pay more for natural high-quality products.²⁶ The 1985 Green Paper therefore anticipates the different goals of the EU GI regime, including sustaining local farmers, promoting diversity and fostering an innovative approach to agriculture and rural development.²⁷ Although the adoption of quality schemes was not mentioned in the Green Paper therefore, GIs explicit appearance on the EU CAP agenda only few years later can be seen as a natural development.

2.1.2 The Report on ‘Environment and Agriculture’ and the Communication on ‘The Future of Rural Society’ (1988)

The importance of GIs in the broad strategy outlined by the Green Paper became explicit in 1988 when, first, the Commission published a report entitled ‘Environment and Agriculture²⁸’ (‘the Report’) and, then, transmitted to the European Parliament a

²³ European Commission, ‘Perspectives for the Common Agricultural Policy’ (n 16) iv-v.

²⁴ European Commission, ‘Europe’s Common Agricultural Policy: European File’ (European Commission 1986) 2/86.

²⁵ European Commission, ‘Perspectives for the Common Agricultural Policy’ (n 16) vi.

²⁶ *ibid.*, 2.

²⁷ Regulation 2081/1992, Preamble recitals 1-3.

²⁸ European Commission, ‘Environment and Agriculture’ (1988) COM(88) 338 final.

Communication called ‘The future of rural society²⁹’ (‘the Communication’). In the Report the Commission stated, among other things, that Europe should encourage farming practices that preserve the rural environment,³⁰ and that the Commission intended to study voluntary measures aimed at achieving that result.³¹

The Communication, on the other hand, focused predominantly on the social impact of agriculture, showing that, although rural areas accounted for 80% of the territory of Europe, they were in deep crisis because of depopulation, decreased productivity and other factors. It was therefore seen as crucial to introduce some new forms of Communitarian action in order to preserve these areas and to modernise the most underdeveloped ones.³² Among the measures that were proposed to achieve these results, the Communication included a plan to protect agricultural products with an identifiable origin³³ through ‘(...) a coherent policy on labels, descriptions and designations of origin’.³⁴ Hence, the 1988 Communication is the first official document published by the Commission that explicitly mentions GIs. Interestingly, in the same period, the EC was the first negotiating party to present a proposal for a GI protection regime in the context of the Uruguay Round. As will be shown below, this cannot be considered a coincidence.³⁵

²⁹ Many data and interesting observations on this issue can be found in European Commission, ‘The Future of Rural Society: Commission Communication Transmitted to the Council and to the European Parliament on 29 July 1988’ (1988) COM(88) 501.

³⁰ European Commission, ‘Environment and Agriculture’ (n 28) 1.

³¹ Ibid, 15-16.

³² European Commission, ‘The Future of Rural Society’ (n 29) 5-8.

³³ Ibid., 43-44.

³⁴ European Commission, ‘The Future of Rural Society’ (n 29) 9.

³⁵ See Section 3.

2.1.3 The reflection paper on ‘The Development and Future of the CAP’ (1991) and the MacSharry reforms

The reflection paper on ‘The Development and Future of the CAP’ (the ‘Reflection Paper’) was communicated by the Commission to the Council on 1 February 1991.³⁶ This was the beginning of the discussions that led to the so-called MacSharry reforms of the CAP in 1992. Although important in the context of the CAP, a full analysis of these reforms is not relevant to the scope of the present thesis.³⁷ The Reflection Paper, just like the documents presented above, puts forward different policy issues that were eventually enshrined in the EU GI policy. For instance, it stated that:

Sufficient numbers of farmers must be kept on the land. There is no other way to preserve the natural environment, traditional landscapes and a model of agriculture based on the family farm as favoured by the society generally. This requires an active rural development policy and this policy will not be created without farmers.³⁸

In conclusion, this brief outline shows that it was the CAP that introduced into the EU GI rules some key policy objectives that were not present in the previous *sui generis* regimes and that, therefore, can be considered, at least partially, an original

³⁶ European Commission, ‘The Development and Future of the CAP’ (1991) COM(91) 100 final.

³⁷ The reform was named after the then European Commissioner for Agriculture, Ray MacSharry. In short, the MacSharry reform was aimed at improving the competitiveness of EU agriculture and stabilising agricultural markets. Furthermore, one of its main goals was diversifying production and protecting the environment. Finally, it was aimed at stabilising the EU budget expenditure. Thus, the driving force of the EU agricultural system became producer support (through income support) while it used to be product support (through prices).

For more information on this, see McMahon (n 11) 90-99; Arlindo Cunha and A Swinbank, *An inside View of the CAP Reform Process: Explaining the MacSharry, Agenda 2000, and Fischler Reforms* (Oxford University Press 2011) 69-101; Albert Massot, ‘The Common Agricultural Policy (CAP) and the Treaty’ (*European Parliament: Fact Sheets on the European Union*, October 2015) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.1.html>; European Commission, ‘The 1992 Reform (“MacSharry Reform”)’ (*European Commission: History of the CAP*, April 2015) <http://ec.europa.eu/agriculture/cap-history/1992-reform/index_en.htm>.

³⁸ European Commission, ‘The Development and Future of the CAP’ (n 36) 9-10.

result of the European system. This link is confirmed by the fact that, during the 1990s and 2000s, after the introduction of the EU *sui generis* GI model, some goals and key principles that were introduced by the Regulation 1151/2012 were, once again, anticipated by the evolution of the CAP. This is the case, for example, with concepts such as ‘cultural and gastronomic heritage’ and ‘sustainable and inclusive growth’.³⁹ The CAP was not the only influence on the EU GI rules as adopted in 1992, however. Another key issue concerned the need to harmonise the different philosophies of GI protection existing in Europe before Regulation 2081/1992.

2.2 The protection of geographical names in Europe before 1992: conflicting philosophies

2.2.1 The southern approach v the central/northern one: general outline

The adoption of common *sui generis* GI rules in Europe was necessary not only to contribute to the implementation of the new goals of the CAP, but also to harmonise the different approaches to the protection of geographical names that could vary substantively from one country to another,⁴⁰ thus creating problems to the communitarian integration.⁴¹ Before the first EU GI Regulation was introduced, there

³⁹ See, Regulation 1151/2012, preamble recitals 1-5; European Commission, ‘The History of the CAP’ (*Agriculture and Rural Development*) <http://ec.europa.eu/agriculture/cap-history/index_en.htm>.

⁴⁰ For an overview of the different approaches to the protection of geographical names in Europe before Regulation 2081/1992, see Bernard O’Connor, *The Law of Geographical Indications* (Cameron May 2004), Ch 7. See also, Nicholas Parrott, Natasha Wilson and Jonathan Murdoch, ‘Spatializing Quality: Regional Protection and the Alternative Geography of Food’ (2002) 9 *European Urban and Regional Studies* 241.

⁴¹ This emerges from the text of Regulation 2081/1992 itself. See, Regulation 2081/1992 Preamble Recital 7: ‘(...) there is diversity in the national practices for implementing registered designations or origin and geographical indications; whereas a Community approach should be envisaged; whereas a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers’ eyes’.

were, broadly speaking, two different approaches to the protection of geographical names in Europe. The first, which was discussed in the previous chapter, was the Appellation of Origin approach, and which applied the concept of *terroir* to link products such as wine, but also cheese, ham, olive oil and others, to a specific place. In these cases, protection was granted at the end of an administrative procedure after which the product was added to an ad hoc register. This system was common to the national laws of southern European countries, such as France, Italy,⁴² and Spain,⁴³ and was also transposed into international law by the Lisbon Agreement in 1958.⁴⁴ Then, there were alternative systems of protection of geographical names, namely those adopted by central/northern European countries, which did not protect AOs but the Indications of Source ('IS'). These are indications of geographical origin that do not establish any physical link between the product and its place of origin. Rather, they simply inform the consumer about the formal origin of a good, for instance by stating that it is 'made in China', and promote truth-telling in the marketplace, thus protecting products that enjoy a special reputation among consumers, such as Toledo

⁴² The law of these two countries has been analysed in depth in the previous chapter.

⁴³ Spain introduced the Denomination of Origin for wines in 1932 following the French model. In 1970 a new Law 'On Vineyard, Wine and Alcohol Regulations' was passed providing protection, through a ministerial decree, not only to wines but also to other products with special economic and social importance that could qualify for protection because of their quality. In the same year, Spain established the National Institute for Designations of Origin, similar to the French INAO. With the adoption of the new Constitution in 1978 the recognition and registration of designations was decentralised and delegated to the Autonomous Communities. For more information, see Joachim Heine, 'The Protection of Geographical Indications in the European Community' (WIPO 1991) WIPO/GEO/WI/91/8 Rev.

⁴⁴ The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. It was signed on 31 October 1958 and came into force in 1966. It is administered by WIPO, see WIPO, 'Objectives and Main Features of the Lisbon Agreement' (WIPO) <<http://www.wipo.int/lisbon/en/general/>>.

steel or Belgian chocolate.⁴⁵ These have been analysed by some leading scholars in the past and, therefore, only an outline will be provided here.⁴⁶

Germany and other continental central/northern countries

Traditionally, Germany has never had a *sui generis* system dedicated to the protection of geographical names and it considered the misleading use of indications of origin an act of unfair competition and specifically, one of unfair advertising.⁴⁷ A similar approach was applied by countries such as the Netherlands⁴⁸ and Sweden.⁴⁹ In contrast, other central European states, such as Czechoslovakia and, subsequently the Czech Republic, had a long tradition of AO.⁵⁰

In Germany, as anticipated, IS were protected by the Unfair Competition Act (UWG) and, especially, by the general provision of art 3:

a[ny] person, who, in the course of a business activity, for purposes of competition, makes misleading statements, particularly concerning

⁴⁵ Gangjee, *Relocating the Law of Geographical Indications* (n 2) 23-26.

⁴⁶ Cohen Jehoram (n 8); Gangjee, *Relocating the Law of Geographical Indications* (n 2) 115-123; O'Connor (n 40) Ch 7.

⁴⁷ For a focus on German Law, see Friederich Karl Beier, 'The Protection of Indications of Geographical Origin in the Federal Republic of Germany' in Herman Cohen Jehoram (ed), *Protection of geographic denominations of goods and services* (Sijthoff & Noordhoff 1980); Gerhard Schricker, 'Protection of Indications of Source, Appellations of Origin and Other Geographical Indications in the Federal Republic of Germany' [1983] IIC 307; Hilke Kickler, 'Die Geschichte Des Schutzes Geographischer Herkunftsangaben in Deutschland Vom Zweiten Deutschen Kaiserreich Bis Zum Markengesetz 1995' (Universität Bayreuth 2012). See also, Gerhard Schricker, 'Der Schutz Der Herkunftsangaben Ursprungsbezeichnungen Und Anderen Geographischen Bezeichnungen in Der Bundesrepublik Deutschland' (Colloque de Lausanne, Lausanne, 1983); Frauke Henning-Bodewig, 'A New Act Against Unfair Competition in Germany' [2005] IIC 421.

⁴⁸ L Wichers Hoeth, 'Protection of Geographic Denominations in the Netherlands' in Herman Cohen Jehoram (ed), *Protection of geographic denominations of goods and services* (Sijthoff & Noordhoff 1980).

⁴⁹ Mogens Koktvedgaard, 'The Legal Protection of Geographic Denominations of Goods and Services in the Scandinavian Countries' in Herman Cohen Jehoram (ed), *Protection of geographic denominations of goods and services* (Sijthoff & Noordhoff 1980).

⁵⁰ See, Table 3.1 in Ch 3; O'Connor (n 40) 220.

(...) the origin of individual goods or commercial services (...) may be ordered to abstain from making such statements.⁵¹

This is a general clause quite common in unfair competition laws. It does not protect a specific good or person directly, but is aimed at assuring fairness in the marketplace, thus protecting the rights of consumers to receive accurate information from producers. This broad consumer-related/trade-related concern led to the granting of protection to so-called ‘indirect Indications of Source’, completely at odds with the logic of AO.⁵² These consist of images, shapes, words and so on that consumers instinctively consider to be related to a specific geographical location, such as the Egyptian Sphinx or the French Eiffel Tower.⁵³ The most famous example is the protection of the shape of the Bocksbeutel bottle. In this case, in 1971, the German Supreme Court held that the use of the bottle shape for wine that did not come from the historical region of Baden and its surroundings could mislead consumers.⁵⁴

The United Kingdom

In the U.K. geographical names have traditionally been protected under the judge-made law of passing off.⁵⁵ The key principle of this legal tort is well known in the common law world and sounds like ‘[a] man is not to sell his goods under the

⁵¹ Gesetz gegen den unlauteren Wettbewerb (UWG). 7 June 1909. Last reformed in 2004. The updated text can be found on WIPO’s website at <<http://www.wipo.int/wipolex/en/details.jsp?id=10009>>

⁵² Roland Knaak and Friederich Karl Beier, ‘The Protection of Direct and Indirect Geographical Indications of Source in Germany and the European Community’ (1994) 25 IIC 1.

⁵³ Gangjee, *Relocating the Law of Geographical Indications* (n 2) 27-28.

⁵⁴ Schricker, ‘Protection of Indications of Source, Appellations of Origin and Other Geographical Indications in the Federal Republic of Germany’ (n 47) 314-315; Beier, ‘The Protection of Indications of Geographical Origin in the Federal Republic of Germany’ (n 47) 28-30.

⁵⁵ For a short discussion regarding the protection of geographical names in the UK by certification trademark before the 1992 Regulation, see Marjorie Thienes, ‘Tradition and Progress: Registration of Geographic Denominations of Origin’ (1994) 96 British Food Journal.

pretence that they are the goods of another man.⁵⁶ Although this concept will not be reviewed here, as it would exceed the scope of the present work,⁵⁷ some practical cases in which it was applied in order to protect indications of geographical origin will be mentioned.

In particular, the legal concept of passing off has also been applied in order to protect a group of producers rather than a single brand. This variation in the general pattern is called ‘extended passing off’. Cases involving extended passing off in the field of geographical names are relatively rare but three are relatively well known. The landmark case on extended passing off in relation to GIs was *Spanish Champagne* (1959).⁵⁸ In this case, the court had to decide whether ‘Spanish Champagne’ could be used to indicate sparkling wine that was not produced in France. Even if the designation itself clarified that the product was not made in France, the judge ruled that, for English consumers, ‘Champagne’ was a product produced in and shipped from the homonymous region of northern France, and that, therefore, ‘Spanish Champagne’ was misleading and could harm the producers of a world famous product and constituted passing off. In *Sherry* (1969),⁵⁹ a group of

⁵⁶ *Perry v Truefitt* (1842) Lord Langdale, 6 Beav 66, 73.

⁵⁷ In extreme synthesis, the three main elements of the tort of passing off are: (1) the goods or services supplied must enjoy reputation or goodwill in the mind of the consumer; (2) the defendant must have led the public to believe that his goods belong to or are somehow connected with the plaintiff; (3) the plaintiff has suffered or will likely suffer a damage because of the defendant’s behaviour.

For a good summary of the law of passing off see *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 (HL). For some works on this doctrine see Christopher Wadlow, *The Law of Passing-off: Unfair Competition by Misrepresentation* (4 ed, Sweet & Maxwell 2011); Nicholas Caddick and others, *A User’s Guide to Trade Marks and Passing Off* (3rd ed, Bloomsbury Professional 2012). See also, Lionel Bently and Brad Sherman, *Intellectual Property Law* (Fourth edition, Oxford University Press 2014) 826-847.

⁵⁸ *Bollinger v Costa Brava Wine Company Ltd* (1959) 3 All ER 800 (Spanish Champagne). Another Champagne case was *Tattinger v Allbev* (1994) 4 All ER 75 CA (Elderflower Champagne).

⁵⁹ *Vine Products Limited & Others v Mackenzie & Company Limited & Others* (1969) R.P.C. 1.

Spanish sherry producers sought to prevent the use of the mark ‘British Sherry’. Following ‘Spanish Champagne’, the court held that British producers could not validly use that geographical name.⁶⁰ In that case, however, the plaintiffs were denied a remedy because they had acquiesced to the use in the English market of marks such as ‘South African Sherry’. Finally, in *Scotch Whisky* (1970),⁶¹ the product was exported to Ecuador where it was blended with local cane spirits and other ingredients and then resold under the name ‘White Abbey Whisky’ and ‘Scotch Archer Whisky’. The court held that there were no true blenders of Scotch whisky outside Scotland and England, hence they applied the decision of *Spanish Champagne* and found passing off.

2.2.2 The Qualified Indications of Source: forefathers of the Protected Geographical Indications?

Well before the introduction of Regulation 2081/1992, the German courts developed the legal concept of Qualified Indication of Source (‘QIS’).⁶² Unlike simple IS, which did not consider the physical link between the product and its place of origin, nor the methods of production, the QIS required some products, bearing a prestigious geographical name, to meet specific substantive quality standards. This special kind of IS has been considered in some important scholarly works to be the main precursor of the PGI quality scheme.⁶³ It is therefore important to outline this here in order to

⁶⁰ ‘Sherry’ is an Anglicisation of ‘Xerez’, the Spanish town where sherry fortified wine is traditionally made.

⁶¹ *John Walker & Sons v Henry Ost & Co* (1970) 2 All ER 106.

⁶² Marc Holtorf, ‘Indication of Source, Appellation of Origin, Geographical Indications’ (13 May 2011) 11; Kickler (n 47) 390. The same concept is applied in Switzerland as well, see IGE/IPI, ‘Indications of Source’ (*IGE/IPI*) <<https://www.ige.ch/en/protecting-your-ip/indications-of-source/faq.html>>.

⁶³ Gangjee, *Relocating the Law of Geographical Indications* (n 2) 118-119, 226-227.

discuss its relationship with the latter, and provide an original perspective on this issue at a later stage of the analysis.⁶⁴

QIS are a judge-made kind of IS developed since the 1950s, when the German Courts began to hold that the advertising effect of a product bearing a geographical name is also based on an expectation of quality and not only on the reputation of the name alone.⁶⁵ In some cases, the German courts have identified goods that enjoyed a specific reputation of quality among the consumers and that, as a consequence, had to meet some specific quality standards in order to bear a specific geographical name. The most famous decision concerning QIS is the ‘Whiskey’ case,⁶⁶ in which the German Supreme Court held that whiskey aged for less than three years could not be marketed as ‘Scotch Whiskey’, even when effectively made in Scotland. In fact, in this case, the product would not comply with the traditional quality standard of the authentic Scotch Whiskey, thus misleading consumers and harming producers.

The relationship between QIS and PGI will be better assessed in due course. In the next section, the work will focus on another essential element to reconstruct the background in which the negotiations for Regulation 2081/1992 took place; that is the controversies generated by the case law of the ECJ.

2.3 The disputes before the European Court of Justice

Before the introduction of the EU GI regime in 1992, the different approaches to the protection of geographical names constituted a legal problem. Indeed, it was not clear, from the perspective of EU Law, what constituted a lawful indication of origin and

⁶⁴ Paragraph 4.2.4.

⁶⁵ For a review of the German Case Law see, Kickler (n 47) 396-399.

⁶⁶ ‘Scotch Whiskey (Case Note)’ [1970] IIC 402.

what, instead, amounted to a measure having an effect equivalent to a quantitative restriction of the free movement of goods between member states. Before the Regulation, the ECJ adopted a narrow definition of indication of origin, endorsing *de facto* only the AO model, thus ruling against Germany twice, in the *Sekt* and in the *Bocksbeutel* case.⁶⁷ These cases were overturned by the famous *Exportur* decision, granted a few months after the adoption of Regulation 2081/1992.⁶⁸ In this decision, the product, a nougat protected by a Franco/Spanish treaty, was considered a valid designation even if it was not linked to its place of origin by a *terroir*-link but only by its reputation. This decision shows the deep impact that the Regulation had on the previous ECJ case law. Nonetheless, the two cases mentioned above must be outlined, since they complete the description of the background in which the negotiations for the EU *sui generis* GI regime took place.

Sekt (1975)

In *Sekt*⁶⁹ the facts were the following. Germany in its Wine Act 1971 (Weingesetz) restricted the terms ‘Sekt’ (sparkling wine) and ‘Weinbrand’ (brandy) to wines and spirits produced in a country in the whole of the territory of which German was an official language and the term ‘Pradikatssekt’ (choice-sekt) to wine made from at least 60 per cent by home-grown grapes. The Commission reacted by alleging that such a provision constituted a measure having an effect equivalent to a

⁶⁷ Vadim Mantrov, *EU Law on Indications of Geographical Origin* (Springer 2014) [5.3]; Dev Gangjee, ‘From Geography to History’ (n 2) 47-49.

⁶⁸ Case C-3/91 *Exportur SA v LOR SA and Confiserie du Tech* [1992] ECR I-5529 (*Exportur*).

⁶⁹ Case 12-74 *Commission v Germany* [1975] ECR 181(*Sekt*).

quantitative restriction, thus breaching art 30 of the Treaty Establishing the European Economic Community (EEC Treaty, currently art 34 TFEU).⁷⁰

The Federal Republic of Germany, by contrast, argued that these names deserved protection on two main grounds: 1) the drinks were prepared according to a traditional manufacturing method that distinguished them from all other similar products; 2) opinion polls demonstrated that German consumers considered the appellations 'sekt' and 'weinbrand' as referring to domestic products only. The ECJ rejected these arguments, however, by ruling that:

(...) the registered designations of origin and indirect indications of origin (...) always describe at the least a product coming from a specific geographical area. (...) These appellations only fulfil their specific purpose if the product which they describe does in fact possess qualities and characteristics which are due to the fact that it originated in a specific geographical area. As regards indications of origin in particular, the geographical area of origin of a product must confer on it a specific quality and specific characteristics of such a nature as to distinguish it from all other products.⁷¹

In this case, however:

An area of origin which is defined on the basis either of the extent of national territory or a linguistic criterion cannot constitute a geographical area within the meaning referred to above, (...), particularly as the products in question may be produced from grapes of indeterminate origin.⁷²

⁷⁰ Moreover, since the measures in dispute were not indispensable in order to protect producers from unfair competition, and consumers from deception regarding the origin of the products, they were not justified under Article 36 EEC (currently art 36 TFEU). This article, in fact, provides for an exception to the general principle of the prohibition of quantitative restrictions between Member States in different circumstances, including the need to protect industrial or commercial property, if the protection does not constitute an arbitrary discrimination or a disguised restriction of intra-communitarian trade.

⁷¹ *Sekt* (n 69), issue 2 para 7.

⁷² *ibid*, para 8.

Bocksbeutel (1984)

In *Bocksbeutel*,⁷³ an Italian national, Karl Prantl, a dealer in beverages, persistently imported ‘bocksbeutel’ bottles into the Federal Republic of Germany. The bocksbeutel bottle has a characteristic bulbous shape and has for several centuries used for bottling quality wine produced in Franconia, Baden-Franconia and four municipalities located in central Baden. A longstanding tradition in the province of Bolzano in Italy, however, also uses the bocksbeutel design. Because the 1971 German Regulation on Wines provided for criminal consequences for those who made an abusive use of the bottle shape, Mr Prantl was subjected to a criminal trial. The Tribunal of München (*Landsgericht München II*), however, asked for a preliminary ruling by the ECJ asking, among other things, whether this limitation to imports constituted a quantitative limitation to imports, thus breaching art 30 EEC (currently art 34 TFEU).

The Federal Republic of Germany claimed that the provision was justified on the grounds of consumer protection and fair-trading, as the traditional ‘bocksbeutel’ had to be regarded as an indirect designation of geographical origin.⁷⁴ The ECJ disagreed, however:

The government of the Federal Republic of Germany has (...) argued that the presentation of Franconian wine and Baden wine in the “traditional bocksbeutel bottle” is an indirect indication of geographical origin and therefore constitutes an industrial or commercial property right (...). In this regard it need merely be observed, (...), that producers who traditionally use a bottle of a specific shape may not in any event successfully rely upon an industrial or commercial property right in order to prevent imports of wines originating in another Member State which have been bottled in

⁷³ Case 16/83 *Criminal Proceedings against Karl Prantl* [1984] ECR 1299 (Bocksbeutel).

⁷⁴ *ibid*, issue 2 para 19.

identical or similar bottles in accordance with a fair and traditional practice in that state.⁷⁵

These examples show that the different standards that existed in Europe before the 1992 Regulation led to disputes concerning the nature of an indication of origin. Indeed, the decisions of the ECJ challenged two key pillars of the German system: (1) the fact that the opinion of domestic consumers was enough to grant an exclusive right over the use of a geographical name; (2) the validity of indirect indications of origin. These differences, and the disputes that arose because of them, were among the issues that led to the negotiations in respect to Regulation 2081/1992. This emerges from the Regulation itself,⁷⁶ and was confirmed by Prof Reinböthe.⁷⁷ Following the reform of the CAP in 1985, an evolution began that led to the adoption of the EU *sui generis* GIs. This process was anticipated by the negotiations on GIs in the context of the Uruguay Round.

3. The common position of the EU members during the Uruguay Round

The existing investigations on the roots of the EU GI system generally do not take into consideration the importance of the position expressed by the member states of the EC, as it then was, during the Uruguay Round. These negotiations led to the constitution of the World Trade Organisation and, among other things, to the

⁷⁵ *ibid*, paras 34-35.

⁷⁶ Regulation 2081/1992, Recital 7 '(...) there is diversity in the national practices for implementing registered designations or origin and geographical indications; (...) a Community approach should be envisaged; (...) a framework of Community rules on protection will permit the development of geographical indications and designations of origin'

⁷⁷ 'Jörg Reinbothe Interview' (23 December 2015) 'To my knowledge, EC legislation on GIs was to a large extent triggered by several disputes among EC Member States that also led to ECJ decisions. It was only consequent to legislate on GIs, like on other IP matters, with a view to accommodating the, not always identical, concepts and interests of EC Member States with respect to GI protection and the needs of the EC Internal Market.'

introduction of the TRIPs Agreement in 1995,⁷⁸ which set the international mandatory minimum standards for the protection of GIs as well as their definition.⁷⁹

The documents submitted by the EC during these negotiations are the earliest proofs, not only of the initial idea of GI protection that Europe tried to export, but also of the compromise that had been reached internally among the EC member states, thus constituting an essential starting point for any research aimed at reconstructing the history of the European GI regime. In fact, the EC was participating in the Uruguay Round as an independent negotiating party, while at the same time also speaking on behalf of member states that were also taking part in the negotiation as independent parties.⁸⁰ As a consequence, the position of the EC, as emerges from the drafts, can be seen to be the result of intense confrontations between the European Commission and the individual European governments and not only between the Commission and third parties.⁸¹ In addition, at that time, the

⁷⁸ WTO, 'The Uruguay Round' (*WTO*)
<http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm>.

For an in-depth analysis of this Agreement, including the provisions on GIs, see Carlos María Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (Oxford University Press 2007); Daniel J Gervais, *The TRIPS Agreement: Drafting History and Analysis* (4rd ed, Sweet & Maxwell/Thomson Reuters 2012); Antony Taubman, Hannu Wager and Jayashree Watal (eds), *A Handbook on the WTO TRIPS Agreement* (Cambridge University Press 2012). See also, Irina Kireeva and Bernard O'Connor, 'Geographical Indications and the TRIPS Agreement: What Protection Is Provided to Geographical Indications in WTO Members?' (2010) 13 *The Journal of World Intellectual Property* 275.

⁷⁹ TRIPs Agreement, arts 22-24.

⁸⁰ The EC was negotiating on behalf of the other members on the basis of art 133 of the EC Treaty whose paragraph 3 reads 'Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it.'

As confirmed by Prof Reinbothe in our interview, therefore, '(...) the drafts were coordinated in detail with Member States in the "113 Committee"'. This refers to the Committee appointed following art 113 of the old EC Treaty.

⁸¹ Thomas Cottier, 'Working Together towards TRIPS' in Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations* (World

regulation of IP was not under the competence of the European Commission. Indeed, the member states made clear that they did not consider themselves bound to accept the proposal of the Community on the topic of IP.⁸² The proposals concerning GIs put forward by the Commission in the Uruguay Round therefore represent the earliest attempt to shape a common model in this field on which the EC member states had already agreed. This means that it is important to analyse the drafts, especially the earliest, submitted in 1988, as they show the first published common position of the EC in respect to GIs.

3.1. The EC Proposal in 1988: the definition of Geographical Indication

In 1988, the EC was the first negotiating party to submit some guidelines for the protection of GIs, in a document entitled ‘Guidelines and Objectives Proposed by the European Community for the Negotiations on Trade Related Aspects of Substantive Standards of Intellectual Property Rights’ (EC Proposal).⁸³ That the EC took the initiative on this issue is due to the fact that, in that period, many European institutions considered such reform necessary and the debate on how to reform the international system of GI protection was very alive.⁸⁴

Trade Organization 2015) and Peter Carl Mogens, ‘Evaluating the TRIPS Negotiation: A Plea for a Substantial Review of the Agreement’ in *ibid.*, 101-103.

⁸² Jörg Reinbothe, ‘Negotiating for the European Communities and Their Member States’ in Jayashree Watal and Antony Taubman (eds), *The Making of Trips. Insights from the Uruguay Round Negotiations* (World Trade Organization 2015) 189-191.

⁸³ European Community, ‘Guidelines and Objectives Proposed by the European Community for the Negotiations on Trade Related Aspects of Substantive Standards of Intellectual Property Rights’ (Negotiating Group on Trade-Related Aspects of Intellectual Property Rights 1988) Multilateral trade negotiations Uruguay Round Restricted MTN.GNG/NG11/W/26.

⁸⁴ For instance, in 1989 the head of the legal and foreign division of the INAO claimed that a new multilateral treaty on the protection of geographical indications (and not only AOs) should have accorded absolute protection to geographical names, among other reasons, because they formed part of the national heritage of a country. Thus, this treaty should have applied GI protection even if such denominations were used by an unauthorised subject: a) in translated form; b) together with the indication of the true origin; c) in conjunction with terms

The EC Proposal included a section entitled ‘Geographical Indications including Appellations of Origin⁸⁵’ in which the EC proposed the creation of two complementary systems, namely the traditional AOs, already enshrined in the Lisbon Agreement, and a new one, the GI.⁸⁶ This proposal was complex and anticipated different aspects of the present EU GI rules. Hence, it deserves to be analysed in the following paragraphs. First of all, the following definition of GI was proposed:

Geographical indications are, for the purpose of this agreement, those which designate a product as originating from a country, region or locality where a given quality, reputation or other characteristic of the product is attributable to its geographical origin, including natural and human factors.⁸⁷

This definition is very similar to the one that the TRIPs negotiating committee approved, and that became the following definition of GIs under article 22(1). In this final version, however, the clause ‘including natural and human factors’, descending from the definition of Appellation of Origin in the Lisbon Agreement,⁸⁸ was cut. This occurred at a later stage of the negotiations, when for the sake of compromise, every

such as ‘make’, ‘kind’, ‘style’, ‘type’, ‘imitation’ and the like. See, Marie-Hélène Bienaymé, ‘The Possible Content on a New Treaty on the Protection of Geographical Indications at the Multilateral Level (part I)’, *Symposium on the International Protection of Geographical Indications. Santenay (France) 9 and 10 November 1989* (WIPO 1990) 64-66.

⁸⁵ European Community, ‘Guidelines and Objectives Proposed by the European Community’ (n 83) [f].

⁸⁶ Later, the Swiss government also proposed to include AOs into the TRIPs Agreement due to the lack of success of the Lisbon Agreement. See, Switzerland, ‘Draft Amendment to the General Agreement on Tariffs and Trade on the Protection of Trade-Related Intellectual Property Rights – Communication from Switzerland’ MTN.GNG/NG11/W/73, art 220.

⁸⁷ European Community, ‘Guidelines and Objectives Proposed by the European Community’ (n 83) f(1).

⁸⁸ Cf art 2(1) Lisbon Agreement (1) ‘In this Agreement, “appellation of origin” means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.’

trace of a system that could be reminiscent of AOs was deleted.⁸⁹ Currently, the abovementioned art 22(1) TRIPs reads as follows:

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

A comparative analysis of the definitions of: (1) GIs proposed by the EC in 1988; (2) AOs provided by the Lisbon Agreement (1958) and those of (3) PDOs and (4) PGIs, respectively, under arts 5(2)(a) and 5(2)(b) of Regulation 2081/1992 reveals some interesting details:

⁸⁹ In particular, this was done in December 1990 when the Swedish chairman, Anell, circulated among the negotiating parties the results of his informal consultations in a document known as 'Brussels draft'. For more information on the Chair's drafts and their importance, see Adrian Otten, 'The TRIPs Negotiations: An Overview' in Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations*. (World Trade Organization 2015) 65-67.

Table 2.1: Comparative analysis of the definitions of GI (EC 1988, AO, PDO and PGI)

EC Draft (1988)	Lisbon Agreement (1958)	Definition of PDO, art 2(2)(a) Regulation 2081/1992	Definition of PGI, art 2(2)(b) Regulation 2081/1992
Geographical indications are, for the purpose of this agreement, those which designate a product as originating from a country, region or locality where a given quality, reputation or other characteristic of the product is attributable to its geographical origin, including natural and human factors.	“Appellation of origin” means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.	Designation of Origin means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: — originating in that region, specific place or country, and — the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.	Geographical Indication means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff : — originating in that region, specific place or country, and — which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

This table shows that: (1) it is not possible to find a clear international predecessor of a *sui generis* system of protection of geographical names that features the reputational element before 1988; (2) the reputational element appeared right from the first draft on the protection of GIs presented by the EC in the negotiations. It is, therefore, a European creation and, as explained above, the member states must have agreed on it in advance; (3) The definition of GI proposed by the EC in 1988 was unprecedented and can be considered a hybrid between the definitions of PDO and

PGI that were enshrined four years later in the Regulation 2081/1992. While the concept of PDO is linked to the definition of Appellation of Origin under art 2 of the Lisbon Agreement, PGI seems at least partially unprecedented; (4) The requirements present in the PDO and in the PGI systems according to which, respectively, the whole production, or at least one step of it, must take place in the designated area are absent in the definition of art 22 of TRIPs, but also in the EC proposal 1988. This aspect is interesting and will be examined in the next section.

Finally, it is important to highlight that, although the draft definition of GI embodied some elements of the AO, and a reference to *terroir* when mentioning the ‘natural and human factors’, the EC wanted to keep the concept of GI distinct from that of AO. This proves that, already in 1988, the EC members agreed on a dualist system in which the AO model would not be merged with another one that allows the reputational element, but would coexist with it just like in the eventual 1992 Regulation.

3.2 The EC Proposal 1988: the level of protection granted

The EC Proposal put forward a complete provision regarding the level of protection to be granted to GIs and the conducts to be prevented. Also in this case the draft rules reproduce almost verbatim the provisions of the Lisbon Agreement.⁹⁰ The draft read as follows:

Geographical indications shall be protected against any use which constitutes an act of unfair competition, including use which is susceptible to mislead the public as to the true origin of the product.
(...)

⁹⁰ Lisbon Agreement, arts 3, 4.

Shall notably be considered to constitute such use:

- any direct or indirect use in trade in respect of products not coming from the place indicated or evoked by the geographical indication in question;

-any usurpation, imitation or evocation, even where the true origin of the product is indicated or the appellation or designation is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like;

- the use of any means in the designation or presentation of the product likely to suggest a link between the product and any geographical area other than the true place of origin.⁹¹

Later, the EC Proposal 1988 was strongly opposed and criticised by many negotiating parties,⁹² some of which in the following years proposed their own drafts concerning the protection of GIs that differed considerably from the EC one.⁹³ In 1990, for instance, the US submitted its own proposal that was very influential.⁹⁴

⁹¹ European Community, ‘Guidelines and Objectives Proposed by the European Community’ (n 82) f(2).

⁹² Generally speaking, five main points were raised: (1) it was argued that the ‘unfair competition’ standard mentioned by the EC was indeed something much different; (2) it was not clear why the AO-level protection was confined to ‘products of the vine’. On this point the EC was explicitly accused of acting more for selfish expediency rather than out of principle; (3) the role that domestic AO systems could play was unclear; (4) the reference to AOs seemed to be aimed at the protection of certain European appellations even though they had now become generic in other parts of the world; (5) AOs had very limited international appeal so adding them to the new treaty was disputable.

See, Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, ‘Meeting of Negotiating Group of 5-8 July 1988’ (1988) MTN.GNG/NG11/8, para 42 and Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, ‘Meeting of the Negotiating Group of 12-14 September 1988’ (1988) MTN.GNG/NG11/9, para 9.

⁹³ Japan, for instance, did not include GIs in the proposal that was presented in 1988, a couple of months after the EC representative. A year later, instead, Canada, argued that GIs, including AOs, could be protected by collective and certification marks with no need for a *sui generis* system. Finally, Peru argued that the definition of AOs provided in the Lisbon Agreement could have been applied to GIs as well.

For the Japanese position, see Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, ‘Meeting of the Negotiating Group of 12-14 September 1988’ (n 92) paras 13-14. Instead, for Canada and Peru, see Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, ‘Meeting of Negotiating Group of 30 October-2 November 1989’ (1989) MTN.GNG/NG11/16, paras 19-20.

⁹⁴ The US presented a proposal completely different from that of the EU. First of all, they did not provide a definition of GI and rejected the idea of a *sui generis* regime of protection.

Hence, this provision was not embodied in the final text of the TRIPs agreement.

Once again, however, the similarity with the text of the 2081/1992 Regulation is evident:

1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;

(b) any misuse, imitation or evocation, even if the true Origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” or similar ;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the public as to the true origin of the product.⁹⁵

In conclusion, the main characteristics of the first EC proposal, circulated in 1988, largely anticipated the content of the first European GI Regulation 2081/1992.

According to them, geographical names should have been protected through collective or certification marks. Then, the US proposal focused on wines. In particular, it provided for an unfair competition provision that read as follows: ‘contracting parties shall provide protection for non-generic appellations of origin for wine by prohibiting their use when such use would mislead the public as to the true geographic origin of the wine’. See, Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, ‘Draft Agreement on Trade-Related Aspects of Intellectual Property Rights: Communication from the United States’ (1990) MTN.GNG/NG11/W/70, 9.

For more information on the different positions concerning the international protection of GIs during the Uruguay Round, see Lee Bendekgey and Caroline H Mead, ‘International Protection of Appellations of Origin and Other Geographic Indications’ (1992) 82 Trademark Reporter 765. See also, Kal Raustiala and Stephen R Munzer, ‘The Global Struggle over Geographic Indications’ [2007] European Journal of International Law 337 and Alberto F Ribeiro de Almeida, ‘The TRIPs Agreement, the Bilateral Agreements Concerning Geographical Indications and the Philosophy of the WTO’ [2005] European Intellectual Property Review 150.

⁹⁵ Regulation 2081/1992, art 13.

The EC negotiating team, before circulating any proposal, had to seek positive feedback from all members.⁹⁶ This means that, already in 1988, this model of GI protection enjoyed the support of most European countries and represented a compromise between them. Indeed, as declared by Reinbothe in our interview ‘It should not be forgotten that EC Member States were consulted both on the TRIPs and on the EC Regulation (in the respective Council Working Group). After all, agreement of EC Member States was a pre-condition for the adoption of the respective proposals in Council. (...) [C]ertainly EC Member States’ representatives in each group knew about the discussions in the other. So, quite naturally there was a cross-influence between both.’

4. The path to Regulation 2081/1992: the making of PGIs

The previous section emphasised the importance of the Uruguay Round as the first attempt of the EC member states to develop a mutually acceptable framework for the protection of GIs. It was also shown that, while the definition of PDOs is evidently inspired by the Lisbon Agreement, the PGI model is similar to the new model that was first proposed by the EC in 1988, but with some interesting amendments. At the beginning of the 1990s both the GI system in the TRIPs Agreement, and the quality scheme that eventually became the EU PGI, were works in progress, whereas the PDO model was, substantively, a new incarnation of a longstanding regime. It is important, therefore, to focus on the negotiations that led to the final draft of the PGI quality scheme. In particular, this analysis will contribute to the existing literature by emphasising the importance of this quality scheme in allowing a compromise to be reached between the European member states, and will make an attempt to deduce

⁹⁶ Text to n 80 .

how this solution was arrived at. This will be done by reconstructing the evolution of the debate on EU *sui generis* GIs and highlighting how the position of the different groups of states changed and with what consequences.

4.1 The proposal of the Commission and the opinion of the EESC

The final version of the ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’⁹⁷ (‘the Proposal’) was presented by the Commission on 5 December 1990.⁹⁸ It should be noted, however, that the member states had already agreed to a set of guidelines in the Working Group of the European Council specialised in Agriculture,⁹⁹ and, furthermore, had already developed a good expertise on the issue of GIs during the Uruguay Round, as was shown in the previous section. Indeed, the Commission confirmed that this ‘internal’ proposal was in line with the one put forward in the context of the negotiations for the TRIPs Agreement,¹⁰⁰ thus explicitly linking the two processes.

Just like in the Uruguay Round, the Commission proposed a double system of protection featuring PDO and PGI.¹⁰¹ These quality schemes were defined as follows:

1. protected geographical indication means the name of a region, specific place or, in exceptional cases, a country followed by the letters

⁹⁷ European Commission, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs. Explanatory Memorandum’ (1990) SEC(90) 2415 final.

⁹⁸ For a detailed chronology of the procedure, see Eur Lex, ‘SEC (1990) 2415’ (*Eur Lex*) <<http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:31992R2081>>.

⁹⁹ European Council, ‘Council of the European Union - Agriculture’ (*Council of the European Union*) <<http://www.consilium.europa.eu/en/topics/agriculture/>>.

¹⁰⁰ European Commission ‘The future of rural society’ (n 29) [10]-[11].

¹⁰¹ European Commission, ‘Proposal for a Council Regulation: Explanatory Memorandum’ (n 97) 4.

'PGI' describing an agricultural product or foodstuff originating in that region, specific place or country and possessing a quality or reputation which may be attributed to the geographical environment with its inherent natural and/or human components. (...);

2. protected designation of origin means the name of a region, a specific place or, in exceptional cases, a country, followed by the letters 'PDO', which refer to an agricultural product or foodstuff originating in that region, specific place or, in exceptional cases, country, and whose quality or other characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human components and whose production, processing and preparation take place in the geographical area.¹⁰²

Then, the next article, art 4, provided that:

A product whose description includes a geographical name must have been produced or processed in the corresponding geographical area and comply with a specification. However, (...) it may be decided for protected geographical indications that:

— the raw material must also come from the geographical area,

— processing may also take place in an area immediately adjacent to the geographical area.¹⁰³

Focusing on PGIs, it can be observed that, in this phase, the Commission proposed the same model on which the member states agreed two years before. This means that at the end of 1990 the idea about how to structure a new model of GI protection to be applied in Europe had not changed. The following table shows this in a clearer way:

¹⁰² European Commission, 'Proposal for a Council Regulation: Explanatory Memorandum' (n 97) art 3.

¹⁰³ *ibid*, art 4(1).

Table 2.2 Definitions of GI/PGI in 1988 and in 1990

EC Proposal 1988	Commission proposal 1990
Geographical indications are, (...), those which designate a product as originating from a country, region or locality where a given quality, reputation or other characteristic of the product is attributable to its geographical origin, including natural and human factors.	Protected geographical indication means the name of a region, specific place or, in exceptional cases, a country (...) describing an agricultural product or foodstuff originating in that region, specific place or country and possessing a quality or reputation which may be attributed to the geographical environment with its inherent natural and/or human components.

Moreover, art 4 of the draft shows that the proposal provided for an exception in favour of PGIs that waived the requirement according to which the production and processing of the good had to be carried out within the designated area. In the following paragraphs it will be shown that this clause was crucial, and that its evolution probably determined the outcome of the negotiations. Before focusing on the crucial period between October 1991 and February 1992, however, it is useful, for completeness, to discuss the contents of the opinion of the European Economic and Social Committee (EESC) on the Commission's proposal.¹⁰⁴

The EESC is a consultative body of the EU and presents itself as 'a bridge between Europe and organized civil society'. It is an advisory assembly composed of 'social partners', namely: employers' organizations, employees' trade unions and representatives of various other interests.¹⁰⁵ It therefore represents the position of the

¹⁰⁴ This was published on the Official Journal of the EC on 14 October 1991. European Economic and Social Committee, 'Opinion on the Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' (1991) 91/C 269/19.

¹⁰⁵ European Economic and Social Committee, 'European Economic and Social Committee' <www.eesc.europa.eu>.

European social and economic stakeholders and not of the political/diplomatic ones.

Interestingly, the EESC recommended that:

[t]he distinction between protected geographical indication (PGI) and protected designation of origin (PDO) needs further clarification. The conditions for granting PDO should include traditional historical character.¹⁰⁶

The history of the product, therefore, as will be shown in the next chapter, was suggested as a means to narrow the scope of GI protection, albeit only for PDOs in this case, since 1991. This is an innovation. In fact, the expression ‘traditional historical character’ does not appear in any previous national or international provision on the protection of geographical names. In conclusion, even if this advice was not followed by the Commission and the Council, this opinion proves that, even before the introduction of the EU *sui generis* GI regime, history was considered, at least by some parties to the process, to be a suitable factor to prevent the registration of GIs unworthy of protection.

