

Innovating Within Tradition: Are PDOs and PGI loosening their link to origin?

Maurizio Crupi – ESR 4

EIPIN-IS Research Paper No. 20-01

www.eipin-innovationsociety.org



EIPIN Innovation Society

(March 2017 - January 2021)

European IP Institutes Network

Cooperation among IP Institutions and students in Europe since 1999.

EIPIN Innovation Society

- Multidisciplinary and **holistic research programme** on role of IP in the innovative lifecycle
- **Co-supervision** of doctoral research leading to **joint doctorate degrees** from two EIPIN partners
- Tailor-made **training programme** prepares a new type of IP researcher who is able to ascertain and articulate the complexities of the IP system.



IP as a complex adaptive system

- IP developed from a mere legal title into a **complex adaptive system**
- IP functions as a
 - Business tool for value creation
 - Vehicle for investment
 - Relationship between right holders, users and society
- Ambition: to **enhance Europe's capacity to foster** innovation-based sustainable economic growth globally
- Research objective: to provide **reliable conclusions** on how to deal with the adaptive complexities of innovation cycles that **secure economic benefits** and **uphold justice** in the innovation society.

Partner organisations



Research results

- 15 **PhD theses**, published as monographs
- International peer-reviewed **articles**
- **Presentations** at international conferences
- Bi-yearly **conferences** on the four areas of research
- **Training** activities on methodology, research and transferrable skills
- Presentations and publications on establishment and management of **joint doctoral degree structures**

PDOS And PGIS: A Pragmatic Approach To The Link To Origin



Maurizio Crupi

Project: ESR4

Research Question

The thesis consists of four chapters built around the notion of link to origin for EU and non-EU products. Every chapter attempts to provide an answer to the following main research question: “Are the differences between PDOs and PGIs reflected in the EU Register?”, the analysis is complemented by the following sub-questions:

1. Are the different legal requirements for the registration of PDOs and PGIs able to reflect their link to origin?
2. What is the difference between PDOs and PGIs concerning the amendment of product specifications?
3. What is the role of PDOs and PGIs in the negotiations of bilateral agreement and in the registration of foreign GIs in the EU?

Methodology

The first chapter explores the nature of the link to origin and the role of natural, human, and reputational factors through a qualitative content analysis of the single documents for EU agricultural products and foodstuffs listed in the EU Register. The results of the empirical analysis are complemented by interviews to producer groups that explore why applicants have opted for a given quality scheme.

The second chapter deals with the relationship among GIs, culture, and innovation. The aim is to prove how traditional products changed during their history, advocating in favour of a dynamic notion of tradition as opposed to a static one. The role of the EU quality schemes is studied through an empirical analysis of the amendments for processed meat products concerning, in particular, the geographical area, raw materials and the method of production.

The third chapter considers the role of PDOs and PGIs in the registration of GIs from third countries. Emphasis is put on the creation of GI lists and on the product-by-product approach that results in the exclusion of some GIs from the negotiations. The chapter explores the reason for the limited number of foreign GIs entered in the EU Register by way of a direct application, made by the applicant or through the competent authority of the third country.

Societal impact

After having explored the link to origin and its change, the fourth chapter provides policy recommendations on how to keep a clear difference between PDOs and PGIs. In particular, recommendations are built on three main objectives: a need for simpler and clearer information on the link to origin, addressing the problem of the blurred difference between PDOs and PGIs; the preservation of a strong link to origin potentially hampered by the amendment of the single documents (alias innovation); and the promotion of international trade.

INNOVATING WITHIN TRADITION: ARE PDOS AND PGIS LOOSENING THEIR LINK TO ORIGIN?

Maurizio Crupi¹

Abstract

Purpose: A Geographical Indication (hereinafter GI) is a sign identifying a product with a specific geographical origin, with qualities or reputation that are due to that origin. The purpose of this paper is to analyze culture and tradition as a rationale to ground the enhanced GI protection. In addition to that, the empirical analysis of the amendments for processed meat products aims at understanding the amendments to the above-mentioned link to origin and the difference between Protected Denominations of Origin (PDOs) and Protected Geographical Indications (PGIs).

Methodology: Literature review on the relationship of GIs with culture and innovation, as justification for the enhanced GI protection, together with a qualitative content analysis of the amendments to the single documents for processed meat products available on the DOOR Database².

Findings: The analysis reveals that PDOs, despite the broad exception under Art. 5 (3), do not limit the geographical origin of raw materials, while some PGIs allow raw materials to come from a larger area. PDOs adopt stricter requirements for the characteristics and use of raw materials, in particular concerning feed, weight and age of the animals, and the characteristics of meat and other ingredients. On the contrary, PGIs tend to amend the above-mentioned sub-categories granting more flexibility to producers. Besides, the analysis shows that there is no difference between PDOs and PGIs concerning the method of production, both PDOs and PGIs have been amended providing a higher degree of flexibility to producers.

Originality: This paper provides the first qualitative content analysis on the amendments of the single documents for EU processed meat products, with a particular reference to the difference between PDOs and PGIs and the modification of their link to origin. The methodology adopted in this research could be extended to other categories of products, providing a more complete picture of the impact of PDOs and PGIs in the amendment of the link to origin. The results of the research could contribute to the ongoing debate on the adoption of a sui generis system for non-agricultural products and the loosening of the link to origin.

¹ PhD Student at the University of Alicante and Maastricht University under the EIPIN – Innovation Society. This project has received funding from the European Union’s Horizon 2020 Research and Innovation Programme under the Marie Skłodowska-Curie grant agreement No 721733. All information is updated at 30 January 2020, later changes have not been considered. I am grateful to Prof. Pilar Montero Garcia-Noblejas for her insightful comments, which led me to refine the argument that I develop in this paper. Any mistakes and omissions are mine only.

² As from 1st January 2020 single documents can be accessed through the eAmbrosia electronic register, available at <<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>> accessed 30 January 2020.

Keywords: Innovation, Tradition, Geographical Indications, Amendments, Link to Origin, Agricultural Products and Foodstuff, Qualitative Content Analysis

Index: 1. Introduction. – 2. GIs and the link to origin. – 2.1. The cultural link to origin. – 2.2. Loosening the link to origin. – 2.3. Innovation and tradition: two sides of the same coin? – 3. Qualitative analysis of the amendments. – 3.1. Methodology. – 3.2. Amendments to the raw materials. – 3.3. Amendments to the method of production. – 3.4. Reasons for the amendments. – 4. Conclusions. – 5. Bibliography.

1. Introduction.

On 22 February 2018, the *Institut national de l'origine et de la qualité* (INAO) announced an agreement between big dairy corporations and small cheese producers³, based on a new PDO that will enter into force in 2021. This agreement will put an end to the use of the label 'Camembert fabriqué en Normandie' and will give rise to a twofold PDO: a high-end Camembert de Normandie (Traditional Camembert de Normandie) and a mid-end Camembert de Normandie (Authentic Camembert de Normandie)⁴.

From the standpoint of the INAO, this is an important step forward⁵. Today consumers are not able to distinguish between Camembert de Normandie (around 6000 tons produced) and 'Camembert fabriqué en Normandie' (around 60000 tons produced, with looser requirements concerning the geographical origin of the raw materials). One of the main fears is that the massive production of non-PDO Camembert cheese (around 10 times more than the current PDO production) could make disappear the smaller PDO production.

So far, the INAO did not take a position on the loosening of the link to origin concerning the current PDO specifications. On the contrary, the INAO stated that the new PDO specifications will increase the global amount of local milk used for both Authentic and Traditional Camembert de Normandie⁶, by increasing the percentage of Norman cows grazing in Normandie. In addition, the use of both raw and pasteurized milk should not be a problem. This is already in use for other PDOs, like Saint-Nectaire, where the two processes of production do coexist under different labels.

That said, the need to represent different stakeholders and the different production techniques may lead to a re-discussion of the product specifications. The solution adopted by the INAO on the use of a PDO for both traditional and authentic Camembert de Normandie tries to redefine the link to origin finding a compromise by strengthening the link to the territory as regards the raw materials (higher percentage of milk from Norman cows) and loosening the link to origin as regard the method of production (use of thermised or pasteurized milk)⁷. Time will tell whether this is a fortunate decision that will positively influence Camembert's sales volume, preventing this cheese from disappearing.

The case of the Camembert de Normandie is paradigmatic of the importance of innovation for GIs. Currently, research on the link to origin has been limited to the analysis of legal provisions with few case studies but there is no qualitative analysis of the amendments for EU GIs⁸. This paper aims at

³ INAO, Communiqué Camembert de Normandie: un accord de principe dans le calendrier annoncé Montreuil, 22 February 2018 <<https://www.inao.gouv.fr/Nos-actualites/Le-vrai-du-faux-du-Camembert-de-Normandie>> accessed 30 January 2020.

