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Silent registered GIs in the EU: What is at Stake?

Andrea Zappalaglio, Giovanni Belletti, Andrea Marescotti¹

Abstract – The present paper investigates the topic of ‘silent registered Geographical Indications’ (GIs), defined as GIs that after their registration, or nonetheless during a relevant period of time, have fallen into disuse or are employed considerably beyond their expected potential. In particular, by applying an empirical methodology, the research will constitute the first attempt to analyse and measure this phenomenon from an EU perspective, especially, although not exclusively, in the context of Italian GIs. First results highlight the extent of the silent GIs phenomenon and the need for further investigation to understand the reasons behind it. The issue of silent GIs can be tackled from two diverging perspectives: one considers silent GIs as detrimental to the GI system as a whole, while the second argues the need to maintain their protection in view of the prevention of generalisation of GIs and the indirect economic effects they can still play.

Keywords – EU Geographical Indications; Silent Registered Geographical Indications; Cancelled Geographical Indications; Italian Geographical Indications.

INTRODUCTION

This paper is aimed at exploring the under-researched issue of ‘silent registered GIs’. For the purposes of the present research, these will be defined as GIs that after their registration, or nonetheless during a relevant period of time, have fallen into disuse or are employed considerably beyond their expected potential. Taking the EU GI system and the Italian PDOs and PGIs for agricultural products and foodstuffs as sample, the research will constitute the first attempt to assess the importance of this phenomenon as well as to discuss the role that silent registered GIs can play and what they reveal about the nature of this Intellectual Property Right. One must also consider that under art 54 Regulation 1151/2012, corresponding, in the Italian legal frame, to art 14 DM 14 October 2013, every registered GI which is not used for a period of 7 years may be subject to cancellation.

Practice suggests that the reasons for the non-use of a registered GI include: (1) products / methods of productions related to a good the production of which is today very rare; (2) top-down registration processes conducted by local public authorities without proper level of involvement of the local communities of producers; (3) disproportionate unbalance between the costs of the use as certifications and the expected benefits.

METHODOLOGY

In order to achieve the above mentioned results, first of all, the investigation will look for data on cancelled EU GIs. Particularly, it will try to assess whether the cancellation of the geographical name from the register also led to the disappearance of the product or, instead, the latter is still locally produced but without the use of a quality scheme. In order to deepen our understanding of this specific aspect, some *ad hoc* case studies may be taken into consideration if relevant and practically retrievable. Furthermore, the analysis will track silent Italian GIs that, nonetheless, appear on the register. This will be done by selecting registered GIs which meet at least one of the following two criteria: (1) specifications that have never undergone even minor amendments, according to the *eAmbrosia* database; (2) PDO-PGI products for which there are no or very small certified values and volumes in 2018-2020, according to *Qualidò databank*. The GIs identified following the application of the above mentioned criteria, will then be subject to an additional desk research aimed at gathering more information on the status of the products, on the existence of known manufacturers and/or of an active association of producers.

This empirical approach will make it possible to assess the current situation of the register concerning ‘silent GIs’. This will open the doors to a debate on critical issues such as the reliability of the register as well as the legal and economic nature of GIs.

INTERIM RESULTS

A research conducted on the *eAmbrosia* database reveals that, to date, only 4 agricultural products have been formally cancelled from the EU register. In particular, the two PGIs, ‘Salaisons Fumée, marque nationale Grand-Duché du Luxembourg’ and ‘Viande de porc, marque nationale grand-duché de Luxembourg’ were registered in 1996 following the ‘Simplified Procedure’, i.e. art 17 of the old Regulation 2081/1992. They were cancelled due to lack of use after having remained substantively inactive on the register, without amendments or notifications of any kind. Instead, the French PGI ‘Volailles de Loués’ was cancelled due to the decreasing volume of products marketed under the registered name and the decision of the producers to promote the sales under a different Indication of Geographical Origin. Finally, the German PGI ‘Holsteiner Karpfen’ was cancelled due to the deterioration of the conditions of the production.

The GIs presented above can be included in two categories: (1) products which have always remained essentially inactive; (2) products the production of which has steadily decreased due to various reasons. However, a sample of 4 indications is clearly insufficient to come to any conclusion.

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This is especially true considering that recent research has shown that both the European Commission and the individual National Competent Authorities are not used to actively monitoring silent registered GIs and, in case, proceed *ex officio* to their cancellation on a regular basis. In particular, the analysis of the practice of the latter institutions has shown that some of them: (1) are usually not interested in carrying out such task and/or (2) are not considered as parties having a 'legitimate interest' in requesting the cancellation of a GI, as required by art 54(1) Regulation 1151/2012 (Guerrieri, 2022).

Hence, the research has applied the methods presented in the Methodology section to identify registered GIs that are inactive or underused but not formally cancelled.

With regard to the **first criterion**, the research has identified the products belonging to Class 1.6 (fruit, vegetables and cereals fresh or processed), in which 118 products are registered, that according to the eAmbrosia database have never undergone any amendment.² The investigation is based on the hypothesis that the absence of any action may indicate that the registered GI is indeed silent. This preliminary analysis has led to the identification of 56 cases.

The **second criterion** has been applied to the same sample mentioned earlier. The methodology was operationalized identifying three alert situations: Silent PDO/PGIs, when the production turnover is below the €20,000 threshold in all three years 2018-2020; Suspicious PDO (PGIs, when the production turnover is between €20,000 and €50,000 in all three years 2018-2020; Doubtful PDO/PGIs, where the turnover is zero (not available) but there are not entirely negligible quantities of certified product. We excluded PDO/PGIs which have amended their specifications since 2016. Results are the following:

Typology	Number of PDO/PGIs	As % of total
Silent	15	12.7%
Suspicious	3	2.5%
Doubtful	7	5.9%

Source: Our elaborations on ISMEA data

In particular, suspicious and doubtful silent GIs need additional analysis in order to understand their real status. Overall, the combined application of the first and the second criteria has led to the identification of 21 cases of possible silent GIs.

OBSERVATIONS ON THE PRESENT FINDINGS AND WAY FORWARD

The completion of the empirical analysis presented in the previous sections will provide a first look at 'silent registered GIs'. On the basis of our first analysis, the extent of this phenomenon from an empirical perspective is very important, affecting approximately from 13 to 21% of PDO/PGIs in the category "Fruit, vegetables and cereals fresh or processed". These data call for reflection on the

causes of this non-use of registered GIs and on the need to implement support actions for producers to facilitate their use in their commercial strategies; but on the other side, also question the appropriateness of maintaining their registration.

Therefore, as mentioned in the Introduction, this research will make it possible to tackle some fundamental questions concerning the nature of GIs. In fact, this issue is usually tackled from two diverging perspectives. According to the first, the silent registered GIs, either unused or underused, should be considered expensive, incapable of performing any significant market function, superfluous and, in the last analysis, detrimental to those which perform their commercial role effectively. Instead, according to the second, GIs are useful, regardless of their current widespread use. In fact, they prevent the misappropriation of a specific name or its genericization, thus keeping the door opened for the protection of the name on the marketplace in the future; secondly, even silent GIs can potentially play a meaningful short-term indirect economic role, for instance, in terms of cultural and touristic promotion of the area of production, among the other things.

Finally, the present research will be expanded through the following next steps: the completion of (1) the additional desk research mentioned in the methodology section and of (2) the analysis of representative case studies aimed at investigating the reasons for the non-use or under-use of a registered GI.

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² The sample has not taken into account 9 products registered after 2016 as, in that case, the lack of an amendment has been deemed physiological.