4.2 October 1991 – February 1992: the decisive months

From the analysis of the relevant materials it emerges that the final draft of the EU GI regime was completed in a complex four-month period that saw not only a north-south opposition, as is sometimes argued, but also differences in position between different northern countries. Unfortunately, the documents that could dispel all doubts, for instance confidential minutes, position papers of single member states and so on, have never been made available. Nonetheless, the factors in the debate can be deduced from the evolution of the text of the provisions on PGIs, analysed in parallel with other sources dating back to the same period.

¹⁰⁶ EESC (n 104) [3.2.1].

4.2.1 The Wiesbaden GI symposium (17-18 October 1991)

The acts of the WIPO Symposium on GIs held in Wiesbaden on 17-18 October 1991 are very important in order to reconstruct the genesis of EU *sui generis* GI law, since they show the positions both of some EC officers but also of the representatives of individual member states before the passing of the Regulation, along with their predictions concerning the final outcome of the negotiations.¹⁰⁷ The most relevant among these speeches will be analysed below.

First of all, Joachim Heine, at that time president of the Agricultural Division of the Commission, started his speech by stating the goals of the proposed Regulation.¹⁰⁸ Basically there were three: (1) harmonising EU law in line with the new CAP; (2) creating a new ‘niche’ market in order to sustain small local producers, thus preventing their disappearance; (3) absorbing the bilateral treaties in force for the mutual recognition of national GIs. All of this was generally in line with the explanatory memorandum of the Commission’s proposal.¹⁰⁹ In addition, he argued that the system would not have protected all geographical names as such but only a small amount of them which qualified for protection.¹¹⁰ Probably, this last statement reflected the position of the majority of the members states, including the central/northern ones, especially Germany, that were in favour of a narrow GI regime

¹⁰⁷ WIPO, ‘Symposium on the International Protection of Geographical Indications Organised by the World Property Organization (WIPO) in Cooperation with the Government of the Federal Republic of Germany’ (n 371).

¹⁰⁸ Heine, ‘The Protection of Geographical Indications in the European Community’ (n 43) 2.

¹⁰⁹ European Commission, ‘Proposal for a Council Regulation: Explanatory Memorandum’ (n 97) 1-3.

¹¹⁰ Heine, ‘The Protection of Geographical Indications in the European Community’ (n 43) 9.

as well as the relevant case law of the ECJ.¹¹¹ As will be shown below, however, this situation changed radically over the subsequent weeks.

To begin with, the fact that the future outcome of the negotiations was far from clear and safe, emerges from the scepticism expressed in relation to the Commission's proposal by key officers of important member states. For instance, the representative of Germany, Von Mühlendhal, even questioned the need for such regulation when the national laws of the member states together with bilateral agreements could have provided an equally valid solution to the problems.¹¹² Indeed, Heine concluded his presentation by picturing the state of negotiations at that time in a rather pessimist way:

(...) this is a proposal that is still under discussion and that, so far, discussions have proved arduous. Indeed, the concept that I have set out to you is meeting with an attitude that is altogether opposed on the part of the Community Member States. The proposal adopts the approach to be found in the legislation of certain southern Member States of the Community. The northern Member States, on the other hand, have a tradition and a legal order, as we have already heard in the contributions here, with differing approaches and these differing traditions means that it is difficult to agree in the discussion. For the moment, the matter remains one of principle. Is there need for Community arrangements or not? If there is a need for a Community system, what should be its scope and what should be its content? As far as the scope is concerned, discussions at present would seem to be tending towards limitation to agricultural products and a small number of foodstuffs (...). The other matter of the content is basically whether there should be a distinction between designations of origin and geographical indications. (...) Quite honestly, I am unable to tell you today what the final outcome on all those points will be.¹¹³

¹¹¹ Section 2.3.

¹¹² The WIPO official documents provides only for an outline of von Mühlendhal's speech. However, the content of his presentation are recounted by Heine, 'The Protection of Geographical Indications in the European Community' (n 43) 7. For the outline of the presentation, see Alexander von Mühlendahl, 'The Protection of Geographical Indications in Germany' in (WIPO 1991) WIPO/GEO/WI/91/3/prov.

¹¹³ Heine 'The Protection of Geographical Indications in the European Community' (n 43) 9.

These statements confirm that, at the time of the Wiesbaden symposium, it was not at all clear whether the proposal drafted by the Commission, even though it was similar to the one that the EC presented in the context of the Uruguay Round in 1988, would have survived. In particular, it emerges that: (1) the member states were in favour of a narrow system; (2) at this point of the negotiation the debate saw two opposing fronts, a southern one against a northern one; (3) it was not possible to foresee whether PGIs would have been included in the final text. This conclusion is supported by other sources that confirm that, in that phase, PGIs were under attack and that the idea of a broad quality scheme did not yet have strong supporters.¹¹⁴

4.2.2 The proposal of the European Parliament: reconciling the southern and the German position

Shortly after the Wiesbaden symposium, the European Parliament began discussing the Commission's proposal. The Committee on Agriculture, Fisheries and Rural Development presented a report on 30 October 1991¹¹⁵ that was followed by parliamentary discussions¹¹⁶ and a final vote on the proposed amendments on 19 November 1991.¹¹⁷

The scholarly literature published in this period showed that Germany began to advocate for a broad system of *sui generis* GIs that could protect as many

¹¹⁴ Kolia, 'Monopolising Names: EEC Proposals on the Protection of Trade Descriptions of Foodstuffs' (n 5), 235-236.

¹¹⁵ European Parliament, 'Report of the Committee on Agriculture, Fisheries and Rural Development' (Borgo Report, A3-0283/91, 1991).

¹¹⁶ Debates of the European Parliament (No 3-411/35, 18 November 1991); Debates of the European Parliament (No 3-411/73, 19 November 1991).

¹¹⁷ European Parliament, 'Specification of agricultural products and foodstuffs: Proposal for a regulation I SEC(90) 2415' (1991) OJEC C326/35.

geographical names as possible.¹¹⁸ The present work suggests that this reversal of position was probably inspired by Friedrich-Karl Beier (1926-1997) who at that time was the managing director of the Max-Planck Institute for Foreign and International Patent Trademark Copyright and Competition Law in Munich.¹¹⁹ Indeed, in many of his articles, Beier advocated the model of Indication of Source because of its broad scope and inclusiveness, thus providing protection to as many products as possible, consequently expanding the information available to consumers. By contrast, he criticised the concept of AO, arguing that it was too narrow and that the link between many AO-products and their place of origin was not scientifically based upon *terroir*, but only upon an idealized link to the land in the minds of consumers and, sometimes, on the history of the product.¹²⁰ Indeed, in an exchange of emails that we had with Prof. Roland Knaak, he declared that ‘Beier was the leader of the German front against the 2081 proposal.’¹²¹

This proves that the northern front was not united but split into at least two factions: one in favour of a broad system that could grant protection to IS and one that wanted to exclude all models that were not as narrow as AOs. This work suggests that the effects of the influence of the first faction can be seen in the amendments proposed by the European parliament. In particular, two are interesting. The first was

¹¹⁸ Kolia, 'Monopolising Names: EEC Proposals on the Protection of Trade Descriptions of Foodstuffs' (n 5) 235.

¹¹⁹ IP Hall of Fame, 'Friedrich Karl Beier: An Influential Academic and Author' (*IP Hall of Fame*) <http://www.iphalloffame.com/inductees/2006/Friedrich_Karl_Beier.aspx>.

¹²⁰ Beier clearly explained his position in two articles published when the new GI regulation was not already implemented in full. In particular, in a famous statement he argued that a GI system that represented only AOs would have been a 'monstrousity'. See Friederich Karl Beier, 'Court of Justice 10.11.1992 Case No. C-3/91 "Turrón"' [1994] IIC 73. See also, Knaak and Beier (n 395).

¹²¹ Roland Knaak interview (24 March 2016).

aimed at expanding the scope of PDOs by allowing raw materials to be sourced from outside the designated areas in order to meet the demands of the market:

(...) in exceptional cases for designations of origin already recognised under national legislation prior to the entry into force of this regulation, where the raw material obtainable in the limited geographical area of processing is insufficient to meet the demand, it may be decided that the basic raw material may come from a wider geographical area provided that: (...) area in question is a traditional supplier of the raw material.¹²²

In parallel, no explicit amendment was proposed to the definition of PGI, but the notes to the report of the Committee on Agriculture stated:

It seems unnecessary to state that the raw material for a PGI product must come from the geographical area concerned or that processing may take place in an adjacent area. To qualify as a PGI, however, a product must be of a quality or have a reputation attributable to the geographical environment in which it was produced or made, unlike PDO products, which must be produced and made in the region whose name they bear.¹²³

Here, it is possible to identify an attempt to make a deal between the southern member states and the supporters of the new German line, thus marginalising the northern supporters of a narrow regime. In fact, both these amendments achieve the goal of broadening the scope of the GI system, each one going in the direction desired by southern and German stakeholders respectively. In particular, the explicit possibility for the producers of PDO products to source the raw materials outside the region of origin, when coherent with the tradition of the products itself, pictures perfectly the situation of some well-known AO-products protected domestically well before the introduction of the EU GI regime. For instance, the specifications of

¹²² European Parliament, 'Specification of agricultural products and foodstuffs' (n 117) amendment no. 51.

¹²³ European Parliament, 'Report of the Committee on Agriculture' (n 115) [18].

French Roquefort cheese and Italian Parma Ham, had always allowed for the raw materials to be sourced outside the area of manufacturing.¹²⁴

Even if the amendments proposed by the European Parliament seem to show a convergence between the positions of some influential members states, both the acts of the Wiesbaden symposium and the comments provided by the European Parliament show that the negotiations were still behind schedule and the objections to the regulation were still many.¹²⁵ The next paragraph will suggest an explanation for how this deadlock was overcome and will conclude that the agreement on some aspects of the rules of PGI was decisive in order to arrive at the final version of the text of the Regulation.

4.2.3 The agreement on the final text: the role of PGIs

There are very few clues that can reveal what exactly occurred in the first three months of 1992 that, eventually, led to the approval of the final text of the Regulation by the Council. On the basis of some particular elements, however, it is possible to put forward an original hypothesis to try to answer the question. First of all, it has been shown that Germany, in changing its position, fractured the coalition of northern countries that wanted a narrower model of protection. It can be deduced that some amendments proposed by the European Parliament in 1991 can reflect an axis between southern countries and Germany in order to broaden the scope of the regulation. Second, according to some sources dating back to that period, France took

¹²⁴ For the specification of Roquefort before Regulation 2081/1992, see *Loi* du 26 Juillet 1925, JORF 30 July 1925, 7190. For Parma Ham, see *Legge* 4 Luglio 1970 n. 506.

¹²⁵ European Parliament, 'Report of the Committee on Agriculture' (n 115) [13]

advantage of the situation to take on the leadership of the negotiation.¹²⁶ Third, although the European Commission accepted many of the modifications proposed by the Parliament, it emerges from the official documents that it did not follow the advice to cut out the rules concerning the provenance of the raw materials and the place of manufacture of PGI products.¹²⁷ On the other hand, the Commission did not add the clause, provided by the current text, according to which at least one step of the production process of a PGI product must take place in the designated area. This last detail is especially interesting because it means that the final text was drafted directly by the European Council, that is by the representatives of the governments of the member states, shortly before being approved, without the intervention of other European institutions. This was possible because the Regulation was approved following the ‘consultation procedure’ in which the Council must consult the Parliament but it is not bound by it.¹²⁸ The amendments of the Council can be read in a way that can shed light on the origin of the present text of the rules on PGI. In particular, our reconstruction is based on the comparison between the initial proposal and the final text of the Regulation, shown in the table below, interpreted in light of how the events discussed above changed the positions of important European member states.

¹²⁶ Kolia, 'Monopolising Names: EEC Proposals on the Protection of Trade Descriptions of Foodstuffs' (n 5) 235.

¹²⁷ European Commission, ‘Amended proposal for a Council Regulation on the Protection of Geographical Indications and designations of origin for agricultural products and foodstuffs’ (1992) COM(92)32 final, 3-4.

¹²⁸ This procedure, provided by art 294 TFEU (art 251 TCE at the time of the negotiations), can be followed in a very limited number of cases, one being Intellectual Property. See ‘Consultation Procedure’ (*EUR-Lex: Access to European Union Law*) <http://eur-lex.europa.eu/summary/glossary/consultation_procedure.html?locale=en>.

Table 2.3. Initial proposal and final text of Regulation 2081/1992 compared

Commission's Proposal (1990)	Final text approved by the Council (1992)
<p>Art 3(1) Protected geographical indication means the name of a region, specific place or, in exceptional cases, a country (...) describing an agricultural product or foodstuff originating in that region, specific place or country and possessing a quality or reputation which may be attributed to the geographical environment with its inherent natural and/or human components.</p> <p>Art 4 (...) it may be decided for protected geographical indications that: — the raw material must also come from the geographical area, — processing may also take place in an area immediately adjacent to the geographical area.</p>	<p>Art 2(2)(b) geographical indication : means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff: — originating in that region, specific place or country, and — which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.</p>

The table shows that, in 1990, the Commission's definition followed the model presented by the EC in the Uruguay Round, which included the reputational link plus an indirect and imperfect reference to *terroir*, that is to the 'natural and/or human factors'. At that point, the proposal allowed for making the requirements for the production of a PGI product more or less stringent by regulating the origin of the raw materials and the areas where the product can be manufactured. By contrast, the text of the regulation requires that at least one step of the production of the PGI product must take place in the designated area. Between these two drafts it was shown that three things happened: (1) some northern countries were in favour of a narrow system of protection, in line with the old case law of the ECJ; (2) Germany departed from this line and began supporting a completely opposite idea; (3) the European Parliament proposed to cut the rules on PGIs that could have limited the possibility of

sourcing the raw materials and production of the goods outside the designated area, thus broadening the provision.

In light of these observations, it can be deduced that the final text of the regulation of PGIs, decided by the Council alone on 28 February 1992, was a successful attempt to hybridise two systems: on the one hand, the PDO and, on the other, the PGI based solely on reputation. It is suggested that the clause of art 2(2)(b) according to which ‘the production and/or processing and/or preparation’ of the product must take place in the defined geographical area was the outcome of a negotiation aimed at approximating PGIs to PDOs and, therefore, compromising between the German position and that of the other northern countries. In fact, through this formulation, PGIs are still based on reputation and not on *terroir*, therefore they can protect a wider range of products, as Beier wanted. An element of PDOs, namely the fact that the production, processing and preparation must take place in the designated area, has been partially transposed into PGI, however, thus preserving and making mandatory the fact that at least one step of the processing must take place in the area. This can be interpreted as an attempt to reconcile the position of those who wanted a broad system with those who wanted a narrow kind of regime. Finally, it has been shown that, at the Wiesbaden symposium, held in October 1991, the situation was still unclear and characterized by a north/south divide that the Commission’s officers explicitly admitted.¹²⁹ It is submitted, therefore, that the present formulation of the PDO/PGI rules was not exclusively the result of the north/south divide that had existed at least since 1988, since, alone, this would have led to the adoption of a narrow AO-like regime. Rather, it was a north-north contrast, mediated by France, that determined the final outcome of the negotiations.

¹²⁹ See, Section 4.2.1.

4.2.4 Some final remarks: the relationship between QIS and PGIs

As anticipated above,¹³⁰ it is sometimes argued that the German QIS can be considered the closest relative to PGIs. In light of the historical reconstruction attempted in this section, however, it is now possible to provide an opinion on this statement. In particular, we believe that, although the two concepts have some important features in common, the PGI seems to be, in many respects, an original European creation.

Indeed, the QIS presents itself as a demanding kind of IS in which a geographical name can be lawfully used only if the product meets specific quality standards rather than just from a place that enjoys a particular reputation among consumers. The fact that QIS take into consideration the method of production and/or the recipe of a good makes QIS products similar to PGIs, which, as is well known, must be made in compliance with the registered specification. Furthermore, both systems have in common the fact that they are based predominantly on the reputational link which, instead, is unknown to the AO/PDO logic.

There are at least three important elements that differentiate the two concepts, however. First of all, the existence of an *ad hoc* register distinguishes PGIs from those forms of protection of indications of geographical origin based essentially on an unfair competition approach, such as QIS.¹³¹ Moreover, the requirement according to which at least one step of the production of a PGI product must take place in the designated area represents an original innovation of the EU system that brings this

¹³⁰ Text to 62.

¹³¹ Moreover, a registration-based system goes beyond the provisions of the TRIPs agreement as well, in which the establishment of a register is considered, but never concretely realised, for wines and spirits only. See, TRIPs Agreement, art 23(4).

quality scheme closer to the AO/PDO one. Finally, the general context in which PGIs are located differs under many aspects from that of QIS and determines its substantive nature. Indeed, the former are part of a complex set of *sui generis* rules, levels of protection and policy objectives that have little in common with the QIS approach.

On the basis of these observations it is therefore possible to conclude that, although QIS are probably the closest relative to PGIs, they are substantively different from them in many respects. In particular, despite both being based mainly on the reputational element, that is a stranger to the AO model, PGIs are located in a new context and have some important peculiarities that can be explained only in light of the evolution of the negotiations that led to the adoption of Regulation 2081/1992. Hence, although some aspects of QIS are reminiscent of PGIs, the latter must be considered to be largely the outcome of negotiations that began in 1988, if not before.

5. The early years of Regulation 2081/1992: EU GIs as a southern European asset

In the preceding subsections it was shown that the first EU GI Regulation 2081/1992 was able to reconcile the positions of the majority of the member states, thus representing the culmination of a process started between 1985 and 1988. A quick analysis of the statistics concerning the registration of GIs in Europe from the adoption of the Regulation until 1996, i.e. when the first EU GIs appeared on the register, is very interesting however. In fact, this shows that, even if the member states had been able to find a compromise, *sui generis* GIs for foodstuffs and agricultural products were still an asset that only southern European countries were ready to exploit, as emerges from the following table.

Table 2.4 Registered GIs by country in the period 1992-1996

	Total	PDO	PGI	TSG
Austria	4	2	2	0
Belgium	3	2	1	0
Denmark	2	0	2	0
France	83	47	36	0
Germany	2	0	2	0
Greece	55	53	2	0
Italy	58	37	21	0
Luxembourg	2	0	2	0
Netherlands	3	3	0	0
Portugal	61	49	11	0
Spain	34	15	19	0
United Kingdom	18	14	4	0
Total	291			

It is striking to see that, in 1996, when the first European GIs were granted, Germany had registered only two PGIs. Instead, France alone accounted for more than a quarter of the granted GIs and France and Italy together for almost 50% of the total. The interest in the new *sui generis* regime in Greece (55) and Portugal (61) is foreseeable and reinforces the idea of a compact southern block of member states. By contrast, it may be argued that Germany and Denmark registered only PGIs because it was the quality scheme with which they were more acquainted. However, this is not

necessarily true as it emerges that a country without an AO tradition, like the United Kingdom, was ready to register 14 PDOs out of 18 registrations.

Although the Commission stated that the new *sui generis* model was able to represent the legal traditions of all the Member States, it seems, however, that, at the beginning, *sui generis* GI rules were, in practice, essentially an asset for the southern countries. This further demonstrates that, still in 1996, the central/northern European countries that had never had a similar system were not yet able to use. This data forms the starting point of a discussion that will be developed much further in the next Chapter.

6. Conclusions

The present chapter has analysed the period spanning from 1985 to 1992, highlighting different aspects of the path that led to the EU *sui generis* GI regime, introduced by Regulation 2081/1992, that have been rarely considered by the existing literature. In particular, while setting out the background, the importance of the EU CAP in developing the policy objectives of the current EU GI rules was emphasised. Next, it was shown that the drafts submitted by the EC during the Uruguay Round, especially the 1988 Proposal, although often underestimated, are particularly important because they represent the outcome of the first negotiations between the European member states concerning the protection of geographical names. Furthermore, it was demonstrated that the provisions on the two EU quality schemes, PDO and PGI, are not only the result of a compromise between the southern members, characterised by a tradition of Appellations of Origin, and the central/northern one, based on a generic unfair competition approach. Rather, the different positions among northern countries played an essential role in shaping the final outcome. In particular, the contrast,

mediated by France, was between those who supported a narrow model of protection, in line with the previous decisions of the ECJ, and those who advocated for a broad regime capable of protecting even indirect GIs. Finally, it was noted that although the adoption of Regulation 2081/1992 would not have been possible without the convergence of the majority of the EU member states, at least the leading ones, at the beginning, this *sui generis* regime was used almost exclusively by southern countries, thus showing that the fracture between the traditions of the different EU states with regard to the protection of GIs was still very much present, at least up until 1996. The trends that denote the evolution of the EU *sui generis* GI regime after 1992 will be analysed in depth in the next Chapter, however.

CHAPTER 3. THE EMERGENCE OF THE HISTORICAL LINK AND ITS MEANING

1. Introduction

1.1. Background

This chapter investigates the evolution of the EU quality schemes from 1996 until the present. This research has been carried out by examining the trends that emerge from the analysis of the registrations of PDOs and PGIs, as well as from the examination of the single specifications of Geographical Indications that can be found in the EU register. The chapter makes three main arguments. Firstly, it concludes that the existence of this kind of product/place link is often demonstrated by making reference to the history of the goods. Hence, the research argues that an ‘historical link’ or ‘historical reputational link/element’, as it will be called, has emerged and has become extremely relevant since the introduction of the EU GI rules. Then, a map of this kind of reputational link will be proposed. Secondly, the chapter argues that the historical link often plays an important role in the specifications of products that are not characterised by an intuitive link to the soil. In these cases, in fact, the classical *terroir* paradigm is unable to constitute the basis of the product/place link. Thirdly, it is argued that, as far as the product/place link is concerned, the distinctions between the PDO and PGI quality schemes have blurred. Indeed, the *terroir* element, which characterises PDOs, appears frequently in PGI specifications, while, vice-versa, the historical link that is almost always mentioned in PGI specifications, often appears in PDOs as well. The chapter focuses on these phenomena and proposes an explanation for them. It concludes that the proof of the history of the product, and of the

traditional practices associated with it, has become, *de facto*, an implied requirement for the drafting of a GI specification, especially for non-*terroir* products.

The link between the product and its place of origin is the crucial element that characterises *sui generis* GIs and that distinguishes them from trademarks and mere quality labels. Although the level of protection granted by the two quality schemes is identical, the type of link between the product and the place that is required is very different. In fact, the quality and characteristics of the PDO products must be ‘(...) essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.’¹ In addition, the production steps must all take place in the defined geographical area.² In the case of PGIs, on the other hand, the requirements are less demanding and more flexibility is allowed. In fact, concerning the product/place link, a product can be protected through PGI when a ‘given quality, reputation or other characteristic is essentially attributable to its geographical origin’³ and at least one of the production steps must take place in the defined geographical area.⁴ In the PDO quality scheme, therefore, the product/place link resides in the physical link between the product and the physical and human environment. In contrast, although the PGI rules mention the qualitative link as well, protection is granted also to products whose reputation is related to a specific place, without the need for a physical/environmental link.

¹ Regulation (EU) No 1151/2012 of the European Parliament and of the Council 12 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1, art 5(1)(b).

² Ibid, art 5(1)(c).

³ Ibid, art 5(2)(b).

⁴ Ibid, art 5(2)(c).

The historical origin of the reputational link, and the reasons why it has been included within the EU GI law have been investigated before,⁵ and a new point of view on the issue has been presented in the previous chapter. In short, the reputational element descends from the legal tradition of some northern/central European countries, and it is similar, although not identical, to the German Qualified Indication of Source protection under the law of unfair competition.⁶ This kind of Indication of Source is aimed at protecting goods that enjoy a strong reputation among consumers because of the place where they are made, e.g. Toledo steel or Murano glass. In these cases, the reputation of the product, linked to its geographical origin, raises in the buyers a specific expectation of quality. Hence, this type of IS must not only indicate the origin of the product, but must also ensure that the product itself respects the reputation and the quality standards that the consumers expect from that geographical origin.

The European Community started to combine this reputational link with the *terroir* logic in 1988 by proposing them both as viable product/place links for a GI protection regime.⁷ Then, in 1992, both approaches were accommodated into the Regulation 2081/1992 as a compromise to reconcile the tradition of southern countries, based on the model of Appellation of Origin, with that of the northern/central ones, centred on the paradigm of unfair competition law.

⁵ Dev Gangjee, *Relocating the Law of Geographical Indications* (CUP 2012) 225-231.

⁶ *Ibid*, 226.

⁷ See, Chapter 2, Section 3.

The nature of the reputational element, and how it has evolved after the introduction of the EU *sui generis* GI regime, is largely under-researched, however.⁸ This chapter, therefore, contributes to the existing literature by focusing on this point. In particular, the examination of the historical element sheds light on the multifaceted nature of the reputational link. In fact, so far, this has always been described within the case law of the Court of Justice of the EU (formerly the European Court of Justice) as the commercial reputation of the product among consumers. This approach emerged in 1992 in the *Exportur* case in which the ECJ mentioned the reputational link in these terms:

Such names may (...) enjoy a high reputation amongst consumers and constitute for producers established in the places to which they refer an essential means of attracting custom. They are therefore entitled to protection.⁹

This way of defining and contextualising the reputational element has been followed faithfully in various subsequent cases.¹⁰ This chapter will argue that, although this way of conceiving the reputational link is still used and relevant, the historical link, because of its increasing importance and diffusion, needs to be examined and accepted, thus rethinking the traditional image of the substance of the reputational link.

⁸ Some of the few contributions on this point are the following: Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture in the Asia-Pacific* (Cambridge University Press, 2017); Marie-Vivien, 'A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?' in Dev Gangjee, *Research Handbook on Intellectual Property Rights and Geographical Indications* (Edward Elgar Publishing 2016).

⁹ Case C-3/91 *Exportur SA v LOR SA and Confiserie du Tech SA* [1992] ECR I-05529 (*Exportur*), para 28.

¹⁰ Case C-388/95 *Kingdom of Belgium v Kingdom of Spain* [2000] ECR I-03123 (*Rioja II*), para 56 'The reputation of designations of origin depends on their image in the minds of consumers'; Case C-469/00 *Ravil SARL v Bellon import SARL and Biraghi SpA* [2003] ECR I-05053 (*Grana Padano*), para 49; Case C-108/01 *Consorzio del Prosciutto di Parma and Salumificio S. Rita SpA v Asda Stores Ltd and Hygrade Foods Ltd* [2003] ECR I-05121 (*Parma Ham*), para 64.

1.2 Methodology and Sources

The work focuses on the content of the specifications of the EU GIs, retrieved through the ‘DOOR’ database, administered by the European Commission.¹¹ All the products added to the register up to 31 December 2016 have been considered. Specifically, the research was carried out following the procedure explained below.

1.2.1 Step 1. Collection of the material and analysis of the specifications of GIs

The first step consisted of the collection of materials and the identification of the relevant data, and was carried out in two phases. Firstly, the summaries of all the Single Documents¹² of the registered PDOs and PGIs, as they appear in the DOOR database, were collected. When the summary was not available in English, the French, Spanish or Italian version was used. If no summary in one of these languages was available, the full specification was retrieved. In rare cases, the documentation was available only in languages different from those mentioned above; in such cases, an automatic translator was used in order to understand the contents. In the event that the specification was amended after its first registration, the older version, when available, was used. This was done in order to take into account the original idea of the applicants when the first registration took place. Finally, the modest numbers of GIs registered by third countries were also considered.

Secondly, the analysis focused on the sections of the GI specification entitled ‘link’ and ‘proof of origin’. These are the paragraphs where the applicants provide

¹¹ European Commission, ‘DOOR’ (*European Commission: Agriculture and Rural Development*) <<http://ec.europa.eu/agriculture/quality/door>>.

¹² The ‘Single Document’ is the template, provided by the Commission, which contains the specification of the GI product. It can be found here: European Commission, ‘Foodstuff and Agricultural Products’ (*European Commission - Agriculture and Rural Development*) <https://ec.europa.eu/agriculture/quality/schemes/foodstuff_en>.

evidence of the connection between the product and its place of origin. Until 2007, these were two different sections of the specifications, although they were logically related.¹³ Then, the latter gradually disappeared as the two merged together.¹⁴ For this reason, this work analyses them together.

1.2.2 Step 2. The focus: the reputational element of the product/place link

The research focuses especially, although not exclusively, on the nature of the reputational element of the product/place link by analysing the way in which it is described in the specification. In particular, the work distinguishes between three (not mutually exclusive) types of reputational element: (1) the history of the product and its connection with the local culture; (2) the existence of longstanding traditional practices and production methods and, finally, (3) the mere commercial practice.¹⁵

The first, consists of a review of the history of the product and of its social and cultural links to a specific place; the second, almost always present together with the first, describes the traditional practices or recipes followed in order to make the product and which still characterise it today; the third, instead, consists of the mere trade reputation of the good, e.g. the fact the consumers prefer it over similar products and/or that it is more expensive than other goods of the same kind and so on. As anticipated, this is the most popular definition of the reputational element that

¹³ Some specifications recognise the interconnection between the two sections, see, for instance, 'Batata Dolce de Aljezur' [2008] C324/31, [4.4]

¹⁴ For the template of the GI Single Document provided by the EU Commission itself, see European Commission, 'Foodstuff and Agricultural Products' (n 12).

¹⁵ This tripartite division of the nature of the reputational element has been adopted following the position of leading experts such as Bérard and Marchenay mentioned in Gangjee, 'From Geography to History' (n 8). See also, WIPO, 'Geographical Indications' (WIPO, SCT/10/4, 2003) [23] - [26].

emerges in the case law of the CJEU.¹⁶ It will be demonstrated, however, that it is not the most frequent kind of reputational link used in the single document form. For the purposes of this study, when at least one of the first two kinds of reputational link was found, and, as already explained, the two almost always appear together, the historical link was deemed to be present. In respect to the product/place link, however, different approaches were adopted to process the data for Single Documents related to PDOs as opposed to PGIs.

The quantitative analysis of PDOs

In the case of PDOs, the research summed all the specifications in which the product/place link was described in the Single Document by means of references to the reputation of the product rather than just the *terroir*, as one would expect. Subsequently, within this group, a distinction was drawn between GIs where the product/place link was also demonstrated on the basis of the history of the product and/or its relationship with the local tradition. In contrast, those that described the product/place link exclusively on the basis of the market reputation of the product or that, in the section ‘proof of origin’, provided only a description of the checks and controls that ensured the provenance of the good, were not counted.¹⁷

The quantitative analysis of PGIs

With regard to PGIs, the analysis set out to: (1) determine how many PGI specifications included *terroir*-based evidence in order to prove the product/place

¹⁶ Text to n 10.

¹⁷ Sometimes the ‘Proof of Origin’ section of the Single Document provided information about the history of the product. More often, however, the paragraph described all the checks that were in place in order to ensure the origin of the good. The ‘proof of origin’ was, therefore, interpreted as the proof of the concrete provenance of the product and its raw materials and not of its historical roots.

link; (2) ascertain how often the reputation of the products is linked to the description of the history of the good and/or of the longstanding production methods and recipes associated with it. Operatively, the analysis counted the specifications that contained at least one of the first two variations of the meaning of ‘reputation’ mentioned above, that is the historical one and/or that related to the traditional production techniques; thus excluding the cases in which only the commercial practice is mentioned.

1.2.3 Overall and regional analysis: the ‘sample regions’

The data collected through the abovementioned procedure was analysed both as a whole and regionally. For the purposes of the research, the EU members were divided into three groups of sample regions in order to examine whether the trends under consideration differ from one another, or whether they are homogeneous: (1) southern European countries; (2) northern/central European countries and (3) new EU member states. In particular:

- Five countries were selected in order to represent southern Europe: Italy, France, Greece, Spain and Portugal. This choice was made on the basis of the following criteria, in addition to their geographical location: (a) having registered a high number of GIs¹⁸; (b) being characterised by a longstanding tradition in the use of *sui generis* GI regimes; (c) being signatory members of the Lisbon Agreement for the Protection of Appellations of Origin (1958).
- Four countries were picked for the northern/central European sample: the United Kingdom, the Netherlands, Germany and Austria. These countries have been selected following these criteria: (a) geographical location; (b) having registered a

¹⁸ Italy: 166 PDOs, 123 PGIs; France: 98 PDOs, 138 PGIs; Greece: 75 PDOs, 29 PGIs; Spain: 101 PDOs, 88 PGOs; Portugal: 64 PDOs, 72 PGIs.

sufficient numbers of GIs to be considered a useful sample¹⁹; (c) no tradition of *sui generis* GI rules before the EU regulations; (d) they have never been members of the Lisbon Agreement.

- The thirteen countries that joined the EU after 2004 have been analysed together under the name ‘New EU Members’.²⁰ These countries, before joining the EU, were characterised by very different legal approaches towards GIs, as will be explained in detail below.²¹ They are analysed together, however, because they are all developing economies that joined the EU when the GI regime had already been in place for at least ten years. It is therefore important to examine whether their approach to the quality schemes has been innovative.

1.2.3 Other sources

Other kinds of materials were used in some sections of this chapter. Specifically, the initial background dedicated to the evolution of the EU Common Agricultural Policy (CAP) from 1992 to present, is based predominantly on: (1) the works of McMahon²²; (2) the information provided by the websites of the European Parliament and of the Commission; (3) the official bulletins published yearly by the Commission

¹⁹ Northern/central European countries have registered a modest number of GIs compared to the Southern ones. In particular, Scandinavian countries members of the EU (Sweden, Finland and Denmark) have not been included in the sample because they have all registered less than 10 GIs.

These are the details of the chosen countries: Germany: 12 PDOs, 77 PGIs; Austria: 10 PDOs, 6 PGIs; the U.K.: 24 PDOs, 35 PGIs; the Netherlands: 24 PDOs, 35 PGIs.

²⁰ Ten countries joined the EU in 2004: Hungary, Czech Republic, Slovakia, Slovenia, Poland, Estonia, Latvia, Lithuania, Cyprus and Malta; two joined in 2007: Romania and Bulgaria; lastly, Croatia joined in 2013.

²¹ See Table 3.1 below.

²² Caoimhín MacMaoláin, *Food Law: European, Domestic and International Frameworks* (Hart Publishing 2015); Caoimhín MacMaoláin, *EU Food Law: Protecting Consumers and Health in a Common Market* (Hart 2007); McMahon (n 303).

on the status of the CAP and of its main goals, such as rural development, environmental sustainability and so on.

Finally, data on the new EU member states was found in the official reports on their economic situation published by the Commission before and after their accession to the Union. The legislation that was in force in these countries concerning the protection of Indications of Geographical Origin before they joined the EU was retrieved through the ‘WIPO Lex’ global database.²³

1.3 Structure of the chapter

The chapter is composed of nine main sections, plus the present introduction and the general conclusions.

Section two describes the evolution of the EU Common Agricultural Policy during the period from 1992 until the present, as well as the evolution of the regulations on Geographical Indications. As in the previous chapter, emphasis is placed on how the evolution of the former has influenced the policy goals of the latter.

Section three presents some general trends concerning the registration choices made in the sample countries, as well as in the EU as a whole. In particular, it emphasises that, especially during the last ten years, PGIs have been the preferred quality scheme in all the sample regions. This includes the southern block that encompasses countries with a strong tradition of Appellation of Origin in which a prevalence of PDOs could have been expected.

²³ WIPO, ‘WIPO Lex’ (*WIPO*) <<http://www.wipo.int/wipolex/en>>.

Section four analyses in depth the status of the new EU members. It finds that: (1) although coming from different legal backgrounds with regard to the protection of Indications of Geographical Origin, all these countries have registered predominantly PGIs; (2) it also notes that they make more use of Traditional Specialities Guaranteed (TSGs) much more than the other member states and anticipates a part of the explanation for this trend that will be provided more fully in section seven.

Section five describes the results of the quantitative analysis of the specifications of GIs, focusing on how the link with the product and its place of origin is established. It concludes that, from a statistical point of view, the two quality schemes are becoming similar, at least as far as the description of the product/place link is concerned. Indeed, in the case of PDOs it will be shown that the reputational element, in the form of the history of the product, appears very often, even if it is not required by law. On the other hand, a meaningful number of PGI specifications include a reference to the element of *terroir*.

Section six analyses the way in which the product/place link is described in specifications that feature the historical reputational element and proposes a map of the concept distinguishing between references to: (1) the history of the product alone; (2) traditional knowledge and longstanding know how; (3) the positive impact of the product on rural development and the environment.

Section seven attempts to explain why PGIs have become the predominant quality scheme and provides four concurrent explanations. According to the first, PGIs are simply easier to get because of their less demanding requirements; the second suggests that PGIs protect products that, although having a great reputation,

do not qualify for PDO protection. However, an in-depth analysis of the PGIs granted to the ‘fruit, vegetables and cereals’ class of products will show that this quality scheme is sometimes used to protect goods that could be protected by PDOs. This suggests that the two quality schemes are to some extent interchangeable and that PGIs sometimes seem to replace PDOs. The third, shows that a relevant number of PDOs were registered between 1996 and 1998 following the simplified procedure that was provided by art 17 Regulation 2082/1992. This may indicate that after this period in which the old Appellations of Origin protected under national law were translated into PDOs, the applicants began to prefer PGIs. Finally, the fourth explanation attempts to determine whether the domestic competent authorities that conduct the first exam of the applications can influence the choice of the applicants with regard to the type of quality scheme.

Section 8 focuses on the historical reputational link and on why it has become so widespread. In particular, it analyses the EU regulation as well as different domestic provisions in order to understand if and how they take into consideration the history of the product.

Finally, Section 9 proposes an explanation for the emergence and the success of the historical reputational element. In particular, building upon the conclusions of the previous chapters, it observes that the evolution of the systems for the protection of IGOs in Europe, and some relevant documents concerning the genesis of the EU *sui generis* GI protection regime, show that history has always played an essential role in justifying the protection of a product. In particular, it can be argued that *terroir* becomes hard to demonstrate once the product is not intuitively linked to the soil.

Thus, in some instances, *terroir*-based arguments are *de facto*, disguised history-based ones.

2. The policy background: the CAP and the EU GI regulations from 1992 to the present day

In the previous chapter it was demonstrated that the EU CAP, reformed after the 1985 Green Paper, essentially contributed to provide the policy background upon which the EU GI regime was built.²⁴ This section will complete the historical analysis started there. In particular, it will show that the general objectives of the GI regime have continued to be linked to those of the CAP and that the connection between the two systems has become even tighter. Furthermore, the section will provide a chance briefly to present the evolution of the GI regulations and of the reforms of the CAP that have been made until today, thus providing an outline of the policy background behind the trends that will be investigated below.

In the 1990s and, even more, after 2000, the EU CAP evolved to meet new goals.²⁵ In particular, the reform package of 1992, the so-called ‘MacSharry’ reform, was an important turning point. Among other things,²⁶ the reform, in line with the newest international standards of that period,²⁷ required farmers to assume responsibility for environment protection, sustainable agriculture and the maintenance

²⁴ Text to n 13 in Ch 2.

²⁵ McMahon (n 22) 279-280.

²⁶ For more information on the 1992 MacSharry reform, see *ibid*, 90-98.

²⁷ The reform was made to implement part of the agenda of the 1992 Earth Summit in Rio de Janeiro. European Commission, ‘The Common Agricultural Policy: A Story to Be Continued’ (2012), 11.

of rural heritage.²⁸ Regulation 2081/1992 explicitly mentions among its goals the diversification of production and the economic sustenance of rural areas, thus confirming the link between the CAP and the GI policy.²⁹ Moreover, the annual review of the EU CAP has, on more than one occasion, mentioned GIs as tools for achieving the goals of the CAP, including the protection of local and traditional products,³⁰ the promotion of quality and the protection of consumers.³¹

In 1999 the Commission passed a broad action programme called ‘Agenda 2000’.³² Among other things, it established new economic, social and environmental goals within the objectives of the CAP.³³ In particular, it introduced rural development as the second pillar of the policy,³⁴ coupling with the first one that was composed of the ‘common organisation of the market in agricultural products’ and the ‘direct payment to farmers’.³⁵ Following Agenda 2000, the EU passed the 2003

²⁸ Ibid, 10; European Commission Directorate General for Agriculture and Sustainable Development, ‘Promoting Europe’s Agriculture and Rural Areas: Continuity and Change’ (1998) 3, 6.

²⁹ Regulation 2081/1992, Recital 2.

Two other relevant policy goals deserve to be mentioned: (1) providing adequate information to consumers who increasingly ask for local products (recitals 3 and 4), and (2) introducing a unitary system of GI protection, thus overcoming the differences in the protection provided by the individual member states (Recital 6).

³⁰ European Commission Directorate General for Agriculture, ‘The Common Agricultural Policy: 1998 Review’ 22.

³¹ European Commission Directorate General for Agriculture, ‘The Common Agricultural Policy: 2002 Review’ 13; European Commission Directorate General for Agriculture, ‘The Common Agricultural Policy: 2003 Review’ 14-16.

³² For an explanation of the Commission’s proposal, see European Commission, ‘Agenda 2000: For a Stronger and Wider Union’ (1997).

³³ McMahon (n 22), 234-250; European Commission Directorate General for Agriculture, ‘CAP Reform: Rural Development’ (1999). European Union Agriculture and Rural Development, ‘Agenda 2000: The Future for European Agriculture’ (1999). See also, European Commission, ‘The Common Agricultural Policy: A Story to Be Continued’ (n 27) 14-15.

³⁴ Guillaume Ragonnaud, ‘Second Pillar of the CAP: Rural Development Policy’ (*European Parliament: Fact Sheets on the European Union*, December 2016) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.6.html>.

³⁵ For details, see Guillaume Ragonnaud, ‘First Pillar of the CAP: I – Common Organisation of the Markets (CMO) in Agricultural Products’ (*European Parliament: Fact Sheets on the*

CAP reform. This act dealt with a number of technical issues which will not be analysed here as they are beyond the scope of this section.³⁶ It must be noted, however, that following the reform, in 2005, the Council of the European Union introduced Regulation 1698/2005 on support for rural development.³⁷ This Regulation explicitly links EU GI rules with the developmental strategy of the CAP by providing support to producers for the promotion of products protected by a quality scheme.³⁸ The same policy was kept and expanded in the latest version of the regulation on support for rural development, Regulation 1305/2013.³⁹

In 2006, the new GI regulation 510/2006 came into force.⁴⁰ This reform was primarily done in order to ratify the decision of the Dispute Settlement Body of the WTO in the dispute EC – Trademarks and Geographical Indications (15 March 2005).⁴¹ For this reason, it did not substantively amend the goals and the key

European Union, December 2016
<http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.4.html>;
Albert Massot, 'First Pillar of the Common Agricultural Policy (CAP): II – Direct Payments to Farmers' (*European Parliament: Fact Sheets on the European Union*, December 2016)
<http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.5.html>.

³⁶ One of the major innovations of the 2003 CAP Reform was the introduction of the Single Payment Scheme. Prior to the 2003 reform, a farmer could receive a number of specific direct payments, each one associated with a particular line of crop or livestock production (cereals, milk, beef, etc.). The 2003 reform incorporated these specific direct payments into a single payment and decoupled this payment from the production of crops and livestock. The 2013 reform has continued in this direction. See, European Commission Directorate General for Agriculture and Rural Development, 'The 2003 CAP Reform' (2005).

³⁷ Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development [2005] OJ L227/1.

³⁸ Ibid, art 20(c)(iii). See also, ibid, art 32.

³⁹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2013] OJ L347/487. See, in particular, Recitals 14, 21, 39; art 5(3)(a); art 16. See also, European Commission Directorate General of Agriculture and Rural Development, 'The EU Rural Development Policy 2007-2013' (2006).

⁴⁰ Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJ L93.

⁴¹ In this case, the US supported a complaint filed by Australia against EU Regulation 2081/1992. In particular, they argued that this legislation was discriminatory and trade-restrictive as it prevented non-European producers from having access to the EU protection when their domestic GI legislation was not equivalent to the EU regulation.

principles of the system.⁴² The relevant amendments were made to modify some provisions concerning the registration of GIs by third countries that were the core of the dispute in the WTO forum.⁴³ Finally, the public debate on a new reform of the CAP started in 2010 and ended in 2013 with a new plan for the period 2014-2020.⁴⁴ This focuses especially on three types of issues: (1) economic, including food security, productivity growth, price volatility and others; (2) environmental, including resource efficiency, preservation of the soil and water quality and protection of biodiversity, and (3) territorial, that is the social and economic development of the rural areas.⁴⁵

Many of these leading principles of the CAP have been embodied in Regulation 1151/2012, the most recent in the field of EU GIs, thus confirming the link between the former and the latter. Contrary to the previous one, this regulation has extensively renewed the EU GI law and its guiding principles. This emerges right from the preamble, which is more detailed than those of its predecessors, and displays much more awareness as to the broad strategic functions of GI protection. For instance, Recital 1 reads as follows:

⁴² Caoimhín MacMaoláin, *EU Food Law: Protecting Consumers and Health in a Common Market* (Hart 2007) 102-108.