⁴ The first one provides for at least 65% of Norman cows with the obligation to use raw milk (currently the minimum is set at 50% for the Camembert de Normandie PDO), while the second provides for at least 30% of Norman cows (currently there is no minimum percentage for the Camembert fabriqué en Normandie) with six months of pasture per year. For the mid-end Camembert de Normandie, the use of pasteurized milk will be authorized.

⁵ INAO, Le vrai du faux du Camembert de Normandie, 2019 <<https://www.inao.gouv.fr/Nos-actualites/Le-vrai-du-faux-du-Camembert-de-Normandie>> accessed 30 January 2020.

⁶ Ibid.

⁷ Some Authors raised doubts about the use of specific mentions like 'traditional' and 'authentic' to distinguish a cheese made of raw or pasteurized milk, in particular on the rationale of the EU quality scheme and the correct use of the PDO/PGI labels. See Delphine Marie-Vivien and others, 'Controversies around geographical indications Are democracy and representativeness the solution?' (2019) *British Food Journal*, 10.

⁸ For an analysis of the distribution of amendments for EU PDOs and PGIs among product classes and different EU countries, including four case studies from the cheese sector, see Xiomara Fernanda Quiñones Ruiz et al, 'How are food

solving this knowledge gap, examining how EU GIs for processed meat products are evolving, with reference to the EU quality signs used. In other words, what is the difference between PDOs and PGIs as regards the amendment of the single documents?

In order to frame this research question, Section 2 provides a literature review on the relationship of GIs with culture and innovation, as justification for the enhanced GI protection and the issue of loosening the link to origin. Indeed, in many single documents, it is possible to find a reference to a process innovation that occurred in the history of the product leading to the creation of new production standards. The aim of this Section is to understand how traditional products changed in the past, providing a dynamic and evolving notion of tradition as opposed to a static one.

After having provided a definition of tradition and its relationship with innovation, section 3 explores the role of the two EU quality schemes when it comes to the amendments of the product specifications. This is made through an empirical analysis of the amendments for processed meat products, in particular concerning the geographical area, raw materials and the method of production. The aim is to understand the difference between the two EU quality schemes through the interpretation of the amendments to the link to origin.

2. GIs and the link to origin.

2.1. The cultural link to origin.

The policy rationale of the EU GI system is to preserve local traditions and cultural diversity establishing permanent communal rights⁹. This justification is used to include GIs in the broader category of intellectual property rights, aimed at fostering innovation and creativity through the grant of a temporary monopoly¹⁰. That being said, the purpose of the GI system is not to reward innovation, but rather to reward members of a group of producers complying with practices and methods belonging to their traditions¹¹.

Despite the importance of the traditional component, the EU GI Regulation does not define the concept of traditional know-how. ‘Traditions’ and ‘knowledge’ are only briefly mentioned under the whereas and under Art. 3 (3), defining ‘traditional’ as intergenerational usage within the domestic market for at least 30 years¹². For a more complete understanding of these notions, we should refer

Geographical Indications evolving? – An analysis of EU GI amendments’ (2018) 120 *British Food Journal* 1876.

⁹ See whereas 1 and 2 of the Regulation (EU) 1151/2012 of 14 December 2012 on quality schemes for agricultural products and foodstuff [2012] OJ L343/1. With regard to the role that GIs have in developing and protecting EU cultural heritage and natural resources see European Commission, *Why Do Geographical Indications Matter to Us?* MEMO/03/160 30 July 2003 <http://europa.eu/rapid/press-release_MEMO-03-160_en.htm> accessed 30 January 2020.

¹⁰ Daniel Gervais, ‘Traditional Innovation and the Ongoing Debate on the Protection of Geographical Indications’ in Peter Drahos and Susy Frankel (eds.) *Indigenous Peoples’ Innovation: Intellectual Property Pathways to Development* (ANU Press 2012) 121, 123. The Author includes GIs within the categories of commercial designations and unfair competition, as defined by Art. 2 (viii) of the Convention Establishing the World Intellectual Property Organization, as amended on September 28, 1979.

¹¹ Regard to the function of GIs in the protection of quality and tradition see Pilar Montero García-Noblejas, *Denominaciones de origen e indicaciones geográficas* (Tirant lo blanch 2016) 56.

¹² Art. 3 (3) Regulation (EU) 1151/2012. For a meaning of ‘traditional’ as cultural values of a community beyond the antiquity of the knowledge see Marion Panizzon and Thomas Cottier, ‘Traditional Knowledge and Geographical Indications’ Foundations, Interests and Negotiating Positions’ in Ernst-Ulrich Petersmann (ed.) *Developing countries in*

to the international treaties recognizing Traditional Knowledge (hereinafter TK) as an expression identifying knowledge, cultural expressions, and creations of a given local community handed down from one generation to the other¹³.

This broad definition shows that a product can be linked to the traditional values of a community in three different ways: the culture of its production, the culture of its consumption, and the culture of its identity¹⁴. The first aspect deals with the method of production of the product. The second aspect deals with the context in which the product is used. In particular, the traditional way in which the product is consumed, the cultural festivities related to it, and the social context of consumption. The third aspect, the culture of identity, comes into play when the product is related to the cultural dimension of a community acquiring a symbolic meaning.

Therefore, TK and GIs share some common elements. They both protect knowledge originated in a given geographical area and belonging to a community. On the one hand, TK represents the local traditions of knowledge, on the other hand, GIs represent a traditional production method, typical of a specific place, embedded in a physical product. In particular, GIs could be useful for the commercial exploitation of some tangible forms of expression of TK¹⁵.

For the purpose of this paper, traditional know-how does not refer to the antiquity of the knowledge *per se* but represents the traditional method of production of a community and is held collectively as part of its cultural traditions.

The qualitative content analysis conducted on the single documents available in the EU database DOOR prove the link between GIs and the culture of their production. Table 1. refers to the number of quotations regarding the culture of production of 376 PDOs and 354 PGIs for classes from 1.1 to 1.5¹⁶. In particular, the section named “link with the geographical area” describes the connection of a product with the know-how of a community of producers, referring to the human factors and the traditional character of a product with the use of keywords like ‘traditional’, ‘longstanding production techniques’, and ‘handed down from one generation to the other’. In this sense, these quotations emphasized the traditional character of the product and its production.

Table 1. No of quotations on tradition for PDOs and PGIs.

the Doha Round: WTO Decision-making procedures and WTO Negotiations on Trade in Agricultural Goods and Services (Robert Schuman Centre for Advanced Studies, European University Institute 2005)

¹³ See Whereas of the UNESCO Universal Declaration on Cultural Diversity of 2 November 2001 and Art. 2 (1) of the Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003. For a more complete analysis of the concept of TK see WIPO, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders* (2001) WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999), 25 and Daniel Gervais, ‘Spiritual but not intellectual? The protection of sacred intangible traditional knowledge’ (2003) 11 *Cardozo Journal of International and Comparative Law* 467, 471.

¹⁴ Tomer Broude, ‘Taking Trade and culture seriously: Geographical Indications and cultural protection in WTO law’ (2005) 26 *University of Pennsylvania Journal of International Law* 623, 636.

¹⁵ Daniel Gervais (n 10) 133. Anselm Kamperman Sanders, ‘Incentives for and Protection of Cultural Expression: Art, Trade and Geographical Indications’ (2010) 13 *The Journal of World Intellectual Property* 81.

¹⁶ Single documents registered at 11 September 2018 for class 1.1 (meat), class 1.2 (processed meat products), class 1.3 (cheese), class 1.4 (product of animal origin e.g. eggs, milk...), class 1.5 (oil and butter) available on the DOOR Database <<https://ec.europa.eu/agriculture/quality/door/list.html>> accessed 30 January 2020.

