



# Policy Notes

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## Truth in labelling: improving EU food GI policy

### Introduction

The European Union (EU) has a registration system for food names linking the product name to the place it comes from. But the design of this Geographical Indication (GI) system means that consumers are very often misled about where an EU GI food actually comes from. Registered GIs are exempt from the 2011 EU regulation requiring that all food products be labelled with the country of origin of the principal ingredient.

This Policy Note reviews EU GI policy and suggests a number of improvements to achieve the EU's objective that a GI food label provide "clear and succinct information regarding the product origin".<sup>1</sup> It also raises issues as to whether traditional methods are still used to produce famous regional specialties. And it sets EU GI policy in the context of other consumer concerns, such as fair trade, organic and food miles.

The improvements to the EU's GI registration system proposed here would assist in current and future EU trade negotiations. If the EU GI system were improved so that labels accurately reflected origin, then partner governments would no longer be placed in the position of being asked to approve the sale of products with misleading and inaccurate labels.

This Policy Note first describes the two main elements in the EU's GI system for foods, before considering the ways in which each falls short of the goal of accurate labelling. Policy modifications to ensure that consumers of EU GI food products are no longer misled are suggested. The EU has also emphasised the importance of preserving its gastronomic heritage. The Traditional Specialty Guaranteed (TSG) designation could be better used to achieve this heritage goal. The Note concludes with a brief consideration of whether EU GI policy is effective in achieving the economic goals of increasing producer income and contributing to regional prosperity.

### A two-part system

The EU's food GI system has two principal categories – Protected Designations of Origin (PDO) and Protected Geographical Indications (PGIs). They share the same producer privileges in terms of restraining trade and

### Some misleading GI labels:<sup>2</sup>

**Parma ham:** the pigs can be raised up to 600 kms away, though the ham will definitely be sliced and packaged in Parma;

Delicious **Bresaola della Valtellina** goes through its final processing stages in Sondrio Province in far north Italy, but the meat comes from Brazil;

The wood used to smoke **Schwarzwälder Schinken** comes from the Black Forest, but the pigs do not.

preventing comparative advertising, but the requirements and history are different as is the link between product and place.

PDOs arose from older French and Italian wine registration systems designed to protect genuine producers, and all consumers, from fraud. PDO food registration existed in France, Italy, Spain, Portugal and Greece before the EU introduced its GI system in 1992. A PDO is described as demonstrating a strong link between the product and the land. The land – *terroir* – where the product is grown is held to create unique product characteristics.

The draft GI regulation covered only PDOs. When it was circulated Germany pointed out that they had a parallel system, arising out of judicial decisions regarding producer reputation.<sup>3</sup> This PGI system was therefore included in the final regulation promulgated in 1992 (EEC 2081/92).

### Author: Hazel V J Moir

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<sup>1</sup> EEC Regulation 2081/92 preamble and EC Regulation 510/2006, preamble para (4).

<sup>2</sup> For further examples see Moir, 2023, *Restraining free trade? The EU's GI export agenda*, ANUCES Briefing Paper Vol. 14, No. 3 at <https://ces.cass.anu.edu.au/research/publications/briefing-paper>. A shorter version will be published as "Europe's GI policy and New World countries", *Journal of World Trade*, 57:6, Dec 2023.

<sup>3</sup> Gangjee, 2006, "Melton Mowbray and the GI Pie in the Sky: Exploring Cartographies of Protection", *Intellectual Property Quarterly*, 3: 291-309.

PGIs, however, have a far more tenuous link between product and place. Inclusion of PGIs in the same system as PDOs has substantially undermined the argument that GIs reflect *terroir* and provenance. While the GI regulation stipulates that a PGI should have qualities “essentially attributable to its geographical origin”, it only requires that one of the production steps should take place in the defined geographical area.<sup>4</sup>

Indeed there is no minimum quantum of the value of a PGI that must take place in the defined area. This is quite unlike the EU’s regulation for wine GIs, where production requirements are strict. The food PDO production requirements are also strict, though undermined by an important exemption.