⁴³ Two amendments were particularly relevant: (1) the new regulation did not specify the level of protection to be granted to the name in the country of origin and did not provide that it had to be equivalent to that provided by the EU; (2) it does not require the country of origin to introduce specific administrative structures in order to control the quality of the goods.

⁴⁴ European Commission, 'The History of the CAP' (n 401).

⁴⁵ European Commission, 'Overview of CAP Reform 2014-2020' (2013) 5/2013; European Commission, 'The Common Agricultural Policy: A Story to Be Continued' (n 27) 18-19.

The quality and diversity of the Union's agricultural, fisheries and aquaculture production is one of its important strengths, giving a competitive advantage to the Union's producers and making a major contribution to its living cultural and gastronomic heritage. This is due to the skills and determination of the Union farmers and producers who have kept traditions alive while taking into account the developments of the new production methods and material.⁴⁶

This provision summarises a number of principles of the CAP developed after 1992: (1) the importance of the production of quality food to give the EU producers a strong competitive edge; (2) the importance of these products for the preservation and valorisation of their local heritage, a concept that did not appear in the previous regulations; (3) the important role of farmers and producers in keeping alive traditional skills and production methods. Then, the importance of GI rules for the diversification of European agriculture and for the economic sustainment of local communities, already present in the previous Regulations,⁴⁷ is restated.⁴⁸ Finally, the preamble of the regulation specifically embodies other general goals of the EU agenda, such as 'the aims of achieving a competitive economy based on knowledge and innovation and fostering a high-employment economy delivering social and territorial cohesion.'⁴⁹

With the completion of this outline of the evolution of the CAP and of the EU GI law from 1992, it is now possible to turn to the main goal of this chapter, that is studying the evolution of the PDO/PGI quality schemes and, specifically, of the nature of the product/place link, as it emerges from the content of the specifications themselves.

⁴⁶ Regulation 1151/2012, Recital 1.

⁴⁷ See Regulation 2081/1992, Recital 2 and Regulation 510/2006, Recital 2.

⁴⁸ Regulation 1151/2012, Recital 4.

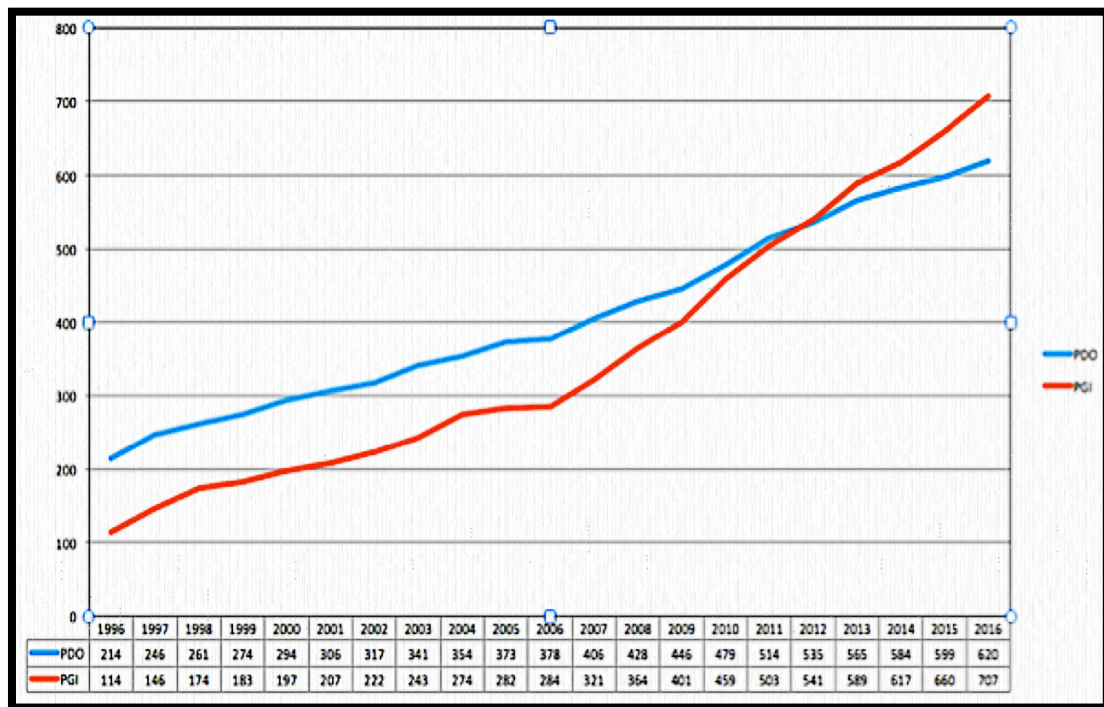
⁴⁹ *ibid*, Recital 5.

3. The trends in the evolution of GIs in Europe

3.1 Overview

To begin with, the analysis shows that, today, PGIs are clearly the preferred quality scheme in Europe, as the graph below shows:

Chart 3.1: Overall growth of PDOs and PGIs in the period 1996-2016



It can be observed that PDOs were the predominant quality scheme until 2012, at which point they were surpassed by PGIs. The reason for this was anticipated in the previous Chapter. Indeed, the initial success of PDOs, which in 1996 numbered 214 against 114 PGIs, was linked to the fact that the first countries to use the EU GI regime were mostly the southern European ones. These already had a legal tradition and a know-how in the field of *sui generis* GIs and were ready to exploit the ‘simplified procedure’ that was provided under art 17 Regulation 2081/1992. As shown by the chart, however, especially from 2006 onwards, the growth of PGIs

began to accelerate, reaching a majority in 2012. Even though 2006 and 2012 were also the years when the EU Regulation was reformed, we do not think that the trend is related to this. Nevertheless, it is certain that the new member states played a substantive role in this process, especially from 2006. This aspect will be examined in depth later.

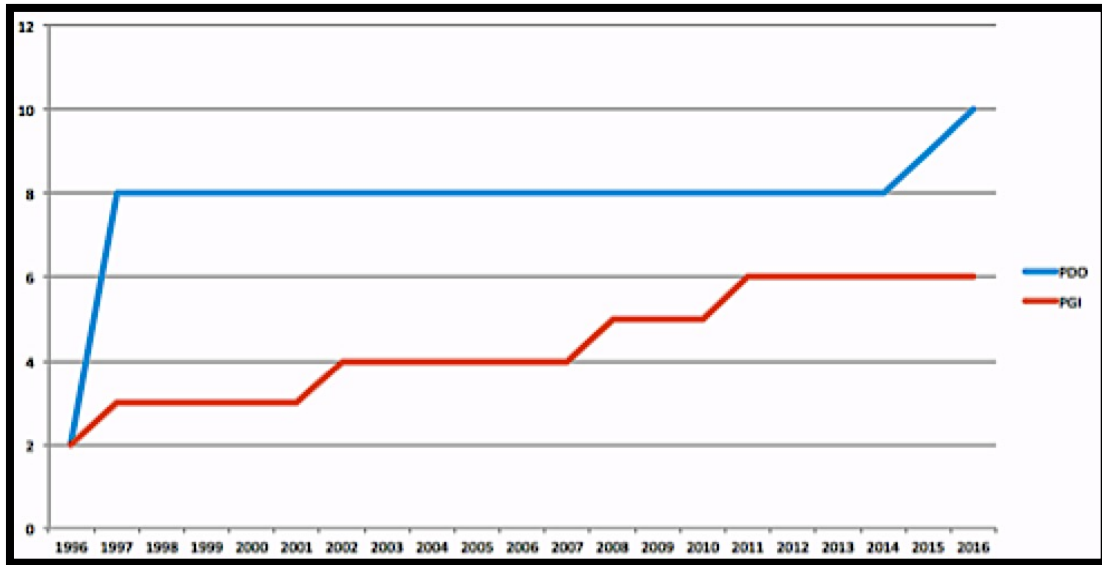
The discussion will now focus on the northern/central and southern countries, selected following the criteria listed above,⁵⁰ and will highlight the evolution of the registration choices of producers in these states. In particular, it will be shown that, while some of them have always favoured PGIs, others have radically changed their approach. Generally speaking, however, over the last 10 years PGIs have outnumbered PDOs in almost all the northern/central and southern sample countries. The new EU members will be analysed separately later.

3.2 Regional trends: northern/central Europe

Starting with Austria, it has registered only a few GIs, 16 in total, and has preferred PDOs, as shown in Chart 3.2 below:

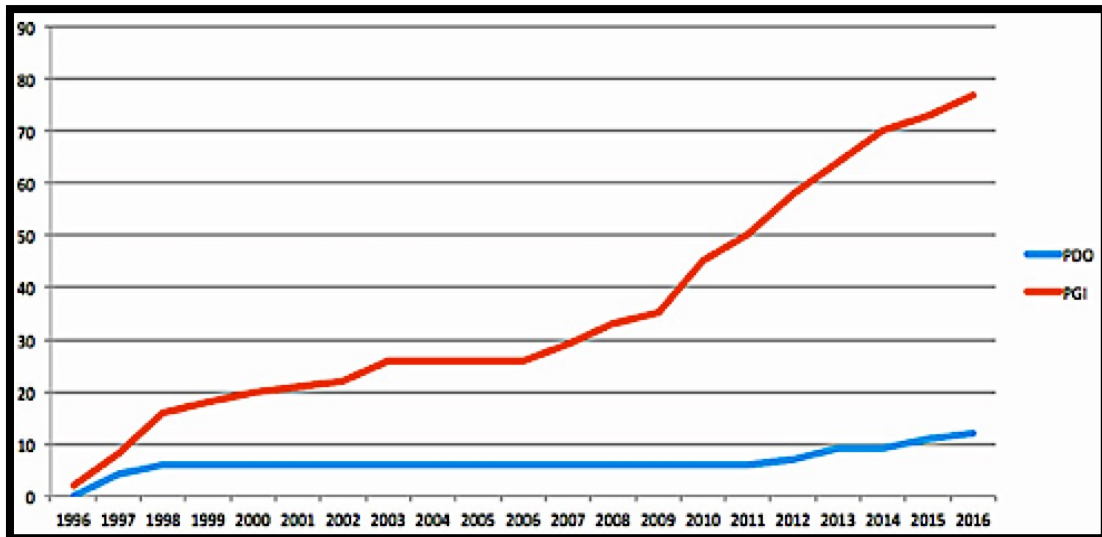
⁵⁰ See, Paragraph 1.2.3.

Chart 3.2: Growth of PDOs and PGIs in the period 1996-2016 in Austria



The opposite trend has been followed by Germany, which has almost never granted PDOs:

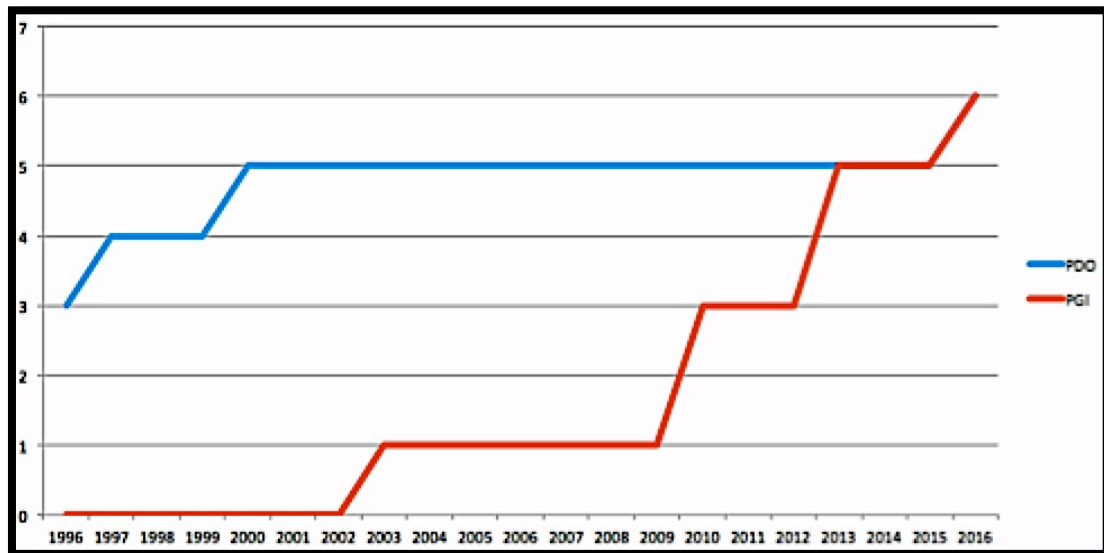
Chart 3.3: Growth of PDOs and PGIs in the period 1996-2016 in Germany



Völker Schöne justifies this trend by explaining that Germany requires a rigorous scientific proof of the product/place link in order to grant a PDO.⁵¹ For this reason this quality scheme is almost non-existent in this country. The work will return to this point in due course.⁵²

Turning now to the Netherlands and the United Kingdom, producers in both countries have changed their preferences with regard to quality schemes. Beginning with the first, the trend has been the following:

Chart 3.4: Growth of PDOs and PGIs in the period 1996-2016 in the Netherlands

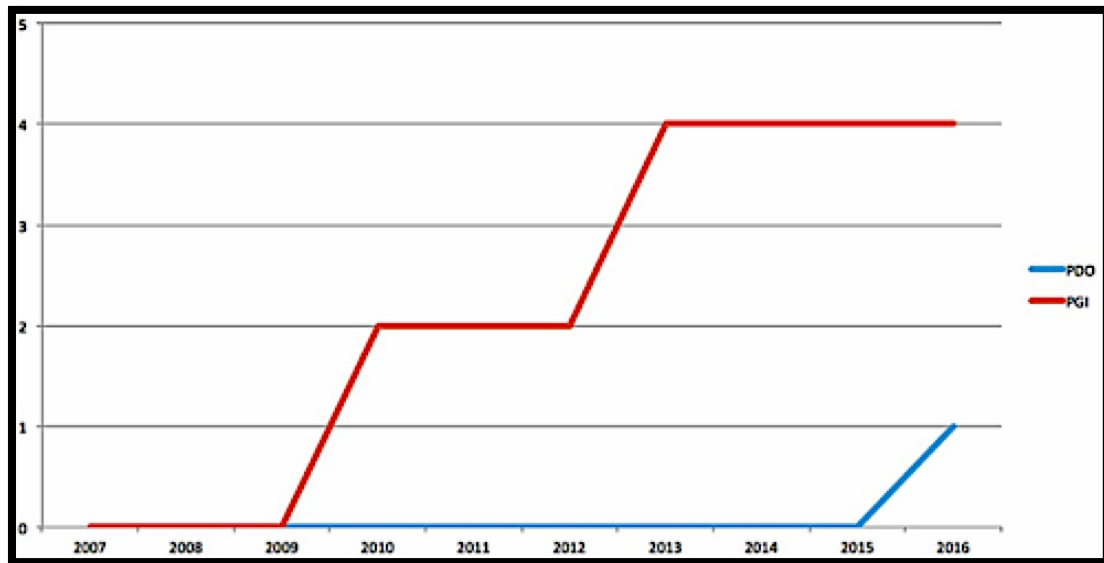


From the chart it emerges that PGIs have surpassed PDOs only recently in the Netherlands. If the period taken into consideration is narrowed down, however, to focus only on the GIs granted during the last 10 years, it can be observed that, in this period, PDOs have practically disappeared in this country:

⁵¹ We would like to thank Dr Völker Schöne (<http://loschelder.de/de/rechtsanwaelte/anwaelte/dr-volker-schoene.html>) for the insights that he gave us in an online interview.

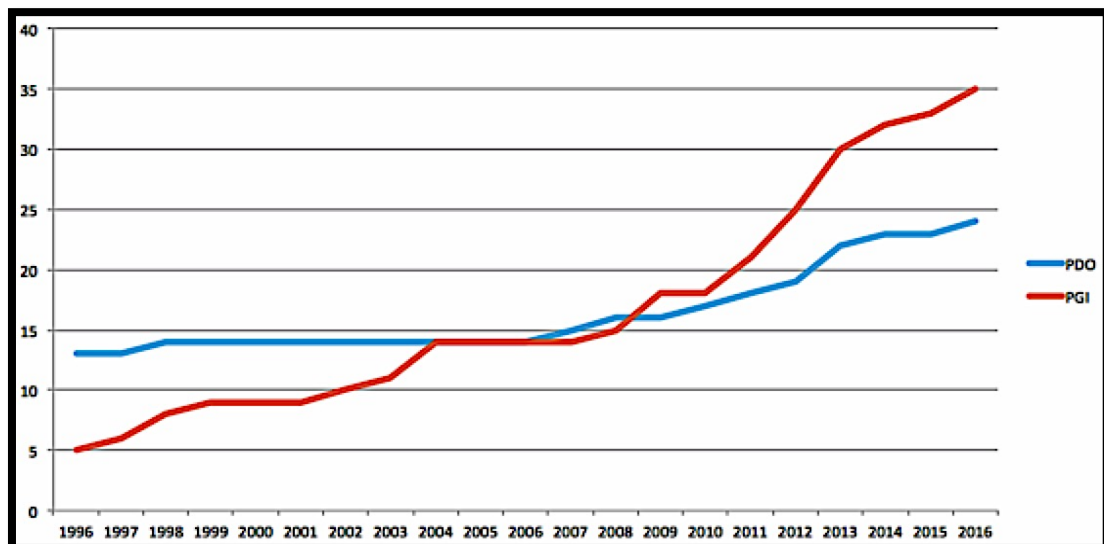
⁵² Text to n 132.

Chart 3.5: Growth of PDOs and PGIs in the period 2007-2016 in the Netherlands



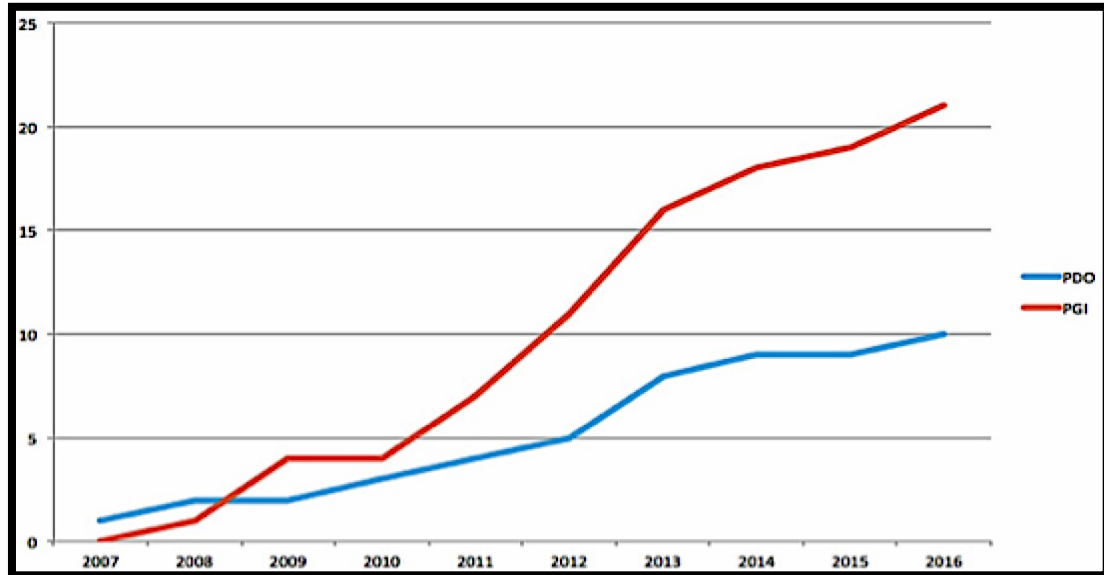
It could rightly be argued, however, that the Netherlands has granted too few GIs to be statistically relevant. The same cannot be said for the U.K., however, which has made a meaningful use of both PDOs and PGIs (59 in total), with the trend again showing a shift in applicant preferences from the former to the latter:

Chart 3.6: Growth of PDOs and PGIs in the period 1996-2016 in the United Kingdom



Furthermore, just like in the case of the Netherlands, the analysis of the trend over the last 10 years demonstrates that, in the U.K., the number of recently registered PGIs has been twice that of PDOs:

Chart 3.7: Growth of PDOs and PGIs in the period 2007-2016 in the U.K.



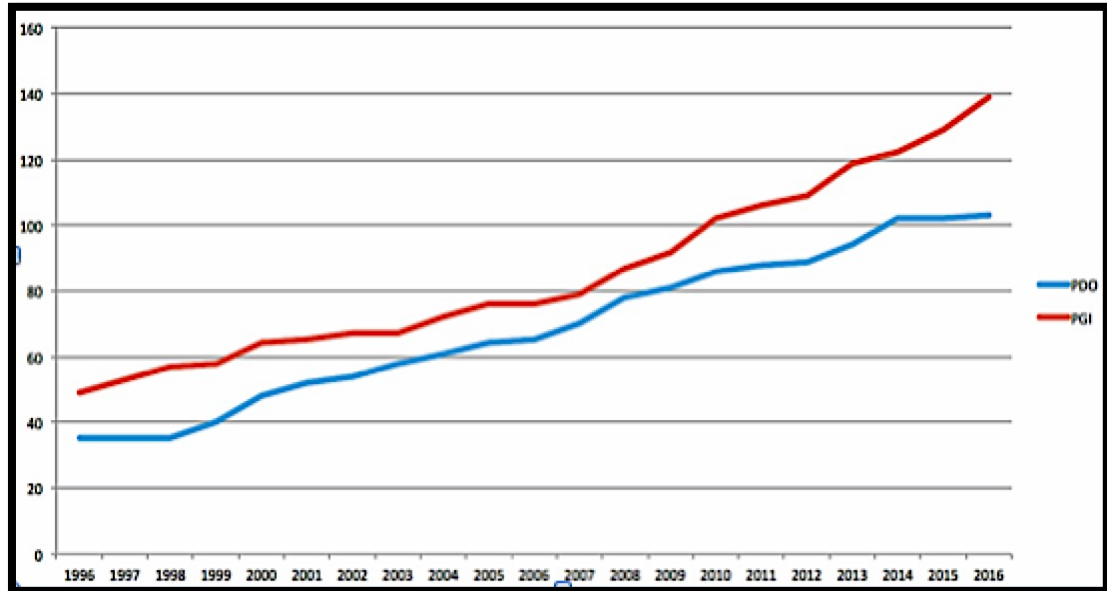
In conclusion, the north European trend shows that the PGI quality scheme is always predominant with the only exception of Austria. Although PDOs have always been marginal in Germany, in the Netherlands and the U.K., PGIs have clearly overtaken PDOs in the last ten years, thus mirroring almost perfectly the general trend that was presented at the beginning of the section.

3.3 Regional trends: southern Europe

The analysis of the general trends that have characterised the policy of the southern European countries over the last 20 years is particularly important since these are all states with a longstanding tradition of Appellation of Origin. Nonetheless, the data demonstrates that in their case as well PGIs have become predominant, especially during the last ten years.

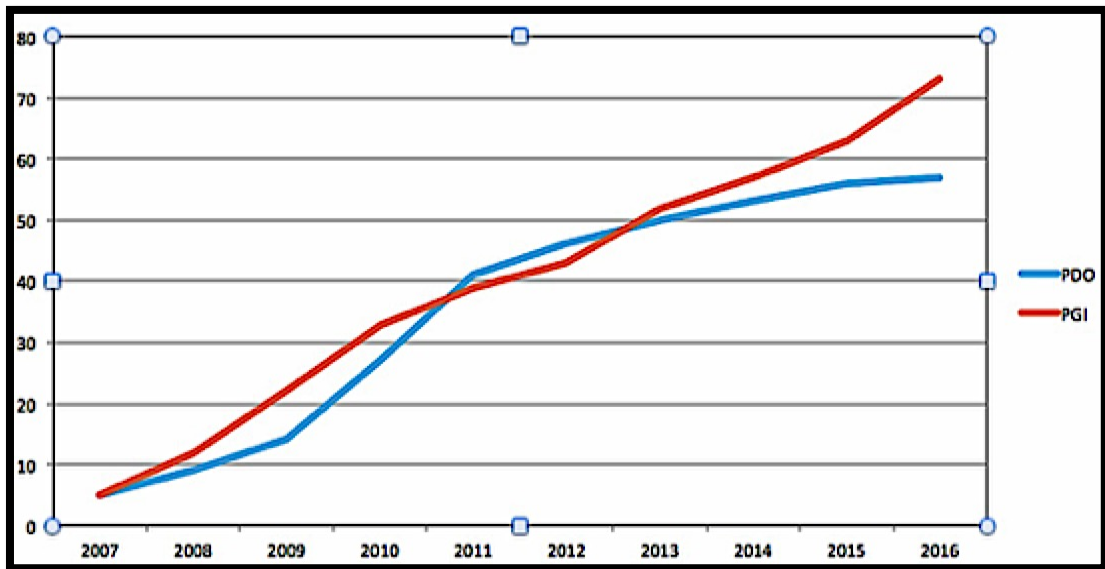
First of all, it is interesting to note that France, despite being the country where Appellations of Origin emerged, has registered more PGIs than PDOs from the beginning:

Chart 3.8: Growth of PDOs and PGIs in the period 1996-2016 in France



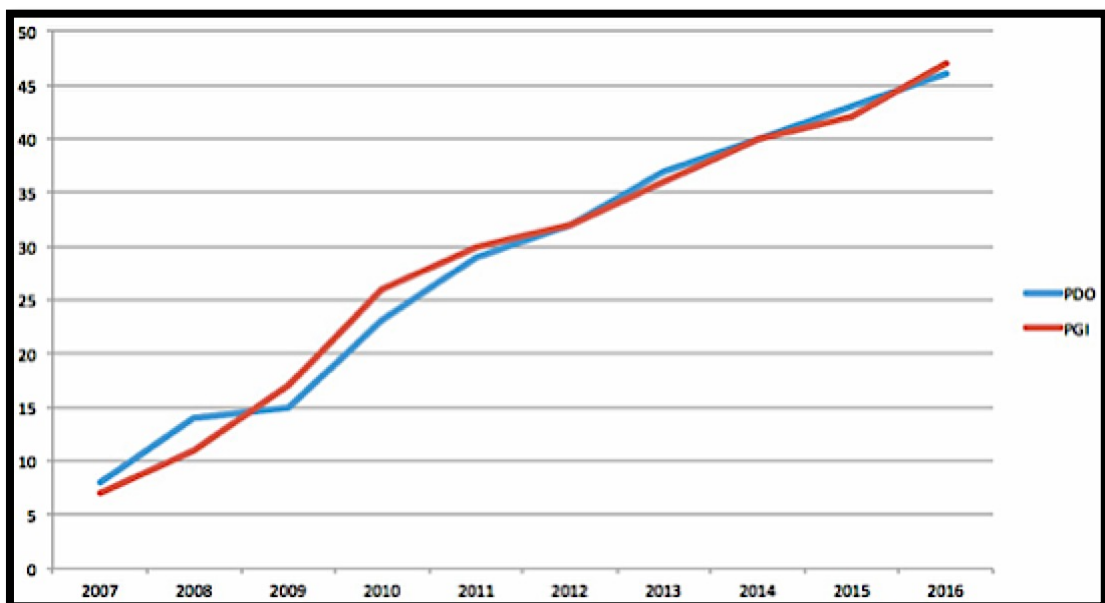
A strong preference for PGIs emerges also in the case of Italy, which is the leading country in the field of GIs. In fact, it has registered much more PDOs (171) than PGIs (122). However, the trend followed in the last ten years unmistakably shows that the growth of the latter quality scheme is indeed accelerating:

Chart 3.9: Growth of PDOs and PGIs in the period 2007-2016 in Italy



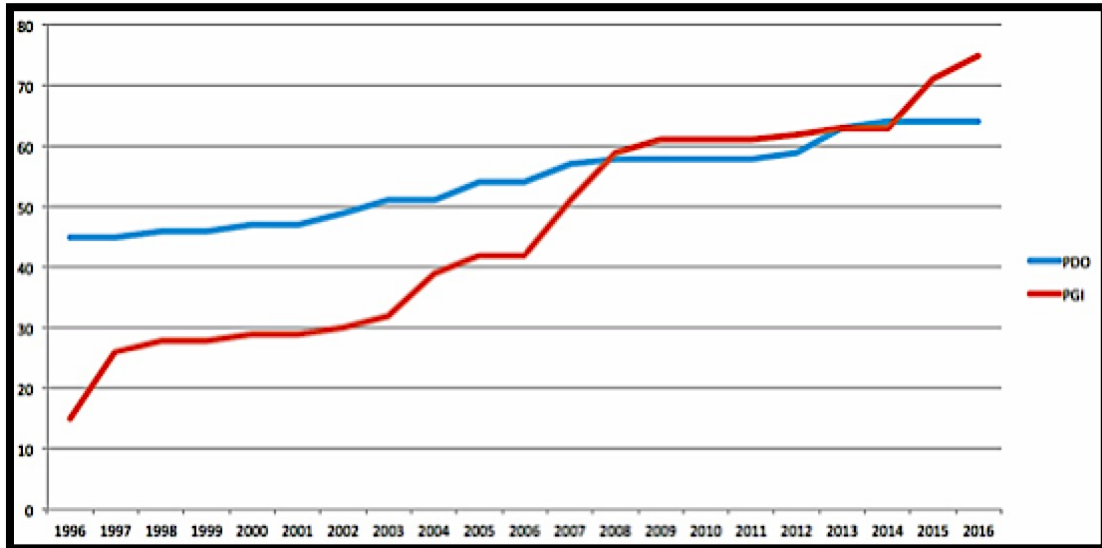
The same conclusions apply to Spain. In this country the PDO model is still predominant (101 PDOs versus 88 PGIs). In the last ten years, however, the trend has changed and, even though, at the moment, the number of registrations of PDOs and PGIs remains evenly balanced, it favours the latter:

Chart 3.10: Growth of PDOs and PGIs in the period 2007-2016 in Spain



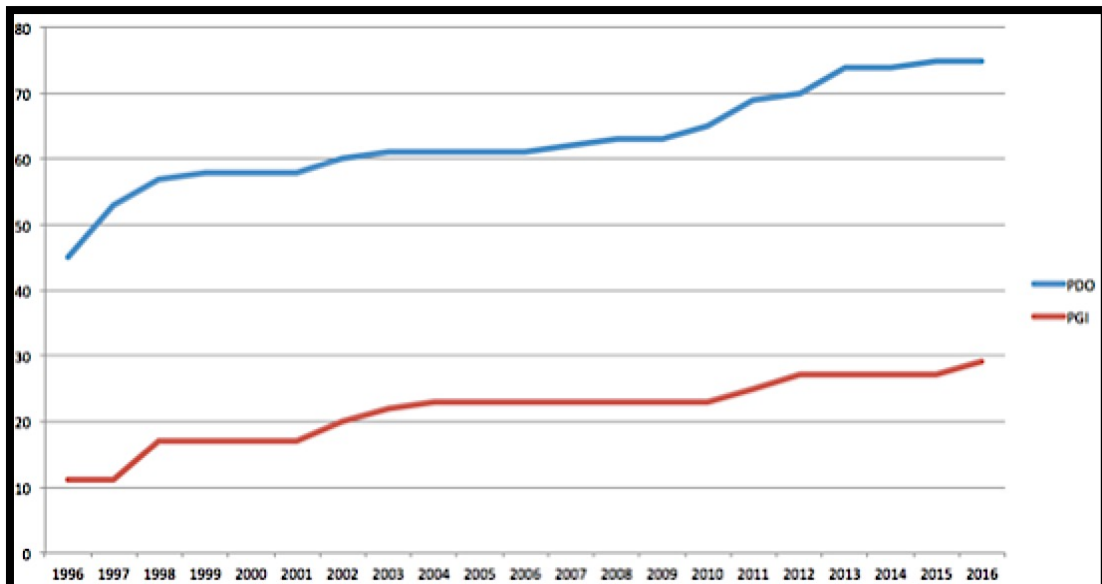
In Portugal, on the other hand, PGIs have become the main label of origin and the gap between them and PDOs seems destined to grow even more:

Chart 3.11: Growth of PDOs and PGIs in the period 1996-2016 in Portugal



The only southern European sample country that bucks this trend is Greece:

Chart 3.12: Growth of PDOs and PGIs in the period 1996-2016 in Greece



This upstream trend can be partially explained by the fact that one of the leading GI products in Greece is olive oil,⁵³ which is almost always protected by PDO.

This regional trend also shows that the southern countries, which remain the main players in the field of EU GIs, at least over the last ten years, have adopted PGIs as their preferred quality scheme. They have therefore partially changed their tradition in the field of protection of Indications of Geographical origin, utilising PDOs less and less.

4. GI policies in the new EU member states

This thesis will now focus on the countries that joined the EU after 2004. These were: Cyprus; Czech Republic; Estonia; Hungary; Latvia; Lithuania; Malta; Poland; Slovakia and Slovenia in 2004; Bulgaria and Romania in 2007 and, lastly, Croatia in 2013.

This analysis is important because these countries began registering GIs and developing their own policy in this field in a period when the EU system had already been established for a long period. It is therefore useful to focus on the conduct of these newcomers, on their way of employing GI protection and, thus to draw some lessons from their experience. Furthermore, this analysis has never been conducted before, and therefore constitutes a contribution to the existing literature.

⁵³ More than a quarter of Greece's PDOs have been granted to olive oil.

4.2 Economic and legal background

A detailed outline of the current economic condition of the new members, compared with the situation existing when they joined the EU, would be beyond the scope of this work. The available data, however, shows that these were, and still are, countries in which the agricultural sector is almost always very relevant, employing more than 10% of the labour force. In particular, this sector is still very important in Bulgaria, Croatia, Cyprus, Hungary, Malta and Romania,⁵⁴ while it is still crucial, although declining, in Latvia, Lithuania, Poland and Slovenia.⁵⁵ It is less central in only three new members: the Czech Republic, Estonia and Slovakia.⁵⁶ It is also relevant to point out that, as can be expected, five of the nine countries where agriculture is still an important sector are considered ‘developing economies’ by the International

⁵⁴ European Commission, ‘Country Report Bulgaria 2016’ (Brussels 2016) SWD(2016) 72 final, 32; European Commission, ‘Country Report Croatia 2016’ (2016) SWD(2016) 80 final/2, 35; European Commission, ‘Country Report Cyprus 2016’ (2016) SWD(2016) 120 final; Eurostat, ‘Agricultural Census in Cyprus’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Cyprus>; European Commission, ‘Country Report Hungary 2016’ (2016) SWD(2016) 85 final; Eurostat, ‘Agricultural Census in Hungary’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Hungary>; European Commission, ‘Country Report Malta 2016’ (2016) SWD(2016) 86 final; Eurostat, ‘Agricultural Census in Malta’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Malta>; European Commission, ‘Country Report Romania 2016’ (2016) SWD(2016) 91 final, 3.

⁵⁵ European Commission, ‘Country Report Latvia 2016’ (2016) SWD(2016) 82 final; Eurostat, ‘Agricultural Census in Latvia’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Latvia>; European Commission, ‘Country Report Lithuania 2016’ (2016) SWD(2016) 83 final 24; Eurostat, ‘Agricultural Census in Lithuania’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Lithuania>; European Commission, ‘Country Report Poland 2016’ (2016) SWD(2016) 89 final, 18; European Commission, ‘Country Report Slovenia 2016’ (2016) SWD(2016) 92 final; Eurostat, ‘Agricultural Census in Slovenia’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Slovenia>.

⁵⁶ Eurostat, ‘Agricultural Census in the Czech Republic’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_the_Czech_Republic>; European Commission, ‘Country Report Czech Republic’ (2016) SWD(2016) 73 final; European Commission, ‘Country Report Estonia 2016’ (2016) 16; European Commission, ‘Country Report Slovakia 2016’ (2016) SWD(2016) 93 final; Eurostat, ‘Agricultural Census in Slovakia’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Slovakia>.

Monetary Fund, these are: Bulgaria; Croatia; Hungary; Romania and Poland. All the others are considered developed economies.⁵⁷

From the point of view of legislative history, these countries had different approaches to the protection of geographical names. This is shown by a research on the legislation that was in force in these countries before joining the EU. First of all, it is important to notice that half of these states were longstanding parties to the Lisbon Agreement, hence familiar with Appellations of Origin (Bulgaria since 1975, the Czech Republic and Slovakia – as Czechoslovakia – since 1966, and as independent countries since 1993; Hungary since 1967, while Romania was a signatory member). Some of them had a law on AOs that ratified the Lisbon Agreement. The following table summarises the legislation of these countries before joining the EU, both the laws on AOs and the more recent laws on GIs (from data taken from the WIPO IP Laws and Treaties database).

⁵⁷ International Monetary Fund, ‘World Economic Outlook’ (2015) 146-153.

Table 3.1: Legislation on AOs and GIs in new EU member states, prior to their accession

Country	Legislation
Bulgaria	‘Law on Trademarks and Industrial Designs’ n.95/1967 (5 December 1967). Chapter III was dedicated to the protection of Appellations of Origin which could be protected at the end of a procedure before the Institute of Inventions and Rationalisations, i.e. the Patent Office. It was superseded by the ‘Law on Marks and Geographical Indications’, n.81/1999 (14 September 1999), although Chapter III was still entirely dedicated to GIs. It distinguished between DOs and GIs. The Patent Office was in charge of scrutinising the application and granting protection.
Croatia	‘Law of the Protection of Geographical Indications of Products and Services’, n.1396/1999 (30 June 1999). It was specifically dedicated to GIs and distinguished between DOs and GIs. The protection was granted by the State Intellectual Property Office.
Czech Republic	‘Law concerning the Protection of Appellations of Origin of the Products’, n.159/1973 (12 December 1973). Law on the protection of Appellation of Origin registered through the ‘Office of Inventions and Discoveries’, i.e. the Patent Office. It was repealed by the ‘Law on the Protection of Designations of Origin and Geographical Indications’, n.452/2001 (29 November 2001). Specifically focused on the protection of GIs. Distinguished between DOs and GIs. The protection was granted by the Industrial Property Office.
Estonia	‘Geographical Indications Protection Act’ (15 December 1999). The law defined only Geographical Indications in line with the TRIPs Agreement. The office in charge of the proceedings was the Patent Office.
Hungary	‘Law on the Protection of Trademarks and Geographical Indications’, n.11/1997 (1 July 1997). The law protects geographical names both through collective marks and AOs. In the latter case, protection is granted by the Patent Office.
Lithuania	‘Law on Trademarks’ n.VIII-1981 (10 October 2000). It protected geographical names through collective marks.
Romania	‘Law on Marks and Geographical Indications’ n.84/1998 (15 April 1998). Chapter 12 of the law provides protection to GIs in accordance with the international treaties to which Romania is party. The competent office is the State Office for Inventions and Trade Marks.
Slovakia	A law on AOs was adopted by Czechoslovakia (see Czech Republic above). Slovakia adopted a the ‘Law on designations of origin of the products and geographical indications for products’ n.469/2003 on 28 October 2003, only seven months before joining the EU on 1 May 2004.

With regard to other new member states: Malta had a Wine Act passed in 2001. It regulated the labelling of the product, among others things, but did not mention geographical indications; Cyprus had a Trade Mark Law (Law n.206/1990),

but this did not focus on GIs, only passing the ‘Law on Appellations of Origin and Geographical Indications for Agricultural Products and Foodstuffs’ in 2006; in 1999 Latvia enacted the ‘Law of the Republic of Latvia on Trademarks and Indications of Geographical Origin’ (16 June 1999) which, in Chapter 9, protected IGOs even without registration under the law of unfair competition; Poland has never had a law on GIs and only passed a procedural act in order to implement the EU Regulation in 2002;⁵⁸ Slovenia, like Poland, does not seem to have had a tradition of *sui generis* GI rules.

Moreover, the EU has not, at least publicly, influenced the GI policy of the countries in relation to the choice of quality scheme. In fact, although the strategy papers on the enlargement of the EU often focused on rural development and monitored the efforts of the newcomer countries in this field, they never mentioned GI rules.⁵⁹ Finally, it is useful to add that the protocols of accession of these countries also did not mention GIs.⁶⁰ Despite this, these new EU members adopted a very

⁵⁸ Prime Ministerial Decree of April 25, 2002 on the Filing and Processing of Geographical Indications.

⁵⁹ European Commission, ‘Enlargement Strategy Paper: Report on Progress towards Accession by Each of the Candidate Countries’ (2000) COM (2000) 700 final; European Commission, ‘Making a Success of Enlargement: Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries’ (2001) COM (2001) 700 final; European Commission, ‘Communication from the Commission to the Council and the European Parliament: Roadmaps for Bulgaria and Romania’ (2002) COM(2002) 624 final; European Commission, ‘Towards the Enlarged Union Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries’ (2002) COM(2002) 700 final; European Commission, ‘Continuing Enlargement: Strategy Paper and Report for the European Commission on the Progress towards Accession by Bulgaria, Romania and Turkey’ (2003) COM(2003) 676 final; European Commission, ‘Communication from the Commission: 2005 Enlargement Strategy Paper’ (2005) COM(2005) 561 final; European Commission, ‘Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2006 – 2007’ (2006) COM(2006) 649.

⁶⁰ Documents concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union [2003] OJ L236/3; Documents concerning the accession of the Republic of Bulgaria and Romania to the European Union [2005] OJ L157/3;

similar and, in various respects, peculiar policy in the field of GIs, the details of which will be analysed below.

4.3 New EU Members: the choice of PGIs

Preliminarily, it is necessary to emphasise that the New EU Members have contributed substantially to the overall trends concerning EU GIs that were shown above.⁶¹ Indeed, all together, they have registered 132 GIs, equal to 9.5% of all the GIs on the register. Specifically, the PDOs registered by these countries represent 6.4% of the total and their PGIs 12.9%. Furthermore, the table below shows that these countries, despite their different juridical background and economic situations, have all registered more PGIs than PDOs. The only exception (narrowly) is Croatia, although Croatia only joined the EU in 2013.

Treaty between the Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union [2012] OJ L122/10.

⁶¹ See, Chart 3.1.

Table 3.2: PDOs versus PGIs in the new EU member states

	TOTAL PDOs	TOTAL PGIs
Cyprus	1	4
Czech Rep	6	23
Estonia	0	0
Hungary	6	7
Latvia	1	1
Lithuania	1	4
Malta	0	0
Poland	8	20
Slovakia	1	10
Slovenia	8	11
Bulgaria	0	2
Romania	1	2
Croatia	8	7
TOTAL	40	92

4.4 New Members and TSGs

A peculiar feature of the new EU members is that they have revived, to some extent, the Traditional Specialities Guaranteed (TSG). This is a label that was introduced in 1992 by the first EU GI Regulation, together with PDOs and PGIs. It has never been successful, however. The following paragraphs present this institute and show some data about how often these sample countries have used it.

4.4.1 Definition of TSGs

According to art 17 Regulation 1151/2012, TSGs have the following function:

A scheme for traditional specialities guaranteed is established to safeguard traditional methods of production and recipes by helping producers of traditional products in marketing and communicating the value-adding attributes of their traditional recipes and products to consumers.⁶²

Operatively, a TSG can be granted to products that fulfil the following requirements:

1. A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that:

(a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or

(b) is produced from raw materials or ingredients that are those traditionally used.

2. For a name to be registered as a traditional speciality guaranteed, it shall:

(a) have been traditionally used to refer to the specific product; or

(b) identify the traditional character or specific character of the product.⁶³

Hence, TSGs are not labels of origin because are granted to products whose distinguishing feature is the traditional method of production and not their link to a geographical area.⁶⁴ For instance, one of the most famous examples of TSGs is '*Pizza Napoletana*' ('Neapolitan Pizza'). Its specification provides for the recipe and the method to make the original Neapolitan Pizza by identifying the traditional ingredients that must be used, such as the variety of tomatoes, the type of flour and so on. However, the specification does not require the product to be made in Naples on

⁶² Regulation 1151/2012, art 17.

⁶³ Regulation 1151/2012, art 18.

⁶⁴ Regulation 1151/2012, art 3 defines 'traditional' as '(...) proven usage on the domestic market for a period that allows transmission between generations: this period is to be at least 30 years.' See also, Regulation 1151/2012, Recital 36.

in any selected area. Another famous TSG is the Spanish ham ‘*Hamon Serrano*’. The name of the product literally means ‘ham from the mountains’. Thus, once again, no indication concerning the geographical origin of the product is given.

