



Are French Geographical Indications Losing Their Soul? Analyzing Recent Developments in the Governance of the Link to the Origin in France

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Summary. — Geographical indications in France are governed since 1935 by a unique mixed public/private Institute set-up on the failure of the State to define GIs. This mixed body, the National Institute of Appellation of Origin, composed of representatives of public authorities and producers' Organization was weakened due to a moving context in France, Europe, and worldwide. The transfer of activities of control of GIs to private certification organization on the one end and the increased involvement of the EU Commission on the other end questions the future of INAO and affects the attractiveness of GIs and hence rural development.
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1. INTRODUCTION

The protection of geographical Indications (GIs), which identify a good of a given quality, reputation, or other characteristic essentially attributable to its geographical origin, is undergoing a remarkable increase worldwide following the implementation of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement, 1994). However, due to the lack of consensus between Old and New World countries, there has been no harmonization of GIs, and their governance is consequently left up to the countries concerned, which are free to determine the legal means for protecting GIs. Although GIs are increasingly classified as a voluntary standard, which includes organic agriculture, fair trade labels, eco-friendly labels, the governance of GIs is characterized by the degree of involvement of the State. This is particularly true in France, the cradle of the modern protection of appellation of origin, the ancestor of geographical indications, which has largely influenced the European concept (Allaire, Casabianca, & Thévenod-Mottet, 2011).

Starting in 1905, France made many attempts to protect GIs before succeeding. After both administrative and judicial ruling failed, a dedicated body, the National Institute of Appellation of Origin (INAO) comprised both representatives of public authorities and professionals involved in GI products, was made responsible for recognizing and controlling GIs under the aegis of the Ministry of Agriculture. But since the broad internationalization of GIs in the WTO and the increasing role of third party-certified voluntary standards, the uniqueness of the French GI system is in danger of disappearing.

The protection of appellation of origin and GIs has been addressed by many researchers, particularly focused on the Europeanization and internationalization of the concept of terroir in the mid-1990s (Barham, 2003; Bérard &

Marchenay, 2004). Their interest was clearly in local development (Barham & Sylvander, 2011; Bowen, 2010) and in protecting regional heritage (Jena & Grote, 2010). The process of qualification that led to the transformation of local knowledge and/or natural resources into collective intellectual property has also been widely studied (Pacciani, Belletti, Marescotti, & Scaramuzzi, 2001; Thiedig & Sylvander, 2000; Tregaer, Arfini, Belletti, & Marescotti, 2007). Detailed analyses of the governance of GIs have shed light on the complementary roles of public and private stakeholders, including regulatory boards, farmers, marketing companies, the public administration (Sanz-Canada & Macias-Vazquez, 2005), and the contrasted role of the State in different countries (Marie-Vivien, 2010) in setting up GIs. Fewer authors have analyzed the issue of the control of GIs, i.e., the verification of compliance with GI specification, and only in particular cases in Europe (Belletti, Burgassi, Marescotti, & Scaramuzzi, 2007) or in southern countries (Hughes, 2009). In contrast, the certification of food standards by a third party justified by their neoliberal governance is widely described (Guthman, 2007; Hatanaka, Bain, & Busch, 2005).

Despite an extensive literature on GIs, remarkably few of these studies provide insights into the role of the State in the governance of GIs at the scale of a country, or the changes governance has undergone as a result of the internationalization of GIs and their association with food standards with the aim of understanding their impacts on the original “appellation of origin” concept.

The overall purpose of this study is to investigate how the governance of GIs has developed in France following its complete remodeling since the Europeanization of the appellation of origin into the Protected Denomination of Origin (PDO) and the creation of the Protected Geographical Indication (PGI) in 1992 and a more recent profound French reform in 2006. The specific aim of the paper is to analyze whether the future of the unique joint public/private

institution for the protection of “origin” in France, the French National Institute for quality and origin (INAO) in which producers play an active role in public decision making, is jeopardized. We question whether the changes INAO has undergone have affected the nature of the PDOs/PGIs and possibly their attractiveness for producers. We hypothesize that the driving forces behind this transformation are (1) the privatization of controls of GIs influenced by the certification practices that apply to private food standards, and (2) the increased role of the European Union since a single EU-wide GI system was established. We decided to investigate exactly what is happening to the concept of “origin” in France, which appears to be being assimilated into the mere concept of quality.

To fill this gap in the literature, our paper provides a detailed treatise on a highly complex institutional issue, the *joint public/private* institutional scheme for the protection of PDO and PGIs in France, but which has worldwide implications, given the extraordinary expansion of GI protection regimes around the world.

