

Geographical Indications in the IP System of the EU: past, present and future

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“ The structure, nature and current situation of the EU *sui generis* GI regime cannot be understood without the knowledge of its evolution. History teaches us about the present and future of the system and can inform the legislative and policy choices of other jurisdictions as well.

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The EU GI Regime

Agricultural Products and Foodstuffs

- Regulation 1151/2012
- Origin: 1990

Wine

- Regulation 1308/2013 (Section II)
- Origin: 1970

Spirits

- Regulation 110/2008
- Origin: 1989

Fortified Wines

- Regulation 251/2014
- Origin: 1991

Handcrafts?

Maybe 2023 / 2024?

EU quality schemes (PDO-PGI-TSG)

Art 5(1) Regulation 1151/2012

1. For the purpose of this Regulation, '**designation of origin**' is a name which identifies a product:
 - (a) originating in a specific place, region or, in exceptional cases, a country;
 - (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors **[origin link]**; and
 - (c) the production steps of which all take place in the defined geographical area **[locality requirement]**.

2. For the purpose of this Regulation, '**geographical indication**' is a name which identifies a product:
 - (a) originating in a specific place, region or country;
 - (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin **[origin link]**; and
 - (c) at least one of the production steps of which take place in the defined geographical area **[locality requirement]**.



Fixing Indications of Source

PROTECTING WINE IN
FRANCE BEFORE
APPELLATIONS OF ORIGIN

The systems for the protection of Indications of Geographical Origin (IGOs)

- Indication of Source (Paris Convention for the Protection of Industrial Property 1883; Madrid Agreement on Indications of Source 1891)
- Appellation of Origin (Lisbon Agreement for the protection of Appellations of Origin 1958)
- Geographical Indication (TRIPs Agreement 1995)
- Trade Marks
- Other: false advertisement; unfair competition; passing off ...

Indication of Source

Art 1(2) Paris Convention

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

WIPO Worldwide Symposium on GIs (San Francisco 2003)

... an indication of source can be defined as an indication referring to a country, or to a place in that country, as being the country or place of origin of a product. It is important that the indication of source relates to the geographical origin of a product and not to another kind of origin, for example, an enterprise that manufactures the product. **This definition does not imply any special quality or characteristics of the product on which an indication of source is used**. Examples of indications of source are the mention, on a product, the name of a country, or indications such as “made in”

Indication of Source does not link the qualities of a product with a place

PROBLEM 1.

I make sparkling wine in Germany, I bring it to the Champagne Region and then I bottle and sell it there.

Is it Champagne Wine?

PROBLEM 2.

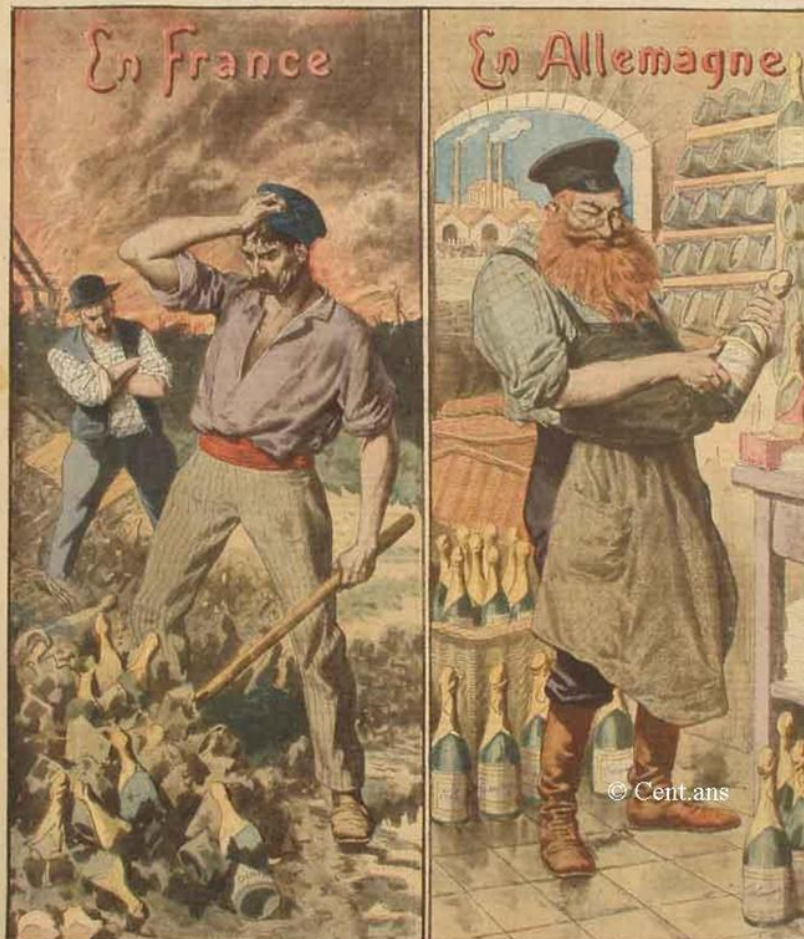
I move to the Champagne Region, I make cheap sparkling wine there without respecting any established production method.

