



# Linking product and place: a focus on PGI

DR ANDREA ZAPPALAGLIO

WORKSHOP: UNDERSTANDING GEOGRAPHICAL INDICATIONS

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# What are 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.*

### (1) "Originating"

GIs are a *label of origin*.

The origin function sets them apart from the broader family of quality labels (Barham 2016)

### (2) "Quality, reputation or other characteristic of the good (...)"

The "origin link" or "product/place link" → a set of requirements provided by the law to establish an essential or exclusive link between a product and a place so that GI protection can be granted.

# PDO and PGI: the Quality Schemes

## Art 5 – 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*; and
  - (c) the production steps of which *all take place in the defined geographical area*.
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*; and
  - (c) *at least one of the production steps* of which take place in the defined geographical area.

# Analysis of the origin links

PDO

- quality or characteristics essentially or exclusively due to a particular geographical environment with its inherent natural and human factors [→ *terroir*]
- All [the production steps] take place in the defined geographical area

PGI

- quality, reputation or other characteristic essentially attributable to its geographical origin
- at least one of the production steps take[s] place in the defined geographical area



# Analysis of the origin link: methodology

- **Research:** analysis of the specifications of all the registered PDOs and PGIs. In particular, the analysis focused on the section “Link with the geographical area” of the Single Documents.
- **Goal:** investigate what “quality” and “reputation” links are in practice, with a special focus on the latter.
- **Analysis of reputation:** Divided the reputational element of PGIs into three classes: **1)** historical reputation; **2)** existence of a traditional know-how/method of production/recipe; **3)** commercial reputation (Gangjee 2017; Bérard *et al*,1999). The first two almost always appear together, so eventually I considered them as one.
- **Importance:** the practical nature and the effectiveness of the product/place links, and especially of the reputational element, are still widely under-researched.

# The Origin Link of PGIs

## Quality

- Characteristics and origin of the raw materials
- Distinctive physical/environmental conditions
- Peculiar know how

## Reputation

- «Market Reputation» → Opinion of Consumers
- «Historical Reputation» → Cultural and/or economic history
- Present economic reality

## Other

- Unclear



# The broad picture

## PDOs

- Approx **74%** of PDOs include a reference to product's reputation. In more than the 90% of cases this includes the history of the product.
- This could be due to the fact that the *terroir* link includes both the natural and *human* factors

## PGIs

- More than the **80%** of PGIs include reference to the history of the product and/or to the relevant traditional know-how.
- The PGIs based on the market reputation alone are less than **10%**.
- The **57%** of PGIs include reference to the quality link

## General observations:

- In PGIs the historical link is predominant
- Many PDOs include references to reputation and many PGIs feature the quality link → the difference between the two quality schemes is not always clear from the origin link p.o.v.



# The Nature of the “historical link”

The historical link consists in:

- Cultural history
- Economic history
- Traditional know how
- Often linked to present economic reality



# Example

## **Kulmbacher Bier PGI**

The quality and reputation of “Kulmbacher Bier” goes back to a centuries-old brewing tradition [history → it is ancient it has always been here].

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 EKV Brauerei was founded in 1872 from a Kulmbach communal brewery [socio-economic history of the product and its impact on the place].

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” [--> know how - current economic reality based on tradition].

# Strengths and weaknesses of history as a linking factor

## Why history can be a good linking factor

- It is not merely abstract, it is the description of an interaction → it can be proved with tangible evidence (Bérard&Marchenay 2004)
- History describes the evolution of a product and outlines its identity (e.g. Gruyère cheese case study - Barjolle, Boisseaux and Dufour, 1998)

## Weaknesses of the historical link and insufficiency of pure commercial reputation

- Non-*terroir* products (--> typically goods that do not grow from the soil, e.g. bakery products, pasta etc...) are purely based on history or commercial reputation, i.e. can be made virtually anywhere:
  - Commercial reputation alone (= consumer's opinion) should not be considered enough: a) it is merely subjective, while *terroir* and history are intrinsic/ (tendentially) objective links; b) it is rarely found alone;
  - If the historical link is used to justify the connection between a product and a place but the product does not reflect its traditional image, PGIs can become misleading and turns into a mere marketing tool.