Since the great majority of products that belong to the culinary tradition of a specific place can be protected by PGI (indeed, in these cases the reputational requirement will always be present), TSGs have never been widely used; to the extent that Regulation 1151/2012 had to specify that:

The specific objective of the scheme for traditional specialities guaranteed is to help the producers of traditional products to communicate to consumers the value-adding attributes of their product. However, as only a few names have been registered, the current scheme for traditional specialities guaranteed has failed to realise its potential. Current provisions should therefore be improved, clarified and sharpened in order to make the scheme more understandable, operational and attractive to potential applicants.⁶⁵

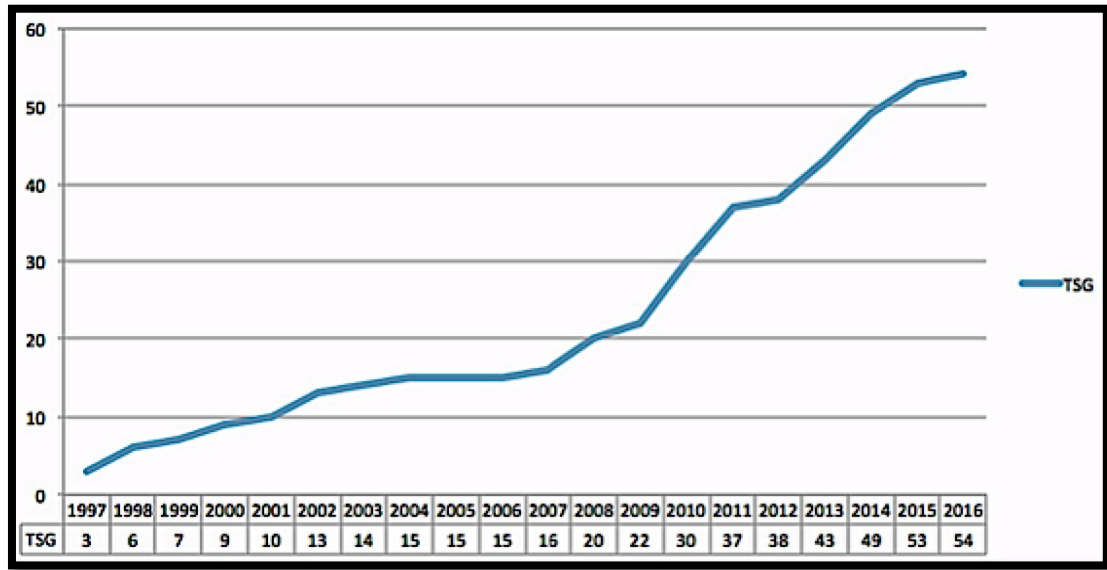
Although there is no sense that the EU Commission recommended to new members the adoption of a specific quality scheme, in fact the new EU members adopted various TSGs. Although it remains of secondary importance, the partial revival of this label reveals a lot about the marketing function that EU GIs are currently playing, as will be shown below.

4.4.2 TSG trend data

The following graph shows the growth of TSGs from 1997 until 2016:

⁶⁵ Regulation 1151/2012, Recital 34.

Chart 3.13: Overall growth of TSGs in the period 1996-2016



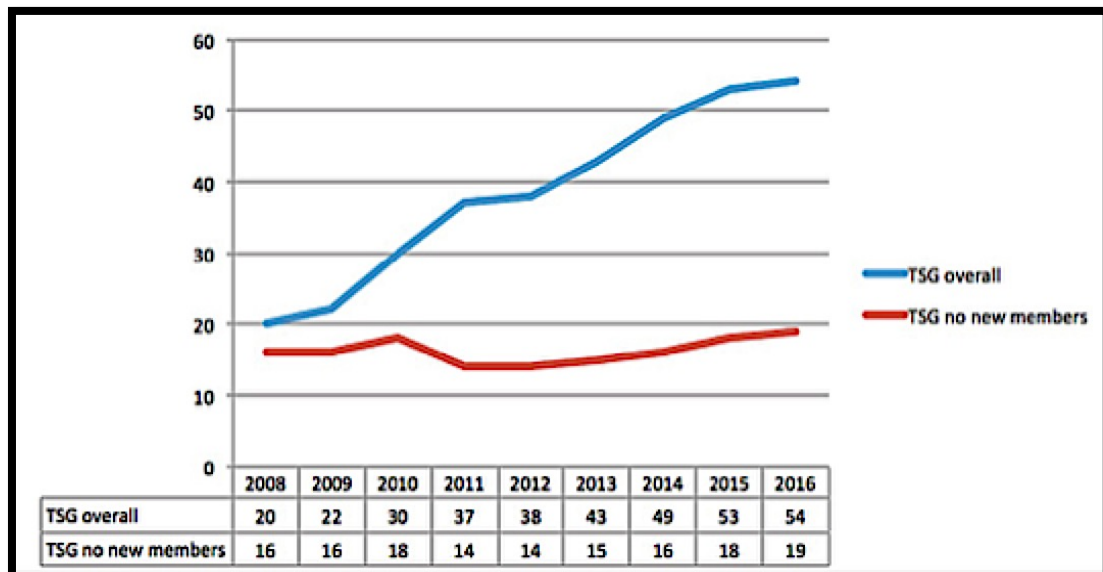
It can be seen that from 2007-2008, and even more after 2009, the trend began to increase sharply, although the number of TSGs remains modest, 54 at present. This change in the trend began when the new EU members started adding their TSGs to the register. The table below shows that eight out of the thirteen new countries registered at least two TSGs, and some of them have been very active, with Poland registering nine and Slovakia seven.

Table 3.3: TSGs registered by new EU member states overall

	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTAL
Cyprus										
Czech Rep				4						4
Estonia										
Hungary						3				3
Latvia						1	1	1		3
Lithuania			1				1			2
Malta										
Poland	4	2		3						9
Slovakia			2	4	1					7
Slovenia			3							3
Bulgaria							3	1		4
Romania										
Croatia										
	4	2	6	11	1	4	5	2	0	35

New member states have therefore registered 35 out of the 54 TSGs present on the register (64.8%). The impact of these countries on the revival of TSGs is shown in the next figure, which compares what would have occurred if the new members had not used this label. It clearly shows that TGSs have grown thanks to them.

Chart 3.14: TSGs registrations trends (2008-2016), overall and excluding new member states



This trend is important for the present chapter. In fact, as it will be more fully argued at a later stage of the analysis,⁶⁶ the use of TSGs by producers from new EU members can be explained by the fact that, in some cases, GIs, and other labels for food products, are used as marketing tools. Thus, if the origin function of the label loses its importance, any sign that generically indicates ‘tradition’ and/or ‘quality’, can be seen as a useful resource especially in countries in which agriculture still plays a central role.

This observation ends the first part of the analysis. In the next section, the study will focus on the content of the specification. In particular, special attention will be paid to the reputational element in the cases in which it does not take the form of the mere commercial practice related to the product.

5. Analysis of the Quality Schemes: the data

As explained in the methodology section, this Chapter presents an analysis of the specifications of both PDOs and PGIs. This contributes to the investigation of the substantive nature of EU GIs. It will be shown that the history of the products, and of the traditional practices related to them, plays a crucial role in the establishment of the product/place link. Furthermore, the exam reveals that many PGI specifications feature *terroir*-based arguments in order to strengthen the product/place link. By contrast, the history of the product is, unexpectedly, often included within PDO specifications. These findings are important for at least three reasons: (1) they show that, as long as the essential element of the product/place link is concerned, the difference between the two quality schemes has blurred, to some extent; (2) they

⁶⁶ Text to n 110.

demonstrate that the specifications for PDO products do not rely exclusively on the *terroir*-link; (3) they help to clarify the meaning of the reputational element required for applying for a PGI under art 5(2)(b) Regulation 1151/2012. In the following section, the findings will be presented and described.

5.1 The specifications of PDOs: general presentation of the findings

As explained in the methodology section, the specifications of PDO products were analysed by identifying those that provide evidence of the product’s reputation in order to substantiate the product/place link. Then, the PDOs that make reference to the history of the product and/or to the traditional practices and recipes related to it – the two almost always appear together – were distinguished from those that mention only its commercial reputation.⁶⁷ The results of this analysis were as follows:

Table 3.4: Reputational element and product history in PDO specifications

	Overall	Product's reputation	Product's history	Reputation %	History %
South	504	352	331	69.8%	94%
North	52	45	38	86.5%	84.4%
New Members	41	31	28	75.6%	90.3%
Total	620	458	429	73.8%	93.6%

The table includes: (1) the total number of PDOs registered by the members of the selected sample regions; (2) the overall number of registered PDOs, not just those registered by the sample countries (the raw named ‘total’); (3) the number of specifications that include references to the reputation of the product and, (4), out of these, those that make reference to the history of the good and/or to the traditional practices related to it; (5) the percentage of the specifications that mention the

⁶⁷ For details, see Methodology section above.

reputation of the product, without distinguishing this from the historical or commercial reputation and (6) the proportion of those that specifically mention the history and/or the tradition of the product and/or other features of the product unrelated to the market.

Before conducting the analysis, we were expecting to find low percentages, since the reputational element is not explicitly required by Regulation 1151/2012 as a compulsory element of a PDO specification. As a consequence, these results were very unexpected. In general, the table shows that the reputation of the product appears in 73.8% of PDO specifications. Furthermore, when a specification makes reference to the reputation of a product, its historical roots are almost always present (93.6% of the time). More specifically, in the specifications drafted by the southern European sample countries, the reputational element appears in almost 70% of cases and there is a constant reference to history (94%). A similar trend is followed by the new member states. Northern/central European countries, instead, add the reputational link to the specifications more often than southern European (86.5%), but make slightly less frequent reference to the history of the goods, although still very often (84.4% of the time). Since the data is univocal in showing consistently high figures, the differences between the northern/central and southern states do not seem especially significant. Overall, the data is enough to confirm one of the points that this chapter aims to demonstrate. That is, that the substantial differences between PDOs and PGIs is blurred and the historical reputational link has become an integral part of PDOs specifications as well.

5.2 The specifications of PGIs: general presentation of the findings

The specifications of the registered PGI products have been analysed in a way similar to that followed for PDOs. Hence, the study focuses on two aspects. First, it counts the PGIs that make reference to *terroir*. Then, the investigation takes into account the PGIs in which the reputational element consists of an historical link between the product and the place of production and/or of the application of traditional methods of production. Those PGIs which make reference to the mere commercial practice that characterises the product have not been listed. The results of the analysis were as follows:

Table 3.5: *Terroir* and product history in PGI specifications

	Quality	History	Total	Quality%	History %
South	281	395	450	62.4%	87.7%
North	70	120	123	56.9%	97%
New Members	36	84	91	39.5%	92%
Total	404	624	707	57.1%	88.2%

The table shows: (1) the total number of PGIs registered by the members of the selected sample-regions; (2) the overall number of registered PGIs, also by countries not included in the sample-regions (the raw named ‘total’); (3) the number of specifications that make a reference to the link between the place and the quality of the product, i.e. the *terroir* link; (4) those in which the reputational element consists of the history of the product and/or in the description of traditional practices related to it; (5) the percentage of the specifications that include the *terroir* link, and (6) the percentage of specifications based on the historical link as previously defined.

With regard to the results, 57.1% of the specifications add references to the essential role played by the physical environment in giving the product its peculiar

features. Furthermore, while the figures for southern and northern/central countries are almost equivalent, 62.4% and 56.9% respectively, the one for the new member states is significantly lower: 39.5%. This work cannot fully explain this discrepancy as only an in-depth comparative analysis of the policy applied by the competent authorities of those sample countries could clarify this point. It can be noted, however, that the number of PGIs that have been considered for the sample in question are only 91; fewer than the 123 belonging to the sample northern/central countries and the 450 from the southern ones. In any case, the overall figure mentioned above, that is 57.1%, is unambiguous enough. As to the reference to history, as for PDOs, the percentage is very high, 88.2%, and basically homogeneous across the sample regions.

In conclusion, the analysis of the specifications of PGIs also confirms that the two quality schemes are to some extent similar, at least as far as the description of the product/place link is concerned. Indeed, in the case of PDOs it has been shown that the history of the product is mentioned very often, even if it is not required by law. On the other hand, a meaningful number of PGI specifications include a reference to the element of *terroir*. The reasons for these outcomes will be investigated below. Prior to that, however, the following section will examine the nature of what this work calls the ‘historical link’, in order to better determine what it is.

5.3 The rise of the historical element

The last important issue that is important to clarify in this section is whether the historical link has emerged gradually or it was present from the beginning of the EU GI experience. In order to answer this question, we have selected three periods of four years each. The initial one, from 1996 to 1999; the final, from 2013 to 2016 and an

intermediate one, from 2005 to 2008. Then, the use of the historical reputational link during each time frame has been calculated, both for PDOs and PGIs. The results are summarised in the following table.

Table 3.6: Growth of the historical reputational link in both PDOs and PGIs

Time frame	Overall registered EU GIs	PDOs	PGIs	PDOs historical link	PGIs historical link
1996-1999	495	276	183	68,4%	75,4%
2005-2008	164	74	90	79,7%	88%
2013-2016	251	85	166	75,2%	93,9%

The table shows: (1) the overall number of EU GIs registered during the selected time frame; (2) the overall number of registered PDOs and PGIs; (3) the percentage of PDOs and of PGIs that feature the historical reputational element. Although caution is needed because the figures can be influenced by the kind of goods that were registered during the selected periods and/or by other factors, a trend seems to emerge. In particular, the percentage of PGIs that embody the historical reputational link has increased significantly, from 75,4% during the 1996-1999 time frame to the 93,9% in the 2013-2016 period. The same can be observed for PDOs in which the historical link rose, on average, by 7% between the first and the last two periods. Therefore, this kind of link has always been very relevant from the beginning and has gradually increased steadily until today.

6. Outlining the ‘historical link’: a proposal for a tripartite classification

In the following sub-sections, the work will show the different forms that the historical reputational element can assume. On the basis of the analysis of the

specifications of all the registered GIs, this work proposes to divide this type of link into three categories: (1) purely historical; (2) based on traditional knowledge or traditional know-how; (3) making reference to the local environment and/or rural development.

The next sections will apply these categories to both PDOs and PGIs. The goal is to explain the various ways in which the reputational product/place link is established, as well as how the importance of the product, and its impact on the place of origin, are embodied into the specifications.

6.1 The tripartite structure of the historical reputational link in PDOs

6.1.1 Cases where the reputational link is absent

To begin with, and for the sake of clarifying the methodology applied, it is necessary to explain where the PDO specifications have not included the historical reputational link. Firstly, the PDOs whose specifications make only a superficial reference to the professionalism of producers have not been counted. An example is the French ‘Moules de bouchot de la Baie du Mont-Saint-Michel PDO’, which makes a very cursory reference to the fact that mussel bed farming was introduced in the defined area in the 1950s, and then states:

Thus, the geographical environment of the Bay of Mont-Saint-Michel allows, by virtue of its natural components, judiciously exploited by professionals since production began, to confer special characteristics on the mussels of the species *Mytilus edulis* bred on mussel beds.⁶⁸

⁶⁸ Moules de bouchot de la Baie du Mont-Saint-Michel PDO [2010] OJ C302/14, [4.6].

Although this is a reference to the importance of the human factor in the production of these French mussels, there is no true reference to the history and tradition of production. It, therefore, does not qualify for this analysis.

Another example is the Greek olive oil ‘Galano Metaggitsiou Chalkidikis PDO’ in which the only trace of the description of the human factor is this:

The dominant presence of this variety in the area is due to the microclimate (...) and human activity, which literally shaped the arable land, combating soil acidity with organic and green manure and soil roughness with manual digging.⁶⁹

Finally, it is expedient to quote, for completeness, a specification from a northern/central European country such as Austria. For instance, the specification of the cheese ‘Altenburger Ziegenkäse PDO’ only mentions the local tradition of making the product in these terms ‘[g]oat-keeping has traditionally been a prominent feature of the region.⁷⁰’ Although this implies the existence of longstanding practices carried out by the local communities, since the specification provides no additional details, we have not counted it. Instead, the specifications in which the reputational product/place link is present are very variegated and provide an interesting picture of the nature and the function of EU GIs, as will be shown below.

6.1.2 The nature of the historical reputational link: history

Since the early days of the EU GI regime, specifications have established the product/place link by providing details on the history of the product. For instance, the specification of one of the first registered PDOs, the French cheese ‘Abondance’, reads as follows:

⁶⁹ Galano Metaggitsiou Chalkidikis PDO [2015] OJ C143/26, [5.3].

⁷⁰ Altenburger Ziegenkäse PDO [1997] OJ L22, [5(f)].

From before the year 1000, the canons of the Abondance monastery developed the rearing of cows of the Abondance breed, brought to the region by the Burgundians, and the production of a high-quality cheese. In 1381, when the conclave met in Avignon to elect a new pope, 15 quintals (1500 kilogrammes) of Abondance were sent down there. King Louis XIV was partial to Abondance and since then the cheese has maintained its reputation.⁷¹

The specification of the prestigious Italian ham ‘San Daniele’ goes even further back in time:

The history of the product dates back to antiquity and has been documented in its region of origin from the time when written records began. Its historical and economic roots are to be found in the Celtic custom of using salt to preserve meat, later refined in Roman times.⁷²

Northern/central European countries have also made extensive use of the historical link. This is, for instance, the case of the Dutch cheese ‘Boeren-Leidse met sleutels PDO’:

As early as 1184, cheese was sent from Holland to Paris, and in the following centuries Dutch cheese became an international product. It was named after specific market places, e.g. Edam after the town of Edam, Gouda after the town of Gouda. (...) Because this artisanally-produced cheese was traded from the 17th- 18th century in Leiden, production has traditionally been concentrated around that town.

A complete list of the different ways of describing the historical origins of the PDO products collected in the specifications would be beyond the scope of the present work. Indeed, the case record is very long. Numerous references are made to the accounts of ancient Greek and Roman historians⁷³; the symbols and coats of arms

⁷¹ Abondance PDO [1996] OJ L148, [5(d)]. The work of monks is quoted also in Staffordshire Cheese PDO [2006] OJ C148/12, [4.6].

⁷² San Daniele PDO [1996] OJ L148, [5(d)].

⁷³ See, for instance, Ekstra deviško oljčno olje Slovenske Istre PDO [2006] OJ C127/16, [4.6]; Pagnotta del Dittaino PDO [2008] OJ C283/15, [5.3].

of cities and regions⁷⁴; popular songs⁷⁵; paintings⁷⁶; ancient civilizations, such as Romans,⁷⁷ Arabs⁷⁸ but also Phoenicians⁷⁹; prehistoric times⁸⁰; religious faith⁸¹ and many others.

6.1.3 The nature of the historical reputational link: traditional knowledge/know-how

Frequently, the product/place link is established by making reference to the traditional knowledge or know-how within the area of production. This proof often coexists with the historical description of the origin of the good and distinguishing the two is sometimes difficult. In cases like the British Stilton cheese, however, the specification makes a direct reference to one of the typical elements of traditional knowledge, i.e. being handed down from generation to generation following a unique recipe which is the outcome of such evolution and provides detailed information:

The processes by which STILTON cheeses are made have been established over the last 200 years. The knowledge has been handed down through generations of families and since STILTON has only ever been produced in the defined area there is a unique pool of local knowledge and expertise. The process involves a unique recipe using the basic ingredients of milk, rennet, starter and salt combined with

⁷⁴ Nošovické kysané zelí PDO [2007] OJ C102/17, [4.6].

⁷⁵ Azeite do Alentejo Interior PDO [2006] OJ C128/16, [4.6].

⁷⁶ Asparago Bianco di Bassano PDO [2006] OJ C321, [4.6].

⁷⁷ Among the dozens, see Allgäuer Sennalpkäse PDO [2016] OJ C20/10, [5].

⁷⁸ Pistacchio Verde di Bronte PDO [2009] OJ C130/16, [4.6].

⁷⁹ Carciofo Spinoso di Sardegna PDO [2010] OJ C149/9, [5.3].

⁸⁰ Isle of Man Manx Loaghtan Lamb PDO [2006] OJ C3/4, [4.4.].

⁸¹ Kočevski gozdni med PDO [2011] OJ C70/14, [4.6]. In this case the specification states that the longstanding importance of this product is proved by the fact that, in medieval times, the local population chose as its patron saint St. Ambrose protector of bees.

local expertise in the control of temperature and humidity as the cheese is taken through its various stages of ripening.⁸²

Similar descriptions appear in cases in which the human role has been decisive in the creation of the product:

The local variety is the direct result of the observation and know-how of the area's producers: it reflects their relationship with the environment and is particularly well-suited to the prevailing weather conditions. Over the centuries man has succeeded in preserving the varietal type and the traditional cultivation (...).⁸³

Sometimes, the product is even defined as '(...) a symbol of the culture and traditions of the production area.'⁸⁴ Moreover, the tradition is sometimes described as what makes an area truly unique:

Each human settlement has retained its peculiarities unchanged during its life as a distinct population unit in its own separate area. Accordingly, though climate and land may be substantially uniform, the presence of traditions handed down by time and history cannot be neglected. (...) Negligence of such a situation would be a profound misrepresentation of cultural and human traditions.⁸⁵

6.1.4 The nature of the historical reputational link: rural development and the environment

In line with the objectives of the CAP, which have become increasingly focused on rural development,⁸⁶ GI specifications have also highlighted, from their beginning,

⁸² 'White Stilton cheese / Blue Stilton cheese PDO' (dossier n° UK/PDO/0017/0277, Summary, 1996), 6. Similarly, see, among the others, Strachitunt PDO [2013] OJ C290/5, [5.3.]; Conwy Mussels PDO [2016] OJ C70/3, [5.3.]; 'Mela Val di Non PDO' (dossier n° IT/PDO/0005/0197, 2003) art 6; Casatella Trevigiana [2007] OJ C204/15, [4.6].

⁸³ Piment d'Espelette PDO [2001] OJ C354/9, [4.6]. See also, Fazola Warzawska PDO [2011] OJ C129/19, [5.1.2]; Isle of Man Queenies PDO [2012] OJ C38/32, [5.1.]; Papa Antigua de Canarias PDO [2012] OJ C31/18, [5.3.]; Pasas de Málaga PDO [2012] OJ C175/35, [5.3].

⁸⁴ Fagiolo Cannellino di Atina PDO [2009] OJ C300/09, [5.3].

⁸⁵ 'Monti Iblei PDO' (dossier n° IT/PDO/0217/1521, 2003), art 5(f).

⁸⁶ Text to n 11 in Ch 2.

the historical, social and economic importance of the goods for a specific area. This is an early example of this:

The link lies in the conditions governing the production of milk: local breeds are used, and the cows are fed without the addition of ensilaged crops, which reinforces the effect of the flora in the mountain pastures. It also lies in the tradition and reputation of Reblochon, which have enabled Reblochon to serve as a catalyst in the development of agricultural activity in these mountainous areas.⁸⁷

In some cases, the specifications emphasise the synergy between the local producers and the GI-product:

The benefits, both economic and dietary, of the chestnut tree and its products enjoyed by the inhabitants of the Province of Lucca and of La Garfagnana in particular, are attested since antiquity in numerous documents. Local people have therefore developed a close link with the tree in order to exploit its products to the maximum.⁸⁸

Sometimes, the specifications explicitly recognise the important role played by the GI in preserving the traditional activities of disadvantaged areas and sustaining the autochthonous communities:

The production of Salers has been existing for several centuries. It ensures the valorisation of the grassland resources of the upland areas. The granting of the Appellation has allowed the preservation of the traditional agricultural activities.⁸⁹

Moreover, from time to time, GIs are explicitly linked to local environmental policies:

⁸⁷ Reblochon (dossier n° FR/PDO/0117/0130, 1996), art 5(f).

⁸⁸ Farina di Neccio della Garfagnana PDO [2003] OJ C153/276, [4.6]. See also, Fico Bianco del Cilento PDO [2005] OJ C137, [4.6].

⁸⁹ ‘Salers PDO’ (dossier n° FR/PDO/0117/0134, 2003), art 5(f). Translated by the author. Original text ‘*La production de Salers existe depuis plusieurs siècles, elle assure une valorisation des ressources herbagères d’altitude. La reconnaissance de l’Appellation a permis le maintien d’activités agricoles traditionnelles.*’

See also, Saint-Nectare PDO (dossier n° FR/PDO/0017/0132, 1996), art 5(f); ‘Beaufort PDO’ (dossier n° FR/PDO/0117/0106, 2003) art 5(f).

The milk used to produce Vorarlberger Alpkäse has a particular flavour as a result of the Alpine vegetation in the area of manufacture, since the cattle are entirely grass-fed. This, together with the fact that the cheese is produced by hand using traditional methods, gives the cheese its characteristic appearance and taste. Cheese-making plays a key role in preserving Vorarlberg's traditional Alpine farming and is indispensable to maintaining the biodiversity and stability of Vorarlberg's Alpine cultural landscape.⁹⁰

6.2 The tripartite structure of the historical link in the PGIs

6.2.1 The nature of the historical link: the history

As shown above, a huge number of PGIs make reference to the historical origins of the product, and an exhaustive presentation of all the nuances of the historical reputational link in the field of PGIs would therefore exceed the scope of the present work. Here, it is necessary to stress that the product is often presented as deeply linked to the society and anthropology of its area of origin. This is an example:

The historical production of 'Jambon de Lacaune' has its origins in the profession of 'mazelier', which was well-established in Lacaune in the Middle Ages. In the Occitan language, it designated someone who sacrificed cows, sheep and pigs. In about the 15th century, with the advent of professional specialisation, this term came to designate a person who transformed pigmeat, i.e. the equivalent of the pork butcher of today.⁹¹

Sometimes, the specification clearly aims at portraying the product as linked to the culture and customs of a place:

The oldest depiction of the product seems to be found in the decoration of the interior of the Baptistery of Parma (1196-1307). On the frieze slab dedicated to the Aquarius sign of the zodiac, two salamis can be seen at the hearth on a rotating saucepan stand. These salamis are of a

⁹⁰ 'Vorarlberger Alpkäse PDO' (dossier n° AT/PDO/0017/1413, 1997) art 5(f).

⁹¹ Jambon de Lacaune PGI [2015] OJ C47/7, [5]. See also, Panforte di Siena PGI [2010] OJ C231/9, [5.1]; Ovos moles de Aveiro PGI [2008] OJ C184/42, [4.6].

size and shape that can still be found today and are the same as those of ‘Salame Felino’ PGI.⁹²

The importance of the history of a product in order to establish its link to the place of origin is common to northern/central and southern countries. This is a good example from the U.K.:

‘Newmarket Sausages’ soon became a popular snack with the horseracing fraternity, which included members of the Royal Family. The sausages have been popular with the Royal Household since the beginning of the 19th century. The recipe for the ‘Newmarket Sausage’ is unchanged since the days of Queen Victoria, and continues to be made to the same exacting standards as they always have been. Handmade with care in small batches, and free from artificial colouring and flavourings.⁹³

Sometimes, the origin of a product melts into legend:

Legends about the origin of Štramberk Ears are linked to the Secret History of the Mongols, which was written 13 years after the death of the founder of the unified Mongol state — the great conqueror of the world, Genghis Khan. A detachment of Tatar troops surrounded Štramberk castle in 1241. Some of the citizens withdrew into the castle, while others sought cover on Kotouč Mountain. During the night before Ascension Day there was a great storm accompanied by torrential rain and a flash flood swept through the Tatar troops. Their camp was destroyed and those that survived hastily withdrew. However, at the site sacks of human ears that the Tatars had cut off their Christian prisoners were found. As thanks to God the residents made an annual pilgrimage on Ascension Day up Kotouč Mountain. As a reminder of those evil times Štramberk Ears are still baked in Štramberk today.⁹⁴

⁹² Salame Felino PGI [2011] OJ C19/14, [5.3]. See also, Kritiko Paximadi PGI (dossier n° EL/PGI/0017/0064, 1996), 5(d); Chouriço de Carne de Estremoz e Borba PGI [2002] OJ C102/2, [4.6]; Alheira de Vinhais PGI [2007] OJ C236/18, [4.6].

⁹³ Newmarket Sausage PGI [2012] OJ C69/17, [5.3]. See also, Filderkraut PGI [2012] OJ C44/45, [5.1], [5.2]; Edam Holland PGI [2008] OJ C57/39, [4.6]; Marchfeldspargel PGI [2016] OJ C437/11, [5]; Whitstable Oysters PGI (dossier n° UK/PGI/0017/0371, 1997), [5].

⁹⁴ Štramberské uši PGI [2006] OJ C148/15, [4.6]. See also, Kainuun rönttönen PGI [2008] OJ C74/72, [4.6]; Rogal świętomarciński PGI [2008] OJ C62/6, [5.3]; Batata doce de Aljezur PGI [2008] OJ C324/31, [4.6].

It should be clarified, however, that not all PGI products boast centuries of history; sometimes, their roots date back only to the 1950s or even more recent times.⁹⁵

6.2.2 The nature of the historical link: traditional knowledge/know-how

Just like PDOs, PGI specifications also often emphasise the traditional know-how embodied within the products and their ancient production methods:

The whole process of preparing and producing ‘Poljički soparnik’/‘Poljički zeljanik’/‘Poljički uljenjak’ is the result of the local population's special skill and know-how in preparing and producing the product and of the tradition that has been passed down through the generations and nurtured in the defined geographical area. (...) The way in which ‘Poljički soparnik’/‘Poljički zeljanik’/‘Poljički uljenjak’ is prepared nowadays and its ingredients and the traditional utensils used to make it are the same as in former times, as described by Ivanišević in his 1906 book.⁹⁶

Moreover, the concept of ‘transmission from generation to generation’ is very present as well:

The centuries-old Rhineland tradition of syrup-making has resulted in the perfection of production process and taste. The relevant skills have been passed on from generation to generation. In the 14th and 15th centuries, sugar beet became firmly established as a farmed crop. In the Rhineland, the beets were one of the tithes which farmers had to pay to their feudal lords from the 15th century on.⁹⁷

In general, various specifications aim at proving that there is a link between a product and the lifestyle of the people who traditionally make and consume that

⁹⁵ For instance, Lentilles vertes du Beny PGI, [1997] OJ C336/4, [4(f)]; Teviotdale Cheese, (dossier n° UK/PGI/0017/0285, 1998).

⁹⁶ Poljički soparnik PGI [2015] OJ C358/8, [5]. See also, Glückstädter Matjes PGI [2015] OJ C2/7, [5.1]; Turrón de Agramunt PGI [2001] OJ C319/2, [4.6.1].

⁹⁷ Rheinisches Zuckerrübenkraut PGI [2011] OJ C189/333, [5.1]. See also, Ail blanc de Lomagne PGI [2008] OJ C87/8, [4.6]; Rillettes de Tours [2012] OJ C183/16, [5.1].

product.⁹⁸ The numerous references to local know-how and its impact in terms of giving the product its unique features are interesting as well:

Experience historically handed down from one generation to the next determines the length of each stage in turning fresh pork into a culinary high-quality processed product. The producers' knowledge and experience concerning seasonal and climatic variations in production conditions enable them to optimise the timing of production.⁹⁹

6.2.3 The nature of the historical link: rural development and the environment

Turning now to the reputational element linked to rural development and the environment, some examples can be found in which the specification stresses the socio-economic importance of the good: 'Cattle rearing has occupied a large place geographically and economically in the Basque Country. Life styles linked to pastoral activities are deeply entrenched (...).¹⁰⁰'

As far as the environment is concerned, some specifications stress the impact of the product on the landscape and its preservation:

Since the late 18th century, potato-growing (whether on irrigated or non-irrigated land) has been one of the most distinctive features of Galicia's agricultural landscape, as well as forming *the* nutritional basis both for the human population and for stock rearing (especially cattle and pigs) in the region.¹⁰¹

⁹⁸ Pizzoccheri della Valtellina PGI [2016] OJ C185/7, [5]; Chouriço de Carne de Estremoz e Borba PGI [2002] OJ C102/2, [4.6]; Pa de Pagès Català [2012] OJ C128/14, [5.1]; Saint-Marcellin PGI [2012] OJ C384/21, [5.2], [5.3].

⁹⁹ Gailtaler Speck PGI [2001] OJ C327/12, [4.6]. See also, Spargel aus Franken PGI [2012] OJ C125/13, [5.3]; Cotechino di Modena PGI (dossier n° IT/PGI/0017/1500, 1999), 5(f); Tiroler speck PGI (dossier n° AT/PGI/0017/1395, 1997) 5(f).

¹⁰⁰ Carne de Vacuno del País Vasco PGI [2003] OJ C207/10, [4.6].

¹⁰¹ Pataca de Galicia PGI [2005] OJ C240/28, [4.6]; see also, Holsteiner Karpfen PGI [2006] OJ C306/10, [4.6]

The reputation of a PGI is sometimes linked to its ability to sustain communities and preserve traditions handed down from generation to generation:

Mackerel of the species *Scomber japonicus* have traditionally been fished off Andalusia and have always been used by the region's processing industry. The non-industrial preserving sector has been dominated by small and medium-sized family undertakings, managed by either the founders or their descendants, which has made it possible to maintain traditional production methods. The long traditions of the industry in Andalusia, and the experience of non-industrial production handed down from father to son guarantee a skilled labour force, which the industrial processes referred to above are threatening to do away with. In addition, the preserving undertakings are located in the regions of Andalusia most dependent on fishing, where they make an important contribution to maintaining employment, particularly as the non-industrial methods used are more labour-intensive.¹⁰²

In some cases, the link between the product and the environment is particularly strong. In the case below, the reputation of the product is linked to an area protected by UNESCO. The production of the good fits into the environment and the good practices employed in order to make it contribute to the preservation of the area.

Jihočeská Niva blue cheese has been produced at the Český Krumlov plant using the same production method since 1951. The cheese is named after the meadows and pastures of Šumava, where the main ingredient comes from cow's milk delivered to the Český Krumlov plant from South Bohemia, particularly from the foothills of Šumava. (...) This varied, rugged terrain is characterised by its very clean environment, particularly the Český Krumlov region and foothills of Šumava (Unesco Biosphere Reserve declared in 1990). As proof that the South Bohemian natural environment is highly valuable, a large number of officially protected landscapes have been declared, two of which are protected by Unesco.¹⁰³

Finally, once again, the specifications confirm that the GI-products play a role in fostering rural development:

¹⁰² Caballa de Andalucía PGI [2008] OJ C240/28, [4.6].

¹⁰³ Jihočeská Niva PGI [2007] OJ C278/14, [4.6]. See also, Třeboňský kapr [2013] OJ C179/27, [5.3].

The wide ranging economic, cultural and social interest in this product has made it possible to develop and improve cultivation techniques, sales and marketing strategies and, in keeping with tradition, to maintain production that provides an income whilst fostering local cooperation and protection of the rural environment.¹⁰⁴

In conclusion, in this section, the present work proposes a tripartite structure capable of describing the many elements that form what has been called the ‘historical link’. These three categories are common to both PDOs and PGIs and are useful in order to understand the substantive nature of the product/place link. In the next section the abovementioned trends, that up to now have only described, will be interpreted, and some explanations for them offered.

7. Interpretation of the data: why have PGIs become predominant?

In the previous section we found that the differences between PDOs and PGIs have blurred in so far as the description of the product/place link is concerned. Moreover, the research has concentrated on the nature of the reputational element and has suggested a categorisation of the forms in which it can manifest itself, thus providing some clarification. Now, the research will interpret the data in order to understand the substantive meaning of the findings and confirm their importance. In particular two issues will be clarified. First, why the PGIs have become the predominant model of GI; second, why the historical reputational link appears so often in the specifications. This section will focus on the first point and will analyse four possible, and not mutually exclusive, explanations.

¹⁰⁴ Asparago di Cantello PGI [2015] OJ C255/7, [5]. See also, Rosée des Pyrénées Catalanes PGI [2015] OJ C347/19, [5]; Ternera de los Pireneos Catalanes PGI [2015] OJ C344/4, [5].

7.1 PGI rules are more flexible and grant the same level of protection

The requirements for the granting of a PGI can be considered less demanding, compared to those for a PDO, especially because of their flexibility. Indeed, under art 5(2)(b) and (c) Regulation 1151/2012, a product qualifies as a PGI when a ‘(...) given quality, reputation or other characteristic is essentially attributable to its geographical origin’ and ‘at least one of the production steps (...) take place in the defined geographical area.’ These provisions are very broad. For instance, virtually any kind of product/place link is acceptable as long as it proves that any characteristic of the product is attributable to its area of production. Furthermore, the rules do not specify which steps of the production must take place in the given geographical area. Therefore, the producer is free to organise the production in the way that he finds more convenient, also completing some steps of the procedure outside the designated area.

It follows that there are many different possible combinations that can lead to a PGI product and, as a consequence, it is arduous to draw a typical profile of this class of GI-goods.¹⁰⁵ Completing an exhaustive map of all the possible variants is an exceptionally difficult task that cannot be fulfilled here. However, at least a limited attempt can be made. To begin with, as it has just been reminded, the product can be connected to its place of origin by a link that can be: (1) qualitative; (2) reputational; (3) both qualitative and reputational; (4) other, different from the first two. These must be combined with the characteristics of the method of production. In particular,

¹⁰⁵ Cristine de Sainte Marie and François Casabianca, ‘The Work of Scientific Valuation in the Justification of the Geographical Origin of Food Products under PGI: Constitution and Collective Appropriation of Local Knowledge’ in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The Socio-Economics of Origin Labelled Products in Agri-Food Supply Chains: Spatial, Institutional and Co-ordination aspects. Proceedings of 67th European Association of Agricultural Economists (EAAE) Seminar*, (INRA 2000) 212.

the product can be fresh or processed, such as cured ham, pickled vegetables and so on. Furthermore, in the case of processed food it needs to be considered whether the raw materials are sourced locally and where the processing takes place. In this case, three scenarios are possible: (1) the raw materials are imported from a different place into the designated area, where they are processed; (2) the raw materials originate from the designated area but the processing takes place elsewhere; (3) both stages of the production take place in the designated area. Finally, the issue of packaging introduces additional complications. In fact this operation can take place within or outside the designated area, thus enriching the number of possible combinations concerning the process of production.

The short analysis above provides an overview of the flexible nature of PGIs. This is a feature that they do not share with PDO products that must be produced entirely in the designated area, including packaging, and cannot be linked to their area of origin solely by the reputation of the good.¹⁰⁶ However, despite their different substantive nature, they are subject to the same administrative procedure¹⁰⁷ and enjoy the same level of protection,¹⁰⁸ thus making PGIs more convenient.

This is linked to the fact that it is argued, and not without merit, that GIs have turned into marketing tools.¹⁰⁹ An in-depth analysis on how GIs can strengthen the market appeal and the competitiveness of a product would exceed the scope of the present research, therefore we refer the reader to the best existing studies on this

¹⁰⁶ Regulation 1151/2012, art 5(1).

¹⁰⁷ Ibid, art 8.

¹⁰⁸ Ibid, art 13.

¹⁰⁹ See, Irene Calboli, 'Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies' [2015] IIC 760.

point.¹¹⁰ Generally speaking, data confirm that GIs have become an important business. In particular, a study financed by the European Commission in 2012 estimated that the worldwide sales value of EU GIs was € 54.3 billion in 2010.¹¹¹ It is not unreasonable, therefore, to maintain that many producers could be tempted to apply for GI protection only to benefit from a new marketing tool. In this regard, PGIs are a perfect solution because, unlike PDOs, they could be granted to goods that are linked to a geographic area only by mere commercial reputation. Indeed, the fact that the new EU members have rediscovered TSGs can be explained by arguing that those countries, in which agriculture is often very important for their economy,¹¹² have considered TSGs to be a good element of a marketing strategy. This, in turn, is

¹¹⁰ Among the others, London Economics, ‘Evaluation of the CAP Policy on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI): Final Report’ (European Commission 2008) 124-149; Tanguy Chever, ‘Les Indications Géographiques (IG) Au Sein de l’Union Européenne (UE): Aspects Économiques’ (2015); Koert Van Ittersum, Math Candel and Franco Torelli, ‘The Market for PDO/PGI Protected Regional Products: Consumer’ Attitudes and Behaviour’ in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The Socio-Economics of Origin Labelled Products in Agri-Food Supply Chains: Spatial, Institutional and Co-ordination aspects. Proceedings of 67th European Association of Agricultural Economists (EAAE) Seminar*, (INRA 2000); Toula Perrea and others, ‘Exploring the Moderating Role of Consumer Ethnocentrism on Consumer Value Perception towards Own-Country Geographic Indication (GI) Foods’ in Filippo Arfini and others (eds), *Intellectual Property Rights for Geographical Indications* (Cambridge Scholars Publishing 2016); Alexandra Vasic, ‘Exploring the Moderating Role of Consumer Ethnocentrism on Consumer Value Perception towards Own-Country Geographic Indication (GI) Foods’ in Filippo Arfini and others (eds), *Intellectual Property Rights for Geographical Indications* (Cambridge Scholars Publishing 2016). See also, FAO&SINER-GI (n 113) Chapter 3; European IPR Helpdesk, ‘The Value of Geographical Indications for Business’ <<https://www.iprhelpdesk.eu/node/1565>>.

¹¹¹ 56% of this total comprises sales of wine 56% (€ 30.4 billion); 29% agricultural products and foodstuffs (€ 15.8 billion); 15% for spirit drinks (€ 8.1 billion) and 0.1% for aromatised wines (€ 31.3 million). The sales contributing to these figures were made for the most part in the country of production (60%); then in other EU countries (20%) and, lastly, outside the EU (20%). See, Tanguy Chever and others, ‘Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI)’ (European Commission 2012) AGRI-2011-EVAL-04.

¹¹² See, Section 4.

linked to the fact that, as many studies and reports point out, there is a growing demand from consumers for ‘typical’ and ‘local’ products.¹¹³

7.2 PGIs protect local products that do not qualify for PDO

7.2.1 General overview

Another reason why PGIs have rapidly grown in number is the fact that they provide protection to products that would not qualify for PDO. This generally occurs because, although showing a longstanding historical link to their place of origin, they are not characterised by a physical connection to the area. Indeed, different classes of products protectable under EU GI law are composed of non-*terroir* products and these are almost always protected through PGI. This can be easily shown by selecting the major classes of products that are not intuitively linked to the soil and, therefore, to which the *terroir* paradigm does not clearly apply. They will be called ‘plausible PGI products’. These are: (1) fresh meat (class 1.1); (2) meat products (class 1.2); (3) fresh fish, molluscs and crustaceans (class 1.7); (4) bread, pastry, cakes, confectionery and biscuits (class 2.4) and (5) pasta (class 2.7).¹¹⁴ The table below shows how the ‘plausible PGI’ products are protected.

¹¹³ Elizabeth Barham, “‘Translating Terroir’ Revisited: The Global Challenge of French AOC Labeling’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016); Angela Tregear and Georges Giraud, ‘Geographical Indications, Consumers and Citizens’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011) . See also, FAO&SINER-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2nd edn, FAO 2010), iii, xi.

¹¹⁴ The classes indicated in brackets are the official categories adopted by the EU Commission.

Table 3.7: ‘Plausible PGI’ Products

Class of Products	PDOs	PDOs south	PGIs	PGIs south
Fresh Meat (class 1.1.)	40	29	118	103
Meat Products (class 1.2)	35	31	133	84
Fresh fish, molluscs and crustaceans (class 1.7)	13	5	30	10
Bread, pastry, cakes, confectionery and biscuits (class 2.4)	4	3	71	34
Pasta (class 2.7)	0	0	10	7
Total	92	68	362	238

The results of this analysis show that, out of a total of 454 products included in the ‘plausible PGI’ category, 362 are in fact protected by a PGI; that is 79.7%. Moreover, the table shows that the figure is largely due to the southern countries that, in this case, are not influenced by their traditional approach towards GI protection.

If the same exam is conducted on ‘plausible PDOs’, the results are more indeed interesting. This second group encompasses three main typologies of products: cheeses (class 1.3), oils and fats and fruit (class 1.5) and vegetables and cereals (1.6).¹¹⁵ These products are ‘plausible PDOs’ because it can be expected to see them protected under the PDO quality scheme. In fact, cheeses are traditionally protected by AOs; the ‘oils and fats’ category is composed to a large extent by different kinds of olive oil, that is products for which a strong analogy with wine applies; finally, fruit, vegetables and cereals are products for which the link to the soil is intuitive. The

¹¹⁵ It is important to stress that the sample presented in these two tables is statistically valid even if it does not take into account all the classes of products identified by the EU. In fact, they collect 1192 out of 1327 EU GIs (620 PDOs and 707 PGIs), equal to the 89.75% of all the registered GIs.

same analysis carried out for ‘plausible PGI’ products has been conducted for ‘plausible PDOs’ with the following results.

Table 3.8: ‘Plausible PDO’ Products

Class of products	PDOs	PDOs (South)	PGIs	PGIs (south)
Cheeses (Class 1.3)	188	153	42	12
Oils and fats (Class 1.5)	115	108	17	14
Fruit, vegetables, cereals fresh or processed (Class 1.6)	150	122	226	174
Total	453	383	285	200

The table shows that, although the majority of classes are protected by PDO as expected, there is one class that does not follow the trend, that is ‘fruit, vegetables, cereals fresh or processed’. In fact, in this case 226 products are protected by PGIs. This is a very high number that represents alone the 31,9% of all the registered PGIs. This is surprising because these products are the only ones, among the classes of PDOs that have been considered, that physically grow from the soil. Thus, a specific analysis on this class was undertaken.