### PDOs: exceptions to the *terroir* rule

The EU’s GI registration system exempts many older PDOs from the strict product-and-place link. For exempted products the label on the food can mislead consumers as to the origin.

Article 5(2) of the GI regulation (EU 1151/2012) requires that the product have a “quality or characteristics essentially or exclusively due to a particular geographical environment” and that **all the production steps** take place in the defined geographic area. Consumers therefore have an expectation that, for example, Roquefort cheese comes from Roquefort-sur-Soulzon and Gorgonzola cheese from Gorgonzola.

**But**, for approximately 166 PDO products, the raw materials can come from elsewhere.<sup>5</sup> The exemption is available for milk or meat-based PDOs recognised in their country of origin before 1 May 2004. As an example, the PDO label Parma ham implies the ham comes from Parma, but the raw materials come from all over central and north Italy.<sup>6</sup>

In the original regulation the exemption was only available for PDOs registered or recognised in their country of origin by 1992 and lodged with the EU within 2 years.<sup>7</sup> The exemption was extended to products registered between 1992 and 2004 when the GI regulation was amended in 2006.<sup>8</sup> This broadening of the exemption from a strict link to *terroir* affected over 40 products.

Because of this exemption, some 68% of meat product PDOs and 71% of cheese PDOs are potentially inaccurately labelled. Of the 25 potentially inaccurate meat product PDO names, 19 are Italian, 4 Spanish and 1 Portuguese. Of the 141 potentially inaccurate cheese PDO names, 39 are French, 30 Italian, 20 Greek, 17 Spanish and 11 Portuguese. These are the five Member States which had PDO systems prior to the introduction of an EU-wide food GI System.

Exempted products do not meet the PDO regulatory requirement that the product be fully produced within the

designated place boundaries. They do, however, meet the requirements for Protected Geographic Indications, where there are no minimum requirements for any production stage.

The goal of “clear and succinct information regarding the product origin” for consumers is central to EU GI policy. It was stated in exactly this way in the 1992 and 2006 versions of the regulation. The current (2012) version is more verbose – either “providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices” from the Preamble (para 18) or “the availability to consumers of reliable information pertaining to [agricultural and foodstuffs] products” from Article 1(c).

Whatever the wording on the goal of providing clear provenance information for consumers, the PDO exemption undermines this, creating uncertainty for consumers which could spill over onto non-exempt PDO products. Given that the *terroir* production requirements for EU wine GIs are strict, it is unclear why these exemptions were written into the food GI regulations. The impact of the exemption is not discussed in either of the evaluations of the food GI system undertaken by the European Commission (EC).<sup>9</sup>

**The problem with potentially misleading PDO labels could easily be solved by removing the exemption on sourcing raw materials. These 166 products could be registered as PGIs.**

### PGIs: no minimum link to place

The PGI part of the EU food GI system is based on judge-made law from Germany, to maintain producers’ reputations. The objective was to eliminate deceptive practices, and so paralleled the TRIPS goals of ensuring that product labels neither **mislead consumers** nor constitute **unfair competition** (TRIPS Article 22).<sup>10</sup> This judge-made law was never designed to confer private proprietary property rights,<sup>11</sup> though this happened after PGIs were absorbed into the EU GI system.

The EU regulation requires (in Article 5(2)) that a PGI have a quality, reputation or other characteristic essentially attributable to the geographic origin and that “at least one of the production steps ... take place in the defined geographic area.” There is no reference to any minimum quantity of production that should take place in the designated area. Indeed production specifications can be entirely silent on the issue of where raw materials come from (for example Schwarzwälder Schinken, where the source for the pigs is unspecified) or where production occurs. Or the origin can be an economic zone, rather than a place with specific terrain characteristics, as is the case with Spreewälder Gurken (gherkins). As a consequence consumers do not really know if there is a genuine link to place. An extreme example of the disconnect

<sup>4</sup> EU regulation 1151/2012, Article 5. The 1992 and 2006 versions of the regulation specified that “the production and/or processing and/or preparation” should take place in the defined area (Article 2) so were similar in effect. References in the text are to the current, 2012, version of the GI regulation unless otherwise specified.