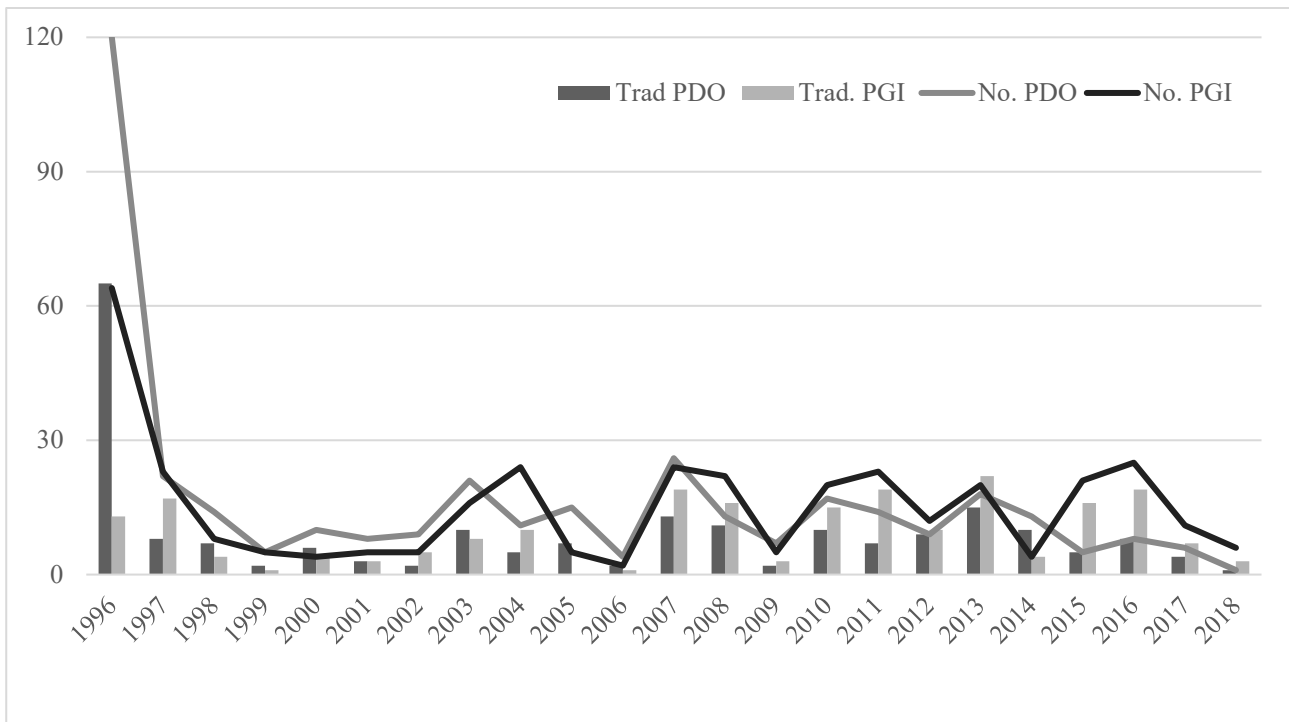


Table 1. shows that there is a high occurrence of quotations on tradition. In particular, starting from 2006 almost every PDO and PGI contains a reference to traditional know-how. Human factors have an important role in linking the product to its origin, although a bit more frequent for PGIs rather than for PDOs.

After having verified the importance of traditional know-how for PDOs and PGIs, it is possible to identify at least two reasons for using GIs in the trade-culture relationship for agricultural products¹⁷. The first reason is consumer protection. GI protection under the TRIPS Agreement prevents the public from being misled as to the real geographical origin of the products and from acts of unfair competition¹⁸, with enhanced protection for wines and spirits¹⁹. It must be observed that the Lisbon Agreement goes even further, protecting all GIs beyond consumers' risk of confusion. In this sense, Art. 3 of the Lisbon Agreement prohibits the use of a GI name even if it is accompanied by the real geographical origin of the product or by expressions such as 'kind', 'type', 'style', and 'imitation'.

The EU provides a broad scope of protection against false or misleading indications. Pursuant to Art. 13 of the EU Regulation no 1151/2012, protection does not cover only the product but also any indication regarding provenance, essential qualities or packaging liable to convey a false impression regarding the origin of the product. Protection is accorded to all GIs against misuse, imitation or evocation, even when the true origin of the product is indicated, the name translated or accompanied by the above-mentioned expressions. Therefore, the rationale of the EU GI system is not limited to consumer protection.

¹⁷ Other reasons deal with rural development and the preservation of the rural community. These aspects are more related to the cultural dimension of the community of producers and will not be considered in this chapter. See Pilar Montero García-Noblejas (n 11) 57.

¹⁸ See Art. 22 TRIPS that refers to acts of unfair competition as per Art. 10bis of the Paris Convention.

¹⁹ See Art. 23 TRIPS that provides additional protection for wines and spirits.

The second reason for the enhanced protection can be found in the preservation of the cultural content of the products. A product can receive GI protection when the link with the natural conditions of the territory and the longstanding methods of production is respected. This link represents the cultural rationale of GI protection, setting a minimum quality level in line with traditional standards and reputation²⁰. Based on this cultural rationale, GIs could serve as a reply to globalization and commodification of goods keeping traditions alive regardless consumers' confusion.

The importance of tradition is again confirmed by Art. 7 (1) (e) of the EU Regulation 1151/2012 requiring a description of the method of obtaining the product. This includes the 'authentic and unvarying local methods' that can justify the link to the territory. These historical practices, proving the traditional character of the product, may be included only if they are still in use and have to be described with 'precise and well established references'²¹.

The above-made considerations, concerning the empirical relevance of 'tradition' in the single documents and the cultural rationale for GI protection, advocate in favour of a notion of *terroir* that goes beyond the mere combination of climate and soil, including culture and human factors in the equation²². In this sense, *terroir* represents the natural factors that make a given territory unique, such as soil, climatic conditions, and altitude, combined with the skills developed by the community of producers over the centuries, adapted to the environmental conditions and handed down from one generation to the other.

2.2. Loosening the link to origin.

If the notion of *terroir* grounds the cultural aspects connected to GI protection, some concerns are raised by those factors that tend to loosen the link with the territory. These can be grouped in two main categories.

The first category deals with changes that happen across space. Usually, the bigger the area of production is, the bigger the differences in terms of output quality are. It is important to limit the production area and to accurately describe the link between product and territory. When products come from large production areas (or even nation-wide), it is complex to assess the uniformity of the natural and human conditions and this determines an evident variation in output quality²³. This is why

²⁰ Tomer Broude (n 14) 655.

²¹ This is confirmed by Art. 7 (2) and Annex I of the Commission Implementing Regulation (EU) 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs [2014] OJ L179/36. Under section 5 of Annex 1 – Link with the geographical area, the applicant states on which factor the causal link is based, providing more detailed information.

²² Definition and role of *terroir* can be found in Irene Calboli, 'Of markets, culture, and *terroir*: The unique economic and culture-related benefits of geographical indications of origin' in Daniel Gervais (ed.) *International Intellectual Property. A Handbook of Contemporary Research* (Edward Elgar 2015) 433. For a definition of *terroir* as 'social construction' see Philippe Prévost et al, 'Le terroir, un concept pour l'action dans le développement des territoires' (2014) 14 *VertigO - la revue électronique en sciences de l'environnement* <<http://journals.openedition.org/vertigo/14807>> accessed 7 January 2020. Having regard to the importance of both natural and human factors in the definition of *terroir* see Andrea Zappalaglio, 'The Debate Between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right' (2019) 50 *International Review of Intellectual Property and Competition Law* 595, 603.

²³ See Feta PDO [2002] Dossier No. EL/PDO/0017/0427. The milk comes from prefectures from all over Greece. The product specifications compare the physical conditions of the areas of production of the raw material, showing similarities in matter of humidity rate, climate, and sunshine, stating that this contributes to the uniformity of the flora.

Art. 5 (1) (a) of the EU Regulation no 1151/2012 allows PDOs for products originating in a country only “in exceptional cases”.

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

Having regard to producers, two are the possible answers to the problem of mobility of producers together with their cultural traditions and the consequent enlargement of the production area. The first one is that the collective nature of GIs might prevent individual producers, located outside the community, to produce GI products with equal proficiency²⁴. The second one considers that over time the land acquires additional characteristics as it is cultivated by humans²⁵. Therefore, GIs are the result of a significant human intervention developed over the centuries, whose impact and results cannot be transferred through mere human and technological migration.

Having regard to methods of production, the main problem deals with innovation and the change of traditional practices. An example is the amendments of the product specifications²⁶, further assessed under section 3 of this paper. In the same line, the increasing number of GIs opens the road to a general devaluation of these quality labels, reducing their impact on the protection of local traditions²⁷. The threshold of local distinctiveness must be kept high, avoiding the problem of ‘invented traditions’ with vague references to a past that has no more influence on modern production. Simply stating compliance with ‘authentic and unvarying local methods of production’, without establishing the long-standing history of the product, inevitably dilutes the cultural rationale. In these cases, recalling a distant past serves more like a commercial strategy, than a cultural foundation of the uniqueness of the product²⁸.

The concept of ‘invented tradition’²⁹ refers to both traditions invented and those emerging in a less traceable manner within a short period. Invention of tradition originates from the contrast between the constantly evolving modern society and the attempt to structure some parts of social life as unchanging and invariant³⁰. This approach, different from the original romantic notion of GIs, can be

²⁴ Delphine Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ in Dev Gangjee (ed.), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar 2016) 318.

²⁵ This could be a consequence of the anthropization of some rural areas, including agricultural land terracing, drainage, as well as landscape care and maintenance.

²⁶ See Grana Padano PDO [1996] Dossier No IT/PDO/0017/0011. The amendment to the single document, pursuant to Art. 6 (2) of Council Regulation (EC) 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJ L93/12 adds the feeding regime for the milk cows, making it stricter and described in more detail. In order to ensure better traceability of the product a tracer is added in the milk.