# When history is unable to establish origin

- I) The production method does not match the traditional image of the product;
- II) The raw materials are sourced from areas that are completely unrelated to the history and traditional image of the product.

Also keep in mind:

- History can be invented or distorted for commercial purposes (Hughes 2006; Broude 2005)
- The specification can be completely distorted (Mexican Tequila case, Bowen 2010)

# Traditional image and production method: the 'Piadina Romagnola PGI' case

- The Piadina Romagnola is a famous traditional flatbread from Romagna (Italy)
- It is traditionally homemade and sold by small kiosks as a snack
- The specification of the product allows also industrial production within the Romagna area



# The dispute I

- The traditional producers of *piadine* contested the specification because it allowed industrial producers to use the PGI label;
- In 2014 the *TAR Lazio* (the Italian central administrative court of first instance), partially annulled the specification holding that since there is no material difference between handmade and industrially-made piadina bread, the former is the only one that deserves protection because consumers consider to be the “original” product;
- In 2015 the *Consiglio di Stato* (administrative court of appeal) reversed the decision stating that:
  - art 5(2) of the Regulation 1151/2012 considers that the reputational link between the product and its place of origin is enough to obtain a PGI;
  - the Regulation does not distinguish between artisanal and industrial products.

# General Court [T-43/15] CRM v Commission (23 April 2018)

- The Claimant argued that the Commission breached Regulation 1151/2012 as it granted protection to industrially made *piadine* even if there is nothing in the specification that suggests that the industrial product enjoys any reputation.
- The EGC dismissed the claim arguing that:
  - "*Consumers associate the product with Romagna independently from the way through which it is produced*" [47] → the historical reputation of the product is not the only linking factor, there is the simple commercial reputation too;
  - "*the single document and the specification (...) contain indications relating to human, cultural and social factors, concerning the know how handed down in Romagna from generation to generation as well as the efforts of the population of the area to enhance this product as coming from that area (...)*" [52] → these are all elements related to the tradition of the product, i.e. to the artisanal one.
- The Consiglio di Stato and the EGC apply the Regulation correctly. However, these decisions do not solve the problem of the identification of the «origin-product» and of the interpretation of the reputational link.



# Traditional image vs substance: the 'Bresaola della Valtellina PGI' case



## Place of Origin

This is not a *terroir* product but producers claim the existence of longstanding know how



## Raw Materials

The specification is silent on the point. The product is made from Zebu meat



## Origin of the raw materials

Zebu does not exist in Europe, the meat is imported from Brazil

# Is this an origin product?

- ▶ According to the specification the meat must be (1) cut; (2) salted (10-14 days); (3) aged in the designated area (4-8 weeks). The preparation is not complex and takes 10 weeks maximum.
- ▶ Although the PGI rules are respected, there is a huge discrepancy between the traditional character of the product, mentioned in the specification, and its concrete features. This is particularly relevant because this product is linked to its place of origin almost exclusively through history and traditional know how.
- ▶ When consumers found out that the raw materials come from another continent, the 87% of them stated that they considered the label of origin misleading.



## Some final remarks and observations

- The reputational requirement is still under-researched;
- The interest of producers must be balanced with the need to preserve the origin function of GIs → the adequacy of the reputational link must be assessed on a case-by-case basis;
- The reputational element should be narrowly construed in order to avoid disfunctions;
- As a general rule, the more the origin link is based on the history/tradition of the product rather than on *terroir*, the more the product must reflect this history/tradition, otherwise GIs become marketing tools at the expenses of their distinctive origin function.
- The examination of the applications is still too inhomogeneous → we need more guidance from the EU.



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Thank you very much for your  
attention!

[andrea.zappalaglio@gmail.com](mailto:andrea.zappalaglio@gmail.com)