<sup>5</sup> Provided there are defined (but unlimited) boundaries to this wider area and clear production and control arrangements. Data are author estimates of EU registration by end 1996 (the earliest registration date provided in the EU’s official GI database eAmbrosia). For further detail see Moir, 2023 (footnote 2).

<sup>6</sup> Oddly, however, if one buys a Parma ham and takes it elsewhere to slice/package, it ceases to be Parma ham (*Consorzio del Prosciutto di Parma v Asda Stores Ltd* (C-108/01) [2003] 2 C.M.L.R. 21.)

<sup>7</sup> EEC 2081/92, Article 2(6) and (7).

<sup>8</sup> EC 510/2006, Article 2(3).

<sup>9</sup> EC staff, 2010, *Impact assessment on geographical indications*, ([https://agriculture.ec.europa.eu/document/download/97fe101f-36f7-46e6-b1e7-44f6f8dcee3f\\_en](https://agriculture.ec.europa.eu/document/download/97fe101f-36f7-46e6-b1e7-44f6f8dcee3f_en)); and 2021, *Evaluation of geographical indications and traditional specialties guaranteed protected in the EU*, EC SWD(2021) 428 final (<https://ec.europa.eu/info/law/better-regulation/>).

<sup>10</sup> Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement ([https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm)).

<sup>11</sup> Blakeney, 2001, “Proposals for the international regulation of geographical indications”, *The Journal of World Intellectual Property*, 4(5): 629-652.

between a registered PGI product and the place it allegedly comes from is Bresaola della Valtellina. The meat used in this product comes from Brazil, though this is not mentioned in the production specifications.<sup>12</sup>

**There is no minimum requirement for the proportion of PGI production or value-added that takes place in the specified area. This means no guarantee for consumers that a PGI product is from the place indicated on the label.**

This lack of a strict requirement on the location of production contrasts with other elements of the EU's GI system. For PDO foods all production must take place within the designated area, and raw materials must be sourced only from the area, except for the exemption discussed above. For GI wines 85% of grapes must be grown and all production must take place in the designated area.<sup>13</sup>

Concerns about the origin of PGI products are magnified by the fact that GI foods have been exempted from the 2011 regulation requiring country of origin labelling for the primary ingredient.

### Exemption from regulation on country of origin (COO) labelling

In 2011 the EU adopted a regulation which, inter alia, required that the COO of the primary ingredient of a food be specified on the label if it was different from the COO of the food itself.<sup>14</sup> This is precisely the kind of situation with Bresaola della Valtellina, where final production is in Italy, but the principal ingredient is from Brazil.

The goal of the 2011 regulation was to provide "the basis for the assurance of a high level of consumer protection in relation to food information" (Article 1(1)).

In all countries there are challenges in moderating between producer interests in maximising flexibility of supply for ingredients and consumer interests in knowing the origin of the product they are eating. Clearly in the EU these challenges led to problems with the application of key Article 26(3) – the article about indicating the COO of the principal ingredient if it is not the same as the country where product is made.

In 2018 the EU adopted a further regulation specifying the application of Article 26(3).<sup>15</sup> Recital 6 of this states that applying the labelling requirement to registered geographical indications needed to be further examined. Effectively this meant that registered GIs remained exempt from Article 26(3) of the 2011 regulation, at least temporarily.

The 2018 regulation was followed in 2020 by an official notice<sup>16</sup> explaining further the application of this article,

showing the continuing difficulty of requiring the provision of clear information to consumers. This notice clearly stated that the requirement for the COO of the primary ingredient to be stated on the label still did not apply to registered food GIs.

Following an evaluation of their GI policy in 2020-21, the EU proposes amending the GI regulations further, principally in terms of strengthening producer privileges, shortening and simplifying the registration process and allowing for an optional increase in the sustainability characteristics of GI products.<sup>17</sup> The evaluation did not discuss the requirement for COO labelling for the primary ingredient, nor any other aspect of the accuracy (or inaccuracy) of GI labels.<sup>18</sup>

### Achieving accuracy in PGI labels

Clearly the current PGI regulations fail consumers in achieving the EU's goal of clear information regarding the product origin. If a consumer's interest in buying regional products is a desire to promote that region, then the absence of minimum requirements in the PGI system is concerning from the regional development goal perspective too.