²⁷ Tomer Broude (n 14) 676. On the fact that quality and other characteristics do not need to be known to the public before the registration causing a possible devaluation of more prestigious geographical indications see Pilar Montero Garcia-Noblejas (n 11) 155.

²⁸ Tomer Broude (n 14) 677, with regard to the GI Morellino di Scansano, a Tuscan wine that can provide reference dating back Middle Age. Anyway, according to the history of the product, after the GI was granted, some big wine companies started to invest in the area of production, creating new wineries. See also Bronwen Bromberger, ‘Aged, but not old: Local identities, market forces, and the invention of “traditional” European cheeses’ in Richard Hosking (ed.) *Authenticity in the Kitchen: Proceedings of the Oxford symposium on food and cookery* (Prospect books 2006) 96 with regard to the PDO Buxton Blue Dossier No. UK/PDO/0017/0287 and the vague reference to its unvarying local methods of production.

²⁹ Eric Hobsbawm, ‘Introduction: inventing traditions’ in Eric Hobsbawm and Terence Ranger (eds) *The invention of tradition* (Cambridge University Press 1983) 4.

³⁰ *ibid* 4.

achieved through product specifications designed for industrial products rather than for a typical product closely linked to the territory³¹. Here the “invention” fulfils the function of creating an element of cohesion which, like many other more or less invented narratives that intend to affirm a direct continuity with the historical past, contributes to strengthening a feeling of territorial identity³².

The problem of loosening the link to origin is not new in GI literature. An analysis of GI provisions shows a progressive loosening of the link between products and their geographical origin³³. Historically, GI protection derived from the unique pedoclimatic characteristics of the territory that influenced the quality of the final product³⁴. This legal requirement changed over time, emphasizing other characteristics, such as reputation and human factors, including the skills and practice of local producers³⁵. In particular, reputation allows raw materials to originate from outside the geographical area, due to the historical link of the product with the territory³⁶. Situations where products are not entirely originating from the territory, together with the use of a de-localized model of production, further contributed to loosening this link, with the risk of transforming GIs into a marketing tool at the expenses of the entire system³⁷.

Linking a product to its origin by way of reputation represents at the same time an issue and an opportunity. On the one hand, the reputational link may loosen the strength between the product and its geographical origin³⁸, on the other hand, it gives certain flexibility to the system, allowing the protection of products having a historical link to a certain geographical area³⁹.

The definition of the area of production, together with the establishment of the raw materials and their source, recipe and other production standards, is a very sensitive issue. This process can easily become politicized, even more, when a GI has a high reputational value. As a consequence, there is

³¹ Angela Tregear, ‘From Stilton to Vimto: Using Food History to Re-think Typical Products in Rural Development’ (2003) 43 *Sociologia Ruralis* 91.

³² Stefano Magagnoli, ‘L’invenzione “industriale” della tradizione: il cartello dell’Aceto balsamico tradizionale di Modena’ (2005) 3 *Food & History* 225, 246. Traditional balsamic vinegar had to be “reinvented” to differentiate the product from the other balsamic vinegar in terms of taste, building around it a symbolic system conferring a precise identity, which cannot be reproduced in any way by the industrial system.

³³ Irene Calboli, ‘Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair(er) System of Protection in the Global Economy?’ in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 23.

³⁴ The Lisbon Agreement requires that a product, apart from originating from a specific area, must have quality and characteristics, which are ‘exclusively or essentially’ due to its geographical origin. Mere reputation is not enough to comply with the definition of the appellation of origin.

³⁵ The TRIPS Agreement broadens the link with the territory, including the concept of reputation. This notion, together with quality and other characteristic of the product, is equally important in linking a good to a given territory. For an analysis of the concept of reputation see Justin Malbon, Charles Lawson and Mark Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary* (Edward Elgar 2014) 334.

³⁶ Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012) 213. With regard to the link between reputation and territory see further UNCTAD – ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005) 290.

³⁷ Irene Calboli, ‘In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin under TRIPS’ (2014) 6 *The WIPO Journal* 57 and Irene Calboli, ‘Time to Say Local Cheese and Smile as Geographical Indications of Origin? International Trade and Local Development in the United States’ (2015) 53 *Houston Law Review* 373, 387.

³⁸ See Justin Malbon, Charles Lawson and Mark Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary* (Edward Elgar 2014) 336 and Irene Calboli, (n 37) 60.

³⁹ Dev Gangjee, ‘From Geography to History: Geographical Indications and the Reputational Link’, in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 39.

a need for a collaborative network of producers that agree on the characteristics of the product and delimitation of the production area. Differently from certification marks, where a private group of producers can establish their production standards, the *sui generis* GI system requires producers to cooperate with governmental agencies and different stakeholders, entering into public–private cooperation. Producers have to find consensus on the product characteristics and their innovation.

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

On the one hand, a strict product specification reduces the differences among products produced by different producers. On the other hand, a strict product specification could mean to a loss of diversity, reducing the variations existing in the tradition to the advantage of a dominant quality formula chosen by the majority of producers (or by the most influential ones), also creating problems of exclusion of some producers from the production chain. A flexible product specification allows producers to innovate their product, adapting it to the exigencies of the market. This allows products with different qualities to use the same designation, creating possible problems for consumers. A bottom-up approach with collaboration and coordination among all stakeholders remains the most desirable option⁴⁰.

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

The above-mentioned innovations are a constant presence in the debate that opposes big corporation against small companies, as proven by the Camembert de Normandie. A clash on a modern way of production versus another one more in line with tradition. The coexistence among the different visions is far from being easy, different products registered under the same quality sign could lead to the cannibalization and marginalization of products with higher production costs, or made within the production area but in less-favored areas⁴¹.

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

Due to their link with the territory, GIs may have an impact on local identity, keeping traditional products and traditional know-how alive. The point is made more complex by the fact that tradition

⁴⁰ Dwijen Rangnekar, *Geographical Indications and Localisation: A Case Study of Feni* (Centre for the Study of Globalisation and Regionalisation, 2009) 49. Feni is an Indian liquor, produced in two principal versions: coconut Feni and Feni made from cashew apples, imported to India in the sixteenth century. The decision to exclude coconut Feni from the GI definition means a loss of history and a potential risk of confusion for consumers.

⁴¹ Filippo Arfini, Giovanni Belletti and Andrea Marescotti, *Prodotti Tipici E Denominazioni Geografiche Strumenti di tutela e valorizzazione* (Tellus 2010) 134.

can be approached not only as a ‘static’ notion, as in the EU legislation, but also with a ‘dynamic’ approach. In particular, ‘traditional’ does not mean that the know-how is old, but deals with the process of sharing and learning. The fact that traditional know-how is passed down from one generation to another does not exclude that it undergoes a process of incremental development (*alias* innovation), where each generation adds new layers of knowledge to the inherited traditions⁴². In particular, it would be incorrect to consider negatively every change in products’ typicality. Changes that occurred to the ‘traditional’ recipes over the centuries have to be carefully considered, furthermore the product may undergo positive and even desirable changes, a natural consequence of the changing society and environment⁴³.

For the purpose of this paper, the term innovation is interpreted according to the definition of ‘business innovation’⁴⁴ provided by the OSLO Manual. This broad definition encompasses a range of sub-categories, dealing with the implementation of one or more types of innovations, such as product and process innovations. The minimum requirement for a product or process to be considered innovative is that it must be new to the firm that adopted it.⁴⁵ Therefore, a broad definition of innovation includes both the case of a firm that is the first one to develop a certain product or process and the case of a firm that adopts innovations already developed by other firms.

More in detail, product innovation is defined as:

*“A product innovation is a new or improved good or service that differs significantly from the firm’s previous goods or services and that has been introduced on the market”*⁴⁶

In other words, new products are those goods that differ significantly in their characteristics from products previously produced by the firm. This means an improvement in materials, components, and other characteristics that enhance the performance of the product.

On the same line, business process innovation is defined as:

*“a new or improved business process for one or more business functions that differs significantly from the firm’s previous business processes and that has been brought into use in the firm”*⁴⁷

A consequence of process innovation may be a decrease in production costs and an improvement (or maintenance) of the product quality and characteristics, through a change in the technical methods of production and the equipment used.

⁴² Graham Dutfield, ‘Protecting Traditional Knowledge and Folklore. A review of progress in diplomacy and policy formulation’ (2003) 1 International Trade & Sustainable Development Series, 23.

⁴³ Bronwen Bromberger (n 28) 93.

⁴⁴ OECD, *OSLO Manual. Guidelines for collecting, reporting and using data on innovation* (OECD 2018) 68.

⁴⁵ *ibid* 69.