7.2.2 Specific focus: fruit, vegetables, cereals fresh or processed

At first, it was hypothesised that the result was determined by the fact that this class of products explicitly encompasses processed products for which the link to *terroir* is not enough to determine their final characteristics. Thus, in order to confirm this hypothesis, a specific analysis of the specifications has been carried out. In particular,

this focused specifically on the description of the method of production and on the product/place link. The research revealed that only one-third, approximately the 34%, of the products registered in this class are processed, such as dried, peeled, sliced, pickled or used for preserves and so on. Indeed, a further analysis of the remaining two-thirds of the specifications of the abovementioned class reveals a lot about the substantive nature as well as the practical function of PGIs. In particular, three broad scenarios emerged: the first one concerns the processing and the packaging of the product, while the other two involve the way through which the product/place link is described.

Processing and packaging take place outside the designated area

The first scenario encompasses cases, common to both processed and non-processed goods, in which the product can be packaged, but also processed, outside the designated area. This includes some examples in which the specification is very broad and generic to such an extent that it raises doubts as to the true existence of the product/place link. For instance, the Belgian variety of potato ‘Plate de Florenville’, after being harvested, can be prepared and packaged everywhere in the European Union.¹¹⁶ Other similar examples are ‘Lički Krumpir’, a tuber from Croatia,¹¹⁷ and ‘Carota Novella di Ispica’, an Italian variety of carrots.¹¹⁸ In both cases, the specifications state that the preparation and the packaging of the product can take place outside the designated area without any specific limitation.

¹¹⁶ Plate de Florenville PGI, [2015] OJ C72/26, [3.6]. For a similar example, see Asperges du Blayais PGI, [2015] OJ C238/13, [3.5].

¹¹⁷ Lički Krumpir PGI, [2015] OJ C145/26, [3.4].

¹¹⁸ Carota Novella di Ispica PGI, [2010] OJ C122/12, [4.5].

Terroir-products entirely made in the designated area.

The second scenario includes a group of specifications in which all the steps of the production must take place in the designated area and the description of the product/place link focuses on the physical link between the product and the place of manufacture. Some examples are the ‘Batata de Trás-os-montes’, a Portuguese kind of potato¹¹⁹; the ‘Kiwi de l’Adour’, a French type of kiwi¹²⁰ and the Dithmarscher Kohl, a German cabbage.¹²¹

Only a deeper analysis, that would exceed the scope of the present thesis, could explain why these non-processed products have not been registered as PDOs. However, these cases likely confirm that PGIs are preferred to PDOs because they are easier to get and provide the same level of protection. Indeed, as shown above,¹²² the examination of the application can take into consideration different factors, qualitative, reputational and others, thus making the application safer even for *terroir*-based products. This would also explain some discrepancies that exist between the EU GI register and the international register of the Lisbon Agreement.¹²³ For instance, while two kinds of Italian apples ‘Mela Val di Non’ and ‘Mela Alto Adige’ are both protected as AOs in the international register, in the EU the first is a PDO whereas the second is, unexpectedly, a PGI.¹²⁴ This can be explained by the fact that the EU GI rules make the registration of PGIs more convenient also for *terroir*-

¹¹⁹ Batata de Trás-os-montes PGI, [2006] OJ C3/6, [4.5], [4.6].

¹²⁰ Kiwi de l’Adour, [2008] OJ C263/5, [4.5].

¹²¹ Dithmarscher Kohl, [2013] C232/21, [3.5], [5.3].

¹²² See, Section 7.1.

¹²³ WIPO, ‘Search Appellations of Origin (Lisbon Express)’ (*Lisbon: the international system of appellation of origin*) <<http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp>>.

¹²⁴ See, Mela Val di Non PDO, [2009] OJ C315/27; Mela Alto Adige /Südtiroler Apfel, [2005] C12/20.

products that would qualify for PDO. Moreover, this shows that, in some cases, the two quality schemes are *de facto* interchangeable.

History-based product entirely made in the designated area

In the third scenario, although, according to the specification, all the steps of the production must take place in the designated area, the link is only described by making reference to the history of the product. This shows that for different kinds of products that grow from the soil, the product/place link based on *terroir* is bypassed in favour of the historical one. Some examples of these typology of specifications are: ‘Insalata di Lusia’,¹²⁵ an Italian kind of salad; the Westlandse Druif,¹²⁶ a German variety of table grapes and the Limone Femminello del Gargano,¹²⁷ an Italian kind of lemon.

7.2.3 Results of the analysis

The present section hypothesised that the predominance of PGIs could be explained by the fact that they grant protection to products that cannot be protected by PDO. In particular, this is the case of goods that, although well known and important, are not physically linked to their area of origin. The analysis has shown that, indeed, the majority of PGI products are not *terroir*-based. However, it also emerged that a relevant share of *terroir* products are protected through PGIs. Therefore, the predominance of this quality scheme cannot be explained only by arguing that the products that can be protected by PDOs are a minority. Indeed, this means that the

¹²⁵ Insalata di Lusia PGI [2009] OJ C89/14, [4.5], [4.6].

¹²⁶ Westlandse Druif PGI [2003] C40/5, [4.4] - [4.6].

¹²⁷ Limone Femminello del Gargano [2005] C314/5, [4.4], [4.5].

PGI, because of its flexible nature and less demanding requirements, it is a simpler and safer choice, even for products that at international level enjoy AO status.

7.3 The majority of PDOs were registered between 1996 and 1998

A meaningful share of the PDOs were registered between 1996 and 1998 through the simplified procedure provided under art 17 Regulation 2081/1992.¹²⁸ In particular, art 17(1) reads:

Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

Hence, this procedure, deleted in 2003, provided a fast-track for registering GIs that were already protected by law or established by usage in the Member States before the entry into force of Regulation 2081/1992.¹²⁹ This possibility of grandfathering the existing indications of geographical origin was exploited almost exclusively by the southern countries that translated into PDOs many of their most prestigious AOs. This was the case, for instance, of the French Camembert and the Comté cheese or of the Italian San Daniele Ham and the Mozzarella di Bufala. The table below highlights this trend:

¹²⁸ 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] OJ L208/1.

¹²⁹ Bernard O'Connor, *The Law of Geographical Indications* (Cameron May 2004) 146.

Table 3.9: PDOs registered in the period 1996-1998

	PDOs
Austria	8
Belgium	2
Denmark	0
France	37
Germany	6
Greece	57
Italy	66
Luxembourg	0
Netherlands	4
Portugal	46
Spain	22
United Kingdom	14

In general, 263 out of 620 PDOs, the 42.4%, were registered during this three-years period. Focusing, in particular, on the classes of PDOs that were analysed in the previous subsection, 119 Cheese PDOs (63.2% of the total); 42 the oil and fats PDOs (36.5% of the total) and 46 Fruit, Vegetables and Cereals PDOs (30.6% of the total), were registered in this period. These data demonstrate that at the beginning of the EU GI experience, the majority of the pre-existing AOs were registered as PDOs. Then the EU members began to prefer PGIs, probably because at that point all the most prestigious AOs had already been translated into PDOs. This is also suggested by the

fact that only the 24,6% of the PGIs were registered during the period 1996-1998 compared to the 42.4% of PDOs.

Indeed, between 1 January 1996 and 31 December 1998 the leading countries in the field of GIs registered a large number of their PDOs, often the majority, through the simplified procedure. In particular, data show that during this period, Italy registered the 39,7% of its PDOs and the 21,9% of its PGIs; Portugal the 71,6% of PDOs and the 38,8% of PGIs; Greece the 76% of PDOs and the 58,6% of PGIs; France the 37% of PDOs and the 40,5% of PGIs. Therefore, the data show that a relevant share of PDOs were registered right at the beginning of the EU regime. As a consequence, this explains why the growth of PGIs has increased and accelerated after this period, and, specifically, over the last 11-12 years. Furthermore, this could suggest why the new members states, despite many of them enshrined AOs in their domestic system,¹³⁰ preferred by far PGIs over PDOs.¹³¹ In fact, it could be hypothesised that, when they joined the EU, they realised that the policy of the member states was already in favour of PGIs and, also for the reasons put forward in Section 7.1 above, they followed a trend that was already established. Moreover, it is important to remind that the simplified procedure was abolished in 2003. Therefore, these countries could not use it in order to translate their domestic AOs into PDOs, as many EU members had done during the period 1996-1998. Only an in depth analysis of the legal policy and of the practical functioning of the competent institutions of the new member states in this field can confirm this hypothesis. This investigation cannot be conducted here. However, it is submitted that the data that have been collected and presented support it.

¹³⁰ See, Section 4.2.

¹³¹ See, Table 3.2.

Therefore, the analysis above shows that almost half of the current EU PDOs were registered between 1996 and 1998. This leads to the conclusion that the growth of PGIs is due to the fact that the majority of *terroir*-products, very often previously protected as AOs, were immediately added to the register through the simplified procedure provided by art 17 Regulation 2081/1992. Then, the new EU member states followed the trend that in 2003-2004 was already strongly in favour of PGIs.

7.4 Do the competent authorities influence the type of GI that is granted?

7.4.1 Presentation of the hypothesis

It can be presumed that the institution that receives the applications for a GI at a national level influences the kind of protection that is granted. For instance, the German authorities almost never accept applications for PDO, because, according to them, the essential link between the product and its place of origin is rarely sufficiently demonstrated.¹³² In particular, generally speaking and with few exceptions, two kinds of institutions scrutinise GI applications domestically: the ministries of agriculture or equivalent bodies, on the one hand, or the patent offices or offices related to the industrial and/or consumer's policy of a country, on the other. It could be supposed that institutions related to the agricultural policy of a country, and consequently to the preservation of the land and environment, such as a ministry of agriculture, would encourage PDOs. By contrast, PGIs could be preferred by institutions linked to the industrial development of a state. This is because, whereas PDO products must be made entirely in the designated area, hence one could suppose that they favour local associations of producers, PGI goods can be largely made outside the designated areas, for instance the raw materials and part of the production

¹³²

We thank Dr Völker Schöene and Dr Adriano Profeta for this information.

can occur out of it. They can therefore be a useful instrument for large industries that are not clearly localised and which source parts of the product from different places.¹³³

The question that must be answered is the following: at least to some extent, is there a link between the national institutions in charge of the examination of the domestic applications for GIs and the trend in registrations? Answering this question fully would require an in-depth comparative analysis of the policy applied and of the procedures followed by each competent authority in the EU. This research cannot be carried out here, but it could be an interesting proposal for future research. The following discussion, therefore, will be focused on a more limited empirical analysis. In particular, they will investigate whether there is a connection between the nature of the institution that examines GI applications at the domestic level and the registration trends in the same country.

7.4.2 Methodology

With regards to methodology, the examination of the abovementioned hypothesis has been divided into three phases. Firstly, we have identified the competent authority (or authorities) for the analysis of the GI applications at the domestic stage for each EU member state. For this purpose, the official list of competent authorities provided by the EU Commission has been used.¹³⁴ Secondly, the nature of the institution has been investigated in order to determine whether it is related to the agricultural policy of a country or not. As anticipated, there are two kinds of competent authorities: the

¹³³ We thank Prof Giovanni Belletti (University of Florence) for suggesting this hypothesis.

¹³⁴ European Commission, 'National Authorities Responsible Departments in the Member States' <http://ec.europa.eu/agriculture/sites/agriculture/files/quality/schemes/national-authorities_en.pdf>.

ministries of agriculture or the patent and trademarks offices. In the event that the competent authority is neither of these, the precise nature and function of the competent body has been investigated. Thus, three possibilities have been considered: GIs granted by the ministry of agriculture; by a patent and trademark office or by a different institution ('other'). More details and sources have been provided in footnotes when necessary. Thirdly, the number of PDO and PGI registrations from each member state has been retrieved through the DOOR database. The results of the analysis have been collected into a table that shows the data concerning each sample country.

7.4.3 Data and results

The results of the investigation described above are summarised in the following table:

Table 3.10: Registered PDOs / PGIs and national competent authority

EU Member	Competent authority	Registered PDOs	Registered PGIs
Belgium	Ministry of Agriculture ¹³⁵	3	10
Bulgaria	Ministry of Agriculture	0	2
Czech Republic	Patent and Trademark Office	6	23
Croatia	Ministry of Agriculture	8	7
Denmark	Ministry of Agriculture	0	6
Germany ¹³⁶	Patent and trademark office	12	77

¹³⁵ In Belgium there are two competent authorities, depending on the place where the product is produced: the Directorate General for Agriculture of the Walloon Region and the Flemish Ministry of Agriculture and Fisheries.

¹³⁶ In Germany, there are two competent authorities. One is the German Patent and Trademarks Office (Deutsches Patent- und Markenamt); one is the Federal Office for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung) which is a service authority within the responsibility of the Federal Ministry of Food and Agriculture. It is the Patent and Trademarks office that is competent for carrying out the national examination procedure, however: see Deutsches Patent und Markenamt, 'Information on the Protection of

The why of Geographical Indications

Estonia	Ministry of Agriculture	0	0
Greece	Ministry of Agriculture	75	29
Spain	Ministry of Agriculture	102	88
Ireland	Ministry of Agriculture	3	4
Italy	Ministry of Agriculture	166	129
Cyprus	Ministry of Agriculture	1	4
Latvia	Ministry of Agriculture	1	1
Lithuania	Ministry of Agriculture	1	4
Luxembourg	Ministry of Agriculture	2	2
Hungary	Patent and trademark office ¹³⁷	6	7
Malta	Other ¹³⁸	0	0
Netherlands	Ministry of Agriculture	6	5
Austria	Patent and trademark office ¹³⁹	10	6
Poland	Patent and trademark office ¹⁴⁰	8	20

Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs pursuant to Council Regulation (EU) No. 1151/2012’.

¹³⁷ ‘the national phase of the procedure is always managed by the Hungarian Intellectual Property Office in coordination with the Ministry for Agriculture and Regional Development’, see Hungarian Intellectual Property Office, ‘Geographical Indications’ (*Hungarian Intellectual Property Office*, 30 March 2016) <<http://www.hipo.gov.hu/en/geographical-indication#4>>.

¹³⁸ In Malta the competent authority is the Foodstuffs Directorate of Malta Standards Authority, now absorbed by the Competition and Consumer’s Affairs Authority. This is a governmental body that performs a number of tasks, many of them not related to food and agriculture. Among its responsibilities, however, is the safeguarding of consumers’ interests and the enhancement of their welfare. See, Malta Competition and Consumer Affairs Authority, ‘Malta Competition and Consumer Affairs Authority’ <<http://mccaa.org.mt/en/home>>.

¹³⁹ In Austria the procedures are conducted by the Patent Office, which gathers statements from the Federal Ministry of Agriculture, Forestry, Environment and Water Management. The English language version of the relevant proceedings does not indicate that there is true cooperation between the two bodies, however. See, Österreichisches Patentamt, ‘Indication of Geographical Origin’ (*Österreichisches Patentamt*) <<https://www.patentamt.at/en/trademarks/trademarks-service/indication-of-geographical-origin/#c1357>>.

¹⁴⁰ In Poland, the competent authority to receive an application for registration is the Patent Office of the Republic of Poland. Patent Office of the Republic of Poland, ‘Basic Information on Legal Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ <<http://www.uprp.pl/procedura-krajowa/Menu17,357,15,indexen,en/>>.

Portugal	Ministry of Agriculture	64	72
Romania	Ministry of Agriculture	1	2
Slovakia	Ministry of Agriculture	1	10
Slovenia	Ministry of Agriculture	8	11
Finland	Ministry of Agriculture	5	2
France	Ministry of Agriculture	98	140
Sweden	Other ¹⁴¹	3	3
United Kingdom ¹⁴²	Ministry of Agriculture	24	35

The table shows that there is no apparent correlation between the adoption of a quality scheme and the domestic competent authority that examines the application. In fact although, in the majority of cases, the ministry of agriculture is the institution in charge of the examination of GIs, the table shows that in these countries the trend indifferently favours PDOs or PGIs. For instance, in Germany the number of PGIs is almost seven times higher than that of PDOs, while in Austria, another country in which the Patent Office is the competent authority, PDOs are more numerous than PGIs. Similar examples can be found among the countries where the ministry of agriculture is the body in charge of the examination of GI applications.

¹⁴¹ In Sweden the competent authority is the National Food Agency (*Livsmedelsverket*), an authority responsible for guiding and supporting consumers' choices concerning foodstuff and enhancing an environmental friendly approach to the food sector. See, Livsmedelsverket, 'About Us' (*Livsmedelsverket - National Food Agency, Sweden*, 23 February 2015) <<https://www.livsmedelsverket.se/en/about-us/>>.

¹⁴² In the U.K. the application must be submitted to the 'Department for Environment, Food and Rural Affairs', which is equivalent to the continental European's ministries of agriculture. See, UK Department for Environment, Food and Rural Affairs, 'EU Protected Food Names: How to Register Food or Drink Products' (10 March 2016) <<https://www.gov.uk/guidance/eu-protected-food-names-how-to-register-food-or-drink-products>>.

In conclusion, only an in-depth comparative analysis focusing on the practical functioning of each competent authority can clarify to what extent these institutions influence the predominance of a quality scheme over the other. This sort of examination cannot be carried out here. The general analysis above, however, does not show any statistical correlation between the nature of the institution that grants GI protection and the kind of quality scheme that is chosen by applicants or that it is granted at the end of the examination procedure. Furthermore, the table above reveals that the management of GIs in Europe falls, in the great majority of cases, under the competence of a ministry of agriculture. Patent offices are responsible in less than a fifth of the member states, and institutions different from these are generally residual and in countries that do not make use of the quality schemes regularly.

This subsection completes the analysis of the reasons why PGIs have become the predominant quality scheme in the EU. In the two following sections, the work will focus specifically on the historical element. First, it will be first investigated whether this type of link appears in some applicable provision both at domestic and at EU level. Indeed, this would explain why it is so frequently used. Next, the thesis will propose a possible explanation of the success of this link.

8. The why of the success of the historical link

8.1 Is mentioning the history of the product in the specification a legal requirement? A comparative analysis

In this case, it will be examined whether the growing importance of the historical reputation in the specification of a product is linked to the way in which GIs are regulated at domestic level. In fact, the Regulation provides for the basic procedures

that must be followed and the standards that must be met during the examination of the applications.¹⁴³ Each country, however, is free to select the competent authority and the internal proceedings. The predominance of PGIs could, therefore, be explained by the fact that many national legislations require applicants to provide evidence of the historical product/place link.

In order to verify the abovementioned hypothesis, the thesis comparatively analyses the regulations in force in some EU jurisdictions in order to investigate how many of them explicitly require that the history of the product must be included in the specification. In particular, this analysis takes into consideration four countries from the southern sample: Spain, France, Italy and Greece, which together represent a considerable share of the registered EU GIs; two from the northern/central sample: the U.K. and Germany and three new member states: Hungary, Poland and Croatia.

Among the jurisdictions taken into consideration, only those of Italy, France and Hungary explicitly require applicants to provide information concerning the history of the product.¹⁴⁴ In particular, Italy asks for ‘(...) a historical report, that must include bibliographical references, designed to demonstrate the production for at least twenty-five years (...) of the product in question.’¹⁴⁵ The French *Guide du*

¹⁴³ Regulation 1151/2012, Chapter IV. In particular, for the domestic phase, see art 49.

¹⁴⁴ Hungarian Law refers to the submission of, among the others, literary sources or historical references. See art 3(c) 158/2009 (VII 30) Korm. ‘(...) *rendelet a mezőgazdasági termékek és az élelmiszerek, valamint a szeszes italok földrajzi árujelzőinek oltalmára irányuló eljárásról és a termékek ellenőrzéséről*’

¹⁴⁵ Translated by the author. Original text ‘*relazione storica, corredata di riferimenti bibliografici, atta a comprovare la produzione per almeno venticinque anni (...) del prodotto in questione*’. Decreto Ministeriale 14 Ottobre 2013 recante le 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, art 6(3)(e).

Demandeur ('Applicant's Guide'), instead, under the section *Spécificité de l'aire géographique* ('specificity of the geographical area') states:

History and past of the product: the description of the elements descending from ancient practices or from the history of the product and its development must be kept short. It is recommended to include only the elements that can be linked to current uses (...). Local practices that have disappeared are not considered relevant.¹⁴⁶

No other country among those considered here specifically requires any historical proof concerning the origin of the product. Spain asks generically for the proof 'that the name is (...) related to the geographical area that must be delimited.'¹⁴⁷ To date, Greece also does not require an historical report to be attached to the domestic application.¹⁴⁸

With regard to the northern/central countries, Germany refers to the requirements of art 7 Regulation 1151/2012.¹⁴⁹ Also the United Kingdom does not distance itself from the text of the Regulation.¹⁵⁰ Poland, instead, does not mention the history of the product, and does not require a specific document describing it. In its guidelines, however, the Polish Patent Office refers to the evolution of the

¹⁴⁶ Translation by the author. Original text: '*Histoire et antériorité du produit: les éléments relevant de pratiques anciennes ou de l'histoire du produit et son développement doivent être synthétiques. Il est recommandé de ne retenir que les éléments pouvant être mis en relation avec les usages actuels (...). Les usages locaux qui ont disparu ne sont pas considérés comme pertinents.*' INAO, 'Guide Du Demandeur D'une Appellation d'Origine (A.O.C./A.O.D.)' (INAO 2009) Version n° 5 du 30/03/2009, 26.

¹⁴⁷ Translated by the author. Original text '*Justificación de que el nombre (...) está relacionado con la zona geográfica a delimitar*'. See, art 7(2) Real Decreto 1335/2011, de 3 de octubre, por el que se regula el procedimiento para la tramitación de las solicitudes de inscripción de las denominaciones de origen protegidas y de las indicaciones geográficas protegidas en el registro comunitario y la oposición a ellas.

¹⁴⁸ Αριθ. 261611/7-3-2007 Κοινή Απόφαση των Υπουργών Οικονομίας και Οικονομικών, Εσωτερικών Δημόσιας Διοίκησης και Αποκέντρωσης, Αγροτικής Ανάπτυξης και Τροφίμων και Ανάπτυξης. I would like to thank Dr Menelaos Markakis for the translation of the text.

¹⁴⁹ Deutsches Patent und Markenamt, 'Information on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs pursuant to Council Regulation (EU) No. 1151/2012', 2.

¹⁵⁰ UK Department for Environment, Food and Rural Affairs (n 142).

practices by stating that '[h]uman factors concern the local and specific production methods of the area. For example, these include (...) the development of local know-how or special skills in production.¹⁵¹' Finally, the Croatian Food Act (2007) does not mention anything specific about the history of the product.¹⁵²

In conclusion, the analysis shows that the predominance of the historical element can be partially explained by the fact that this element is mandatory under some jurisdictions. In particular, among the nine countries whose legislation has been examined, three: France, Italy and Hungary, require a description of the history of the product. This clearly influences the empirical data presented above because these three countries together represent 43.5% of the registered PDOs (270 out of 620) and 39% of PGIs (276 out of 707), the major role being played by Italy and France. The next subsection will focus on the relevance of the history of the product in the EU Regulation.

8.2 The relevance of the history of the product in the text of Regulation 1151/2012

8.2.1 The relevant provisions in Regulation 1151/2012

The presence of the historical requirement in the national law of some EU member states can be explained by making reference to the text of Regulation 1151/2012. Indeed, art 5(1)(b) of the Regulation defines a PDO product as a product 'whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors'. The

¹⁵¹ Patent Office of the Republic of Poland (n 140).

¹⁵² The Food Act (Official Gazette 46/2007) Section 10.

Regulation does not define what the ‘human factor’ is. The Preamble, however, emphasises the ‘skills and determination of the Union farmers and producers who have kept traditions alive while taking into account the developments of the new production methods and material.’¹⁵³ This recital is followed by another one that makes reference to the increasing demand among EU consumers for quality and traditional products.¹⁵⁴ Thus, the need to describe the human factor that distinguishes the products, together with the reference to tradition made by the Regulation, encourages the description of the tradition and history behind the protected good.

Moreover, the minimum elements of the specification, as outlined by the Regulation, almost inevitably lead to an emphasis on the role of the historical link. In particular, art 7(1)(d) requires the applicant to provide ‘evidence that the product originates in the defined geographical area’, without excluding the possibility of establishing this link through history. Finally, under art 7(1)(e) the specification must include ‘a description of the method of obtaining the product and, where appropriate, *the authentic and unvarying local methods (...)*’¹⁵⁵

Although the word ‘history’ never appears in the text of Regulation 1151/2012, however, the importance of the historical link emerges clearly at various points, in particular in the provisions referring to the human factor and the tradition that this sometimes embodies. In addition, the text insists on the importance of proving the origin of the goods and documenting its longstanding methods of production. All these elements must be traced inevitably in the near or remote past of the product.

¹⁵³ Regulation 1151/2012, Recital 1.

¹⁵⁴ Ibid, Recital 2.

¹⁵⁵ Emphasis added.

8.2.2 The EU guidelines

Another document worth analysing, as it provides some indications concerning how to register a GI in Europe, is the Commission's 'Guide to Applicants'¹⁵⁶. It is, however, a short seven-page document. Thus, it adds very little to the text of arts 7 and 8 of Regulation 1151/2012 that provide for the minimum mandatory requirements of a specification. The guide does, however, recommend that applicants 'give concrete examples of the effective use of the name, in both the past and the present, preferably using elements drawn from the marketing of the product.'¹⁵⁷ This documentation of the use of the name in the past is an indirect reference to the importance of its history. The templates of the single document provided by the Commission,¹⁵⁸ and generally followed verbatim by applicants, do not however provide details about how the product/place link must be described.

9. Has history always been an implied component of the product/place link?

In this last section we will propose an explanation of the data that emerged from the analysis. In particular, it is suggested that the evolution of the protection of geographical names in Europe shows that, to some extent, this element has always been an implied element of the product/place link. This at least is true in the case of products that are not characterised by an intuitive link between them and their place of origin.

¹⁵⁶ European Commission, 'Guide to Applicants: How to Compile the Single Document' (2017).

¹⁵⁷ *ibid*, para 5.

¹⁵⁸ European Commission, 'Geographical Indications and Traditional Specialities' (*European Commission - Agriculture and Rural Development*) <http://ec.europa.eu/agriculture/quality/schemes/index_en.htm>.

In particular, the early example of the Roquefort Appellation of Origin supports this argument. As was shown in Chapter one,¹⁵⁹ in 1925 the members of the French parliament disagreed on whether that cheese could be protected through AO because it was not a product directly linked to the soil. Monsservin supported the proposal for the Roquefort AO by mentioning the impact that the environment and climate had on the product. The key part of his speech, however, has been embodied almost verbatim in the current specification,¹⁶⁰ namely, the emphasis on the longstanding history of the cheese, dating back to medieval times and earlier. Monsservin, supported by other members of the French parliament,¹⁶¹ argued that the product called ‘Roquefort’ had always been made in the caves of the homonymous region. The operation of aging the cheese in this environment, repeated over and over again, is what creates the product itself.¹⁶²

Thus, Monsservin seems to base his argument more on the history of the product and of the traditional practices related to it, rather than on its physical link to the soil. Indeed, he must have been aware of the fact that the argument according to which the cheese arrived to the caves as ‘candidate Roquefort’ and that, after being aged in them, turned into ‘Roquefort’ would not have convinced the French parliament.¹⁶³ Indeed, the majority of the members of the parliament considered AO protection applicable only to wine or to other goods intuitively related to the soil.

¹⁵⁹ Text to n 189 in Ch 1.

¹⁶⁰ ‘Roquefort’ PDO [2007] C298/29, [4.6].

¹⁶¹ Senate, 9 June 1925, JORF 10 June 1925, 1141-1143.

¹⁶² Monsservin in *ibid*, 1138-1140.

¹⁶³ Indeed, this claim was strongly criticised, see text to 192 in Ch 1.

This early example allows us to clarify our argument: the paradigm of *terroir* becomes unconvincing when it is applied to products that are not directly linked to the soil, simply because they do not grow from it. As a consequence, in these cases, *terroir*-based links, when analysed, reveal themselves as fundamentally history or tradition-based arguments. This has been true since the early days of the debate on IGOs in Europe and contributes to explain why today the historical reputational element is used to justify the product/place link even for products for which a *terroir*-based protection through PDOs can be expected.

This point is also confirmed by a more recent example. In 1991, the European Economic and Social Committee (EESC), in its Opinion on the draft of the 1992 Regulation observed that:

The distinction between protected geographical indication (PGI) and protected designation of origin (PDO) needs further clarification. The conditions for granting PDO should include traditional historical character.¹⁶⁴

Although, this recommendation was not embodied into the final text of the Regulation, it shows that the EESC already had clear two points: (1) that the traditional historical character of the product was also important for PDOs and (2) that the two quality schemes were not sufficiently distinct. Hence, the EESC was able to foresee in 1991 some of the trends that this work has shown empirically above. This is even more interesting and important if we remember that this Committee was formed by the representatives of different European associations and organised civil society. That is, the actors that operate closely in the economic and social activities of

¹⁶⁴ Opinion on the proposal for a Council Regulation (EEC) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1991] OJ 91/C 269/19, 3.2.1.

the EU, such as the associations of producers or the undertakings that apply for GI registration.¹⁶⁵ Finally, in the previous section it was noted how, although indirectly, some applicable provisions make reference to the importance of the history of the product. Hence, despite the traditional and partially out-dated dichotomy between the (physical) *terroir* and the (commercial) reputation, the rules seem to acknowledge, between the lines, that a GI-product, including a *terroir*-product, is almost always linked to a place also by its history.

Therefore, the general argument presented in this section is aimed at suggesting a possible substantive explanation of the success of the historical link. This is in line both with the findings of the present section and with the conclusions of the previous chapters. Finally, it is not intended to replace or override the conclusions that were drawn in the previous sections about the flexibility and the less demanding requirements that make PGIs more attractive. Indeed, those arguments remain perfectly valid and complement the explanation put forward here.

Conclusions

The present chapter was aimed at investigating the substance of the EU GI rules and their evolution since they were introduced 25 years ago. First, a quantitative analysis of the content of the specifications of the registered GIs has been conducted. This research has demonstrated that the ‘historical reputational link’, that is the establishment of the product/place link based on the description of the history of the product and/or of the traditional practices related to it, has acquired a primary importance in the specifications of EU GIs.

¹⁶⁵ European Economic and Social Committee (n 448).

Second, it has argued that as far as the product/place link is concerned, the differences between the two quality schemes, PDOs and PGIs are unclear. This point has been confirmed by showing that the *terroir* element, that characterises PDOs, appears frequently in PGI specifications. Vice-versa, the historical-reputational link is almost always mentioned in PGI specifications, but it often appears in PDOs as well. Furthermore, it has been shown that, in some cases, *terroir* products are protected by PGIs, thus confirming that the two quality schemes are sometimes interchangeable in practice.

Third, the thesis focused on the reasons why PGIs have become the predominant quality scheme. It concluded that their success must be due to their flexible nature; to the fact that they extend protection to products that would be, otherwise, excluded from protection and because the majority of PDO goods were registered at the beginning of the EU GI experience, between 1996 and 1998.

Fourth, the work has began to focus on the historical link and on the why it is so widely used in the specifications. In this regard, the thesis has observed, first, that the text of Regulation 1151/2012 itself makes reference, at least indirectly, to the importance of the history of the product, of the use of the name and, in general, of the relationship within the GI and the geographical area of origin; second, that this is so important that the legislations of the two leading countries in the field, Italy and France, consider it as a mandatory requirement.

Finally, the thesis proposed an additional explanation, arguing that the description of the historical link between the product and its place of origin has become *de facto* an implied factor that must appear in the specification. Among other

things, this is due to the fact that the *terroir* paradigm is often unable convincingly to prove the essential link between a product and its place of origin, especially in the case of products that are not characterised by an intuitive link to the land, in other words that do not fit into the traditional paradigm of wine and viticulture.

CHAPTER 4. THE SUITABILITY OF HISTORY TO BE A LINKING FACTOR

1. Introduction

1.1. Background

This chapter will focus on the historical element and on its suitability to constitute a valid link between a product and its place of origin ('product/place link'). Indeed, rather surprisingly, the role of history as a linking factor and, in general, the reputational element as a whole, as mentioned under art. 5(2)(b) Regulation 1151/2012,¹ is still largely under researched. In particular, few legal scholars have investigated this issue.² By contrast, the relationship between an origin product and the history, society and culture of a specific area have already been analysed by leading anthropologists and sociologists, especially French.³

¹ 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] L343/1.

² See, in particular, Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link' in Irene Calboli and Wee Loon Ng-Loy (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture in the Asia-Pacific* (Cambridge University Press 2017); 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 Pub 2016); Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (n 16).

³ Laurence Bérard et al., 'Les Facteurs Historiques, Culturels, Économiens et Environnementaux Dans La Délimitation Des Zones IGP' in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The socio-economics of Origin Labelled Products in Agri-food Supply Chains: Spatial, Institutional, and Co-ordination Aspects* (Actes et Communications, 2000); Laurence Bérard and Philippe Marchenay, 'Productions Localisées et Indications Géographiques: Prendre En Compte Les Savoirs Locaux et La Biodiversité' [2006] *Revue Internationale des Sciences Sociales*; Laurence Bérard and Philippe Marchenay, 'Local Products and Geographical Indications: Taking Account of Local Knowledge and Biodiversity' (UNESCO 2006); Laurence Bérard and Philippe Marchenay, 'Lieux, Temps et Preuves: La Construction Sociale Des Produits de Terroir' (1995) 24 *Terrain*; Barjolle, Boisseaux and Dufour (n 18). See also, Filippo Arfini, Giovanni Belletti and Andrea Marescotti, *Prodotti Tipici E Denominazioni Geografiche: Strumenti Di Tutela E Valorizzazione* (Tellus 2010); Giovanni Belletti and Andrea Marescotti, 'Origin Products, Geographical Indications and Rural Development' in Elizabeth Barham and Bertil Sylvander (eds.), *Labels of origin for food: local development, global recognition* (CABI 2011).

It is therefore both necessary and urgent to expand the legal literature on the topic of the product/place link and especially on the historical and, in general, the reputational element. It is necessary because, as was stated a moment ago, research on this among legal scholars is scarce. It is urgent, for two main reasons. The first is that, today, the historical element has become predominant and is present in the majority of GI specifications for both PDO and PGI products. Indeed, as was shown in the previous chapter, the history of the product is included in the specifications of 88.2% of registered PGIs, and in 93% of the PDOs specifications that include the reputational link (that is 73.8% of the total). It was also noticed that the description of the know-how that characterises the product and its historical evolution are almost always featured together. Finally, it was shown that history is so important for drafting of a specification, that the two leading countries in the field of GIs, Italy and France, mandatorily require it as a component of every specification.⁴ Hence, it is important to investigate the historical element in light of its increasing importance. The second reason is that GI regimes are gradually expanding their scope, extending protection to non-*terroir* products that are linked to their place of origin *only* by their reputation. In this regard, the revision of the Lisbon Agreement on Appellations of Origin is very important.⁵ In fact, the system now has included Geographical Indications in its subject matter and has recognised the reputational element as a valid basis for granting protection, thus allowing more products to join the register in the

⁴ Text to n 144 in Ch 3.

⁵ For more information, see Marcus Höpferger and Matthijs Geuze, 'Negotiators Modernise International System for Registering GIs' (2015) 3 *WIPO Magazine* <http://www.wipo.int/wipo_magazine/en/2015/03/article_0001.html>; WIPO, 'Negotiators Adopt Geneva Act of Lisbon Agreement at Diplomatic Conference' (PR/2015/770, 20 May 2015). See also, World Intellectual Property Organization, *The Lisbon System International Protection for Identifiers of Typical Products from a Defined Geographical Area* (WIPO 2011); 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 *IIC* 673.

future.⁶ Moreover, since 2009, the European Commission has been discussing extending the GI system to non-agricultural products, e.g. handicrafts, and is promoting research and public consultations on this issue.⁷ To date, it is still uncertain whether this plan will succeed or not. Nonetheless, the fact that the EU might broaden the scope of GI protection beyond agricultural products to protect goods that are linked to their place of origin only by their history and reputation, could potentially lead to a revolution in EU GI rules.

For these reasons, it is necessary to focus specifically on the historical reputational element because, despite already being predominant, it is likely to increase its importance even more in the near future. It is crucial, therefore, not only, to understand the strengths of this linking factor, but also its weaknesses. In particular, the arguments presented in this chapter have been developed bearing in mind a fundamental concept: i.e. that GIs are origin labels. This characteristic, as Barham rightly remembers,⁸ is what sets them apart from the broad family of quality labels, i.e. labels that inform the consumer of how the product was made but not necessarily about ‘the where’.⁹ This work will follow this principle as a compass, thus rejecting every overly broad interpretation of the reputational element that could lead

⁶ Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations under the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (LI/DC/19, 20 May 2015), art 2.

⁷ Insight Consulting, oriGIN and Agridea, ‘Study on the Protection of Geographical Indications for Products Other than Wines, Spirits Agricultural Products or Foodstuffs’ (2009). European Commission, ‘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’ (2015) COM(2014) 469 final. See also, Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ (n 16).

⁸ Elizabeth Barham, “‘Translating Terroir’ Revisited: The Global Challenge of French AOC Labeling’ in Dev Gangjee (ed.), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub. 2016) 47-48, 53-54.

⁹ In order to illustrate this concept, Barham contrasts GIs with eco-labels such as ‘Fair Trade’ and ‘Organic’. See, *ibid*, 53-54.

to the registration of weak GIs for goods that can hardly be considered origin products. Finally, it will propose a narrow interpretation of the historical link and of the reputational element in general, aimed at preventing any misuse of this, otherwise perfectly valid, product/place link.

1.2. Methodology

This chapter is based on a mixed methodology, building upon a critical review of the most important scholarly literature as well as on some selected case studies and empirical data. In particular, the work carries out an analysis of the historical link, assessing its suitability to be an effective product/place link and focusing on both its strengths and limits. In order to do this, the work bases itself on the best scholarly works that discuss the relationship between origin products and the economy, culture and society of a specific geographical area. Moreover, it reviews the fundamental papers that have shed light on the role of history in the making of *terroir* and as an element that describes the evolution of the longstanding interaction between a place and the human community that lives there. In particular, the theoretical part of the chapter is based predominantly, although not exclusively, on the works of Bérard, Marchenay and Barjolle because they are the scholars who, more than anyone else, have focused in depth on these issues.¹⁰ Furthermore, the most important criticisms against the use of the concepts of history and tradition in the field of GIs will be discussed. In particular, the chapter will review the positions of Broude and Hughes.¹¹

¹⁰ See, n 2 and 3.

¹¹ Tomer Broude, 'Taking "trade and Culture" seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26 University of Pennsylvania Journal of International Economic Law 623; Justin Hughes, 'Champagne, Feta and Bourbon: The Spirited Debate About Geographical Indications' (2006) 58 Hastings Law Journal 299.

Next, the thesis will contribute to the existing literature by presenting different case studies, specifically selected on the basis of the research carried out in the previous chapter. Their analysis will confirm that, as already stated in the abovementioned literature, history can be an effective linking factor. They will also show some important limits of the historical element, however. This mix of doctrinal discussions and practical cases will allow the chapter to come to original conclusions and to propose a set of policy prescriptions that will also be useful starting points for future research.

1.3 Structure

The chapter is divided into ten sections, including the present introduction and the conclusions:

- Section 2 interprets the text of Regulation 1151/2012 and will conclude that, although the historical element is never explicitly mentioned, the importance of history as a linking factor emerges implicitly from the letter of some relevant provisions and that, in any event, the suitability of this element is widely accepted by the leading scholars;
- Section 3 starts the discussion on whether history can be a valid product/place link. It will respond affirmatively because, first, this element is often a component of the concept of *terroir* which is now practically uncontested in the EU and, second, history is not an abstract and immaterial link; on the contrary, it is the description of the practical interaction between a place and the community that lives there and that makes the product. Moreover, just like *terroir*, the historical link can be accurately proved through evidence;

- Section 4 presents some practical cases that demonstrate how the historical element, if correctly applied, can show how history has determined the peculiar features of a product and explain the origin of its method of production, thus constituting a valid product/place link;
- Section 5 builds upon the best available literature as well as on the results of the analysis of the case studies in order to present the different types of evidence that can effectively prove the existence of an historical product/place link;
- Sections 6 and 7 focus on the limits of the historical element as a linking factor. First, the work reviews the most persuasive criticisms advanced against the concepts of history and tradition in the context of GIs. Then, it contributes to the debate by analysing some practical cases that show how this linking factor can be misused, thus leading to the registration of weak and disputable GIs, unable to fulfil their origin function and, as a consequence, leading to the opposite result, i.e. the deception of consumers.
- Section 8 concludes the analysis by suggesting some general policy prescription that should be able to prevent a distorted application of the historical and reputational element, thus preserving intact the rationale of GIs.

2. The historical link and EU GI Law: the interpretation of article 5

Regulation 1151/2012

Art 5 Regulation 1151/2012 mentions the factors that can be used to prove the link between a product and a place, but does not define these in detail. In the case of PDOs, for example, the text provides that the link consists of the quality or

characteristics of the product that are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.¹² In the case of PGIs, meanwhile, the link can consist in the quality and/or the reputation and/or any other characteristic of the foodstuff that is essentially attributable to its place of origin.¹³ History is not explicitly mentioned as a linking factor, however, it can be considered implied in the reputational link, but also in the qualitative link, as will be shown.

First of all, the importance of the tradition and of the ‘past’ of a product is mentioned in the Preamble’s Recital 1:

The quality and diversity of the Union’s (...) production is one of its important strengths, giving a competitive advantage to the Union’s producers and making a major contribution to its living cultural and gastronomic heritage. This is due to the skills and determination of Union farmers and producers who have kept traditions alive while taking into account the developments of new production methods and material.

Next, the French literature offers some detailed analyses that are extremely useful in order to interpret the linking factors mentioned above and to understand the function that they perform in practice, as well as the role of history.¹⁴ In particular, Bérard, Marchenay et al., in detailed research published in 2000, and still today one of the best on this specific point, identified some elements that are crucial in order to establish the product/place link in the case of both raw and processed types of food. These are: (a) the natural factors; (b) the know-how related to a specific area and (c) the current economic reality. These can all determine the product/place link for

¹² Art 5(1)(b) Regulation 1151/2012.

¹³ Art 5(2)(b) Regulation 1151/2012.

¹⁴ Bérard et al., ‘Les Facteurs Historiques, Culturels, Économiés et Environnementaux Dans La Délimitation Des Zones IGP’ (n 3) 169; Barjolle, Boisseaux and Dufour (n 18).

natural/raw products, often protected through PDOs; the last two, instead, are also relevant in the case of processed products, which are generally protected by PGIs.¹⁵ Furthermore, the paper clarified that the ‘quality’ of the product, which is mentioned in the definitions of both quality schemes, is given, depending on the specific circumstances, by: (a) the know-how/*savoir faire*; (b) the origin of the raw materials; (c) the peculiar environmental conditions of the area. The present know-how is therefore considered a quality of the product. Being a human element, however, it has an historical dimension that, as shown in the previous chapter, is often mentioned even in the specifications of PDO products.

Then, the authors identified some factors that can play a role in specific cases: the historical economic reality (*réalité économique historique*) and the current economic reality (*réalité économique actuelle*).¹⁶ While the latter is simply the description of where the producers are located today, the former emerges from historical investigation and allows the area of production of a good to be located as it was thirty/fifty years ago or more.¹⁷ The importance of the historical element was not particularly emphasised in their work, however. In fact, this analysis of the linking factors considered the historical economic reality only as an ancillary factor to be applied in case the three main ones, listed above, were not enough to establish a product/place link.¹⁸ Nevertheless, other key relevant studies dating back to the same period already recognised the crucial importance of history, interpreted broadly as a

¹⁵ Bérard et al., ‘Les Facteurs Historiques, Culturels, Économiés et Environnementaux Dans La Délimitation Des Zones IGP’ (n 3) 164-170.

¹⁶ The other elements being: (a) the origin and, especially, the quality of raw materials; (b) the presence of environmental factors that can influence the manufacturing of processed products and (c) the existence of a specific geographical area that confers a specific reputation on the product. See, *ibid*, 169.

¹⁷ *ibid*, 169-170.

¹⁸ *ibid*.

description of the longstanding tradition and of the cultural relevance of the good, in order to establish a product/place link, both for PDOs and PGIs.¹⁹ Indeed, Bérard and Marchenay themselves highlighted the role of this element in later papers.²⁰ Today, therefore, the importance of the historical link, although not explicitly mentioned in the text of Regulation 1151/2012, is largely recognised by the leading academics in the field of GIs.

Finally, it is worth remarking that these categorisations are not merely doctrinal, but, indeed, are mirrored by the practice of GIs. In particular, some GI specifications are drafted on the basis of the different nuances of the historical link that were mapped above; that is (1) ancient history that leads to (2) the historical economic reality that leads to (3) the present economic reality/know-how. A good example of this way of developing a specification is the famous German PGI ‘Kulmbacher Bier’ that, when describing the link to the geographical area, follows exactly the structure that has been described before:

The quality and reputation of “Kulmbacher Bier” goes back to a centuries-old brewing tradition. Long before the first documented monastic brewery of 1349 there was probably a so-called communal brewery where the burgers of Kulmbach in a fixed order were allowed to brew beer for their own needs and for small-scale trade. That for example is how the EKU Brauerei was founded in 1872 from a Kulmbach communal brewery. The old tradition is still nurtured today. About 400 Kulmbach citizens have come together in a cooperative to produce beer for the needs of their own pub. The population's diligence, business acumen and brewing skills based on rich experience contribute significantly to the importance of “Kulmbacher Bier”.²¹

¹⁹ See, in particular, Barjolle, Boisseaux and Dufour (n 3) 14-18.