We start by reviewing the history of the governance of appellation of origin and geographical indications in France and Europe from 1905 until today, thereby laying the foundation for a detailed analysis of changes in the monitoring of PDO/PGI controls in France, now transferred from INAO to private certification organizations. We then examine the impact of the privatization of controls together with the increased role of the EU Commission on INAO’s role in defining PDO/PGI specifications. Finally we discuss the implications of the transformation of INAO, whereby we highlight the complexities of the governance of GIs, which is both public–private and local–global. Our key conclusions are: (i) the joint public–private body “INAO” has been weakened by the successive changes it has undergone, which have resulted in a more contrasted role of private *versus* public stakeholders; (ii) the concepts of “quality” and “standard” have affected the concept of origin; and (iii) the future of appellation of origin is at risk.

To address the problems we identified, we gathered data through field surveys, and used an interdisciplinary method combining a social sciences approach with those used by legal scholars and economists. The targets of our research were all the institutions involved in the management and control of the use of GIs in France. We conducted in-depth interviews with the director of the INAO and with its staff, both at the INAO headquarters in Paris and in the five regional offices. Special attention was paid to capturing the meaning our informants give to their practices and representations.

In addition, three of the authors have been directly involved in the functioning of INAO as external experts on INAO national committees (review of applications for recognition of more than 100 PDO/PGIs) since 2002, and in boundaries commissions since 1995, which provided data covering around 15 years of experience. These data were compiled and analyzed alongside an extensive analysis of the legal texts that have regulated INAO and the protection of PDOs/GIs in France since 1935 and in the EU since 1992. Further, we analyzed case laws on GIs, and official documents related to the procedure of registration and controls of particular GIs. This multidisciplinary approach allowed us to compare the legislation with its implementation and its representation by stakeholders.

2. THE ROLE OF THE STATE IN THE PROTECTION OF GEOGRAPHICAL INDICATIONS: HISTORICAL PERSPECTIVE

Modern protection of the origin of goods saw the light in France with the law of 1905 which provided for the repression of fraud, such as false indications of the source and origin of goods in the agro-food sector. The appellation was defined by the administration through notification enactments,¹ determining the geographical boundaries and the methods of production. Later, the *Loi relative à la protection des appellations d’origine du 6 mai 1919* defined the Appellation of Origin as a collective right that can never become generic or be registered as a trademark. Any producer could use the appellation of origin and could file complaints in court on uses that he or she considered prejudicial. The courts, organs of the State, were responsible for delimitating the areas of production and/or the methods of production to be considered “local, fair, and constant”. But as the courts had no knowledge of the products concerned, in 1935, a new law, the *Décret-Loi du 30 juillet 1935 relatif à la défense du marché du vin et au régime économique de l’alcool* created the National Committee for Appellations of Origin for Wines and Spirits, whose members were producers of wines and spirits. This committee was responsible for defining the conditions of production of the product and for its control, both of which were considered essential to avoid bad quality; this was the birth of the concept of “*appellation d’origine contrôlée*”.

In 1947, the National Committee for Appellations of Origin for Wines and Spirits was transformed into the National Institute of Appellations of Origin (INAO), a public body under the aegis of the Ministry of Agriculture. Appellation of origin was originally limited to wines and spirits and extended to include all agro-food products only in 1990 (Bienaymé, 1995).²

Drawing largely on the French tradition (Sylvander, Casabianca, & Roncin, 2008) in 1992, the European community introduced homogeneous protection throughout the EU, by adopting the Regulation No 2081/92³ on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, based on the principal of mutual recognition of surviving national norms.⁴ The regulation applied only to agricultural products and foodstuffs, with the exception of wines and spirits, which were controlled by a set of specific texts⁵ (Sylvander *et al.*, 2004). In the framework of the Common Agricultural Policy, these regulations derived from the principles outlined by the European Union Court of Justice (EUCJ), which, since the 1970s, has recognized that geographical designations are industrial property rights and are not a barrier to the freedom of circulation of goods.⁶

This European Regulation was amended twice, in 2006 and 2012,⁷ but its core remained untouched, i.e., two levels of geographical references. First, the Protected Designation of Origin (PDO), which very closely resembled the appellation of origin and was directly influenced by the French concept. Second, the Protected Geographical Indication (PGI), which establishes a weaker link with the geographical origin: at least one of the production steps (which need only be processing) shall take place in the defined geographical area, with the valorization of local know-how (Bérard & Marchenay, 2004; Bérard and de Sainte-Marie, 2005; de Sainte-Marie and Bérard, 2005).

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