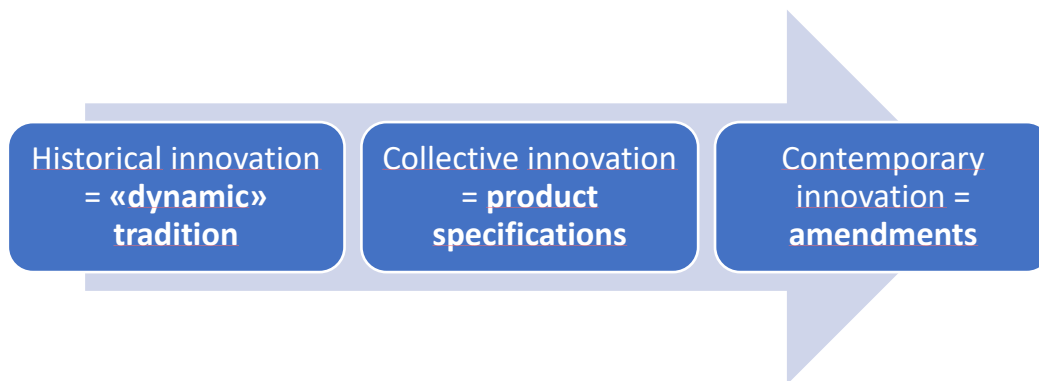
⁴⁶ *ibid* 70.

⁴⁷ *ibid* 72.

The entire GI system is grounded on the recognition of a name linked to a specific production practice⁴⁸. Therefore, product innovation does not refer to the creation of ‘new’ products but deals with the ‘improvement’ of existing ones⁴⁹. This happens through a modification of the existing product that can take place while drafting of the product specification or later on with the amendments, as further explained in the following paragraphs.

Early adopters of the EU quality schemes can be compared to innovators since they both face similar problems as regards the bureaucracy of the application process and the implementation of a system of inspection and quality control⁵⁰. These administrative burdens could prevent some actors from adopting a GI label or from starting a procedure to amend a product specification, therefore hampering innovation. Some producers expressed concerns about the delay of obtention of the quality sign, communication with national and the EU Authorities, divisions among producers, new studies and expenses⁵¹. All these reasons impose a second tough on the amendment of a product specification, delaying or hampering innovation.

Table 2. Different types of innovation for GIs.



What does it mean innovation with regard to GIs? It is possible to give three different answers to this question, depending on when innovation occurred. Firstly, the innovation that occurred in the past before the drafting of the product specifications. This is the ‘historical innovation’ that occurred to the ‘traditional’ recipes over the centuries as a natural consequence of the changing society and

⁴⁸ See INAO, Guide du demandeur d’une appellation d’origine protégée (AOP) ou d’une indication géographique protégée (IGP) à l’exception des vins, boissons alcoolisées et boissons spiritueuses (2017) 13. Available at <<https://www.inao.gouv.fr/Espace-professionnel-et-outils/Produire-sous-signes-de-qualite-comment-faire/Guides-pratiques>> accessed on 30 January 2020.

⁴⁹ Nonetheless, the system allows the recognition of “invented” products and products with a recent history of production. See TEKOVSKÝ SALÁMOVÝ SYR PGI [2010], whose “production process was invented in 1921”. And the kiwi Aktinidio Pierias PGI [2002], whose first plant was grown in Greece in 1973.

⁵⁰ Brian Ilberry and Moya Kneafsey, ‘Registering Regional Speciality Food and Drink Products in the United Kingdom: The Case of PDOs and PGIs’ (2000) 32 *The Royal Geographical Society (with the Institute of British Geographers)* 317, 324.

⁵¹ Interviews conducted with producers from countries with a long GI tradition (mainly Italy, Spain, and France) show the main concerns for starting an amendment procedure to change their quality sign from PGI to PDO. Interview Sel de Guérande (delay of obtention of the quality sign), interview Soumaintrain (communication with the EU authorities), interview Limone di Siracusa (divisions among producers), interview Lenteja de Tierra de Campos (new studies and expenses). Innovation-hampering arguments have been analysed together with innovation-facilitating features by Anke Moerland, ‘Geographical Indications and innovation: what is the connection?’ in Josef Drexler and Anselm Kamperman Sanders (eds) *The Innovation Society and Intellectual Property* (Edward Elgar 2019) 59.

environment⁵². It is interesting to note that around 20% of the single documents for EU foodstuff contain a reference to “innovation”, meaning the modernization of the process of production that took place over the centuries. In particular, many innovations became the new standard of production, being indissolubly linked to the product as we know it. This code is often observed in the single document as part of process innovation, showing the ability of the local community of producers to innovate within the traditional process of production, advocating in favour of a dynamic concept of tradition⁵³.

Secondly, the ‘collective innovation’ that occurred at the time when product specifications were drafted. The definition of the production standards is a complex procedure to be managed as a bottom-up collective approach, in order to better represent the interest of all GI beneficiaries⁵⁴. The community of producers has to reconcile different perspectives and come to commonly agreed product specifications, depending on producers’ objectives and priorities that can often be in contradiction⁵⁵. An example is the issue on the adoption of new production methods vs pre-existing ones, often opposing farmers against industrial producers. Within this ‘negotiated order’⁵⁶, it would be possible to give certain flexibility and dynamism to the system. On the contrary, providing a too strict description of the methods of production could prevent producers to compete on the market through quality and innovation of their products⁵⁷.

An example is the difference in competing styles in winemaking in Piedmont, also known as the ‘Barolo war’, aimed at producing wine more suitable for modern consumers. The flexibility offered by the product specifications allows the coexistence between modern and traditional winemakers. In other situations, when the divide between tradition and innovation is more radical, producers within the area of production may decide to leave the GI and pursue new production methods. In the case of ‘Supertuscans’, innovators started to work outside the GI ‘Chianti Classico’ adopting the lower classification of ‘Vino da tavola’ (a less prestigious category of wines used for the daily consumption). Here they introduced Cabernet Sauvignon and other grape varieties coming from outside the area of production obtaining a highly appreciated wine. This example shows how innovation and quality products are possible even outside the GIs, and how the GI system failed to protect the traditional wine production⁵⁸.

Reaching an agreement on the product specifications will be more complex depending on several factors, such as the number of production steps required, the heterogeneity among local producers,

⁵² Bronwen Bromberger, (n 28) 93.

⁵³ See Miel de Galicia PGI [2005] OJ C30/16 [4.6]. “The rapid expansion of modern beekeeping did not start until 1975, the year in which, thanks to the work of the producer associations, the first real changes took place influencing the know-how of beekeepers and the traditional methods of hive management. The major change to affect beekeeping generally was the changeover from fixed hives to movable hives, mainly multistoreyed hives”.

⁵⁴ Delphine Marie-Vivien and others, ‘Controversies around geographical indications Are democracy and representativeness the solution?’ (2019) British Food Journal.

⁵⁵ FAO and SINER-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications*, (FAO 2009) 39.

⁵⁶ Claude Compagnone, “Les appellations d’origine contrôlée comme ordre négocié” 2012 (2) *Négociations* 63.

⁵⁷ Amit Basole, ‘Authenticity, Innovation and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari’ (2014) Department of Economics University of Massachusetts Boston Working Paper 2014-09, 27. When producers don’t agree on a given innovation (such as the use of a power loom instead of the traditional hand loom for the Indian Saree) the Author suggests to use the GI system in combination with a certification mark, this would allow producers to equally compete on the market.

⁵⁸ Tomer Broude (n 14) 665.

the commercial channels used, together with the cultural and economic importance of the product. The heterogeneity of the actors deals with their different degree of specialization and on the dimension of their economic activity, strongly influencing the production techniques and the commercial channels used. All this will result in significant differences in the quality attributes of the product obtained, differences that are strictly linked to the quality standards under which the companies operate⁵⁹. The stronger the difference among the community of producers the more complex will be to find an agreement on the product specifications.

Thirdly, ‘contemporary innovation’ that occurs with the amendments of the product specifications, after the registration of the product. When complying with traditional production methods, producers have to face issues such as the entry into force of new safety regulations, change in consumers’ needs⁶⁰, technological developments⁶¹, technical restrictions to the production according to the traditional recipe⁶², and a combination thereof. All these issues could force producers to amend the traditional process of production, deviating from their traditional know-how.

An analysis of the amendment of the single documents contained in the EU database shows contrasting amendment strategies, reflecting an orientation to more flexible, and in some cases more restrictive, rules to exploit market opportunities⁶³. A more detailed analysis of these amendments, and in particular on the difference between PDOs and PGIs for processed meat products, is conducted under the following section.

3. Qualitative analysis of the amendments.

3.1. Methodology.

The following section reports a qualitative analysis of the amendments to the registered EU GIs. The methodology consists in a directed content analysis on the text of the amendments made available on the DOOR database of the European Commission, with the use of the software ATLAS.ti in order to ensure replicability of the results⁶⁴.