²⁰ Laurence Bérard and Philippe Marchenay, ‘Prouver l’Origine’ in Laurence Bérard and Philippe Marchenay (eds.), *Les produits de terroir: entre cultures et règlements* (CNRS Editions (Open Edition) 2004).

²¹ ‘Kulmbacher Bier PGI’ (EN/06/97/50730400.W00 (DE) CCE, 1997), [f].

The same structure is not confined only to PGIs and can be found in the specifications of different PDOs as well. For instance, the renewed ‘Aceto Balsamico Tradizionale di Modena PDO’ constitutes a good example:

(...) the tradition of producing a very special balsamic vinegar in the area comprising the province of Modena must go back to 1508 at least. Documents dating back to the 16th century and to 1796 refer to very mature musts which were used in the production of Modena style balsamic vinegar and to stays for 36 barrels of the product in question which were kept in a tower of the Duke's Palace. (...) The first consolidated version of the rules governing the production of Aceto Balsamico Tradizionale di Modena is to be found in a letter sent by Francesco Aggazzotti to Pio Fabriani in 1860. From that point onwards the references to the product become more and more numerous and official as trade in the product develops: 1863 Agricultural Exhibition in Modena; 1888 Emilia Fair in Bologna; a brochure describing balsamic vinegar as a Modena speciality made from selected grapes. All this confirms that since time immemorial the province of Modena has produced a special type of vinegar, not found in other areas, whose methods of production and ageing have been handed down almost unchanged over the centuries and are now laid down in the rules governing the production of Aceto Balsamico Tradizionale di Modena.²²

In conclusion, this section has shown that the historical link, although not mentioned by art 5 Regulation 1151/2012, has been recognised by the leading scholarly literature as a factor that plays a role in the definition of an origin product. In the following sections, the present work will assess the adequacy of history as a linking factor, investigating both its strengths and weaknesses, thus contributing to the abovementioned discussion.

²² ‘Aceto Balsamico Tradizionale di Modena PGI’ (Dossier n. VI/5278/99-EN, 2000), [d].

3. Why history is an adequate linking factor

3.1 History and *terroir* are related and operate in a similar way

The first remark that must be made is that the historical aspect has many elements in common with the concept of *terroir* that, although not free from contradictions, is commonly accepted in the EU GI Law.²³ Furthermore, as demonstrated in the previous chapter, it is often present also in the specifications of PGIs where it would be, strictly, unnecessary.²⁴ Generally speaking, *terroir* is considered a valid product/place link because: (1) it can be proved with objective evidence; (2) it demonstrates the physical link between a geographical area and the product, creating a one-to-one correspondence between the two. In parallel, it can be shown that history, as a linking factor, operates in a similar way, only, instead of proving a physical interaction, it demonstrates the peculiar interaction between a human community and a specific place. The next sections will show that these two features of *terroir* apply to history as well. Before this, however, some preliminary observations are useful.

First of all, it is important to remind that, in some cases, history, is nothing but a component of *terroir*. In fact, as was shown in chapter 1,²⁵ although agronomy did little to develop the concept of *terroir* over the decades, and still considers it an element related to pedology,²⁶ as it was a century ago,²⁷ other subjects have

²³ This is not universally accepted everywhere, however. Indeed, it is well known that the majority of criticisms against *terroir* come from the US. See, as an example, United States Patents and Trademark Office, 'Geographical Indication Protection in the United States' (USPTO) <<http://www.uspto.gov/ip/global/geographical/>>. For a complete bibliography on the US/EU divide on GIs, see Le Goffic and Zappalaglio (n 15).

²⁴ See, Table 3.5 in Ch 3.

²⁵ See, text to n 106 in Ch 1.

²⁶ Pedology is the branch of soil science that studies soils in their natural environment.

developed it considerably. For instance, already in 1952, the historian Roger Dion argued that origin products, including wine, are the results of human will and that ‘the role of the land in the making of a grand cru scarcely goes beyond that of the material used in the making of a work of art.’²⁸

Today, the majority of anthropological and sociological studies describe *terroir* as a mix of natural and human factors, including social and cultural elements.²⁹ Other researchers go even beyond and describe this link almost exclusively in terms of culture, traditional knowledge and heritage.³⁰ *Terroir*, therefore, is not only the geographical space in which the production takes place, but the area in which a specific know-how is developed, often unintentionally and by trial-and-error, thus becoming related historically, socially and culturally to the place.³¹ Finally, the importance of the human factor grew considerably in the 1980s, when GIs began to be associated with the strategies for fostering rural development,

²⁷ Jean-Pierre Deffontaines, ‘The Terroir, a Concept with Multiple Meanings’ in François Vardeaux and Philippe Marchenay (eds.), *Biodiversity and Local Ecological Knowledge in France* (Quae 2006) 38-39; Stéphane Hénin, ‘Quelques Aspects de La Pédologie, L’évolution Du Concept de Sol et Ses Conséquences’ (1957) *Cr Acad Agriculture de France*, 66.

²⁸ Roger Dion, *Le Paysage et La Vigne. Essais de Géographie Historique* (Bibliothèque Historique Payot 1990) 226; Laurence Bérard, ‘Terroir and the Sense of Place’ in Dev Gangjee (ed.), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub. 2016) 77.

²⁹ FAO & Siner-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2nd edn, FAO 2010) 12; François Casabianca, Bertil Sylvander and Yves Noël, ‘Terroir et Typicité: Un Enjeu de Terminologie Pour Les Indications Géographiques’ in Claire Delfosse (ed.), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011); Bérard (n 30) 76-77; Claire Delfosse and Isabelle Lefort, ‘Le Terroir, Un Bel Objet Géographique’ in Claire Delfosse (ed.), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011) 34-35. Stéphane Cartier, ‘Terroirs En Nuances’ (2004) 11 *Strates*; Laurence Bérard and Philippe Marchenay, ‘From Localised Products to Geographical Indications: Awareness and Action’ (Centre national de la recherche scientifique 2008) 17; Katérina Stenou, ‘Les Terroirs Au Service Du Maintien de La Diversité Culturelle’ (2005) 23; Paul Péllissier, ‘The Terroir, a Tool for the Recognition of Farming Knowledge in Africa’ in François Vardeaux and Philippe Marchenay (eds.), *Biodiversity and Local Ecological Knowledge in France* (Quae 2006) 46.

³⁰ For details, see text to n 119 in Ch 1. See also, UNESCO and Terroirs & Cultures, ‘Planète Terroirs’ <www.unesco.org>; Terroirs & Cultures and UNESCO, ‘Rencontres Internationales Planète Terroirs’ (UNESCO 2005) SC-2007/WS/41.

³¹ François Casabianca, Bertil Sylvander and Yves Noël (n 29) 104-106.

that need an organized human activity to succeed,³² and with the Common Agricultural Policy.³³

It is also expedient to remember that the reconceptualization of *terroir* as a social construct did not remain confined to the fields of anthropology, history and sociology. Indeed, it influences the definitions enshrined in the legal text currently in force. For instance, since the introduction of the EU GI system, the relevant provisions stipulate that, in the case of PDOs, the origin link consists in the relationship between the product and the environment, a link that includes both the natural and the human factors.³⁴ Moreover, other influential institutions have explicitly endorsed this concept of *terroir*.³⁵

Finally, this evolution of the concept of *terroir* has, in turn, influenced the concept of origin product, or GI-product, that is of the object of GI protection, and it is generally described as a social creation too. In particular, leading scholars have convincingly argued how an origin product is the result of a strategy of production,

³² Deffontaines (n 27) 39-42; Delfosse and Lefort (n 29) 30-31; Isolina Boto and others, 'The Geography of Food: Reconnecting with Origin in the Food System' (2013) Section 3; Claire Delfosse, 'La France et Ses Terroirs. Un Siècle de Débats Sur Les Produits et Leurs Liens À L'espace' (2012) 215-216 Pour, 67-70.

³³ This point was analysed in depth in chapter 2, see Section 2.1 in Ch 2.

³⁴ Art 2 Regulation 2081/1992; cf art 5(1) Regulation 1151/2012.

³⁵ Significantly, the French INAO currently provides the following definition of *terroir* that seems to focus more on the human factor rather than on the mere physical one 'A geographical area with defined boundaries where a human community generates and accumulates across its history a collectively developed knowledge of production based on a system of interactions between a physical and a biological environment.' (original text: '*Un terroir est un espace géographique délimité, dans lequel une communauté humaine, construit, au cours de son histoire, un savoir collectif de production, fondé sur un système d'interactions entre un milieu physique et biologique, et un ensemble de facteurs humains.*'). INAO, 'Guide Du Demandeur' (April 2015), 27. This definition was further discussed in the text to n 90 in ch 1. For a collection and analysis of other doctrinal and legal definitions of *terroir*, see Casabianca, Sylvander and Noël (n 29).

developed by local producers over the course of time, developed on the basis of the environmental conditions of a specific area and of the needs of a given community.³⁶

Summarising the findings above about, on the one hand, *terroir* and, on the other, the origin product, it is therefore possible to conclude as follows. The human interaction with a geographical area creates the *terroir* or, if it is not possible to affect the geographical environment to such an extent, develops practices and a know-how that are adapted to it. In turn, this generally lengthy process generates an origin product, which is the output of this evolution. In this context, history acquires a crucial importance as it clarifies the relationship between the designated area and the human communities that live there. Thus, history is not an immaterial element but it is a concrete interaction that can be proved and that, often, is only an element of a widely accepted linking factor, i.e. *terroir*. This point will be analysed better in the next subsection.

3.2 History is the description of the interaction between a place and a human community

The leading scholars agree that history is a crucial linking factor between a product and its place of origin. Quoting Bérard and Marchenay, it can be argued that it is '(...) a major distinguishing factor in a product's relationship with a given place.'³⁷ Indeed, history is, in practice, the description of a continuative relationship between different

³⁶ Giovanni Belletti and Andrea Marescotti, 'Origin Products, Geographical Indications and Rural Development' in Elizabeth Barham and Bertil Sylvander (eds.), *Labels of origin for food: local development, global recognition* (CABI 2011) 78-81; Dominique Barjolle, Bertil Sylvander and Erik Thévenod-Mottet, 'Public Policies and Geographical Indications' in Elizabeth Barham and Bertil Sylvander (eds.), *Labels of origin for food: local development, global recognition* (CABI 2011) 92. See also, Arfini, Belletti and Marescotti (n 3) 13-15.

³⁷ Bérard and Marchenay, 'From Localised Products to Geographical Indications: Awareness and Action' (n 29) 21.

factors, such as human, environmental, physical and so on, that interact in a specific place.³⁸ Thus, history, just like *terroir*, proves and illustrates the origin of a product and of its method of production.³⁹ Indeed, this interpretation of the historical element is also compatible with the modern concept of *terroir*, presented above, according to which the environment in which a product is made encompasses both the natural and human factors. Hence, geography, history and agronomy are linked and represent different faces of the same concept. It follows that the existence of an historical evolution is essential to distinguish between the provenance and the origin of a product.⁴⁰ To clarify, a product that ‘comes from’ an area does not necessarily ‘originate from’ there if it does not belong to the history of that place. In particular, often, products that are well known and highly reputed today, used to be unknown, domestically-made local goods.⁴¹ It is their history that anchors them to a specific area by making them culturally unique.⁴² This is especially important for non-*terroir* products, such as handicrafts but also bakerwares that, often, can be easily reproduced anywhere.

³⁸ Bérard and Marchenay, ‘From Localised Products to Geographical Indications: Awareness and Action’ (n 29) 21-23; Laurence Bérard and Philippe Marchenay, ‘Local Products and Geographical Indications’ (n 3) 109-110; Bérard and others (n 3) 164; Bertrand in Laurence Bérard, ‘Terroir and the Sense of Place’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016) 77; Javier Sanz Canada, ‘Introduction: Ancrage et Identité Territoriale Des Systèmes Agroalimentaires Localisés’ (2011) 322 *Economie rurale*, 6-9. See also, Cristina Papa, ‘The Social Construction of Umbrian Extravirgin Olive Oil’ in Cristina Papa, Giovanni Pizza and Filippo Zerilli (eds), *Incontri di Etnologia Europea - European Ethnology Meetings* (Edizioni Scientifiche Italiane 1998) 148-150.

³⁹ Laurence Bérard, Philippe Marchenay and Claire Delfosse, ‘Les “Produits de Terroir”: De La Recherche à l’expertise’ (2004) 34 *Ethnologie française*.

⁴⁰ For this distinction, see Laurence Bérard and Philippe Marchenay, ‘Local Products and Geographical Indications’ (n 3) 110.

⁴¹ Laurence Bérard and Philippe Marchenay, ‘Tradition, Regulation and Intellectual Property’ in Stephen B Brush and Doreen Stabinsky (eds), *Valuing Local Knowledge* (1996) 233-234.

⁴² Bérard, Marchenay and Delfosse (n 39) 593-594.

In conclusion, history concerns specifically the evolution of the know-how developed by local communities over time and its relationship with a specific place.⁴³ It is not, therefore, a merely immaterial factor but, on the contrary, it is an element that can explain the origins of a product and prove it with concrete evidence. These points will be developed further in the next two sections.

4. History outlines the identity of a product: case studies

This section will use some selected case studies to show how history can describe the evolution of a product, explain the origin of its peculiar features and demonstrate why it is made following a specific recipe or process. This point was already highlighted by some French and Swiss researches, especially Dominique Barjolle, who focused on the evolution of the know-how related to cheeses.⁴⁴ In particular, her case study on Gruyere cheese, protected by AO under Swiss law, will be presented in the next subsection. Then, this thesis will apply the same methodology to PGIs and will emphasise that in this case also history can explain and prove the origin of a product and of its method of production.

4.1 History and Appellations of Origin: the case of Gruyere Cheese

Gruyere is protected in Switzerland by Appellation of Origin⁴⁵ and in France by PGI.⁴⁶ This cheese is made in areas that were, and still are, difficult to cultivate but

⁴³ Deffontaines (n 27) 41-42.

⁴⁴ Barjolle, Boisseaux and Dufour (n 18). See also, Bérard et al. (n 3). A similar demonstration of the effectiveness of the reputational link, applied also to non-EU GI systems, can be found in Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (n 16).

⁴⁵ Switzerland has never registered any of its origin products in the EU register, however, the Swiss Appellation d'Origine Contrôlées is almost identical to the French one and, therefore, it corresponds to the European PDO. See, Interprofession du Gruyère, 'Le Gruyère AOP' (*Le Gruyère - Switzerland*) <www.gruyere.com>.

suited to dairy herds.⁴⁷ Since transporting the milk down from the mountains would have taken too long, the only way not to waste this good was to make cheese with it. The management of the production of the cheese was regulated by customary rules. In particular, one cheese maker was hired by all the breeders in order to make the product. The former, therefore, had at his disposal a huge quantity of milk. This is why, still today, the wheels of Gruyère are very large and heavy.⁴⁸ Another reason is that big wheels made during the summer meant a lot of food for the winter.⁴⁹ Finally, the name of the product refers to the ‘gruyers’, tax collectors that exacted dues on the fine wood logged in the area.⁵⁰ This example, one of the many,⁵¹ demonstrates that the history of a product, in this case the economic and cultural history, shows why the product has been traditionally made in an area and why it has developed its characteristic features. Furthermore, it confirms that the product, by being made in compliance with this tradition, still represents this evolution and the identity of the makers.

⁴⁶ Gruyère PGI [2010] OJEU C298/14.

⁴⁷ Barjolle, Boisseaux and Dufour (n 3) 16-17.

⁴⁸ *ibid.*

⁴⁹ Gruyère PGI (n 49) [5.1.2].

⁵⁰ *ibid.*

⁵¹ Another interesting case on which the French literature has focused is that of the Carp of Dombes, in France. This fish has been bred in ponds since the Middle Ages, originally because the local population needed it in order to respect religious dietary prescriptions, i.e. the so called ‘lean’ days. This is another case in which the history of the product is necessary to understand why it is made and what relationship it has with its area of origin. The Carp of Dombes is not as yet protected by a GI, however, therefore this work will not focus on it in detail. For more information, see Laurence Bérard and Philippe Marchenay, ‘Ressources Des Terroirs et Diversité Bio-Culturelle. Perspectives de Recherche’ (1994) 36 *Journal d’agriculture traditionnelle et de botanique appliquée*, 89; Bérard and Marchenay, ‘Productions Localisées et Indications Géographiques (n 3) 119.

4.2 History and PGIs: selected case studies

The case of Gruyere showed the function performed by history as the product/place link in the case of an AO product. Now the work will extend this analysis to PGI goods, specifically chosen among those that do not feature a *terroir* link and that, therefore, are related to their area of origin only by history, know-how and, in some cases, commercial practices. In order to investigate how the historical element acts as a linking factor in this scenario, three classes of products, characterised by a weak substantive connection with the environment where they are made, have been selected: (1) pasta; (2) baker's wares; (3) cured meat. For each class, two products will be taken as samples, one made in Italy, i.e. the leading southern country in the field of GIs, and one made in a central/northern European country. The analysis of these classes will not provide a complete picture of the function exercised by historical links in the PGI quality scheme, since only in-depth analyses of all the classes of products could achieve such result. The following examples will show, however, that history is an essential element to link a product, and the know-how on which it is based, with a specific place, thus making it unique.

4.2.1. Class 1: Pasta

Pizzoccheri della Valtellina PGI (Italy)

Pizzoccheri della Valtellina are a distinctive kind of pasta made from buckwheat flour in the province of Sondrio, a mountainous area in north Lombardy. In its specification, history links the product with the environmental and socio-economic features of its place of origin.⁵² In particular, it stresses that the culture surrounding 'Pizzoccheri' derives from the historical presence and extensive use of

⁵² Pizzoccheri della Valtellina PGI [2009] OJEU C248/29, [5].

buckwheat flour which, since it was widely grown and used in that area, was a basic ingredient of the local cuisine. Since this mountainous area was poor and disadvantaged, a resource like buckwheat was central to the local diet. This pasta, therefore, was, and still is, cooked together with highly energetic foods that can be found in the area, such as potatoes and cheese, because it was meant to feed communities of farmers and breeders who needed a large amount of calories to work. This factor led to the emergence of this localised speciality that started being mentioned in official documents since the 17th century. The specifications list the most notable of them. Interestingly, this product was considered so important to the local communities that it was even mentioned in wills. Finally, it is still entirely produced in the area, 90% by factories that follow traditional methods of production and 10% by local restaurants.

In this case, therefore, history links the product to a specific area by showing the reasons why it was made there, the presence of the raw materials and its social importance for the sustenance of the, traditionally poor, local communities.

Schwäbische Spätzle PGI (Germany)

‘Schwäbische Spätzle’ is a German egg-based pasta product made from fresh eggs in a home-made style.⁵³ In this case, just like the previous ones, the historical description links the product to the socio-economic development of the area. In particular, it states that it was part of the diet of the poor farmers living in the region.⁵⁴ Another important element added by the specification is the fact that a specific machine for cutting this kind of pasta was patented at the beginning of the

⁵³ Schwäbische Spätzle PGI [2011] OJEU C191/22.

⁵⁴ *ibid*, [5.3].

20th century.⁵⁵ This shows that this kind of food was so important for this area that it even fostered technological innovation.

4.2.2. Class 2: baker's wares

Bremer Klaben PGI (Germany)

The Bremer Klaben is a large yeast cake that contains a lot of candied fruit.⁵⁶ In this case, history shows that the product is intimately linked to the economic and social history of Bremen. This city was an important trade port where colonial goods such as candied fruit and other essential raw materials arrived.⁵⁷ Furthermore, the sailors liked to take the cake with them on the ships as it kept for a long time.⁵⁸ This explains both the origin of the characteristic ingredients and of the popularity of the good in the past.

Moreover, as occurs in a large majority of cases, the specification emphasises the link between the product and the city of Bremen by quoting official documents that demonstrate trade in it since the late 16th century, such as resolutions of the local city council. Then, it mentions that the product had become so important and sought-after, that the cake bakers of the city formed their own guild in 1637.⁵⁹ The historical element therefore explains and proves why and how the Klaben is originally linked to the city of Bremen.

⁵⁵ *ibid.*

⁵⁶ Bremer Klaben PGI [2009] OJEU C110/7.

⁵⁷ *ibid.*, [4.6].

⁵⁸ *ibid.*

⁵⁹ *ibid.*

Panforte di Siena PGI (Italy)

The name ‘Panforte di Siena’ refers to a confectionery product obtained by kneading and baking a dough of flour, candied fruit, dried fruit and a mixture of sugar, honey and spices.⁶⁰ In this case, the specification links the origin of this product to the history of the city of Siena, which, from the 12th century onwards, rose as a wealthy trade city as well as a stop-over for pilgrims heading to Rome. This explains why, on the one hand, the product is made from ingredients that are easily found in the hinterland to the city, such as cereals and flour, dried fruit and honey; while on the other hand, it justifies the use of exotic spices that were available due to the importance of the city as a trade centre.⁶¹ Finally, the specification mentions historical sources that show how, at least since the late 18th century, the importance of the production of this product led to the emergence of a professional figure, the *panfortaio* (the panforte-maker), who is peculiar to the area of Siena.⁶² Finally in the 19th century, the name ‘panforte’ started being widely attested nationally to indicate the name of the product.⁶³ Once again, therefore, in this case, the historical analysis of the product shows its genesis, why it is made in a specific way and its unique link with its area of origin.

⁶⁰ Panforte di Siena PGI [2012] OJEU C231/6.

⁶¹ *ibid*, [5.1].

⁶² *ibid*.

⁶³ *ibid*, [5.3].

4.2.3. Class 3: cured meat

Newmarket sausage PGI (UK)

Newmarket sausage is a pork sausage seasoned with a selection of herbs and spices typical of the city of Newmarket, Suffolk.⁶⁴ The origin of the product is linked to the fact that the area is famous for horse racing, and pigs were traditionally used to keep racing yards free from debris. Furthermore, the area has always enjoyed a longstanding reputation for the production of pork.⁶⁵ Pork sausages therefore became a popular snack among the horseracing fraternity, which included members of the royal family. The specification states that the current recipe has remained unchanged since the Victorian age, starting a niche tradition that still exists today, even if, of course, no modern stable keeps pigs.⁶⁶ This example is similar to the Karlovarské Oplatky PGI where the origins of the product are linked to a social and cultural peculiarity of an area. In this case this is represented by the tradition of horse riding. History, therefore, creates and justifies a link, alternative to the *terroir* one, between a localised custom (here, the horse races) and the product. Furthermore, it proves that the recipe has remained unaltered.

Salame Felino PGI (Italy)

Salame Felino is a cured sausage from the small town of Felino, near Parma.⁶⁷ The specification points out that this product is linked to the physical characteristics of the area but also to the presence of local salt mines. Both in Roman and medieval times this product was very precious and it allowed the preservation of meat in the

⁶⁴ Newmarket Sausage PGI [2012] OJEU C69/15.

⁶⁵ *ibid.*, [5.3].

⁶⁶ *ibid.*, [5.1].

⁶⁷ Salame Felino PGI [2011] OJEU C19/15.

form of hams and sausages.⁶⁸ The specification states that in the 13th century the product was even depicted in the Baptistery of Parma.⁶⁹ This demonstrates the longstanding importance and reputation of the product. Finally, as with all the other PGIs examined above, the specification makes reference to sources from the 18th century onwards that mention the product, such as newspapers and encyclopaedias,⁷⁰ thus establishing a link between the ancient origin of the Salame and the modern age in which sources are more certain and reliable.

This selection of examples, therefore, shows in practice how history can be used to reconstruct the origins of a product and of its recipe, and to explain why it appeared in an a specific area. This product/place link does not rest solely on a recount of the past, however. Indeed, it can be proved with concrete evidence, as will be shown in the next section.

5. Evidence

5.1 The function of evidence

The historical link can be proved with evidence just like *terroir*. Indeed, the specification of a PDO must provide details of the physical relationship between the product and the place of origin.⁷¹ Generally, these consist of data concerning the features of the soil, the weather, the climate and so on, which explain how the environment determines a peculiar characteristic of the product, e.g. taste, colour and

⁶⁸ *ibid*, [5.1].

⁶⁹ *ibid*.

⁷⁰ *ibid*, [5.3.].

⁷¹ INAO, 'Geographical Indication: Applicant's Guide' 18-19. See also, INAO (n 37) 32; Daniele Giovannucci and others, 'Guide to Geographical Indications' (International Trade Centre 2009) 80-81;

other organoleptic features.⁷² History performs the same function but requires a different kind of evidence. In particular, it must be able to link the product and its name to the society, culture and economy of a specific area, thus showing the existence of an historical reputation on which the modern one is built. Moreover, it must demonstrate that there is a link between the ancient features of the product, or of its method of production, and the present ones, thus establishing a continuity between the identity of the old and of the present product.⁷³ This analysis must be conducted with a rigorous approach that takes into consideration the relevant socio-cultural and economic factors in order to develop a true and accurate picture of the past of the product and of its evolution.⁷⁴ Hence, the objective work of historians and of scholars of ethnology is needed.⁷⁵ Otherwise, this product/place link will likely be based only on unpersuasive romantic reconstructions of the past of an area and of the communities that lived and live there.

Indeed, it is not uncommon to find specifications that trace the origin of a product back to ‘time immemorial’⁷⁶; or link it to ancestral customs⁷⁷; or make references to legends concerning very well-known historical characters⁷⁸ or

⁷² Barjolle, Sylvander and Thévenod-Mottet (n 36) 96; Casabianca, Sylvander and Noël (n 29).

⁷³ Dev Gangjee, ‘From Geography to History: Geographical Indications and the Reputational Link’ in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture in the Asia-Pacific* (Cambridge University Press 2017) 56.

⁷⁴ *ibid*, 57; Bérard and Marchenay, ‘Lieux, Temps et Preuves: La Construction Sociale Des Produits de Terroir’ (n 3) [32]-[35].

⁷⁵ Bérard and Marchenay, ‘Prouver l’origine’ (n 20) [42].

⁷⁶ See, for instance, ‘Provolone del Monaco PDO’ [2009] OJEU C140/4, [4.6].

⁷⁷ The specification of the Portuguese sausage ‘Alheira de Vinhais’ makes reference to its archaic sculpturing in the shape of a pig, see ‘Alheira de Vinhais PGI’ [2007] OJEU C236/18, [4.6].

⁷⁸ For instance, the specification of the Brie de Meaux PDO states, without providing any specific proof, that this kind of cheese was enjoyed by Charlemagne, while the origin of the typical Czech dough ‘Štramberké uši PGI’ is traced back to some legendary events related to the invasion of the territory by the Mongols in the 13th century. See, respectively, ‘Brie de Meaux

surrounding ancient events.⁷⁹ These examples show how the historical analysis and the choice of the sources is not always adequate to establish an origin link but only to create an allure of folklore around the product. Furthermore, even if the references to ancient periods such as the Middle-Ages or Roman times are substantiated by evidence, they are too far distant in time to prove an actual origin link between the product and the place.⁸⁰ This is generally done for the purposes of marketing. For instance, Gougeon in an essay on ‘la pogne’, a typical French kind of bread, recounts that the producers were trying to pick selectively some parts of the history of the product in order to find an explanation of the etymology of the product’s name that could be appealing to both producers and consumers. According to the author, the producers declared ‘we want to do some history, but we want to sell our products too!’ (*‘On veut bien faire de l’historique, mais on veut aussi faire vendre nos produits’*).⁸¹

Historical evidence can therefore establish an effective product/place link but only if it is researched and analysed in an appropriate way, thus establishing a veritable origin link and not merely advertising legends and folklore unsupported by accurate references. Indeed, the latter conduct, although it could be profitable for the sake of marketing, leads to the creation of invented traditions. These, not only do not

PDO’ (dossier n°6/FR/00110/94.01.24, 1995), [5(e)] and ‘Štramberské uši PGI’ [2006] OJEU C148/15, [4.6].

⁷⁹ Notable in this regard is the specification of the Portuguese potato ‘Batata Dolce de Aljezur’ that reads ‘The town of Aljezur was founded in the tenth century by Arabs and later seized from the Moors in 1249. According to legend (...), the Knights of the Order of St James of the Sword, (...) , drank a potion made from sweet potato before every important battle. The force of the invasion and the speed with which they took the castle of Aljezur stunned the Moors, who were unable to react to such a sudden charge.’ See, ‘Batata Dolce de Aljezur PGI’ [2008] OJEU C324/32, [4.6].

⁸⁰ Bérard and Marchenay, ‘Prouver l’Origine’ (n 20) [18].

⁸¹ Béatrice Gougeon, *La Pogne: Essai Sur Une Spécialité Locale* (Lyon: Université Lumière-Lyon 2, 1992) 10.

prove the origin of the product, but also harm the credibility of the GI system, as will be shown more fully at a later stage of the analysis.⁸² There are some elements, however, that are generally accepted as valid sources in order to prove that the link between a product and a place exists. They are presented below.

5.2 Types of evidence

Different sorts of sources are commonly used to show the link between a product and a place, as well as its social and cultural importance in that specific area. The specifications, after their introductory part, almost always mention written sources, generally dating back from the 18th century onwards, that emphasise not only the geographical link but also the social, cultural and economic importance of the good. This thesis has identified the most recurring kinds of proofs, both through the analysis of the GI specifications and on the basis of the key literature on this point. Some examples will be provided below to show how history can be proved by concrete documentary evidence.

5.2.1. Official and public documents

First of all, this evidence can consist in archival sources such as official or personal documents.⁸³ For instance, the specification of the ‘Pizzoccheri della Valtellina’ puts in evidence that the product was mentioned even in wills,⁸⁴ while the case of the

⁸² See, Section 7.

⁸³ Bérard and Marchenay, ‘From Localised Products to Geographical Indications: Awareness and Action’ (n 29) 24-25.

⁸⁴ Text to n 52.

Bremer Klaben, documents such as resolutions of the city council and the statute of the guild of bakers, dating back to 1637, are mentioned.⁸⁵

5.2.2. Newspapers, magazines and other

Other types of sources that are often used to establish the product/place link are newspaper, magazine and journal articles and guides.⁸⁶ For instance, Salame Felino appeared in 19th and early 20th century newspapers and encyclopaedias.⁸⁷ Recipes are also often used in order to show the existence of the product and the fact that it was similar to its present version, as in the case of the Newmarket sausage.⁸⁸ All literary sources are acceptable, however, including historiography.⁸⁹ For instance, the specification of the prestigious Italian Ham ‘Culatello di Zibello’ states that at least two historians mentioned the product in the 16th and in the 18th century while describing the territory and the economy of the Dukedom of Parma.⁹⁰ In this case, this is, indeed, an important source as it demonstrates the impact of the product on the economy and society of the area.

5.2.3. Oral sources

Finally, oral accounts can also be used.⁹¹ Since the majority of origin products have, for the majority of their history, been niche, homemade goods, written evidence may

⁸⁵ Text to n 57.

⁸⁶ Bérard and Marchenay, ‘From Localised Products to Geographical Indications: Awareness and Action’ (n 29) 24-25.

⁸⁷ Text to n 67.

⁸⁸ Text to n 64.

⁸⁹ Bérard and Marchenay, ‘Lieux, Temps et Preuves: La Construction Sociale Des Produits de Terroir’ (n 3) [35].

⁹⁰ ‘Culatello di Zibello DOP’ (dossier n° VI B14RT/01492/, 1994) [5(d)].

⁹¹ Bérard and Marchenay, ‘From Localised Products to Geographical Indications: Awareness and Action’ (n 29) 23-24. See also, Gangjee (n 2) 56-57.

often be lacking. Sociological investigations can be conducted, however, such as interviews and so on. There are few examples of this kind of research. One of the most instructive is embodied in the specification of the Slovenian sausage Šebreljski želođec:

Šebreljski želođec has been produced for many years in the Idrijsko-Cerkljansko area, but there are few written records to prove this. A survey of the older population was carried out in the geographical area, which confirmed the long tradition of producing Šebreljski želođec' in the Idrijsko-Cerkljansko area. It was found that, since olden times, only high-quality ingredients had been used to make želođec, that the product had always been matured in the traditional manner and that its characteristic shape, taste and aroma formed part of its reputation.⁹²

In conclusion, the two previous sections have demonstrated that history can be an appropriate product/place link because: (1) it consists in the concrete interaction between a place and the activity of the human community that makes the product; (2) it can be proved with objective evidence. This link has also its limits, however, and, sometimes, cannot be considered enough on its own. In fact, it is not always able to establish a true link between the past reputation of the product and the present one. This issue will be analysed in the following sections.

6. The limits of the historical link: general discussion

There are some limitations regarding the possibility of establishing an origin link exclusively through history. This work will focus on two of them. First, it must be proved that the history attributed to the product truly exists. Indeed, history can be mystified, invented and/or reconstructed selectively, thus creating a local tradition that never actually existed in reality. Second, if the history does exist, it must be ensured that the present version of the product is still truly connected to its historical

⁹² 'Šebreljski želođec PGI' [2011] OJEU C45/25, [4.6].

version. In fact, as reminded above,⁹³ there is a difference between origin and mere provenance. Hence, a product that is made in a specific place without any true connection to the local tradition and identity should not be considered an origin product.⁹⁴ A different conclusion would focus on the origin function of GIs and allow history to be used purely for marketing goals and not to establish a product/place link. Furthermore, broadening the scope of GI protection so much is not only inexpedient, but also unnecessary because the non-origin agricultural products and foodstuffs could be protected anyway by collective and certification marks. Both these issues will be analysed below. Then, some relevant case studies will be presented in order to show the undesirable effects of a distorted use of the historical element.

6.1 The history and the tradition of the product can be invented or mystified

The debate on what tradition is and how it can be invented and romanticised has ancient roots, and its discussion in connection with GIs is always lively.⁹⁵ Here the work will discuss an article by Tomer Broude,⁹⁶ published in 2005, which paved the way to other well-known works that have forcefully criticised the relationship between GIs, on one side, and history and tradition, on the other.⁹⁷ In this influential

⁹³ Text to n 40.

⁹⁴ Barjolle, Boisseaux and Dufour (n 3) 15-17.

⁹⁵ For a very recent example, see Grégoire Croidieu and Walter W Powell, 'Inventing Tradition: From Cru to Classe in Bordeaux Wine' (EPIP Conference, Bordeaux, 4-6 September 2017).

⁹⁶ Broude (n 669).

⁹⁷ For instance, Justin Hughes based on Broude's argument in some sections of a famous article in which he claimed that the only true goal of EU GIs is to create a monopoly over the marketing allure and the evocative power of geographical names. Thus, the preservation of the myths surrounding highly reputed products would only be a commercial operation. Justin Hughes, 'Champagne, Feta and Bourbon' (n 11).

More recently, Hughes stated that some producers believe in GIs as if they were magical tools. See, Hughes (n 13).

article, Broude argued that GIs often promote ‘invented traditions’ and ‘invented communities’, providing protection to names and symbols embellished in order to appear to be expressions of traditional know-how.⁹⁸ According to the author, this strategy cannot be prevented by the law and, indeed, is often supported by the states that are glad to emphasise what makes their territory allegedly special and attractive to tourists.⁹⁹ There is, therefore, no way to prevent GI from becoming instruments for promoting ‘Disneyfied’ traditions, with the ultimate result of leaving consumers confused and suspicious. Furthermore, Broude argues that modern GI products have few elements in common with their traditional precedents, hence talking about the traditional character of them is, at least, misleading.¹⁰⁰ Both these objections will be analysed in the following paragraphs.

6.1.1. Objection 1: tradition is an invention

In his argument, Broude expressly applies to GIs the famous theories of Hobsbawm who, in his work ‘The Invention of Tradition’, argues that tradition is an invention aimed at creating symbols that inculcate values and social codes by implying a continuity with the past that is often largely fictitious.¹⁰¹ This discussion belongs to a broad and complex debate among anthropologists about the meaning of tradition and authenticity that will not be reviewed here, as it would exceed the purpose of the present work.¹⁰²

⁹⁸ Broude (n 11) 674-678.

⁹⁹ *ibid.*

¹⁰⁰ Broude (n 11) 677.

¹⁰¹ EJ Hobsbawm and TO Ranger (eds), *The Invention of Tradition* (Cambridge University Press 2012); Broude (n 11), fn 154.

¹⁰² Ulin provides an excellent resume of the debate on this issue, see Robert C Ulin, ‘Invention and Representation as Cultural Capital: Southwest French Winegrowing History’ (1995) 97 *American Anthropologist* 519. For additional readings, see Jocelyn Linnekin, ‘Defining

In fact, the present work submits that these standards of anthropology do not fully apply to GIs to which a lower threshold is enough. GIs, although important, are only labels that must prove that a product belongs to an area to which they are linked because of environmental, social, cultural, economic and other matters. If the historical evidence, objectively and impartially collected, provides evidence of these factors, the product/place link is established. Indeed, arguing that the roots of GIs rest solely on invention is excessive since, as was shown above, the historical link can be supported by practical evidence.¹⁰³ Furthermore, anthropology itself admits that ‘invented’ traditions can be distinguished from those that are established as ‘real’.¹⁰⁴ Finally, as shown above, the history of a product actually not only explains the origin of the peculiar characteristics of a product but these goods also have an influence on the local economy, landscape and identity. This is due to their historical importance that has shaped, through the decades, the natural and human environment in which they are made. This point is confirmed at an international level too. For example, the ‘Champagne hillsides, houses and cellars’ are protected by UNESCO because they testify a ‘(...) development of a very specialized artisan activity that has become an agro-industrial enterprise¹⁰⁵’ dating back to the 17th century. A similar example is represented by the ‘Vineyard Landscape of Piedmont’ where, according to UNESCO, the cultivation of wine has been playing an essential role in shaping the landscape and

Tradition: Variations on the Hawaiian Identity’ (1983) 10 *American Ethnologist*; Jocelyn Linnekin, ‘Cultural Invention and the Dilemma of Authenticity’; Jocelyn Linnekin and Richard Handler, ‘Tradition, Genuine or Spurious’ (1984) 97 *Journal of American Folklore*; Allan Hanson, ‘Reply to Langdon, Levine and Linnekin’ (1991) 93 *American Anthropologist*; Allan Hanson, ‘The Making of the Maori: Culture Invention and Its Logic’ (1989) 91 *American Anthropologist*.

¹⁰³ See, Section 5.2.

¹⁰⁴ Edward Shils, *Tradition* (University of Chicago Press 1981). For more sources, see Ulin (n 105) 519.

¹⁰⁵ UNESCO - World Heritage List, ‘Champagne Hillsides, Houses and Cellars’ (*UNESCO*) <<http://whc.unesco.org/en/list/1465>>.

the local culture for centuries.¹⁰⁶ The creation of a symbolism related to the product and its evolution over time is therefore perfectly natural and acceptable,¹⁰⁷ unless it is fictitious and/or completely unsupported by concrete evidence.

6.1.2. *The traditional version of the product is a mere commercial invention*

Broude criticises the use of tradition in GIs also by claiming that these are only marketing strategies and that the past of the product is generally unrelated to its present. For instance, he observes that the ancient version of Champagne has nothing to do with the current one:

(...) Champagne is somehow instructive in this regard, because, until the mid-nineteenth century, local culture was more related to still wines, not *Methode Champenoise* sparkling wines. Economic expediency produced the push for early GI protection that required an emphasis on the local and French ethos of sparkling wine.¹⁰⁸

On the same note, Justin Hughes argues that the traditional environment, often evoked by the producers of GI products, is just a caricature and a mystification. In fact, according to him, the processes of production are nowadays highly industrialised, and products such as Champagne or Bordeaux wine have become consumer goods spread worldwide rather than traditional niche products.¹⁰⁹

These arguments highlight a serious known issue,¹¹⁰ i.e. it must be ensured that the history of the product is indeed able to link the product to a specific place.

¹⁰⁶ UNESCO - World Heritage List, 'Vineyard Landscape of Piedmont: Langhe-Roero and Monferrato' (*UNESCO*) <<http://whc.unesco.org/en/list/1390>>.

¹⁰⁷ Barjolle, Boisseaux and Dufour (n 3) 17-20.

¹⁰⁸ Broude (n 11) 677.

¹⁰⁹ Hughes, 'Champagne, Feta and Bourbon' (n 11) 340-342.

¹¹⁰ For instance the applicant's guide of the INAO specifically provides that the only important historical references are those that are related to the present uses. See, INAO (n 37) 26.

The way in which these excerpts analyse the concept of tradition is not completely convincing, however. In fact, tradition is, by definition, an evolving concept that naturally embodies all the innovations introduced by the community that develops it.¹¹¹ In the case of Champagne, the fact that the sparkling version of this product prevailed was due to a specific cultural evolution linked to the change in taste of the high social classes.¹¹² Then, it naturally evolved into a highly successful product, exported all over the world. Yet, the physical, historical, cultural and economic link between the wine and its area of origin is certified by copious historical evidence and, as shown in the previous paragraph, by international institutions such as UNESCO. The fact that the product evolved into something different from what it was in the past, therefore, does not mean *per se* that there is no link between the history of the product and its present reputation. Sometimes, however, the line between a genuine tradition and a distortion of the history of the product is not clear and this issue creates problems, as will be analysed in the following sections.

For completeness, it is worth adding that the fact that a product was relatively unknown and considered ‘poor’ in the past, does not mean that its subsequent success makes it less linked to the history of their area of origin. For instance, the Italian ‘Lardo di Colonnata PGI’,¹¹³ a product obtained from pig meat fat, was for centuries a

¹¹¹ For an authoritative definition of traditional knowledge, see WIPO IGC, ‘The Protection of Traditional Knowledge: Draft Objectives and Principles’ (2006) WIPO/GRTKF/IC/10/5, 19. See also, Martin Beckstein, ‘The Concept of a Living Tradition’ [2016] *European Journal of Social Theory* 1; Susette Biber-Klemm and Danuta Szymura Berglas, ‘Biodiversity and Traditional Knowledge: Factual Background and Problems’ in Susette Biber-Klemm and Thomas Cottier (eds.), *Rights to plant genetic resources and traditional knowledge: basic issues and perspectives* (CABI Pub 2006) 17.

¹¹² In particular, it is linked to the fact that the middle and upper class in the French *belle époque* considered sparkling wine an essential sign of status quo. Sparkling wine, however, was a must in the parties of the French aristocracy even before the French Revolution. See the sources in chapter 1, in particular Guy (n 24).

¹¹³ ‘Lardo di Colonnata PGI’ [2003] OJEU C131/10, [4.4].

highly caloric snack for the people who worked in the caves to extract the famous Carrara marble. There is evidence that the product has been consumed since Roman times, and it is demonstrated that its manufacture contributed to keeping the economy of this village alive for centuries.¹¹⁴ The fact that the Lardo has now lost its social function and has become a gourmet good, is just a step in its evolution.

Not all the aspects of the main criticisms of the concept of tradition in the field of GIs are convincing, therefore. Nonetheless, the work of Broude, and also of Hughes, is of paramount importance as it reminds us that if the historical element is not based on solid evidence, the product/place link is unconvincing and works only as a marketing tool. This is the case when the present version of the good is completely unrelated to its traditional one, with the latter used only to create a mystified image for commercial purposes. This point will be discussed in the next subsection.

6.2 The product is not linked to its tradition and ancient reputation

The mere fact that a product enjoys an illustrious history does not always prove *per se* that there is a link between its present and its past version. It has just been stated that it is not necessary that the good be produced exactly in the same way as it was in the past, provided that this evolution takes place in the mould of the local tradition. It is necessary, however, to prove the existence of the link between the past and the present of the product in order to demonstrate that the reputation of the product is legitimately based on its history, otherwise the granting of a GI would not be justified.

¹¹⁴ *ibid.*

An extreme example of how the nature of a GI can be distorted by an inappropriate use of the historical link is the one of Mexican Tequila, analysed by Sarah Bowen in a famous article.¹¹⁵ The AO for Tequila was registered domestically in 1974 by the Mexican Government, which is also its owner. The international registration in the Lisbon Register was finalized in 1978. Tequila has a very old tradition, dating back to the 16th century when the blue agave started being distilled in the area of the city of Tequila. Today, however, the bottlers and sellers of the product, who are the most powerful actors in the supply chain, have lowered the standards of Tequila and added variations to the traditional recipe, thus turning the drink into something far from the authentic origin product. Moreover, the traditional producers of agave are not represented in the process of production.¹¹⁶ Since the method of production of the good and the environment in which it is made are completely different from the traditional one, it is questionable whether the current version of the product is linked to its historical roots anymore.

This famous example demonstrates that even if a longstanding history and know-how associated with a product do exist, these are not always enough *per se* to establish a valid product/place link in case the current version of the product does not reflect its history. Hence, if no other linking factor is present, e.g. *terroir*, the good should not be considered an origin product, even if it enjoys a well-established reputation in the market.