There are a number of options to achieve clear labelling of PGI products. The most robust of these would be to introduce minimum requirements as to where the various stages of production take place. This would substantially improve the integrity of the EU's quality schemes policy as a whole. At present the PGI part of the system is the only part where there are no strict product-place requirements. A phase-in period could allow producers to adjust their supply arrangements.

Should it be politically impossible to require that PGIs actually come from the specified area, a second-best solution would be to require immediate compliance with Article 26(3) of the 2011 food labelling regulation (1169/2011).

A third option would be to transition some PGI products from PGI status to TSG status.

### Gastronomic heritage: the role of TSGs

A little discussed strand in the EU's food quality schemes is the role of TSGs. When a product, for example mozzarella, is registered as a TSG, then mozzarella sold in the EU must follow the registered traditional recipe. It can, however, be made anywhere. TSGs therefore preserve gastronomic heritage without being anti-competitive, and thus fit better into the overall EU ethic of a single competitive market.

As at January 2021, there were only 64 registered TSGs. The 2020-21 evaluation of the EU's food quality schemes has little specific analysis of the TSG strand. The report nonetheless concludes that the TSG scheme should be reassessed in light of its limited attractiveness for producers.<sup>19</sup> While the role of TSGs in preserving cultural heritage is noted, there is no discussion of how this role differs between TSGs, PDOs and PGIs. This is despite feedback during the evaluation consultation that PDOs had moved away from traditional production methodology. The examples of Camembert de Normandie and Stilton were given.<sup>20</sup>

<sup>12</sup> Zappalaglio, 2018, "The why of geographical indications: the transformation of the link between the product and its place of origin in Europe", University of Oxford (<https://ora.ox.ac.uk/objects/uuid:d7124003-81b5-4d7b-8c27-eba29c8a3d24>).

<sup>13</sup> EU regulation 1308/2013, Article 93.

<sup>14</sup> EU Regulation 1169/2011 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011R1169-20180101>).

<sup>15</sup> EU Regulation 2018/755 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0755>).

<sup>16</sup> EC Notice 2020/C 32/01) of 31 January 2020 ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0131\(0111\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0131(0111))) on

the application of the provisions of Article 26(3) of regulation (EU) No 1169/2011.

<sup>17</sup> [https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained\\_en](https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en).

<sup>18</sup> EC staff, 2021, details at footnote 9.

<sup>19</sup> Ibid, pages 63, 65.

<sup>20</sup> Pantzer, 2019, "Feedback from Slow Food to evaluation of Geographical Indications...in the EU" (<https://ec.europa.eu/info/law/better->

It is understandable that many producers are uninterested in TSGs. But it is not understandable why authorities interested in promoting food heritage do not take a greater interest. Unless it is that, if traditional recipes were promoted more, consumers might realise how much some PDO and PGI products have moved away from tradition.<sup>21</sup>

### What quality food products do consumers want?

Only 7% of foodstuffs consumed in the EU are GI labelled,<sup>22</sup> so clearly the consumer demand for GI products is small. There is also a demand for food with other attributes – for example in three Member States the share of organic food is over 8%.<sup>23</sup> The willingness to pay studies reviewed by Török and Moir show that consumers value a range of attributes and are willing to pay a premium to support local products (and low food miles), fair trade, organic products, etc.<sup>24</sup>

It is difficult to determine just how much consumers are willing to pay for each of these attributes, or how these attributes combine. Nor is there much information on what attributes consumers prioritise when they buy a PDO or PGI product. Certainly for many the key attribute is “local”, but when a GI food is exported, issues like food miles come into play. There is even less information about preferences for traditional methods of production.

### Economic objectives of GI food names

The quality programs which consist of GI systems for different types of agricultural product (wines, spirits and foodstuffs) are administered by the Directorate-General, Agriculture and Rural Development (DG AGRI). The economic policy objectives are to diversify agriculture, increase net producer income and promote regional prosperity.