A problem often debated is that these quality labels are mostly unknown to the average EU consumer. A survey conducted in the UK in 2000 shows that the EU quality labels are not recognised by consumers and do not make a difference in sales. From the producers’ side, the EU labels appear to

⁵⁹ Filippo Arfini (n 41) 137.

⁶⁰ See Pecorino Toscano PDO [2015] OJ C18/12 [3]. The amendment of the method of production of the Pecorino Toscano allows the use of vegetable rennet for the production of cheese in compliance with the Kosher certification. The paragraph expressly mentions that this practice is not new but was already part of the traditional know-how. “*The possibility is added of using vegetable rennet, a long-standing practice in Tuscany for the production of Pecorino (already mentioned in the national registration application submitted in 1985). This practice has been taken up again in the last few years both as practice that is typical of the territory and for the production of Kosher cheeses*”.

⁶¹ Bra PDO [2014] OJ C205/15 [3]. The amendment allows the mechanical skimming of the milk, identified as a practice that dates back the early 1900s.

⁶² Stelvio/Stilfser PDO [2013] OJ C77/29 [4.2.5]. The amendment allows to use rennet produced according to a traditional method even if it does not come from the area of production. “This amendment became necessary for technical reasons linked to the difficulty for producers to obtain the rennet needed to produce ‘Stelvio/Stilfser’ within the districts of the Province of Bolzano”.

⁶³ Xiomara Fernanda Quiñones Ruiz et al (n 8) 1884. In particular with regard to micro-filtration of milk and portion sized pieces for individual consumption.

⁶⁴ See <<https://atlasti.com>> accessed 30 January 2020.

be one of the least important quality indicators⁶⁵. A more recent study confirms that the overall awareness of EU food logos is low, with higher percentages for those Member States with GI tradition⁶⁶.

The present research is aimed not only at examining the different types of amendments and their justifications but also at comparing the results obtained for PDOs and PGIs. The purpose is to understand if there is a correlation between the two quality signs and the nature of the amendments, observing if there is any difference on the amendment of products with a stronger link to origin (PDO) when compared to the amendment of a product with a looser link (PGI).

The qualitative content analysis has been limited to a specific category of products, namely the amendments for processed meat products (class 1.2), to provide a more in-depth categorization able to reflect the specificities of the products object of analysis. Only approved amendments have been taken into consideration since in the DOOR database no reference has been found concerning rejected amendments.

Despite the relatively small number of amendments (54 as identified in the DOOR database)⁶⁷, processed meat products are indeed relevant in the analysis of the link of PDOs and PGIs with their territory. Apart from the high number of amendments occurring for PDOs, class 1.2 has been preferred to other classes also because it allows an analysis of the difference between PDOs and PGIs about the origin of raw materials, in light of the exception pursuant to Art. 5 (3) of the EU Regulation No 1151/2012. The question is how PDOs, that enjoyed the exception pursuant to Art. 5 (3) of the EU Regulation No 1151/2012, have amended their link to the territory with regard to the origin of raw materials and the traditional methods of production?

This exception allows for a name to be registered as a designation of origin even though the raw materials come from a geographical area that is larger than the defined geographical area. Under this exception, 'raw materials' are limited to live animals, meat and milk. This is allowed for the designations of origin recognised in the country of origin before 1 May 2004, as soon as the production area of the raw materials is defined and there are special conditions for the production of raw materials.

This exception has been applied because these products were registered at the national level based on national provisions adopted before the entry into force of Regulation 2081/1992. The idea was to give relevance to the place of transformation of the raw materials, and not only to their origin. In this sense, it is possible to identify two categories of products: those having a single big area for the origin of the raw materials and their transformation and those having two different areas, one (bigger) for the

⁶⁵ Brian Ilberry and Moya Kneafsey (n 50) 322. The survey was conducted on a population of 13 UK companies. Only one company declared that the EU quality scheme was recognised by customers, making a difference in terms of sales London Economics (2008), "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI): Final Report", (European Commission, Brussels) 81.

⁶⁶ European Commission, 'Special Eurobarometer 389, Europeans' Attitudes Towards Food Security, Food Quality And The Countryside' (2012) 27. PGIs and PDOs are recognized on average by 15% of the population (26593 respondents). France Spain and Italy show the highest percentage per country.

⁶⁷ The research conducted on the DOOR database has been complemented with an additional research conducted on the Eur-Lex database <<https://eur-lex.europa.eu/homepage.html?locale=it>> accessed on 1 November 2019 for all processed meat products under class 1.2. The research has been conducted by entering the name of each GI together with the keyword "amendment", showing a total of 64 amendments. The research has been conducted on a total of 29 amendments for PDOs and 30 for PGIs. It was not possible to access the following documents: Prosciutto San Daniele PDO, Cotechino Modena PGI, Thüringer Leberwurst PGI, Thüringer Rotwurst PGI, Zampone Modena PGI).

origin of raw materials and another one (smaller) for their transformation. Salamini italiani alla cacciatora PDO⁶⁸ is an example of the first category of products, raw materials originate and are transformed in 11 Italian regions, showing a weak link with the area of origin. Culatello di Zibello PDO⁶⁹ is an example of the second category of products: raw materials originate in 2 Italian regions and are transformed in 8 communes within the same region, keeping a stronger link to the territory⁷⁰. Sopressa Vicentina PDO⁷¹ represents an exception to the above-mentioned categorization, having located the origin of raw materials and their transformation within the same province. In other words, how GIs have amended their geographical area in light of this exception?

The unit of meaning for this analysis is the minor and not minor amendments for registered PDOs and PGIs published in the DOOR database approved before 1 November 2019. The EU Regulation 1151/2012 makes a distinction between minor and not minor amendments, at both substantial and procedural level. Pursuant to Art. 53, an amendment has to be considered not minor when it affects: the essential characteristics of the product; the link between the quality, reputation or other characteristics of the product and the geographical origin; the name of the product; the geographical area or determines restrictions on trade in the product or its raw materials. In all other circumstances, the amendment will be regarded as minor. The difference at the procedural level is that minor amendments are directly approved or rejected by the Commission, while not minor amendments require the publication of an amendment application pursuant to Art. 50 (2) (a) of the EU Regulation 1151/2012, conferring the right to oppose pursuant to Art. 51. Oppositions⁷², when filed, have been analysed. Temporary modifications to the product specifications have not been considered.

The application for approval of the (minor and not minor) amendment contains the original and the amended text, together with the reasons for the amendment. This allows a qualitative analysis of the amendments, clearly identifying the amended elements in the different versions of the documents. The amendments have been classified as more flexible, when they provide a wider range⁷³ or increase the number of options available⁷⁴ than the ones listed in the previous product specifications; stricter, when they impose a stricter range⁷⁵ or reduce the number of options available⁷⁶ to producers; both, when they contain combined provisions aimed at widening and reducing the range available to

⁶⁸ Salamini italiani alla cacciatora PDO [2001] OJ L240/2001, n. 2.

⁶⁹ Culatello di Zibello PDO [1996] OJ L163/1996, n.2.

⁷⁰ Filippo Arfini (n 41) 76.

⁷¹ Sopressa Vicentina PDO [2002] OJ C114/16, n. 4.3.

⁷² See Tiroler Speck PGI [2019] OJ L167/18.

⁷³ Coppa piacentina PDO [2010] OJ C311/24, n. 8. Here the paragraph “The next drying stage takes place in appropriate drying chambers with climate control set at a temperature ranging from 17 °C to 20 °C, humidity at 75 % to 80 % and ventilation at 1 to 7 m/s for at least 7 days or, in any event, until the characteristic “mould” has appeared, at which point the product turns the typical rose colour.”, has been replaced by: “The next drying stage takes place in appropriate drying chambers with climate control set at a temperature ranging from 15 °C to 25 °C, humidity at 40 % to 90 %, under ventilation, for at least 7 days or, in any event, until the characteristic “mould” has appeared, at which point the product turns the typical rose colour.”, therefore increasing the minimum temperature from 17 °C to 15 °C and the maximum temperature from 20 °C to 25 °C.

⁷⁴ Pancetta di Calabria PDO [2015] OJ C79/9, n. 3. Here the native ‘Apulian-Calabrian’ breed has been added to the list of authorised breeds together with the ‘Duroc’ breed, due to its widespread presence in the pigs’ area of origin.

⁷⁵ Prosciutto di Carpegna PDO [2009] OJ C189/03, n. 3.2. In Art. 5 of the product specifications, the description of the maturing period as ‘on average 14 months and never less than 12’ has been replaced by ‘is not less than 13 months’, therefore raising the minimum requirements.

⁷⁶ Jamon de Teruel PDO [2013] OJ C242/17, n. 3.5. Having regard to the breed, the paternal line is restricted to the Duroc breed for reasons of product homogeneity, thereby reducing the variations in cross-breeds and considerably improving the product quality.

producers⁷⁷; and clarification, a residual category used to classify those amendments that do not impose any change on the requirements already established in the product specification, but provide additional information on the traditional and common practice of the sector⁷⁸.