Now that these controversial issues concerning the suitability of history to establish a valid product/place link have been discussed from a general perspective, it

¹¹⁵ Sarah Bowen, 'Development from Within? The Potential for Geographical Indications in the Global South' (2010) 13 *The Journal of World Intellectual Property* 231.

¹¹⁶ *ibid*, 238-240.

is possible to analyse some practical cases, taken from the EU experience, that illustrate the negative consequences of an improper use of the historical element.

7. When the history does not establish an origin link: practical cases

The following sections will focus on selected cases, divided into three categories, which show the consequences of a use of the history that does not create a product/place link but that merely builds a commercial image for the products. Such distorted uses of the historical link have sometimes led to the deception of consumers and public controversies, thus confirming that this linking factor, although widely used in practice, is not always able on its own to link a product with its place of origin and that, if applied improperly, can in fact harm the origin function of GIs. In particular, the analysis will focus on three controversial circumstances: (1) when the method of production does not match the traditional image of the product; (2) when the raw materials are completely unrelated to the history and tradition of the product; (3) when, although a tradition related to the product existed, the current version of the latter has nothing to do with it.¹¹⁷

7.1. Problem 1: the production method does not match the traditional image of the product

The ‘Piadina Romagnola PGI’¹¹⁸ is a good example of a case in which the specification of a product exploits its strong reputation among consumers, while allowing a method of production that does not correspond to the one that the public

¹¹⁷ Instead, it will not focus on related issues such as those concerning the correct identification of the area of production, as this would exceed the scope of the present work. For more on this point, see Dev Gangjee, ‘Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection’ (2006) 3 Intellectual Property Quarterly 291 and Bérard and others (n 17).

¹¹⁸ ‘Piadina Romagnola / Piada Romagnola PGI’ [2014] OJEU C153/9.

expects. The Piadina is a flatbread made in the area around the Italian Adriatic coast of the Riviera Romagnola. Between 2014 and 2015 this product became the object of an administrative trial in Italy that raised many questions concerning the ability of GIs to truly protect the traditional version of a product.¹¹⁹ The dispute involved a challenge by small scale ‘kiosk’ producers of *piadine* and other artisanal producers, who were supported, among the others, by the Slow Food association.¹²⁰ In particular, these contested that the Italian competent authority allowed the registration of a specification that permitted the use of the PGI label on industrially-produced *piadine*. Hence, these were being treated as equivalent to *piadine* produced on a small-scale/artisanal basis and sold in street-side outlets as had traditionally been done. Although the administrative tribunal of first instance (*TAR del Lazio*) ruled in favour of the plaintiffs that contested the validity of the specification,¹²¹ on appeal the *Consiglio di Stato*, the Italian administrative tribunal of last instance, reversed the decision.¹²² In particular, it held, *inter alia*, that the artisanal and the industrial products were substantively identical, and that therefore excluding the latter from the text of the specification would have been discriminatory.¹²³

This decision is highly disputable as it does not consider that, *per se*, the *piadina* is only a flatbread and it is not linked to its area of production by any physical factor. Hence, the history of the product, that builds its present reputation, is the only

¹¹⁹ Andrea Zappalaglio, ‘The “Piadina Romagnola” Mess. A New Legal Case for an Old Question: What Is a GI?’ (2015). See also Gangjee, ‘From Geography to History: Geographical Indications and the Reputational Link’ (n 16).

¹²⁰ The case also featured a challenge to the definition of the geographical region by a producer excluded from it. This aspect, however, will not be taken into consideration here.

¹²¹ TAR Lazio, Sentenza n 5148, 15 May 2014.

¹²² Consiglio di Stato, Sentenza n 6933, 13 May 2015.

¹²³ From a review of the litigation, see Valeria Paganizza, ‘Dalla Padella Alla Brace: La Piadina Romagnola OGP Dal “Testo” Al Consiglio Di Stato’ (2014) 8 *Rivista di Diritto Alimentare* 45.

element that can distinguish the original product from any other similar bakery product, by making it unique. The specification does not take this crucial point into consideration, however, thus allowing the production of *piadine* that do not match the traditional image of the product on which its present market reputation is made. In addition, the majority of consumers may not be aware of this.

7.2. Problem 2: the raw materials are sourced from areas completely unrelated to the reputation of the product

In chapter 2 it was shown that the drafts of Regulation 2081/1992 allowed producers to source the raw materials necessary to make the GI product from outside the designated area of production in order to accommodate the longstanding traditions of well-known products like French Roquefort and Italian Parma Ham.¹²⁴ Those drafts in fact specified that this operation was possible only in cases in which this was compliant with the tradition of the product, but this limit was not included in the final text of the Regulation 2081/1992, thus leaving members states free to adopt their own approaches on the matter.

As an undesired consequence, the analysis of the specifications allows the identification of two different controversial scenarios.¹²⁵ First, a more serious one, in which the raw materials are imported from areas that are completely unrelated to that to which the reputation of the product is linked. The case of ‘Bresaola della Valtellina PGI’ is a good example of this. The second scenario, instead, concerns cases in which

¹²⁴ Text to n 123 in Ch 2.

¹²⁵ Even countries in which the competent authority is strict, such as France, are not immune from these dysfunctions. See, Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (n 2) 197-199.

the area from which the raw materials of the product can be sourced has been excessively expanded over the years, through progressive amendments of the specifications, thus becoming overly broad and raising doubts as to whether the good can still be considered an origin product. This is the case, for instance, of the ‘Lardo di Colonnata PGI’ and the ‘Prosciutto di Parma PDO’.

7.2.1. The raw materials are unrelated to the area to which the reputation of the product is linked

The ‘Bresaola della Valtellina PGI’ is an example of a product that is linked to a specific area by its strong commercial and historical reputation and, therefore, worthy of PGI protection under art 5(2) Regulation 1151/2012. The way in which the product is made, however, and especially the nature of the raw materials used, leads to the conclusion that, in this case, the reputational element is misleading and unable to constitute the basis of a true origin link.

Bresaola is a salty and naturally aged beef typical of Valtellina, a mountain valley in northern Lombardy. It enjoys a strong market reputation and boasts an ancient history. Its specification states that writings dating back to the 15th century prove the existence of ancient practices related to the production of the product.¹²⁶ Moreover, it mentions that the know-how involved in the making is passed down from generation to generation, thus belonging to a local tradition.¹²⁷ The specification

¹²⁶ Bresaola della Valtellina PGI [2010] OJEU C321/23, [5.1], [5.3].

¹²⁷ *ibid.*

does not require the product do be made with local, or even national meat, however, and indeed is very generic on the point.¹²⁸

In 2016, a scandal arose when it became known that the Bresaola is produced from meat of zebu, a cattle imported from South America that does not exist in Europe. Consumers were not aware of this and, unsurprisingly, considered the GI label deceiving.¹²⁹ Some producers, however, replied by claiming that the South American beef is better than the European one and that they selected it in order to make the best product possible.¹³⁰ This is an interesting observation that shows that often the concept of origin and that of quality are confused. In fact, the use of this kind of raw material is completely incoherent with the history and reputation of the product that, in turn, has generated a specific image, and expectations, in the mind of the consumers. Indeed, very few of them were aware of the origin of the meat and, according to a survey, 87% shared the opinion that, in this case, the label was actually misleading.¹³¹ This case confirms that history is not enough to constitute a valid product/place link, if the product that is marketed is not linked to it. Furthermore, it highlights the fact that the concept of quality and that of origin are not interchangeable. While no one questions the excellence of the ‘Bresaola della Valtellina’, it is questionable whether it qualifies as a GI/origin product since the raw materials used to make it are completely alien to the image of the product upon which its historical reputation has been built in the minds of consumers.

¹²⁸ *ibid*, [3.3].

¹²⁹ Isabella Fantigrossi, ‘La Bresaola Della Valtellina IGP? E’ Fatta Con Carne Di Zebù Dal Brasile. E in Pochi Lo Sanno’ *Il Corriere della Sera* (2016) <http://cucina.corriere.it/notizie/cards/bresaola-valtellina-igp-fatta-carne-zebu-sudamericano-pochi-sanno/caso-bresaola_principale.shtml>.

¹³⁰ Elle Lee, ‘Bresaola from Valtellina: A Traditional Italian Cold Cut’ [2017] *Artimondo: artisanal excellence* <<http://www.artimondo.co.uk/magazine/bresaola-from-valtellina/>>.

¹³¹ Fantigrossi (n 129).

7.2.2. The area of origin of the raw material is excessively broad

Many times the area from which the raw materials can be sourced is excessively broad, thus raising objections as to whether the good is truly an origin product. This practice, which is due to the necessity of meeting the demands of the market, is not limited to agricultural products, since similar examples can be found in the field of wine.¹³² We can find examples of it in the specifications of both PGI and PDO products.

For instance, the pig's fat necessary to make the 'Lardo di Colonnata PGI', already described above,¹³³ can be sourced from all regions of northern and central Italy, even from areas located 600 kilometres away from Colonnata.¹³⁴ While this practice is absolutely compliant with the GI rules, it is probably not enough to make a convincing origin product since consumers expect the raw materials to come from an area that is at least related to the area where the good is manufactured. An even better example of this issue can be found among PDOs. Indeed, the area from which the pig meat needed to produce the 'Parma Ham PDO' can be sourced has been expanded in recent decades. In 1970, this raw material could be sourced only from four regions of northern Italy, including the region of production and two next to it.¹³⁵ Today, the meat can be sourced from practically all the regions of northern and central Italy.¹³⁶

¹³² For instance, the area of production of Prosecco wine has been considerably expanded over the years such that today it no longer reflects the traditional areas of manufacturing. See, Diego Tomasi, Federica Gaiotti and Gregory V Jones, *The Power of the Terroir: The Case Study of Prosecco Wine* (Springer 2013).

¹³³ Text to n 113.

¹³⁴ The meat can be sourced from Tuscany, Emilia-Romagna, Veneto, Friuli-Venezia Giulia, Lombardy, Piedmont, Umbria, Marche, Lazio and Molise, *ibid.*, [4.2].

¹³⁵ The regions were: Emilia Romagna, Veneto, Lombardia, Toscana, Piemonte. See, Legge 4 Luglio 1970, n 506 (GU 17 July 1970 n 179), art 2.

¹³⁶ In particular from Emilia-Romagna, Veneto, Lombardia, Piemonte, Molise, Umbria, Toscana, Marche, Abruzzo e Lazio. See, *Decreto Legge* 15 Febbraio 1993, n 26 (GU 26 July 1993), art 3.

Although this provision is justified by the exigencies of the production, it has been criticised as it harms the credibility of the GI and of the level of protection granted to it. For instance, after the famous ECJ decision *Consorzio del Prosciutto di Parma v Asda*¹³⁷ that the Parma Ham can be sliced only in the place of manufacturing is hard to justify when the raw materials needed to make it can be imported from up to 450 kilometres away.¹³⁸

7.3 Problem 3: the present and the historical version of the product are unrelated

In the previous cases, the product enjoyed a specific historical reputation that linked it to a specific place. The nature of the product itself, however, for different reasons, substantively differed from the image of the product built by its reputation. Instead, in other cases, rarer than those discussed above, the historical and anthropological analysis show that the current product and its historical precedents are completely unrelated. An example of this is the ‘Volaille de Bresse PGI’ that consists of different types of poultry cuts and carcasses from the area of Bresse in France.¹³⁹

In the specification, the product/place link is described only very briefly and is based on two elements: first, the commercial reputation that the good enjoys among the consumers; second, the history of the product. In particular, the latter is defined as follows:

¹³⁷ Case C-108-01 [2003] *Consorzio del Prosciutto di Parma v Asda Stores Ltd* [2003] I-05121.

¹³⁸ This interesting critique was put forward by Hazel Moir during the Conference ‘European Policy for Intellectual Policy 2017’.

¹³⁹ Volaille de Bresse PGI [2008] OJEU L151/29, [4.2].

Historical reputation, linked to the ‘Foire de l’Envoi’, a fair held in the village of Loué. This fair was very well-known in the 19th century and attracted many poultry dealers. The region's farmers sold their poultry to these dealers. In 1958, breeders and packers in the Loué region successfully revived the production of high-quality farm poultry.¹⁴⁰

It appears that the origin of the product dates back to the 19th century and was then revived in the 1950s. As documented by Bérard and Marchenay, however, the historical version of the good and the present one have nothing in common. The authors, focusing specifically on the chicken and the capon of Bresse, point out that in both cases the current methods of production are completely unrelated with the traditional ones and, in any event, they are fairly common and not characteristic of the area.¹⁴¹ Moreover, even the race of the animals used to produce the product is different from the traditional one.¹⁴² Hence, in this case a substantively new product has been created on the basis of the reputation of a previous one with which it has few things in common. Although the registration as a PGI is justified by the fact that the *Volaille de Bresse* enjoys a strong commercial reputation, therefore, the historical sources mentioned in the specification cannot establish a valid historical link and constitute a mere marketing argument.

8. The product/place link: some policy prescriptions and suggestions for future research

The previous sections have demonstrated that the history and the tradition related to a product can be an adequate linking factor because they prove the origin of the good by showing the interaction between the community that makes it and a specific place. This element is not always used properly, however, and can become a mere marketing

¹⁴⁰ *ibid*, [4.6].

¹⁴¹ Laurence Bérard and Philippe Marchenay, ‘Prouver l’Origine’ (n 20) [7].

¹⁴² *ibid*.

tool, thus damaging the origin function of GIs. In this section, therefore, some policy prescriptions will be suggested, which may be useful in order to promote a better use of the linking factors, in line with the origin function of GIs. A disclaimer is needed here, however: there is no exact formula that can solve all the issues of the reputational link and, in particular, of the reputational link based on the history of the product. Indeed there are so many practical nuances that emerge from the analysis of the registered GIs, often due to the different approaches of each EU GI member state, that a one-size-fits-all approach would be inexpedient. The following policy prescriptions must therefore be taken as starting points for future research, since developing them here would exceed the scope of the present one.

First of all, this whole work has focused on the links between the product and the place in the context of GIs, focusing on *terroir* first and, then, on the reputational link and, in particular, on the historical reputational element. Between these two extremes, however, there are different nuances. For instance, some *terroir* products can be made, completely or partially, from materials sourced from outside the designated areas, and the same can occur for PGI ones. By contrast, some goods are based on traditional practices, and not on a specific soil, which, nevertheless, must be performed in a specific environment. For instance, Roquefort cheese can only be made in the local caves. Instead, other goods feature a specific method of production, which, however, can be performed anywhere. Other nuances could be described.¹⁴³ Being aware of all these variants, which can be dealt with only through a case-by-case approach, we suggest the following list of criteria that should be followed in order to prevent the registration of weak GIs:

¹⁴³ Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (n 16).

(1) Whenever possible, both the *terroir* and the reputational element should be included in the specification in order to strengthen the product/place link and to make it more accurate.¹⁴⁴ This should be done not only in the case of products that are characterised by a *terroir* link, but also for those that are produced in a specific environment, with the only exception being those that are completely unrelated to the natural context. Indeed, as reminded in the introduction, the analysis carried out in the previous chapter shows that many PDOs include the reputational element in their specification and, in turn, PGIs often mention some sort of *terroir* link. This is a good solution that, on the one hand, would prevent PGIs from becoming too broad, while on the other providing a complete picture of *terroir* conceived as a mix of natural and human factors.

(2) The more the product is based only on reputation and history, the more its specification, in particular the product/place link, and its method of production, must reflect its traditional image. In fact, in these cases, it is the historical element that makes unique a product that, otherwise, would be easily replicable anywhere. Furthermore, as stated above,¹⁴⁵ this does not mean that the good must be made as it was centuries ago. Rather, it means that it must be coherent with the identity of the product, as it emerges from historical proofs, studies and other types of evidence, and it must represent the know-how shared by the producers in the designated area. This narrow way of interpreting the reputational element is necessary to avoid the distortions that we have shown in the previous section and would prevent an undue proliferation of weak GIs.

¹⁴⁴ Here, we agree with Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ (n 2) 296.

¹⁴⁵ Text to n 111.

(3) As shown in chapter 3,¹⁴⁶ the registered GIs based solely on the commercial reputation, i.e. the opinion of consumers, are less than the 20% of the total. In light of the findings of the present work and considering, in particular, the importance of the historical element in order to establish the reputational link, the mere market reputation should not be considered enough. Indeed, as correctly argued by Bérard and Marchenay, the mere fact that consumers believe that a product originates from a specific area, does not mean that it is truly anchored to that through history or environment.¹⁴⁷ Indeed, as some of the case studies presented above show, consumers can be misled. Since we believe that the origin function of GIs must be preserved, a narrower interpretation of the reputational element must be provided. In light of this, the mere commercial reputation should always be accompanied by the history of the product, and of the method of production, supported by proper evidence and/or by the analysis of the relevant *terroir* link. If none of these linking factors are available or can be sufficiently proved, the GI must not be granted.

(4) Restricting the possibility to register GIs not based on a strong physical and/or human link to the designated area should not be considered a problem. Indeed, geographical names can be protected by collective marks or certification marks.¹⁴⁸ GI protection, meanwhile, should be reserved for products with a clear origin link.

¹⁴⁶ See, Tables 3.4 and 3.5 in Ch 3.

¹⁴⁷ Bérard and Marchenay, 'Prouver l'Origine' (n 20) [7].

¹⁴⁸ For a focus on collective and certification marks, see World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use*. (2nd edn, WIPO 2004), [2.695-2.707]; Marsha A Echols (ed), *Geographical Indications for Food Products: International Legal and Regulatory Perspectives* (Kluwer Law International 2008) 135-148; Jeffrey Belson, *Certification Marks* (Sweet & Maxwell 2002); Norma Dawson, *Certification Trade Marks: Law and Practice* (IP Publishing Ltd 1988). For the position of the US concerning the protection of geographical names through trademarks, see United States Patents and Trademark Office (n 681). See also, Le Goffic and Zappalaglio (n 15).

(5) From the present work it emerges that sometimes there are still too many differences between the approaches adopted by the different domestic competent authorities regarding the criteria needed to register a GI. The system currently in place, however, featuring a two-step procedure for the examination of the applications, should be retained. This allows the local authorities, closer to the applicants, to carry out the first scrutiny of the application, which they might be reasonably expected to be able to perform better than any distant centralised bureau. It is important, however, to enhance the harmonisation of the practices of these national offices in order to enhance clarity and uniformity. The publication of a set of shared guidelines is, in this regard, desirable because the existing one is only a few pages long: far too short and vague to introduce clear and cogent standards.¹⁴⁹

8. Conclusions

The present chapter has focused on the role that history can play as a valid product/place link. It has concluded that the historical element can indeed constitute an effective linking factor, for two main reasons. First, because, similarly to *terroir*, it consists in the description of a practical interaction between the community that makes the origin product and a specific geographical area; second, because this link can be proved by concrete evidence identified and interpreted in a scientific way.

It has also been highlighted, however, that this element is not always enough on its own. In fact, the history of a product can be just a depiction of a vague mystified past, completely unsupported by tangible elements. Furthermore, even if a longstanding tradition related to a place exists, this does not necessarily signify that

¹⁴⁹ European Commission, 'Guide to Applicants: How to Compile the Single Document' (2017).

the present version of a product is related to it, and that it belongs to the peculiar identity of the geographical area in question. In particular, the work has analysed some practical cases in which (1) the method of production allowed by the specification makes the product substantively different from the one that consumers have in mind, based on its historical reputation; (2) the raw materials necessary to make the good are sourced from areas that are completely unrelated to those from which these were traditionally imported. For instance, in the case of Bresaola, the meat comes from another continent altogether; (3) although a tradition concerning a product exists, the two are completely unrelated. Thus, the former cannot validly be used to demonstrate the existence of the link between the latter and its place of origin, since the good, although vaguely based on the local history, is substantively new.

Finally, the chapter has presented some policy prescriptions that, in light of the findings of the whole work, might be useful in order to prevent the granting of weak GIs based on a disputable product/place link. Among other things, it was suggested that the origin function of GIs can be preserved only by supporting a narrow interpretation of the linking factors. As a consequence, the links that are merely based on the subjective perception of consumers, such as the commercial reputation of the product, should not be considered enough on their own. It is important, however, to stress that the specifications can be very nuanced and differ, one from the other. Distilling universal rules in this field, however, as well as adopting a one-size-fits-all approach, is probably inexpedient. Hence, the policy prescriptions presented in this chapter must be read as the starting point of further research on this matter, rather than general principles valid in all cases

GENERAL CONCLUSIONS

The proof of the existence of an essential link between a product and its place of origin is a crucial requirement to grant protection to a geographical name under the Law of Geographical Indications. The present thesis has demonstrated that, in Europe, the nature of this link has changed, shifting from the early *sui generis* regimes that considered *terroir* to be the only valid linking factor, to a EU one in which the history of the product has become the predominant element. The work has come to this conclusion through the analysis of the evolution of the most important *sui generis* systems of GI protection that have been introduced in Europe, with a specific focus on the EU Regulation 1151/2012 on geographical indications for the protection of agricultural products and foodstuffs.

In particular, in Chapter 1, the analysis focused on the origin of *sui generis* GI protection in Europe, specifically investigating the French and the Italian experiences. In those systems, originally designed to protect wines against adulteration and counterfeiting, the only linking factor was *terroir*. This word, descending from the technical jargon of oenology, indicated the physical link between a product and the soil that gave the former its peculiar organoleptic features. Today, this concept is even more popular than in the 1930s, when the law on the protection of *Appellations d'Origine Contrôlées* (AOC) came into force in France and when Italy was trying to introduce its own system of protection of IGOs. The thesis has found, however, that the early concept of *terroir* was substantively differed, under some aspects, from its present version, as enshrined in the text of Regulation 1151/2012 where it is defined as a mix of natural and human factors. This definition, in fact, was only sporadically anticipated during the interwar period by the statements of some forward-looking

politicians and academics. It truly began to emerge, however, only after the introduction of the AOC rules. The popularity of the concept of *terroir* is therefore probably the consequence, and not the cause, of the success of the protection granted initially to wine and cheeses, before being gradually extended to other products.

Furthermore, the thesis has focused on the policies upon which the early GI systems were based, and has found that there are some important similarities between these and the current EU one. For instance, in both cases, there is a rigid bureaucratic structure in charge of examining the applications. Moreover, the overall system is aimed at protecting producers against a range of unfair practices. There are also many important differences between the old and the new regimes, however, that lead to the conclusion that they are substantially different in many of their aspects. For instance, some important policy objectives that characterise the present EU *sui generis* regime, such as the promotion of rural development, were completely absent in the past. Equally, the protection of consumers was rarely listed among the direct objectives of the early systems of protection, while it is central today. Hence, the chapter concludes that many elements of the policy of the current EU GI system do not descend from the early IGO regimes and, therefore, must have originated elsewhere.

Chapter 2 continues the analysis of the previous chapter and concludes that many of the goals of the present EU GI system were established by the process of reform of the European Common Agricultural Policy (CAP) that began in 1985. For instance, it was stated a moment ago that the promotion of rural development was completely absent in the early *sui generis* regimes. This, however, became very important within the CAP during the 1980s and, even more so during the 1990s. Next,

the chapter focuses on the origins and the nature of the reputational link that, despite being the most frequently used linking factor, is largely under researched.

It is known that, traditionally, the countries that had not established a *sui generis* GI regime, such as Germany and the U.K., protected IGOs under the law of unfair competition or passing off. Hence, the link between a product and its place of origin depended on the reputation that the good enjoyed on the market. In other words, it was considered to be a merely subjective element, based on the opinion of consumers who attributed a specific quality to a product made in a specific place and bearing the distinctive name of the area of production. This link, based purely on the commercial reputation of the product, was enshrined into the Regulation 2081/1992, thus becoming the key element of applications for a PGI. This quality scheme was meant to represent the legal tradition of central and northern European countries, while the PDO is almost identical to the French *Appellations d'Origine Contrôlée* and the Italian *Denominazione d'Origine Controllata*.

This thesis, however, has analysed the *travaux préparatoires* of the TRIPs Agreement, along with the position papers submitted by the negotiating parties during the Uruguay Round. This research revealed that, in 1988, the European Community, as it then was, proposed the adoption of a GI regime that was almost identical to the PGI quality scheme and that featured the reputational element as a linking factor. This shows that more than two years before the beginning of the negotiations that led to the introduction of the EU *sui generis* GI regime, the EC member states had already come to some kind of agreement on a flexible standard of protection, narrower than Indications of Source, protected by the general principles of the unfair competition law, and broader than the Appellations of Origin that were based exclusively on

terroir. This conclusion allowed this thesis to analyse under a different light the events that, between the end of 1991 and the first months of 1992, led to the introduction of the first EU GI Regulation. In fact, it is known that these negotiations were very complex and, indeed, the work provides an original view on the role played by the different countries that conducted them and by their key policymakers. The fact that the EC member states had already agreed on a system similar to PGI, however, demonstrates that the current structure of the EU GI regime is not just the result of an eventful negotiation, but the end of a complex process of harmonisation that the European countries started, at least partially, at the end of the 1980s, in parallel with the reform of the CAP and the Uruguay Round.

Chapter 3 has been dedicated to the evolution of the product/place link after the introduction of the EU *sui generis* GI regime in 1992. In particular, the thesis has carried out the analysis of the specifications of all the registered PDOs and PGIs until 31 December 2016 and has highlighted the relevant trends that emerged from this investigation. First of all, the research has shown that, over the last ten years, applicants from almost all the EU members, with few exceptions, have preferred PGIs to PDOs. This can be easily explained by the fact that the former are more flexible and easier to obtain than the latter. This trend has led to the predominance of the reputational element. Very often, in practice, this consists of the description of the historical reputation of the product, that is of the history of the good and/or of the evolution of the production methods that are related to the traditional socio-cultural reality of the designated area.

The analysis goes further, however, to show that, as far as the product/place link is concerned, the differences between the two quality schemes, PDOs and PGIs,

are unclear. This point has been confirmed by showing that the *terroir* element, which characterises PDOs, appears frequently in PGI specifications. Vice-versa, while the historical link is almost always mentioned in PGI specifications, it often appears in PDOs as well. Furthermore, it has been shown that, in some cases, *terroir* products are protected by PGIs, thus confirming that the two quality schemes are sometimes interchangeable in practice.

Chapter 4 reflects on the findings of the previous chapter and of the whole thesis. In particular, it concentrates on whether history can be a suitable product/place link and it concludes that the answer must be positive for two main reasons. First, because, similarly to *terroir*, history consists in the description of a practical interaction between the community that makes the product and a specific geographical area; second, because this link can be proved by concrete evidence identified and interpreted in a scientific way. The work stresses, however, the fact that, in some cases, history cannot on its own establish a valid product/place link and that its use must be cautious and always supported by convincing evidence.

Finally, the thesis ends by suggesting some policy prescriptions that should achieve the crucial goal of strengthening the origin function of GIs and that can be taken as the starting point for further research. For instance, it is proposed that (1) whenever possible, the historical element should be supported by *terroir* and vice versa; (2) the mere commercial reputation, based solely on the perception of consumers, is very weak and should not be considered a self-sufficient linking factor, able on its own to justify the granting of a GI and (3) the standards applied by the different domestic competent authorities to examine the applications must be further harmonised because, at the moment, they are still too disparate.

In conclusion, this thesis represents a 120-year-long journey through the history of *sui generis* GI rules in Europe, with a specific focus on the key element of this IPR, i.e. the essential link between the product and its area of production. The analysis carried out in these pages, based on a mixed historical and empirical approach, shows how the product/place link has evolved from the narrow concept of *terroir* to the predominance of history. This is an important finding because history is an element that can extend the scope of GI protection beyond the narrow physical connection to the soil. In fact, it can demonstrate, on the basis of objective evidence, the existence of a peculiar relationship between a good and its longstanding social, economic and cultural tradition. These results confirm that *sui generis* GIs can protect the name of products that are linked to their area of production by intangible factors, such as handcrafts, and not only by the physical and environmental conditions of the place of origin. Moreover, it suggests that this IPR could successfully contribute to the protection of the cultural heritage of which the product is a tangible expression.

This work, however, has also emphasised the problems that could be caused by the adoption of overly broad forms of product/place link. In particular, it has been argued that an inappropriate use of the historical link can lead to the mystification of the origin of the product, thus turning GIs into a mere marketing tool. This is dangerous because it damages their function in affirming origin, i.e. the feature that distinguishes GIs from the broad family of quality labels and, in general, it harms the credibility of the GIs as a distinct IPR.

Finally, this thesis represents the starting point for further research in the field of *sui generis* GI rules, since the conclusions that have been reached here, as is

Bibliography

inevitable, raise many more questions which, without doubt, other scholars will answer adequately.

BIBLIOGRAPHY

Books

Arfini F, Belletti G and Marescotti A, *Prodotti Tipici E Denominazioni Geografiche: Strumenti Di Tutela E Valorizzazione* (Tellus 2010)

Bell D and Valentine G, *Consuming Geographies We Are Where We Eat* (Routledge 1997)

Belson, J, *Certification and Collective Marks Law and Practice* (Edward Elgar Publishing 2017)

Bently L and Sherman B, *Intellectual Property Law* (Fourth edition, Oxford University Press 2014)

Bérard L and Marchenay P, 'Tradition, Regulation and Intellectual Property' in Stephen B Brush and Doreen Stabinsky (eds), *Valuing Local Knowledge* (1996)

——, *Les produits de terroir: entre cultures et règlements* (CNRS Editions 2004)

——, 'Local Products and Geographical Indications: Taking Account of Local Knowledge and Biodiversity' (UNESCO 2006)

Blakeney M, *The Protection of Geographical Indications: Law and Practice* (Edward Elgar 2014)

Caddick N and others, *A User's Guide to Trade Marks and Passing off* (3rd ed, Bloomsbury Professional 2012)

CIRAD and others (eds), *Biodiversité et Savoirs Naturalistes Locaux En France* (CIRAD, Iddri, IFB, Inra 2005)

Coates C, *The Wines of Bordeaux: And Vintages and Tasting Notes 1952-2003* (Weidenfeld & Nicolson 2004)

Correa CM, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (Oxford University Press 2007)

Cosmo I, *Commento Alle Disposizioni Sulle Denominazioni D'origine Dei Vini* (Longo&Zoppelli 1968)

Bibliography

Cunha A and Swinbank A, *An inside View of the CAP Reform Process: Explaining the MacSharry, Agenda 2000, and Fischler Reforms* (Oxford University Press 2011)

Dagne TW, *Intellectual Property and Traditional Knowledge in the Global Economy: Translating Geographical Indications for Development* (Routledge 2015)

Dawson N, *Certification Trade Marks: Law and Practice* (IP Publishing Ltd 1988)

Dominique Denis, *Appellation d'origine et indication de provenance* (Daloz 1995).

Dion R, *Le Paysage et La Vigne. Essais de Géographie Historique* (Bibliothèque Historique Payot 1990)

Echols MA (ed), *Geographical Indications for Food Products: International Legal and Regulatory Perspectives* (Wolters Kluwer Law & Business; Kluwer Law International 2008)

FAO&SINER-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications* (2nd edn, FAO 2010)

Flower R, *Chianti: The Land, the People, and the Wine* (Rev ed, C Helm 1988)

Fonte M & Papadopulos AG, *Naming Food After Places* (Routledge 2016)

Gangjee D, *Relocating the Law of Geographical Indications* (CUP 2012)

Garrie, Pech R and European University Institute, *Genèse de La Qualité Des Vins : L'évolution En France et En Italie Depuis Deux Siècles* (Bourgogne Publications 1994)

George P, *Dictionnaire de La Géographie* (1st edn, Presses universitaires de France 1970)

———, *Dictionnaire de La Géographie* (2nd edn, Presses universitaires de France 1974)

Gervais DJ, *The TRIPS Agreement: Drafting History and Analysis* (4rd ed, Sweet & Maxwell 2012)

Grant W, *The Common Agricultural Policy* (trans to digital print, Palgrave 2003)

Guy KM, *When Champagne Became French: Wine and the Making of a National Identity* (Johns Hopkins University Press 2003)

Hobsbawm EJ and Ranger TO (eds), *The Invention of Tradition* (Cambridge University Press 2012)

INAO, *Une Réussite Française: L'Appellation d'Origine Contrôlée* (INAO 1985)

Kramer M, *Making Sense of Burgundy* (Quill 1990)

Kuhnoltz-Lordat G, *La Genèse Des Appellations d'Origine Des Vins* (Buguet-Comptour 1963)

Lash S and Urry J, *Economies of Signs and Space* (Sage 1994)

Lichine A, *Encyclopaedia of Wines and Spirits* (Cassell 1967)

Loubère LA, *The Red and the White: A History of Wine in France and Italy in the Nineteenth Century* (State University of New York Press 1978)

—— (ed), *The Vine Remembers: French Vignerons Recall Their Past: Interviews* (State University of New York Press 1985)

——, *The Wine Revolution in France: The Twentieth Century* (Princeton University Press 2014)

Le Goffic C, *La Protection Des Indications Géographiques* (LexisNexis 2010)

MacMaoláin C, *EU Food Law: Protecting Consumers and Health in a Common Market* (Hart 2007)

——, *Food Law: European, Domestic and International Frameworks* (Hart Publishing 2015)

Marie-Vivien D, *La Protection Des Indications Géographiques: France, Europe, Inde* (Éditions Quae 2012)

Marres P, *La Vigne et Le Vin En France* (Librairie Armand Colin 1950)

Masui K and Yamada T, *French cheeses* (Dorling Kindersley 2000)

Matthews MA, *Terroir and Other Myths of Winegrowing* (University of California Press 2015)

McMahon JA, *EU Agricultural Law* (Oxford University Press 2007)

O'Connor B, *The Law of Geographical Indications* (Cameron May 2004)

O'Keefe K, *Brunello Di Montalcino: Understanding and Appreciating One of Italy's Greatest Wines* (University of California Press 2012)

Bibliography

- Olszak N, *Droit des appellations d'origine et indications de provenance* (Ed Tel & Doc 2001)
- Parker T, *Tasting French Terroir: The History of an Idea* (University of California Press 2015)
- Pollaud-Dulian F, *Droit de la propriété industrielle* (Montchrestien 1999)
- Price W, *The Common Agricultural Policy* (Association of EDC Librarians 1989)
- Ribéreau-Gayon P (ed), *Hachette Atlas of French Wines and Vineyards* (Hachette 2000)
- Ritson C and Harvey DR (eds), *The Common Agricultural Policy* (2nd ed, CAB International 1997).
- Ritzer G, *The McDonaldization of Society* (6th ed, Pine Forge ; Sage 2011)
- Robinson J (ed), *The Oxford Companion to Wine* (3rd ed, Oxford University Press 2006)
- Roubier P, *Le Droit de La Propriété Industrielle, vol 2* (Recueil Sirey 1952)
- Roudié P, *Vignobles et Vignerons Du Bordelais, 1850-1980* (CNRS 1988)
- Sereni E, *Storia Del Paesaggio Agrario Italiano* (Laterza 1961)
- Shils E, *Tradition* (University of Chicago Press 1981)
- Simon AL, *The History of Champagne* (Octopus Books 1971)
- Stevenson T, *Christie's World Encyclopedia of Champagne & Sparkling Wine* (Absolute 2003)
- Taubman A, *A Practical Guide to Working with TRIPS* (Oxford University Press 2011)
- Taubman A, Wager H and Watal J (eds), *A Handbook on the WTO TRIPS Agreement* (Cambridge University Press 2012)
- Tomasi D, Gaiotti F and Jones GV, *The Power of the Terroir: The Case Study of Prosecco Wine* (Springer 2013)
- Trubek AB, *The Taste of Place: A Cultural Journey into Terroir* (University of California Press 2008)
- United Nations (ed), *The Millennium Development Goals Report 2007* (United Nations 2007)
- Wadlow C, *The Law of Passing-off: Unfair Competition by Misrepresentation* (4 ed, Sweet & Maxwell 2011)
- Wilson JE, *Terroir* (University of California Press ; Wine Appreciation Guild 2012)

WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use*. (2nd edn, WIPO 2004)

——, *The Lisbon System International Protection for Identifiers of Typical Products from a Defined Geographical Area* (WIPO 2011)

Zografos D, *Intellectual Property and Traditional Cultural Expressions* (Edward Elgar 2010)

Contributions to edited works

Allaire G, Casabianca F and Thévenod-Mottet E, ‘Geographical Origin and Agro-Food Products’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)

Arfini F, Albisu LM and Giacomini C, ‘Current Situation and Potential of Geographical Indications in Europe’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)

Barham E, ‘“Translating Terroir” Revisited: The Global Challenge of French AOC Labeling’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016)

Barham E, Bingen J and Hinrichs CC, ‘Geographical Indications in the USA’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)

Barjolle D, ‘Geographical Indications and Protected Designations of Origin: Intellectual Property Tools for Rural Development Objectives’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016)

Barjolle D, Sylvander B and Thévenod-Mottet E, ‘Public Policies and Geographical Indications’ in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)

Beier FK, ‘The Protection of Indications of Geographical Origin in the Federal Republic of Germany’ in Herman Cohen Jehoram (ed), *Protection of geographic denominations of goods and services* (Sijthoff & Noordhoff 1980)

Belletti G and Marescotti A, 'Origin Products, Geographical Indications and Rural Development' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)

Bérard L, 'Terroir and the Sense of Place' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016)

——, 'Les Facteurs Historiques, Culturels, Économiques et Environnementaux Dans La Délimitation Des Zones IGP' in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The socio-economics of Origin Labelled Products in Agri-food Supply Chains: Spatial, Institutiona, and Co-ordination Aspects* (Actes et Communications, 2000)

——, 'Prouver l'Origine' in Laurence Bérard and Philippe Marchenay (eds), *Les produits de terroir: entre cultures et règlements* (CNRS Editions (Open Edition) 2004)

Biber-Klemm S and Berglas DS, 'Biodiversity and Traditional Knowledge: Factual Background and Problems' in Susette Biber-Klemm and Thomas Cottier (eds), *Rights to plant genetic resources and traditional knowledge: basic issues and perspectives* (CABI Pub 2006)

Biagoli G, 'Du Vin "Navigato" Au Vin Commercial En Toscane (XVIIIè-XIXè Siècles)' in Garrie, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994)

Bianco A and others, 'Fonti documentarie dell'Archivio di Stato di Lecce' in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d'Otranto* (Edizioni Pugliesi 2010)

Bienaymé M-H, 'The Possible Content on a New Treaty on the Protection of Geographical Indications at the Multilateral Level (part I)' in *Symposium on the International Protection of Geographical Indications. Santenay (France) 9 and 10 November 1989* (WIPO 1990)

Blakeney M, 'Protection of Traditional Knowledge by Geographical Indications' in Christoph Antons (ed), *Traditional knowledge, traditional cultural expressions, and intellectual property law in the Asia-Pacific region* (Kluwer Law International 2009)

Broude T, 'From Chianti to Kimchi: Geographical Indications, Intangible Cultural Heritage, and Their Unsettled Relationship with Cultural Diversity' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017)

Calò A, 'Il settore vitivinicolo dagli albori del Regno d'Italia alla seconda Guerra Mondiale' in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d'Otranto* (Edizioni Pugliesi 2010)

Casabianca F, Sylvander B and Noël Y, 'Terroir et Typicité: Un Enjeu de Terminologie Pour Les Indications Géographiques' in Claire Delfosse (ed), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011)

Cau P, 'Alle origini della viticoltura contemporanea in Sardegna: la fillossera da accidente fatale ad acceleratore del cambiamento' in Mario Da Passano (ed), *La vite e il vino: storia e diritto (secoli XI-XIX)* (1 ed, Carocci 2000)

—, 'Alle Origini Della Viticoltura Contemporanea in Sardegna: La Fillossera Da Accidente Fatale Ad Acceleratore Del Cambiamento' in *Mario Da Passano and others* (eds), *Le Vite e il Vino, vol 2* (Carocci 2000)

Ciuffoletti Z, 'Dall'unità d'Italia alla metà del novecento' in Paolo Nanni (ed), *Storia regionale della vite e del vino in Italia: Toscana* (Polistampa 2007)

Cottier T, 'Working Together towards TRIPS' in Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations* (World Trade Organization 2015)

Deffontaines J-P, 'The Terroir, a Concept with Multiple Meanings' in François Vardeaux and Philippe Marchenay (eds), *Biodiversity and Local Ecological Knowledge in France* (Quae 2006)

Delfosse C and Lefort I, 'Le Terroir, Un Bel Objet Géographique' in Claire Delfosse (ed), *La mode du terroir et les produits alimentaires* (Les Indes Savantes 2011)

Kasturi Das, 'Unresolved Issues on Geographical Indications in the WTO' in Carlos María Correa (ed), *Research handbook on the protection of intellectual property under WTO rules* (Edward Elgar 2010)

Daynes S, 'The Social Life of Terroir among Bordeaux Winemakers' in Rachel Black and Robert C Ulin (eds), *Wine and culture: vineyard to glass* (Bloomsbury 2013)

de Sainte Marie C and Casabianca F, 'The Work of Scientific Valuation in the Justification of the Geographical Origin of Food Products under PGI: Constitution and Collective Appropriation of Local Knowledge' in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The Socio-Economics of Origin Labelled Products in Agri-Food Supply Chains: Spatial, Institutional and Co-ordination aspects. Proceedings of 67th European Association of Agricultural Economists (EAAE) Seminar*, (INRA 2000)

Drahos P, 'Sunshine in a Bottle? Geographical Indications, the Australian Wine Industry, and the Promise of Rural Development' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017);

Farmer EA, 'Local, Loyal and Constant': The Legal Construction of Wine in Bordeaux' in Rachel Black and Robert C Ulin (eds), *Wine and culture: vineyard to glass* (Bloomsbury 2013)

Freychet L, 'Le Roquefort' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), *1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992)

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

Gasnier T, 'Le Local: Une et Divisible' in Pierre Nora (ed), *Les Lieux de Mémoire* (Gallimard 1992)

Holdgate M, 'Environmental and Agricultural Policies' in BJ Marshall and FA Miller (eds), *Priorities for a new century: agriculture, food, and rural policies in the European Union* (Centre for Agricultural Strategy, University of Reading 1995)

Hughes J, 'The Limited Promise of Geographical Indications for Farmers in Developing Countries' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017)

Keilling J, 'Les Crus En Matière Latière' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), *1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992)

Knaak R, 'The Protection of Geographical Indications according to the TRIPs Agreement' in Friedrich-Karl Beier and Gerhard Schricker (eds), *From GATT to TRIPs: the agreement on trade-related aspects of intellectual property rights* (VCH 1996)

Koktvedgaard M, 'The Legal Protection of Geographic Denominations of Goods and Services in the Scandinavian Countries' in Herman Cohen Jehoram (ed), *Protection of geographic denominations of goods and services* (Sijthoff & Noordhoff 1980)

Maby J, 'Loi, Marché, Ténacité Vigneronne: Les Fondements Humains D'une Viticulture de Qualité Dans Le Gard Rhodanien' in Garrie, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994)

Marie-Vivien D, '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 Pub 2016)

Menzione A, 'Riordinamenti Culturali E Mutamenti Strutturali Nelle Campagne Toscane Fra XVII E XVIII Secolo' in Franco Angiolini, Vieri Becagli and Marcello Verga (eds), *La Toscana nell'età di Cosimo III: atti del convegno, Pisa-San Domenico di Fiesole (FI), 4-5 giugno 1990* (EDIFIR 1993)

Mogens PC, 'Evaluating the TRIPS Negotiation: A Plea for a Substantial Review of the Agreement' in Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations* (World Trade Organization 2015)

Noilhan H, 'La Protection Des Nos Appellations D'Origine' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), *1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992)

Otten A, 'The TRIPS Negotiations: An Overview' in Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations* (World Trade Organization 2015)

Papa C, 'The Social Construction of Umbrian Extravirgin Olive Oil' in Cristina Papa, Giovanni Pizza and Filippo Zerilli (eds), *Incontri di Etnologia Europea - European Ethnology Meetings* (Edizioni Scientifiche Italiane 1998)

Pedrocco G, 'La Vigne et Le Vin En Italie' in Garrie, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994)

Péllissier P, 'The Terroir, a Tool for the Recognition of Farming Knowledge in Africa' in François Vardeaux and Philippe Marchenay (eds), *Biodiversity and Local Ecological Knowledge in France* (Quae 2006)

Perrea T and others, 'Exploring the Moderating Role of Consumer Ethnocentrism on Consumer Value Perception towards Own-Country Geographic Indication (GI) Foods' in Filippo Arfini and others (eds), *Intellectual Property Rights for Geographical Indications* (Cambridge Scholars Publishing 2016)

Pick B, Marie-Vivien D and Bui Kim D, 'The Use of Geographical Indications in Vietnam: A Promising Tool for Socioeconomic Development?' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the crossroads of trade development and culture* (Cambridge University Press 2017)

Poli G, 'La viticoltura pugliese in Età Moderna' in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d'Otranto* (Edizioni Pugliesi 2010)

Rangnekar D, 'No "lemons" No More: A Sketch on the "Economics" of Geographical Indications' in Carlos María Correa (ed), *Research handbook on the protection of intellectual property under WTO rules* (Edward Elgar 2010).