Clearly there is no incentive for producers to participate in GI schemes if this does not increase net profit. The assumption underlying PDOs and PGIs is that these are high quality products, which should attract a price premium. However producing higher quality products also costs more, so for the schemes to be economically beneficial the increased price should more than cover the increased cost.

AND-International found that 34% of GI foods commanded a price premium of over 100% and a further 22% achieved price premiums between 50% and 100%.<sup>25</sup> These data do not tell us whether net profit increased, though it seems likely for at least those products with premiums over 100%. The data cast no insight as to where in the supply chain the increased price is captured.

EU-funded studies of GI policy have not systematically addressed the question of whether GI labelling increases net producer income or contributes to regional prosperity. To fill this gap the ANUCES reviewed all available empirical studies on the economic impact of GIs and assessed their impact on net producer income and regional prosperity. This work is, to the best of our knowledge, the first evidence-based synthesis of the available empirical evidence on the economic impact of GIs.<sup>26</sup> It has been summarised and updated by Török et al., 2020, who conclude that:

“there is considerable heterogeneity between different GI products and between the outcomes for similar GI products in different regions. Consequently, it is difficult to determine if there are specific types of product, or specific places, where GI labelling is more likely to achieve a price premium. This hinders the effective development of GI policy on the ground. Based on the available data it is not possible to recommend where an investment in GI labelling will generate a good return.”<sup>27</sup>

### In summary

This Note has not addressed the legal fiction that lies at the heart of EU GI policy – that a food labelled “feta, made in Tasmania” misleads consumers. It focuses instead on the regulatory standards which fail to ensure that GI labelled foods actually come from the specified place. These latter problems can be resolved to achieve truthful labelling. Such improvements would go a long way to resolving the difficulties trading partners have with the EU’s goal of exporting its GI policy.

### CONTACT US:

#### The Australian National University Centre for European Studies (ANUCES)

RSSS Building, Level 2, 146 Ellery Crescent, Canberra ACT 2601, Australia  
T +61 2 6125 9896  
W <http://ces.anu.edu.au>

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<sup>21</sup> Ruiz and colleagues find that 17% of registered PDO/PGI products had changes in their production specifications (Ruiz et al, 2018, “How are food Geographical Indications evolving? – An analysis of EU GI amendments”, British Food Journal, 120:8.

<sup>22</sup> AND-International, 2019, *Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialties guaranteed (TSGs) Final Report*: 20 (<https://op.europa.eu/en/publication-detail/-/publication/a7281794-7ebe-11ea-aea8-01aa75ed71a1>).

<sup>23</sup> Austria, Denmark and Sweden. See Daugbjerg and Moir, 2019, *Labelling food: organics and geographical names*, ANUCES Policy Note 4 ([https://ces.cass.anu.edu.au/sites/default/files/docs/2021/5/ANUCES-policy-notes\\_issue4-2019\\_WEB.pdf](https://ces.cass.anu.edu.au/sites/default/files/docs/2021/5/ANUCES-policy-notes_issue4-2019_WEB.pdf)).

<sup>24</sup> See footnote 26.

<sup>25</sup> AND-International, 2020, *Evaluation support study on Geographical Indications and Traditional Specialities Guaranteed protected in the EU* (<https://op.europa.eu/en/publication-detail/-/publication/c1d86ba1-7b09-11eb-9ac9-01aa75ed71a1/language-en>): 106.

<sup>26</sup> Török and Moir, 2018, “Understanding the real-world impact of GIs: A critical review of the empirical economic literature”, Canberra: ANUCES Briefing Paper Series Vol.9 No.3: 4-5 ([https://ces.cass.anu.edu.au/sites/default/files/docs/2021/5/Briefing\\_Paper\\_GeographicalIndications\\_Vol.9\\_No.3.pdf](https://ces.cass.anu.edu.au/sites/default/files/docs/2021/5/Briefing_Paper_GeographicalIndications_Vol.9_No.3.pdf)).

<sup>27</sup> Török et al., 2020, “Understanding the real-world impact of GIs: A critical review of the empirical economic literature”, *Sustainability*, 12(22): 9434.