The analysis has been focused on two main categories of amendments, those dealing with the origin and characteristics of raw materials and those concerning the methods of production. The results have been grouped in PDOs and PGIs and then compared.

3.2. Amendments to the raw materials.

This section starts with the analysis of the geographical origin of raw materials, in light of the exception pursuant to Art. 5 (3) of EU Regulation No 1151/2012, which allows raw materials for PDOs to come from a larger area. This section continues with the analysis of the amendments of other characteristics of raw materials (namely breed, feed, characteristics of the meat, additives, flavourings, weight and age of the animal) and their difference between PDOs and PGIs.

The analysis conducted on the amendments of the geographical origin of raw materials shows that PDOs did not change the provisions concerning the origin of raw materials. On the contrary, 4 out of 30 PGIs loosened their link to origin allowing raw materials to come from outside the area of production⁷⁹, the most common reason presented by producers is that product's characteristics and appearance are not affected by the extent to which the ingredients originate in the region.

The category of raw materials for PDOs presents stricter amendments when it comes to feed, characteristics of the meat, and weight and age of the animal. It is possible to observe how feed and the fattening phase have been strictly regulated in 3 amendments, introducing a minimum fattening time, a stocking density and replacing the maximum permitted average weight with a minimum weight for the individual carcasses. 4 amendments present a stricter definition of the characteristics of the meat, such as the EU classification scale used to distinguish the carcasses of the animals, together with the definition of minimum and maximum limits of fat and the use of specific meat cuts. The sub-category weight and age has been deeply modified in 6 cases. In particular, the weight of the carcasses has been increased, replacing other requirements such as length or weight of the entire animal with the weight of the single meat cut, to better characterise the raw materials used in the production process.

Other sub-categories dealing with breed and the use of flavourings present more flexible amendments aimed at allowing producers to personalize the recipe. For example, under the sub-category breed, the list of the authorised breeds has been amended authorising more breeds and crossbreeds, this is justified in reason of the widespread presence of a certain breed in the area of origin⁸⁰. 6 amendments

⁷⁷ Pancetta Piacentina PDO [2010] OJ C64/32, n. 10, 11. Here the maturation phase has been increased from at least two months to at least three months from the date of salting, therefore imposing stricter requirements for the drying and ageing phase. At the same time, the range of relative humidity has been increased from 70-80 % to 70-90%, therefore giving more flexibility to producers with regard to the maximum percentage of relative humidity.

⁷⁸ Salsiccia di Calabria PDO [2015] OJ77/12, n.3. The ingredients to be used have been clarified, correcting the material error in the current text which stated: 'red pepper provided for in the applicable provisions of law'. The amendment defines 'red pepper' more accurately as 'chilli pepper/bell pepper', both belonging to the genus *Capsicum* L. Natural ingredients not included in the current text have been expressly listed to reflect historical practices in the area of origin.

⁷⁹ Thüringer Rostbratwurst PGI [2011] OJ C310/15, n. 3.1. Gailtaler Speck PGI [2018] OJ C195/47, n. 5. Jambon Sec des Ardennes PGI [2014] OJ C444/26, n. 3.3. Eichsfelder Feldgieker PGI [2015] OJ C281/12, n. 5.3.

⁸⁰ Pancetta di Calabria PDO [2015] OJ C 78/9 n. 3. Dehesa de Extremadura PDO [2016] OJ C 207/18, n. 5 and Guijuelo PDO [2015] OJ C 329/3, n. 5 (the requirement of meat cuts coming from "pure-bred Iberian pigs or crosses with 75 % Iberian blood and 25 % Duroc-Jersey blood" has been replaced with a looser one, requiring "at least 75 % Iberian blood").

within the sub-category flavourings presents lower minimum and higher maximum percentages of pepper, cloves, salt and other flavourings, adapting the product specifications to the growing trends reducing the amount of salt in food.

On the contrary, the category of raw materials for PGIs is characterised by a high degree of flexibility when it comes to the characteristics of the meat, the use of additives and weight and age of the animal. In particular, various amendments allow a change in the muscle ratio⁸¹, updating the single document in line with the advancement in the breeding techniques. The amendments provide more flexibility with the use of nitrates⁸² and increase the range of minimum and maximum age and weight of the animal at slaughter⁸³, since this does not alter the characteristics of the raw materials used in the production.

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

3.3. Amendments to the method of production.

This part of the research deals with the analysis of the method of production. The following categories have been identified: transport (including storage and slaughter), preparation of the meat, salting, drying/ageing, and the materials used in various phases of production (such as wood used in the smoking process). As in the previous section, the amendments have been analysed and compared under the PDO and PGI quality label used for their registration.

Differently from the amendments to raw materials, the majority of the amendments regarding the method of production for PDOs provides some flexibilities to producers. 6 amendments concerning various production steps such as transport, storage, and slaughter provide flexibilities regarding the minimum time that the meat has to stay at the slaughterhouse before being slaughtered or other deadlines. In addition, 2 amendments introduce flexibilities regarding the operations that have to take place when processing the raw material. 4 amendments concerning the materials used in the production allow the introduction of non-traditional material in the process of production, to better reflect current market conditions. 7 amendments of the salting phase are characterised by a difference in the salting period, usually a decrease of the minimum period; this complies with modern salting techniques and avoids the meat to absorb too much salt, in line with consumers' current food requirements. The final phases of drying and ageing contains 6 adjustments of the relative humidity and temperature ranges to more adequately reflect the customary manufacturing cycle and to adapt to climate change and customers' needs.

Similarly, PGIs provide a higher degree of flexibilities to producers. Transport, storage, and slaughter have been amended once, broadening the temperature range used in the delivery of the meat⁸⁴. Some amendments allow the use of machines in the salting process, together with the traditional hand-made

⁸¹ Jambon de l'Ardèche PGI [2015] OJ C330/3, n. 5.2.

⁸² Jambon Sec des Ardennes PGI [2014] OJ C444/26, n. 3.4.

⁸³ Gornooryahovski Sudzhuk [2014] OJ C75/10, n. 3.1. Zgornjesavinjski Želodec PGI [2015] OJ C145/23, n. 5.2. Saucisson de l'Ardèche PGI [2015] OJ C437/10, n. 5.3.1. Prosciutto di Norcia PGI [2016] OJ C153/17, n. 5. Breasaola della Valtellina PGI [2010] OJ C321/25, n. 3.4.

⁸⁴ Speck Alto Adige PGI [2016] OJ C334/9, n. 5.

process⁸⁵. Tradition is partly overcome also in the use of new materials, 4 amendments allow the use of non-traditional wood in the smoking process and expands the type of casings permitted in the production. Lastly, 3 amendments modified the drying and ageing phases with the adoption of a broader length of the process and with more flexible temperature and ageing conditions.

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

3.4. Reasons for the amendments.

The amendments published in the Official Journal of the EU contain the reasons for the modification of the previous product specifications. A qualitative analysis of the reasons for the amendment shows a difference between PDOs and PGIs, in particular when it comes to the amendments of the sections concerning raw materials and the method of production.

For PDOs, the majority of the amendments concerning raw materials provides a more accurate description of the specifications, correcting mistakes and using more precise wording, avoiding misinterpretation. Other frequent reasons concern producers' willingness to modify the section on raw materials to make them more in line with traditional practices, to improve the quality of the final product and to comply with both national and EU legal provisions. When it comes to PGIs, producers' interest, apart from a more accurate description and a focus on quality, is to adapt product specifications to the changes of raw materials, to adhere to common practices (sometimes without specifying whether these are traditional practices that have not been codified in the previous version of the specifications or whether these are innovations commonly adopted by the majority of producers), and market needs⁸⁶.

When it comes to the method of production, both PDOs and PGIs producers are interested in achieving more flexibility to adapt their product to a new market and consumers' needs, modern practices of production and new food safety standards. For PDOs, a high percentage of amendments have been adopted to adapt to climate change (4 amendments) and respect traditional practices (12 amendments).

The results of the qualitative analysis on the reasons for the amendments confirms the findings of the previous sections on the fact that modifications of product specifications are more conservative for PDOs rather than for PGIs when it comes to the origin/production of raw materials, while they both tend to achieve more flexibilities when it comes to the method of production.

4. Conclusions.

The analysis conducted under section 2 shows that the cultural rationale is a possible answer to the criticisms raised by the enhanced GI protection. The role of culture and tradition in the quality, reputation, or other characteristics of the product could justify the higher protection granted to GIs when compared to other products. Table 1. supports this theory and shows a high occurrence of quotations on tradition, showing that traditional know-how has an important role in linking the product to its origin.