Is it Champagne Wine?



Le Petit Journal

ADMINISTRATION 5 CENT. SUPPLEMENT ILLUSTRE 5 CENT. ABONNEMENTS
51, RUE LAFAYETTE, 51
Les manuscrits ne sont pas rendus
22^{me} Année Numéroté 1.067
DIMANCHE 30 AVRIL 1911
REVUE EN NEUF-ET-DEUX 20 ANS 20 00
DEPARTEMENTS 2 50 4 50 6
ETRANGER 8 50 8 50 7



A QUI PROFITERA LA JACQUERIE CHAMPENOISE ?
AU FRAUDEUR ALLEMAND

4 INFLUENCES OF TERROIR

CLIMATE



COLD



HOT



WINDY



FOGGY

TERRAIN



NORTH OR SOUTH
FACING



ELEVATION/
ALTITUDE

SOIL



ROCK + MINERAL DEPOSITS



DENSITY

TRADITION



TECHNIQUE + WINEMAKER



WWW.THEFAVORY.COM

Appellation of Origin → substantive link between an *Origin Product* and place

“

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 ... 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 are the result of close synergies between mankind and nature. They 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

(Roquefort PDO Single Document, Link section)

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Only products growing from the soil? NO. Roquefort Appellation of Origin Approved in 1925.

Shift to a history/ tradition base link

The road to PDO

French experience (*Appellation d'Origine Contrôlée*) + Lisbon Agreement

Lisbon Agreement (1958)

Art 2(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.***

Regulation 817/70 'laying down special provisions relating to quality wines produces in specified regions

- Distinction 'Quality Wines produced in specified regions' vs 'Table Wines'
- No PDO / PGI yet
- QWPSR could only be made from grapevines harvested in the designated areas
- It was a way to recognise EU status to the national origin labels (*Appellation d'Origine Controlée* – France; *Denominazione d'Origine Controllata e Garantita* – Italy etc...)
- Aim: protect and promote the EU Wine sector (extremely relevant from an economic perspective)

The Road to PGI

Unfair competition; Indications of Source; communicative logic of the sign

‘Collective reputation’ of the sign

- Some European countries – especially Germany and the U.K. – opposed the introduction of a registration-based administrative system based on Appellation of Origin
- Communicative logic of the sign. E.g. ‘Scotch Whiskey’ generates a specific image in the mind of the consumers + specific expectations of quality
- Truth-telling on the marketplace must be protected
- Unfair competition / Passing Off approach → ex post, case-by-case approach
- Broad approach: any product can be protected, indirect GIs possible (e.g. the Eiffel Tower as a symbol of France)



Solingen Steel



The birth of PDO and PGI:
Regulation 2801/1992 on agricultural
products and foodstuffs

The EU *sui generis* GI regime as we know it

- Introduction of PDO and PGI (Regulation 2081/1992 → first regulation on food GIs)
- Art 22(1) TRIPs Agreement 'Geographical indications are ... indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin' --> almost identical to EU PGI; inspired by the EU
- Application of the PDO/PGI quality schemes to Wine in 2008

How are EU *sui generis* GI doing in 2021?

- Good economic results
- PGI has become the major Quality Scheme for Foodstuffs (660 PDOs – 882 PGIs)
- PDO remains the major Quality Scheme for Wines (1 178 PDOs – 443 PGIs)
- In the field of Foodstuffs the 'reputation' of the product has become the main linking factor and it is usually proved not only through evidence of market reputation, but also more and more often through evidence of the product history, traditional knowledge related to it etc...
- Many countries have adopted a *sui generis* registration-based GI system (e.g. China, India, Russia etc...)

The future of the EU GI regime: handcrafts?

Work in progress

Extension of EU GIs to handcrafts

- The EU *sui generis* GI regime does not protect handcrafts and other non-agricultural / non-drinks products. This is due to historical reasons. However, nothing prevents the extension of the system
- In 2019 the EU joined the **Geneva Act of the Lisbon Agreement** that includes the Geographical Indication in the Lisbon System
- Geographical Indications are used to protect non-agricultural products because they are more flexible and the reputational link is broader than '*terroir*' (see India)
- The EU needs to extend protection to non-agricultural GIs to comply with the *Geneva Act*
- Currently work in progress. Research work will be completed in September.
- New Regulation in 2023/2024?

Data and materials

- EU Commission 'Study on the Economic Value of EU GIs'
<https://op.europa.eu/en/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1>
- Zappalaglio 'The Transformation of EU Geographical indications Law: the present, past and future of the origin link' (2021)
- Zappalaglio & Mikheeva 'The new Russian Law of Geographical Indications: a critical assessment' (2021) *Journal of Intellectual Property Law and Practice*
- Zappalaglio, Guerrieri, Carls 'Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task' (2020) 51 *IIC* 31

Thank you for your attention!

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**The
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Of
Sheffield.**