Reinbothe J, 'Negotiating for the European Communities and Their Member States' in Jayashree Watal and Antony Taubman (eds), *The Making of Trips Insights from the Uruguay Round Negotiations* (World Trade Organization 2015)

Révillon S and Chappuis J-M, 'Geographical Indications: Collective Organization and Management' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)

- Ritrovato E, 'Sviluppo dei mercati vinicoli dopo il 1860' in Antonio Calò and Liana Bertoldi Lenoci (eds), *Le Puglie: la Daunia, la terra di Bari, la terra d'Otranto* (Edizioni Pugliesi 2010)
- Roudié P, 'Le Rôle de L'histoire Dans L'élaboration de L'appellation Viticole En France' in Gilbert Garrier, Rémy Pech and European University Institute (eds), *Genèse de la qualité des vins : l'évolution en France et en Italie depuis deux siècles* (Bourgogne Publications 1994)
- Sherman B and Wiseman L, 'From Terroir to Pangkarra: Geographical Indications of Origin and Indigenous Knowledge' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar Pub 2016)
- Stanziani A, 'French Collective Wine Branding in the Nineteenth-Twentieth Century' in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar 2016)
- Sylvander B and Allaire G, 'Globalisation and Geographical Indications' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)
- Tregear A and Giraud G, 'Geographical Indications, Consumers and Citizens' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011)
- Trova A, 'I Congressi Enologici Italiani Nell'ottocento' in Mario Da Passano and others (eds), *Le Vite e il Vino, vol 2* (1st edn, Carocci 2000)
- Ulin RC, 'Writing about Wine: The Uses of Nature and History in the Wine-Growing Regions of Southwest France and America' in Gwyn Campbell and Nathalie Guibert (eds), *Wine, society, and globalization: multidisciplinary perspectives on the wine industry* (1st ed, Palgrave Macmillan 2007)
- Van Ittersum K, Candel M and Torelli F, 'The Market for PDO/PGI Protected Regional Products: Consumer Attitudes and Behaviour' in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The Socio-Economics of Origin Labelled Products in Agri-Food Supply Chains: Spatial, Institutional and Co-ordination aspects. Proceedings of 67th European Association of Agricultural Economists (EAAE) Seminar*, (INRA 2000)
- Vasic A, 'Exploring the Moderating Role of Consumer Ethnocentrism on Consumer Value Perception towards Own-Country Geographic Indication (GI) Foods' in Filippo Arfini and others (eds), *Intellectual Property Rights for Geographical Indications* (Cambridge Scholars Publishing 2016)
- Wichers Hoeth L, 'Protection of Geographic Denominations in the Netherlands' in Herman Cohen Jehoram (ed), *Protection of geographic denominations of goods and services* (Sijthoff & Noordhoff 1980)

Journal articles

Barham E, 'Translating Terroir: The Global Challenge of French AOC Labelling' (2003) 19 *Journal of Rural Studies* 127

Beier FK, 'Court of Justice 10.11.1992 Case No. C-3/91 "Turrón"' [1994] *IIC* 73

Beckstein M, 'The Concept of a Living Tradition' [2016] *European Journal of Social Theory* 1

Belletti G, 'Le denominazioni geografiche nel support all'agricoltura multifunzionale' (2003) 4 *Politica Agricola Internazionale*

Belletti G and others, 'Geographical Indications, Public Goods, and Sustainable Development: The Roles of Actors' Strategies and Public Policies' (2017) 98 *World Development* 45

Bendeckey L and Mead CH, 'International Protection of Appellations of Origin and Other Geographic Indications' (1992) 82 *Trademark Reporter* 765

Bérard L and Marchenay P, 'Ressources Des Terroirs et Diversité Bio-Culturelle. Perspectives de Recherche' (1994) 36 *Journal d'agriculture traditionnelle et de botanique appliquée*

——, 'Lieux, Temps et Preuves: La Construction Sociale Des Produits de Terroir' (1995) 24 *Terrain* 1

——, 'Productions Localisées et Indications Géographiques: Prendre En Compte Les Savoirs Locaux Et La Biodiversité' [2006] *Revue internationale des sciences sociales*

Bessière J, 'Local Development and Heritage: Traditional Food and Cuisine as Tourist Attractions in Rural Areas' (1998) 38 *Sociologia Ruralis* 21

Bowen S, 'Development from Within? The Potential for Geographical Indications in the Global South' (2010) 13 *The Journal of World Intellectual Property* 231

Broude T, 'Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law' (2005) 26 *University of Pennsylvania Journal of International Economic Law* 623

Brouwer O, 'Community Protection of Geographical Indications and Specific Character as a Means of Enhancing Foodstuff Quality.' (1991) 28 *Common Market Law Review* 615

Calboli I, 'Geographical Indications of Origin at the Crossroads of Local Development, Consumer Protection and Marketing Strategies' [2015] *IIC* 760

Bibliography

- Cartier S, 'Terroirs En Nuances' (2004) 11 *Strates*
- Chen J, 'A Sober Second Look at Appellations of Origin: How the United States Will Crash France's Wine and Cheese Party' (1996) 5 *Minnesota Journal of Global Trade* 29
- Delfosse C, 'La France et Ses Terroirs. Un Siècle de Débats Sur Les Produits et Leurs Liens à l'espace' (2012) 215–216 *Pour*
- Engels W and others, 'The CAP is Destroying the EEC' (1985) *Economic Affairs* 1
- Ferrari F, 'The Narratives of Geographical Indications' (2014) 10 *International Journal of Law in Context* 222
- Frankel S, 'The Mismatch of Geographical Indications and Innovative Traditional Knowledge' (2011) 29 *Prometheus: Critical Studies in Innovation* 253
- Fuller AM, 'From Part-Time Farming to Pluriactivity: A Decade of Change in Rural Europe' (1990) 6 *Journal of Rural Studies* 361
- Gangjee D, 'Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection' (2006) 3 *Intellectual Property Quarterly* 291
- , 'Proving Provenance? Geographical Indications Certification and its Ambiguities' (2017) 98 *World Development* 12
- Gervais DJ, 'Traditional Knowledge: Are We Closer to the Answer(s)? The Potential Role of Geographical Indications' (2008) 15 *ILSA Journal of International and Coparative Law* 551
- Gragnani M, 'The Law of Geographical Indications in the EU' (2012) 7 *Journal of Intellectual Property Law & Practice* 271
- Hanson A, 'The Making of the Maori: Culture Invention and Its Logic' (1989) 91 *American Anthropologist*
- , 'Reply to Langdon, Levine and Linnekin' (1991) 93 *American Anthropologist*
- Hénin S, 'Quelques Aspects de La Pédologie, l'évolution Du Concept de Sol et Ses Conséquences' (1957) *Cr Acad Agriculture de France*
- Henning-Bodewig F, 'A New Act Against Unfair Competition in Germany' [2005] *IIC* 421
- Hughes J, 'Champagne, Feta and Bourbon: The Spirited Debate About Geographical Indications' (2006) 58 *Hastings Law Journal* 299

Jaquet O, 'Les Appellations D'origine et Le Débat Sur La Typicité Dans La Première Moitié Du XXème Siècle: Le Rôle Du Syndicalisme Viti-Vinicole Bourguignon' (2009) 1 Territoires du vin online

Josling TE, 'The War on Terroir: A Transatlantic Trade Conflict' (2006) 53 Journal of Agricultural Economics 337

Kireeva I and O'Connor B, 'Geographical Indications and the TRIPS Agreement: What Protection Is Provided to Geographical Indications in WTO Members?' (2010) 13 The Journal of World Intellectual Property 275.

Knaak R and Beier FK, 'The Protection of Direct and Indirect Geographical Indications of Source in Germany and the European Community' (1994) 25 IIC 1

Kolia M, 'Monopolising Names: EEC Proposals on the Protection of Trade Descriptions of Foodstuffs' (1992) European Intellectual Property Review 233

——, 'Monopolising Names of Foodstuffs: The New Legislation' (1992) European Intellectual Property Review 333

Laville P, 'Le Terroir, Un Concept Indispensable à L'élaboration et à La Protection Des Appellations D'origine Comme à La Gestion Des Vignobles: Le Cas de La France' (1990) Bulletin de l'OIV 217

Le Goffic C and Zappalaglio A, 'The Role Played by the US Government in Protecting Geographical Indications' (2017) 98 World Development 35

Letablier MT and Nicolas F, 'Genèse de La Typicité' (1994) 14 Sciences des Aliments 541

Linnekin J, 'Defining Tradition: Variations on the Hawaiian Identity' (1983) 10 American Ethnologist

——, 'Cultural Invention and the Dilemma of Authenticity' (1991) 93 American Anthropologist

Linnekin J and Handler R, 'Tradition, Genuine or Spurious' (1984) 97 Journal of American Folklore

Lorvellec L, 'You've Got to Fight for Your Right to Party: A Response to Professor Jim Chen' (1996) 5 Minnesota Journal of Global Trade 65

Marie-Vivien D, 'The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India' (2010) 13 The Journal of World Intellectual Property 121

Bibliography

Marie-Vivien D and others, 'The Protection of Geographical Indications for Handicrafts or How to Apply the Concepts of Natural and Human Factors to All Products' (2013) 4 WIPO Journal 191

——, 'Are French Geographical Indications Losing Their Soul? Analysing Recent Developments in the Governance of the Link to the Origin in France' (2017) 98 World Development 25

Marie-Vivien D and Biénabe E, 'The Multifaceted Role of the State in the Protection of Geographical Indications: A Worldwide Review' (2017) 98 World Development 1

Micara A, '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 IIC 673

Montén L, 'Geographical Indications of Origin: Should They Be Protected and Why? An Analysis of the Issue From the U.S. and EU Perspectives' (2005) 22 Santa Clara Computer & High Technology Law Journal 315

Moran W, 'Rural Space as Intellectual Property' (1993) 12 Political Geography 263

Murdoch J and Miele M, "'Back to Nature": Changing "World of Production" in the Food Sector' (1999) 39 Sociologia Ruralis 465

Morlat R, Barbeau G and Asselin C, 'Facteurs Naturels et Humains Des Terroirs Viticoles Français: Méthode D'étude et Valorisation' (2001) 32 Études et Recherches sur les Systèmes Agraires et le Développement 111

Nguyen G and others, 'French Quality and Eco-Labeling Schemes: Do They Also Benefit the Environment?' (2004) 2 International Journal of Agricultural Sustainability 167

Paganizza V, 'Dalla Padella Alla Brace: La Piadina Romagnola OGP Dal "Testo" Al Consiglio Di Stato' (2014) 8 Rivista di Diritto Alimentare 45

Parrott N, Wilson N and Murdoch J, 'Spatializing Quality: Regional Protection and the Alternative Geography of Food' (2002) 9 European Urban and Regional Studies 241

Prévost and others, 'Le terroir, un concept pour l'action dans le développement des territoires' (2014) 1 Vertigo 1

Raustiala K and Munzer SR, 'The Global Struggle over Geographic Indications' [2007] European Journal of International Law 337

Ray C, 'Culture, Intellectual Property and Territorial Rural Development' (1998) 38 Sociologia Ruralis 3

Reinbothe J and Howard A, 'The State of Play in the Negotiations on Trips (GATT/Uruguay Round)' (1991) 5 European Intellectual Property Review 157

Ribeiro de Almeida AF, 'The TRIPs Agreement, the Bilateral Agreements Concerning Geographical Indications and the Philosophy of the WTO' [2005] *European Intellectual Property Review* 150

Roudié P, 'La Notion de Terroir Viticole En Bordelais' (1995) 43 *Cahiers Nantais* 65

Sanz Cañada J, 'Introduction: Ancrage et Identité Territoriale Des Systèmes Agroalimentaires Localisés' (2011) 322 *Economie rurale*

Schricker G, 'Protection of Indications of Source, Appellations of Origin and Other Geographical Indications in the Federal Republic of Germany' (1983) *IIC* 307

Schwab B, 'The Protection of Geographical Indications in the European Economic Community' (1995) 17 *European Intellectual Property Review* 242

'Scotch Whiskey (case Note)' (1970) *IIC* 402

Simpson J, 'Selling to Reluctant Drinkers: The British Wine Market, 1860-1914' (2004) 57 *Economic History Review* 80

Singhal S, 'Geographical Indications and Traditional Knowledge' (2008) 3 *Journal of Intellectual Property Law & Practice* 732

Stanziani A, 'La Falsification Du Vin En France, 1880-1905: Un Cas de Fraude Agro-Alimentaire' (2003) 2 *Revue d'histoire moderne et contemporaine* 154

——, 'Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France' (2004) 18 *European Journal of Law and Economics* 149

——, 'Information, Quality and Legal Rules: Wine Adulteration in the Nineteenth Century France' (2009) 51 *Business History* 268

Thienes M, 'Tradition and Progress: Registration of Geographic Denominations of Origin' (1994) 96 *British Food Journal*

Tregear A, 'From Stilton to Vimto: Using Food History to Re-Think Typical Products in Rural Development' (2003) 43 *Sociologia Ruralis* 92

——, 'Regional Foods and Rural Development: The Role of Product Qualification' (2007) 23 *Journal of Rural Studies* 12

Ulin RC, 'Invention and Representation as Cultural Capital: Southwest French Winegrowing History' (1995) 97 *American Anthropologist* 519

Stone D and Heard B, 'VODKAT Is Not Vodka: "extended" Passing off Extended' (2010) 3 *Journal of Intellectual Property Law & Practice* 842

Swinbank A, 'EU Agriculture, Agenda 2000 and the WTO Commitments' (1999) 22 *The World Economy* 41

Bibliography

van der Ploeg JD and others, 'Rural Development: From Practices and Policies towards Theory' (2000) 40 *Sociologia Ruralis* 392

van Meijl H and van Tongeren F, 'The Agenda 2000 CAP Reform, World Prices and GATT-WTO Export Constraints' (2002) 29 *European Review of Agricultural Economics* 44

EU institutional papers, reports and documents

Committee of the Regions, ‘Opinion of the Committee of the Regions on “EU Development Policy in Support of Inclusive Growth and Sustainable Development - Increasing the Impact of EU Development Policy”’ (2011) 2011/C 192/03

——, ‘Opinion of the Committee of the Regions on “Towards an Ambitious European Policy for Agricultural Quality Schemes”’ (2011) 2011/C 192/06

Council of the European Union, ‘3059th Council Meeting: Agriculture and Fisheries’ (2010) 17836/10

——, ‘3084th Council Meeting: Agriculture and Fisheries’ (2011) 8908/11

European Commission, ‘Perspectives for the Common Agricultural Policy’ (1985) COM(85) 333 final

——, ‘Europe’s Common Agricultural Policy: European File’ (1986) 2/86

——, ‘Social Europe: Seminar on the Social Aspects of the Common Agricultural Policy’ (European Commission 1987) 3/89

——, ‘Environment and Agriculture’ (1988) COM(88) 338 final

——, ‘The Future of Rural Society: Commission Communication Transmitted to the Council and to the European Parliament on 29 July 1988’ (1988) COM(88) 501

——, ‘Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs. Explanatory Memorandum’ (1990) SEC(90) 2415 final

——, ‘The Development and Future of the CAP’ (1991) COM(91) 100 final

——, ‘The Development and Future of the Common Agricultural Policy (follow-Up)’ (1991) COM(91) 258 final

——, ‘Amended Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (1992) COM(92) 32 final

——, ‘Study on Alternative Strategies for the Development of Relations in the Field of Agriculture between the EU and the Associated Countries with a View to Future Accession of These Countries’ (1995) CSE (95) 607

Bibliography

- , ‘Agenda 2000: For a Stronger and Wider Union’ (1997)
- , ‘Proposals for Council Regulations (EC) Concerning the Reform of the Common Agricultural Policy’ (1998) COM(1998) 158 final
- , ‘Agenda 2000: For a Stronger and Wider Union’
- , ‘Enlargement Strategy Paper: Report on Progress towards Accession by Each of the Candidate Countries’ (2000) COM (2000) 700 final
- , ‘Making a Success of Enlargement: Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries’ (2001) COM (2001) 700 final
- , ‘Towards the Enlarged Union Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries’ (2002) COM(2002) 700 final
- , ‘Communication from the Commission to the Council and the European Parliament: Roadmaps for Bulgaria and Romania’ (2002) COM(2002) 624 final
- , ‘Communication from the Commission to the Council and the European Parliament Mid-Term Review of the Common Agricultural Policy’ (2002) COM(2002) 394 final
- , ‘Continuing Enlargement: Strategy Paper and Report for the European Commission on the Progress towards Accession by Bulgaria, Romania and Turkey’ (2003) COM(2003) 676 final
- , ‘Communication from the Commission: 2005 Enlargement Strategy Paper’ (2005) COM(2005) 561 final
- , ‘Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2006 – 2007’ (2006) COM(2006) 649
- , ‘Commission Proposes Improved Rules on Agricultural Quality Products’ (European Commission 2006) IP/06/2
- , ‘Proposal for a Council Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ (2006) COM(2005) 698 final/2
- , ‘European Policy for Quality Agricultural Products’ (2007)

——, ‘Proposal for a Regulation of the European Parliament and of the Council’ (2010) COM(2010) 733 final

——, ‘The Common Agricultural Policy: A Story to Be Continued’ (2012)

——, ‘Overview of CAP Reform 2014-2020’ (2013) 5/2013

——, ‘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’ (2015) COM(2014) 469 final

——, ‘Country Report Bulgaria 2016’ (Brussels 2016) SWD(2016) 72 final

——, ‘Country Report Czech Republic’ (2016) SWD(2016) 73 final

——, ‘Country Report Estonia 2016’ (2016) SWD(2016) 76 final

——, ‘Country Report Hungary 2016’ (2016) SWD(2016) 85 final

——, ‘Country Report Latvia 2016’ (2016) SWD(2016) 82 final

——, ‘Country Report Lithuania 2016’ (2016) SWD(2016) 83 final

——, ‘Country Report Malta 2016’ (2016) SWD(2016) 86 final

——, ‘Country Report Poland 2016’ (2016) SWD(2016) 89 final

——, ‘Country Report Romania 2016’ (2016) SWD(2016) 91 final

——, ‘Country Report Slovakia 2016’ (2016) SWD(2016) 93 final

——, ‘Country Report Slovenia 2016’ (2016) SWD(2016) 92 final

——, ‘Country Report Croatia 2016’ (2016) SWD(2016) 80 final/2

——, ‘Country Report Cyprus 2016’ (2016) SWD(2016) 120 final

——, ‘Guide to Applicants: How to Compile the Single Document’ (2017)

European Commission Directorate General of Agriculture, ‘Agenda 2000: The Future for European Agriculture: Explanatory Memorandum’ (1998)

——, ‘The Common Agricultural Policy: 1998 Review’ (1999)

Bibliography

European Commission Directorate General for Agriculture and Rural Development, 'Promoting Europe's Agriculture and Rural Areas: Continuity and Change' (1998)

——, 'Environment' (1998) 09/98

——, 'The Common Agricultural Policy: 1998 Review' (1998)

——, 'The Reform of the Common Agricultural Policy: The Wine Sector' (1998) 10/98

——, 'The Common Agricultural Policy: 1999 Review' (1999)

——, 'CAP Reform: Rural Development' (1999)

——, 'The Common Agricultural Policy: 2000 Review' (2000)

——, 'The Common Agricultural Policy: 2001 Review' (2001)

——, 'The Common Agricultural Policy: 2002 Review' (2002)

——, 'Towards Sustainable Farming: A Mid-Term Review of the Common Agricultural Policy' (2002)

——, 'Mid-Term Review of the Common Agricultural Policy: July 2002 Proposals' (2003)

——, 'The Common Agricultural Policy: 2003 Review' (2003)

——, 'The 2003 CAP Reform' (2005)

——, 'The EU Rural Development Policy 2007-2013' (European Commission 2006) EC/D ser.58

European Council 'Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy' [1975] OJ C92/1.

European Economic and Social Committee, 'Opinion on the Proposal for a Council Regulation (EEC) on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' (1991) 91/C 269/19

——, 'Opinion of the European Economic and Social Committee on the "Proposal for a Regulation of the European Parliament and of the Council on Agricultural Product Quality Schemes"' (European Economic and Social Committee 2011) COM(2010) 733 final

European Parliament, 'European Parliament Legislative Resolution on the Proposal for a Council Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs' (2006) P6_TA(2006)0095

—, 'Report of the Committee on Agriculture, Fisheries and Rural Development' (Borgo Report, A3-0283/91, 1991)

—, 'Specification of agricultural products and foodstuffs: Proposal for a regulation I SEC(90) 2415' (1991) OJEC C326/35

Reports, conference papers, doctoral theses and other documents

Belletti G and Marescotti A, 'GI Social and Economic Issues' (SINER-GI 2006) D2-WP2

Barjolle D, Boisseaux S and Dufour M, 'Le Lien Au Terroir: Bilan Des Travaux de Recherche' (Institut d'économie rurale 1998)

Bérard L, Marchenay P, 'From Localised Products to Geographical Indications: Awareness and Action' (Centre national de la recherche scientifique 2008)

Boto I and others, 'The Geography of Food: Reconnecting with Origin in the Food System' (Brussels Rural Development Briefing, 2013)

Croidieu G and Powell WW, 'Inventing Tradition: From Cru to Classe in Bordeaux Wine' (European Policy for Intellectual Property 2017)

Deutsches Patent und Markenamt, 'Information on the Protection of Geographical Infications and Designations of Origin for Agricultural Products and Foodstuffs Pursuant to Council Regulation (EU) No. 1151/2012' (2016)

Dindo S and Andretto L, 'Compiti E Funzioni Dei Consorzi Di Tutela Con Riconoscimento Erga Omnes' (Unione Giuristi della Vite e del Vino: XXI° Seminario di Aggiornamento, 2014)

Caron A and others, 'Biodiversity Conservation as a New Rationale for Localized and Sustainable Agro-Food Systems. The Case of Two French PDO Mountain Cheeses' (9th European IFSA symposium, 2010)

Chever T, 'Les Indications Géographiques (IG) Au Sein de l'Union Européenne (UE): Aspects Économiques' (Colloque mondial sûr les Indications Géographiques 2015)

Bibliography

——, ‘Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication (GI)’ (European Commission, AGRI–2011–EVAL–04, 2012)

Filhol D and Châtelet A, ‘Historique Des AOC et Pratiques Oenologiques’ (DGCCRF - Bureau des Boissons 2001) DGCCRF- D2/MVS-AC-mars2001

Giovanucci D and others, ‘Guide to Geographical Indications’ (International Trade Centre 2009)

Gougeon B, *La Pogne: Essai Sur Une Spécialité Locale* (Université Lumière-Lyon 2, 1992)

Heine J, ‘The Protection of Geographical Indications in the European Community’ (WIPO 1991) WIPO/GEO/WI/91/8 Rev

Holtorf M, ‘Indication of Source, Appellation of Origin, Geographical Indications’ (EU-China workshop on revision of the Trademark Law, 13 May 2011)

Humbert F, ‘L’INAO, de Ses Origines à La Fin Des Années 1960’ (Doctoral thesis, Université de Bourgogne 2011)

INAO, ‘Appellations d’Origine Contrôlée & Paysages’ (INAO 2006)

——, ‘Guide Du Demandeur d’une Appellation d’Origine (A.O.C./A.O.D.)’ (INAO 2009)

——, ‘Guide Du Demandeur d’une Appellation d’Origine (A.O.C./A.O.D.)’ (INAO 2016)

In Sight Consulting, oriGIn and Agridea, ‘Study on the Protection of Geographical Indications for Products Other than Wines, Spirits Agricultural Products or Foodstuffs’ (2009)

International Monetary Fund, ‘World Economic Outlook’ (2015)

IPDEV, ‘Impacts of the IPR Rules on Sustainable Development’ (2006)

Kickler H, ‘Die Geschichte Des Schutzes Geographischer Herkunftsangaben in Deutschland Vom Zweiten Deutschen Kaiserreich Bis Zum Markengesetz 1995’ (Universität Bayreuth 2012)

Laferté G, ‘Regionalism in the Marketing of French Luxury Goods: The Example of Burgundy Wines in the Inter-War Years’ (Centre d’Economie et Sociologie appliquées à l’Agriculture et aux Espaces Ruraux 2012) Working Paper 2012/2

London Economics, 'Evaluation of the CAP Policy on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI): Final Report' (European Commission 2008)

Martelli G, '1963/2013: 50 Anni Di DOC Italiane' (Dipartimento delle politiche competitive, della qualità agroalimentare e della pesca Direzione Generale per la promozione della qualità 2013)

Melkonian R, 'The History and Future of Geographical Indications in Europe and the United States' (Third year paper, Harvard, 2005)

Pacciani A and others, 'The Role of Typical Products in Fostering Rural Development and the Effects of Regulation (EEC) 2081/92' (2001)

Panizzon M and Cottier T, 'Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions' (2006) 2005/01

Rangnekar D, 'The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe' (Issue Paper No. 8, UNCTAD-ICTSD 2004)

Rovamo O, 'Monopolising Names? The Protection of Geographical Indications in the European Community' (Doctoral thesis, University of Helsinki 2006)

Samardzic S and others, 'Quantitative and Qualitative Effects of Protecting Traditional Agro-Food Products by Geographical Indications' (IV International Symposium, Agrosysm 2013)

Schricker G, 'Der Schutz Der Herkunftsangaben Ursprungsbezeichnungen Und Anderen Geographischen Bezeichnungen in Der Bundesrepublik Deutschland' (Colloque de Lausanne, Lausanne, 1983)

Stenou K, 'Les Terroirs Au Service Du Maintien de La Diversité Culturelle' (Rencontres Internationales Planète Terroirs 2005)

Sylvander B, Casabianca F and Roncin F, 'Produits Agricoles et Alimentaires D'origine: Enjeux et Acquis Scientifiques' (Colloque international de restitution des travaux de recherche sur les indications et appellations d'origine géographiques, 2005)

Terroirs&Cultures and UNESCO, 'Rencontres Internationales Planète Terroirs' (SC-2007/WS/41, UNESCO 2005)

Vakoufari H and others, 'Protected Geographical Indications and the Landscape: Towards a Conceptual Framework' (working paper, 2014)

van de Kop P, Sautier D and Gerz A, *Origin-Based Products: Lessons for pro-Poor Market Development* (KIT, Amsterdam and CIRAD, Montpellier 2006)

von Mühlendahl A, 'The Protection of Geographical Indications in Germany' (WIPO/GEO/WI/91/3/prov, WIPO 1991)

WIPO, 'Geographical Indications' (WIPO 2003) SCT/10/4

WIPO, 'Negotiators Adopt Geneva Act of Lisbon Agreement at Diplomatic Conference' (2015)

WIPO IGC, 'The Protection of Traditional Knowledge: Draft Objectives and Principles' (WIPO/GRTKF/IC/10/5, 2006)

Zappalaglio A, 'The Protection of Traditional Knowledge: What Role for Geographical Indications?' (MPhil Dissertation, University of Oxford, 2014).

——, 'The "Piadina Romagnola" Mess. A New Legal Case for an Old Question: What Is a GI?' (EAAE Conference, 2015)

Interviews

Knaak, R (interviewed on 24 March 2016)

Profeta, A (interviewed on 21 October 2016)

Reinbothe J (interviewed on 23 December 2015)

Stanziani A (interviewed on 15 June 2016)

Debates of the European Parliament

Debates of the European Parliament (No 3-411/35, 18 November 1991)

Debates of the European Parliament (No 3-411/73, 19 November 1991)

Debates of the French Parliament

Chambre

Chambre, 23 February 1905, JORF 4 February 1905

Chambre, 23 February 1905, JORF 24 February 1905

Chambre, 26 February 1909, JO 27 February 1909

Chambre, 10 June 1911, JORF 11 June 1911

Chambre, 11 July 1911, JORF 12 July 1911

Chambre, 4 November 1913, JORF 5 November 1913

Chambre, 13 November 1913, JORF 14 November 1913

Chambre, 14 November 1913, JORF 15 November 1913

Chambre, 20 November 1913, JORF 21 November 1913

Chambre, 21 November 1913, JORF 22 November 1913

Chambre, 27 November 1913, JORF 28 November 1913

Chambre, 19 April 1919, JORF 20 April 1919

Chambre, 24 April 1919, JORF 25 April 1919

Chambre, 4 July 1921, JORF 5 July 1921

Chambre, 14 June 1927, JORF 15 June 1927

Chambre, 10 May 1927, JORF 11 May 1927

Chambre, 20 May 1927, JORF 21 May 1927

Chambre, 24 May 1927, JORF 25 May 1927

Chambre, 30 June 1930, JORF 1 July 1930

Chambre, 13 July 1927, JORF 14 July 1927

Sénat

Sénat, 19 May 1913, JORF 20 May 1913

Sénat, 24 January 1919, JORF 25 January 1919

Sénat, 9 June 1925, JORF 10 June 1925

Sénat, 11 July 1925, JORF 12 July 1925

Sénat, 12 July 1927, JORF 13 July 1927

Sénat, 7 July 1933, JORF 8 July 1933

Sénat, 31 December 1937, JORF 2 January 1938

Debates of the Italian Parliament

Camera

Dibattiti Parlamentari, 13 December 1899

Dibattiti Parlamentari, 28 June 1904

Atti parlamentari, 15 December 1921

Atti Parlamentari, 16 December 1921

Camera, Atti Parlamentari n.476-A, 30 March 1930;

Atti parlamentari, 11 June 1930

Atti parlamentari, 11 June 1930

Atti Parlamentari, 25 June 1930

Documenti n.4173, 9 October 1962

Atti parlamentari, 23 January 1963

Senato

Senato, Atti Parlamentari n.554-A, 13 June 1930.

Travaux préparatoires of the TRIPs Agreement

Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, 'Meeting of Negotiating Group of 5-8 July 1988' (1988) MTN.GNG/NG11/8

—, 'Meeting of the Negotiating Group of 12-14 September 1988' (1988) MTN.GNG/NG11/9

—, 'Meeting of Negotiating Group of 30 October-2 November 1989' (1989) MTN.GNG/NG11/16

—, 'Draft Agreement on Trade-Related Aspects of Intellectual Property Rights: Communication from the European Communities' (1990) MTN.GNG/NG11/W/68

—, 'Meeting of Negotiating Group of 2, 4 and 5 April 1990' (1990) MTN.GNG/NG11/20

——, ‘Draft Agreement on Trade-Related Aspects of Intellectual Property Rights: Communication from the United States’ (1990) MTN.GNG/NG11/W/70

——, ‘Meeting of Negotiating Group of 14-16 May 1990’ (1990) MTN.GNG/NG11/21

——, ‘Meeting of Negotiating Group of 25 and 29 June 1990’ (1990) MTN.GNG/NG/22

Archival sources

Académie d’agriculture de France, *Comptes Rendus Des Séances de l’Académie D’agriculture de France, vol 24* (Académie d’Agriculture de France 1938)

——, *Comptes Rendus Des Séances de l’Académie D’agriculture de France, vol 25* (Académie d’Agriculture de France 1939)

——, *Comptes Rendus Des Séances de l’Académie D’agriculture de France* (Académie d’Agriculture de France 1940)

Académie de Mâcon, *Annales de l’Académie de Mâcon, vol 33* (Protat Frères 1938)

Académie des sciences et lettres de Montpellier, *Bulletin Mensuel de l’Académie Des Sciences et Lettres de Montpellier* (Bibliothèque de l’Académie des Sciences et Lettres 1940)

Académie Française, *Dictionnaire de l’Académie Française, vol 2* (Vve B Brunet 1762)

Assemblée Nationale Française, ‘Joseph Capus’ (Assemblée Nationale Française) <http://www.assemblee-nationale.fr/sycomore/fiche.asp?num_dept=1429>

Association Nationale d’Expansion Economique, *Semaine Nationale Du Vin. Compte Rendu Des Travaux. Paris 13-18 Mars 1922* (Dubois et Bauer 1922)

Aueroche S, *Répression Des Fraudes, Falsifications de Denrées Alimentaires, Boissons, Marchandises et Produit Agricoles: Commentaire de La Loi Du 1er Août 1905* (2ème edn, Bulletin-commentaire 1907)

Bandini SA, *Discorso Sopra La Maremma Di Siena* (Lazzeri 1877)

Baron Le Roy, ‘L’Origine’ in Syndicat de la Marque d’Origine ‘Pays d’Auge’ (ed), *1er Congrès de l’Origine: Tenu en Pays d’Auge à Deauville du 25 au 27 Juin 1948* (Normandie Information Impression 1992)

Bibliography

Bréart G, 'La Définition et La Protection de La Qualité et de L'origine Des Fromages Français' in Syndicat de la Marque d'Origine 'Pays d'Auge' (ed), 1er Congrès de l'Origine: Tenu en Pays d'Auge à Deauville du 25 au 27 Juin 1948 (Normandie Information Impression 1992)

Brunet R, 'M. Joseph Capus' (1924) 7 *Le Sommelier*

Brusset P and Havez P, *Album Des Vins de France* (Causse, Graille, Castelnau 1939)

Bureaux International de l'Union pour la Protection de la Propriété Industrielle, 'La Question Des Fausses Indications de Provenance et l'Arrangement de Madrid' (1920) 36 *La Propriété Industrielle* 13

Capus J, *L'Évolution de La Législation Sur Les Appellations D'origine: Genèse Des Appellations Contrôlées* (INAO 1947)

Direttore del comizio agrario di S. Giuliano, *Memoria Sul Commercio Dei Vini Del Piemonte* (Tipografia Speirani e Ferrero 1846)

Furetière A, *Dictionnaire Universel, Contenant Généralement Tous Les Mots François Tant Vieux Que Modernes, & Les Termes Des Sciences et Des Arts* (2nd edn, Arnoud et Reinier Leers 1702)

Gribaudo P, *L'Italia E Le Grandi Potenze Mondiali* (2nd edn, Società Editrice Internazionale 1934)

Guyot J, *Culture de La Vigne et Vinification* (Librairie Agricole de la Maison Rustique 1864)

——, *Culture and Wine Making* (Marie Ludovic tr, Melbourne 1865)

Jullien A, *Topographie de Tous Les Vignobles Connus* (Madame Huzard, imprimeur-libraire 1816)

——, *The Topography of All the Known Vineyards. Translated from the French and Abridged* (J and WB Whittaker 1824)

Limasset A, *Réglementation Du Vin Dans La Province de Languedoc et Particulièrement à Roquemaure Au XVIIe et Au XVIIIe Siècles* (Seguin 1908)

Maigne P, *Nouveau Manuel Complet Du Sommelier et Du Marchand de Vin* (Mulo 1921)

Maisonneuve P, *L'Anjou, Ses Vignes et Ses Vins* (Self-Published 1925)

——, *Le Vigneron Angevin* (Self-Published 1926)

- Marescalchi A, *Scritti Agrari* (Unione Tipografico-Editrice Torinese 1934)
- Marescalchi A and Dalmasso G, *Storia Della Vite E Del Vino in Italia, vol 1* (Gualdoni 1938)
- Marescalchi A and Marescalchi C, *Viticultura, Vino, Vini Tipici* (Unione Tipografico-Editrice Torinese 1938)
- Ministère de l'agriculture, *L'Agriculture Du Département de l'Aude En 1939* (Les Imprimeries Gabelle 1939)
- Ministère de l'Agriculture et du Commerce, *Agriculture Française, Par Mm. Les Inspecteurs de L'agriculture Publié D'après Les Ordres de M. Le Ministre de L'agriculture et Du Commerce: Department Du Tarn* (Imprimerie Royale 1845)
- Mondini S, *Produzione E Commercio Del Vino in Italia* (Hoepli 1899)
- Payen, *Compte Rendu Des Travaux de La Société Royale et Centrale D'agriculture Du 30 Mars 1845 Au 18 Avril 1846* (Librarie de Mme Bouchard-Huzard 1846)
- Perrier L, *Mémoire Sur Le Vin de Champagne* (Bonnedame fils 1886)
- Rossi G, *Progetto Onde Stabilire Un Commercio Dei Vini Toscani Coll'estero E come Si Può Mettere Ad Esecuzione* (Ranieri Prosperi 1833)
- Rozier F, *Cours Complet D'agriculture, Théorique, Pratique, économique, et de Médecine Rurale et Vétérinaire, Suivi D'une Méthode Pour étudier L'agriculture Par Principes; Ou, Dictionnaire Universel D'agriculture, vol 4* (Rue et Hotel Serpente 1791)
- Semichon L, 'Les Conquêtes et Les Reculs de l'Oenologie' in Société scientifique d'hygiène alimentaire (ed), *Bulletin de la Société scientifique d'hygiène alimentaire et d'alimentation rationnelle de l'homme* (Masson et C 1937)
- Société de législation comparée, *Annuaire de Législation Française* (Cotillon 1928)
- Société d'histoire de Chinon Vienne & Loire, *Amis Du Vieux Chinon* (Imprimerie Delaunay-Dehaies 1934)
- Vidal de La Blache P, *Tableau de La Géographie de La France* (1st edn, Hachette 1903)

Websites, online articles and materials

Agraria.org: Istruzione Agraria Online, ‘Atlante Dei Vini Italiani DOCG, DOP E IGP’ (Agraria.org: Istruzione Agraria Online) <<http://www.agraria.org/vini/>>

Barreau de Clermont Ferrand, ‘La Fraude Sur Les Produits Alimentaires et Industriels Au Sens de La Loi Du 1er Août 1905: La Genèse D’une Réglementation’ (2014) Les colloques du barreau de Clermont-Ferrand: la lutte contre la fraude, un enjeu économique majeur <<http://www.barreau-clermont.avocat.fr/pdf/exposé-loi-du-1er-aout-1905-colloque.pdf>>

Bibliothèque Nationale de France (Gallica) <www.gallica.bnf.fr>

Consorzio Vino Chianti, ‘Chianti’ (Chianti) <<http://www.consorziovinochianti.it>>

Consorzio vino Chianti Classico, ‘Consorzio Vino Chianti Classico’ <<http://www.chianticlassico.com>>

‘Consultation Procedure’ (EUR-Lex: Access to European Union Law) <http://eur-lex.europa.eu/summary/glossary/consultation_procedure.html?locale=en>

Committee of the Regions, ‘EU Committee of the Regions: The EU’s Assembly of Regional and Local Representatives’ (EU Committee of the Regions) <<http://cor.europa.eu/en/Pages/home.aspx>>

European Commission, ‘National Authorities Responsible Departments in the Member States’ <http://ec.europa.eu/agriculture/sites/agriculture/files/quality/schemes/national-authorities_en.pdf>

—, ‘Foodstuff and Agricultural Products’ (European Commission - Agriculture and Rural Development) <https://ec.europa.eu/agriculture/quality/schemes/foodstuff_en>

—, ‘Geographical Indications and Traditional Specialities’ (European Commission - Agriculture and Rural Development) <http://ec.europa.eu/agriculture/quality/schemes/index_en.htm>

—, ‘The History of the CAP’ (Agriculture and Rural Development) <http://ec.europa.eu/agriculture/cap-history/index_en.htm>

European Commission Directorate General of Agriculture, ‘The 2003 Reform’ (History of the CAP) <http://ec.europa.eu/agriculture/cap-history/2003-reform/index_en.htm>

European Council, ‘Council of the European Union - Agriculture’ (Council of the European Union) <<http://www.consilium.europa.eu/en/topics/agriculture/>>

European Economic and Social Committee, ‘European Economic and Social Committee’ <www.eesc.europa.eu>

European IPR Helpdesk, ‘The Value of Geographical Indications for Business’ <<https://www.iprhelpdesk.eu/node/1565>>

European Union Agriculture and Rural Development, ‘Agenda 2000: The Future for European Agriculture’

Eurostat, ‘Agricultural Census in Cyprus’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Cyprus>

——, ‘Agricultural Census in Hungary’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Hungary>

——, ‘Agricultural Census in Latvia’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Latvia>

——, ‘Agricultural Census in Lithuania’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Lithuania>

——, ‘Agricultural Census in Malta’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Malta>

——, ‘Agricultural Census in Slovakia’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Slovakia>

——, ‘Agricultural Census in Slovenia’ <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_Slovenia>

——, ‘Agricultural Census in the Czech Republic’ (2012) <http://ec.europa.eu/eurostat/statistics-explained/index.php/Agricultural_census_in_the_Czech_Republic>

Fantigrossi I, ‘La Bresaola Della Valtellina IGP? E’ Fatta Con Carne Di Zebù Dal Brasile. E in Pochi Lo Sanno’ *Il Corriere della Sera* (2016) <http://cucina.corriere.it/notizie/cards/bresaola-valtellina-igp-fatta-carne-zebu-sudamericano-pochi-sanno/caso-bresaola_principale.shtml>

Gouvernement Français, ‘Legifrance’ (Legifrance.gouv.fr) <<http://www.legifrance.gouv.fr>>

Höpperger M and Geuze M, ‘Negotiators Modernise International System for Registering GIs’ (2015) 3 *WIPO Magazine* <http://www.wipo.int/wipo_magazine/en/2015/03/article_0001.html>

Humbert F, 'Approche Historique Du Processus de Délimitation Des AOC Vinicoles Françaises: Contribution à La Compréhension Des Principes et de L'application D'une Expertise' (2010) 5 Sciences Humaines Combinées <<http://revuesshs.ubourgogne.fr/lisit491/document.php?id=542> ISSN 1961-9936>

Hungarian Intellectual Property Office, 'Geographical Indications' (*Hungarian Intellectual Property Office*, 30 March 2016) <<http://www.hipo.gov.hu/en/geographical-indication#4>>

ICCU, 'OPAC SBN' (Catalogo del Servizio Bibliotecario Nazionale) <<http://www.sbn.it>>

IGE/IPI, 'Indications of Source' (IGE/IPI) <<https://www.ige.ch/en/protecting-your-ip/indications-of-source/faq.html>>

Interprofession du Gruyère, 'Le Gruyère AOP' (*Le Gruyère - Switzerland*) <www.gruyere.com>

IP Hall of Fame, 'Friedrich Karl Beier: An Influential Academic and Author' (IP Hall of Fame) <http://www.iphalloffame.com/inductees/2006/Friedrich_Karl_Beier.aspx>

Lee E, 'Bresaola from Valtellina: A Traditional Italian Cold Cut' [2017] *Artimondo: artisanal excellence* <<http://www.artimondo.co.uk/magazine/bresaola-from-valtellina/>>

Livsmedelsverket, 'About Us' (*Livsmedelsverket - National Food Agency, Sweden*, 23 February 2015) <<https://www.livsmedelsverket.se/en/about-us/>>

Malta Competition and Consumer Affairs Authority, 'Malta Competition and Consumer Affairs Authority' <<http://mccaa.org.mt/en/home>>

Massot A, 'First Pillar of the Common Agricultural Policy (CAP): II – Direct Payments to Farmers' (European Parliament: Fact Sheets on the European Union, October 2015) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.5.html>

——, 'CAP Instruments and Reforms Made to Them' (European Parliament: Fact Sheets on the European Union, October 2015) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.3.html>

——, 'The Common Agricultural Policy (CAP) and the Treaty' (European Parliament: Fact Sheets on the European Union, October 2015) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.1.html>

Österreichisches patentamt, ‘Indication of Geographical Origin’ (*österreichisches patentamt*) <<https://www.patentamt.at/en/trademarks/trademarks-service/indication-of-geographical-origin/#c1357>>

Patent Office of the Republic of Poland, ‘Basic Information on Legal Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs’ <<http://www.uprp.pl/procedura-krajowa/Menu17,357,15,indexen,en/>>

Ragonnaud G, ‘First Pillar of the CAP: I – Common Organisation of the Markets (CMO) in Agricultural Products’ (European Parliament: Fact Sheets on the European Union, October 2015) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.4.html>

——, ‘First Pillar of the CAP: I – Common Organisation of the Markets (CMO) in Agricultural Products’ (*European Parliament: Fact Sheets on the European Union*, December 2016) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.4.html>

——, ‘Second Pillar of the CAP: Rural Development Policy’ (*European Parliament: Fact Sheets on the European Union*, December 2016) <http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.6.html>

UNESCO and Terroirs&Cultures, ‘Planète Terroirs’ <www.unesco.org>

UNESCO - World Heritage List, ‘Champagne Hillsides, Houses and Cellars’ (*UNESCO*) <<http://whc.unesco.org/en/list/1465>>

WIPO, ‘WIPO Lex’ (*WIPO*) <<http://www.wipo.int/wipolex/en>>

——, ‘Objectives and Main Features of the Lisbon Agreement’ (WIPO) <<http://www.wipo.int/lisbon/en/general/>>

——, ‘Search Appellations of Origin (Lisbon Express)’ (*Lisbon: the international system of appellation of origin*) <<http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp>>

——, ‘Traditional Knowledge’ <<http://www.wipo.int/tk/en/>>

Zappalaglio A, ‘Traditional Knowledge: Emergence and History of the Concept at International Level’ (2014) <<http://ssrn.com/abstract=2554132>>