⁸⁵ Jambon Sec des Ardennes PGI [2014] OJ C444/26, n. 3.4. Schwarzwälder Schinken [2012] OJ C274/2, n. 3.e.

⁸⁶ The limited information available in the single documents does not allow to understand if the amendments analyzed under sections 3.2 and 3.3. are able to achieve the purpose envisaged by producers or whether alternative measures should have been preferred.

As discussed under section 2.1, loosening the link with the territory creates some criticisms regarding the enhanced GI protection. Human factors are a complex link to origin since tradition can be approached not only as a static notion, as in the EU legislation, but also as a dynamic notion. Three different types of innovation have been identified, depending on when they took place: the “historical innovation”, the “collective innovation” that occurred during the drafting of the product specifications, and the “contemporary innovation”, embodied in the amendments of the product specifications after the registration of the product.

Innovation is necessary to be competitive in the market. Producers have to continue improving their product and the process of production, reconsidering their traditional know-how and adapting to new safety standards, change in consumers’ needs, and technological developments. Market pressure, apart from the adoption of new production techniques, can also lead to renegotiation and finally to the enlargement of the area of production, including producers before excluded. The enlargement of the area of production, due to ungrounded historical reasons and the commercial reputation of the product, could be detrimental to the culture of production of a given product and a further loosening of the link between the product and the territory.

The difference regarding the origin of raw materials for PDOs and PGIs has been assessed with an analysis of the amendments of single documents for processed meat products (class 1.2). The analysis reveals that PDOs did not amend the provisions concerning the origin of raw materials. In particular, PDOs did not restrict said geographical origin despite the broad exception pursuant to Art. 5 (3) of the EU Regulation No 1151/2012, which allows raw materials (such as live animals and meat) to come from a larger area. On the contrary, PGIs tend to loosen said link to origin. In particular, 4 PGIs have amended the link to origin of raw materials, allowing them to come from outside the area of production.

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

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

Innovation is strictly connected to GIs, both under an historical and contemporary perspective. As considered in the Camembert case, the problem mainly relies in keeping high the threshold of local distinctiveness, avoiding on the one hand the ‘invented traditions’ and on the other hand consumers’ confusion. Simply stating the compliance with “authentic and unvarying local methods of production”, without establishing the long-standing history of the product, inevitably dilutes the

cultural rationale. Innovation must be accompanied by a clear use and understanding of the EU quality labels complemented with one-word qualifications that serve as a cultural foundation of the uniqueness of the product rather than as a mere commercial strategy.

This work aims at providing a better understanding on how GIs for processed meat products are evolving, with a particular reference to the difference between PDOs and PGIs. The methodology adopted in this research could be extended to other categories of products, providing a more complete picture of the impact of PDOs and PGIs in the amendment of the link to origin.

5. Bibliography.

- Arfini F, Belletti G and Marescotti A, *Prodotti Tipici E Denominazioni Geografiche Strumenti di tutela e valorizzazione* (Tellus 2010)
- Basole A, 'Authenticity, Innovation and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari' (2014) Department of Economics University of Massachusetts Boston Working Paper 2014-09
- Bromberger B, 'Aged, but not old: Local identities, market forces, and the invention of "traditional" European cheeses' in Richard Hosking (ed.) *Authenticity in the Kitchen: Proceedings of the Oxford symposium on food and cookery* (Prospect books 2006) 93
- Broude T, 'Taking Trade and culture seriously: Geographical Indications and cultural protection in WTO law' (2005) 26 University of Pennsylvania Journal of International Law 623
- Calboli I, 'Of markets, culture, and *terroir*: The unique economic and culture-related benefits of geographical indications of origin' in Daniel Gervais (ed.) *International Intellectual Property. A Handbook of Contemporary Research* (Edward Elgar 2015) 433
- — 'Time to Say Local Cheese and Smile as Geographical Indications of Origin? International Trade and Local Development in the United States' (2015) 53 Houston Law Review 373
- — 'In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin under TRIPS' (2014) 6 The WIPO Journal 57
- — 'Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair(er) System of Protection in the Global Economy?' in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 23
- Compagnone C, 'Les appellations d'origine contrôlée comme ordre négocié' 2012 (2) *Négociations* 63
- Dutfield G, 'Protecting Traditional Knowledge and Folklore. A review of progress in diplomacy and policy formulation' (2003) 1 *International Trade & Sustainable Development Series*
- European Commission, 'Special Eurobarometer 389, Europeans' Attitudes Towards Food Security, Food Quality And The Countryside' (2012)
- — Future of CAP: Protecting our traditions 30 October 2017
<https://ec.europa.eu/info/news/future-cap-protecting-our-traditions_en> accessed 30 January 2020
- — Why Do Geographical Indications Matter to Us? MEMO/03/160 30 July 2003
<http://europa.eu/rapid/press-release_MEMO-03-160_en.htm> accessed 30 January 2020
- FAO and SINGER-GI, *Linking People, Places and Products: A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications*, (FAO 2009)

- Gangjee D, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012)
- — ‘From Geography to History: Geographical Indications and the Reputational Link’, in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 38
- Gervais D, ‘Spiritual but not intellectual? The protection of sacred intangible traditional knowledge’ (2003) 11 *Cardozo Journal of International and Comparative Law* 467
- — ‘Traditional Knowledge: Are We Closer to the Answers? The Potential Role of Geographical Indications’ (2009) 15 *ILSA Journal of International & Comparative Law* 551
- — ‘Traditional Innovation and the Ongoing Debate on the Protection of Geographical Indications’ in Peter Drahos and Susy Frankel (eds.) *Indigenous Peoples’ Innovation: Intellectual Property Pathways to Development* (ANU Press 2012) 121
- Hobsbawn E, ‘Introduction: inventing traditions’ in Eric Hobsbawn and Terence Ranger (eds) *The invention of tradition* (Cambridge University Press 1983)
- Ilberry B and Kneafsey M, ‘Registering Regional Speciality Food and Drink Products in the United Kingdom: The Case of PDOs and PGIs’ (2000) 32 *The Royal Geographical Society* (with the Institute of British Geographers) 317
- Kamperman Sanders A, ‘Incentives for and Protection of Cultural Expression: Art, Trade and Geographical Indications’ (2010) 13 *The Journal of World Intellectual Property* 81
- Magagnoli S, ‘L’invenzione “industriale” della tradizione: il cartello dell’Aceto balsamico tradizionale di Modena’ (2005) 3 *Food & History* 225
- Malbon J, Lawson C and Davison M, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary* (Edward Elgar 2014)
- 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 2016) 318
- — and others, ‘Controversies around geographical indications Are democracy and representativeness the solution?’ (2019) *British Food Journal*
- Moerland A, ‘Geographical Indications and innovation: what is the connection?’ in Josef Drexler and Anselm Kamperman Sanders (eds) *The Innovation Society and Intellectual Property* (Edward Elgar 2019) 59
- Montero García-Noblejas P, *Denominaciones de origen e indicaciones geográficas* (Tirant lo blanch 2016)
- OECD, *OSLO Manual. Guidelines for collecting, reporting and using data on innovation* (OECD 2018)
- Panizzon M and Cottier T, ‘Traditional Knowledge and Geographical Indications’ Foundations, Interests and Negotiating Positions’ in Ernst-Ulrich Petersmann (ed.) *Developing countries in the Doha Round: WTO Decision-making procedures and WTO Negotiations on Trade in Agricultural Goods and Services* (Robert Schuman Centre for Advanced Studies, European University Institute 2005)
- Prévost P et al, ‘Le terroir, un concept pour l’action dans le développement des territoires’ (2014) 14 *Vertigo - la revue électronique en sciences de l’environnement* <<http://journals.openedition.org/vertigo/14807>> accessed 7 January 2020
- Quiñones-Ruiz X and others, ‘How are food Geographical Indications evolving? – An analysis of EU GI amendments’ (2018) 120 *British Food Journal* 1876

- Rangnekar D, *Geographical Indications and Localisation: A Case Study of Feni* (Centre for the Study of Globalisation and Regionalisation, 2009)
- Tregear A, 'From Stilton to Vimto: Using Food History to Re-think Typical Products in Rural Development' (2003) 43 *Sociologia Ruralis* 91
- UNCTAD – ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press 2005)
- WIPO, Intellectual Property Needs and Expectations of Traditional Knowledge Holders (2001) WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)
- Zappalaglio A, 'The Debate Between the European Parliament and the Commission on the Definition of Protected Designation of Origin: Why the Parliament Is Right' (2019) 50 *International Review of Intellectual Property and Competition Law* 595



EIPIN Innovation Society

Coordinated by Maastricht University, Faculty of Law,
Bouillonstraat 3, 6211 LH Maastricht, The Netherlands
P.O. Box 616, 6200 MD Maastricht, The Netherlands
E: info@eipin-innovationsociety.org

www.eipin-innovationsociety.org

