

ANDREA ZAPPALAGLIO*

Anatomy of Traditional Specialities Guaranteed: Analysis of the Functioning, Limitations and (Possible) Future of the Forgotten EU Quality Scheme

This article focuses on traditional specialities guaranteed (TSGs), the least researched of the EU quality schemes that also include the better known protected designation of origin (PDO) and protected geographical indication (PGI). Firstly, this contribution presents a historical account of the evolution of this quality label. Secondly, it illustrates the results of the first empirical analysis of the contents of the Single Documents for all the TSGs registered, thus providing an unprecedented view of their nature. Thirdly, it divides TSGs into six categories, which will be called 'profiles', in order to provide a nuanced picture of what is protected by this quality scheme and how. Finally, this work reflects on why this label has always been essentially unsuccessful in terms of number of registrations, and what could be done to revive it. It concludes that, because of the residual nature of TSGs compared with PDOs/PGIs, it is highly unlikely that TSGs will acquire more importance as market-related labels. Hence, from this point of view, discontinuing them might lead to a simplification and clarification of the EU quality schemes. However, the fact that they are residual does not mean that they are superfluous. They may nonetheless play a meaningful role as tools aimed at connecting the names of traditional products with their original recipes, thus contributing to the preservation of relevant pieces of European gastronomic heritage that would otherwise be denied any form of recognition and protection.

I. Introduction

The traditional speciality guaranteed (TSG) is one of the three quality schemes featured in EU Regulation 1151/2012 'on quality schemes for agricultural products and foodstuffs' (Regulation 1151/2012).¹ The other two are the protected designation of origin (PDO) and the protected geographical indication (PGI).²

According to Art. 17 of Regulation 1151/2012, the TSG has the following function:

[...] to safeguard traditional methods of production and recipes by helping producers of traditional products in marketing and communicating the value-adding attributes of their traditional recipes and products to consumers.

In practice, TSG protection is granted to the names of products that fulfil the following requirements under Art. 18 of Regulation 1151/2012:

1. A name shall be eligible for registration as a traditional speciality guaranteed where it describes a specific product or foodstuff that:
 - (a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or

- (b) is produced from raw materials or ingredients that are those traditionally used.
2. For a name to be registered as a traditional speciality guaranteed, it shall:
 - (a) have been traditionally used to refer to the specific product; or
 - (b) identify the traditional character or specific character of the product.

From the above it transpires that TSGs are 'names' that identify products that are considered 'traditional'. More specifically, the goods must meet two conditions to qualify for protection: first, they must have been made in accordance with a traditional production method or from traditionally used raw materials/ingredients; second, their names must be those traditionally used to refer to that product, or they must express its traditional nature. Finally, Art. 3(3) of Regulation 1151/2012 clarifies that the adjective 'traditional' must be understood as '[...] proven usage on the domestic market for a period that allows transmission between generations; this period is to be at least 30 years'.

Meanwhile, PDOs and PGIs are defined, under Art. 5(1) and (2), respectively, of Regulation 1151/2012, as follows:

1. For the purpose of this Regulation, a 'designation of origin' is a name, which may be a traditionally used name, which identifies a product:
 - (a) originating in a specific place, region or, in exceptional cases, country;
 - (b) whose quality or characteristics are essentially or exclusively due to a particular geographical

* Dr, Lecturer in Intellectual Property Law, University of Sheffield, UK. Email: a.zappalaglio@sheffield.ac.uk.

¹ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.

² *ibid* art 5.

- environment with its inherent natural and human factors; and
- (c) the production steps of which all take place in the defined geographical area.
2. For the purpose of this Regulation, a ‘geographical indication’ is a name, including a traditionally used name, which identifies a product:
 - (a) originating in a specific place, region or country;
 - (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and
 - (c) at least one of the production steps of which takes place in the defined geographical area.

These definitions show that PDOs/PGIs on the one hand and TSGs on the other are profoundly different for at least two –related– reasons.

First, PDOs and PGIs are *origin labels*, i.e. labels that grant protection to names of products characterised by a specific link to a place. These are identifiable by the particular wording of the relevant provisions, which feature an ‘origin link’. The latter is defined as the ‘set of rules that identify the elements whose presence must be proved in order to establish a connection between a product and a place’.³ More specifically, a PDO can be registered for products ‘whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors’, while PGIs, require proof of a link based on quality, reputation or other characteristics.⁴

By contrast, TSG rules do not feature any origin link. Therefore, TSGs are not ‘origin labels’ but fall into the broader category of ‘quality labels’.⁵ Hence, unlike PDOs/PGIs, they can confer protection on products that are not substantively linked to a specific place, as long as they meet the requirements mentioned earlier. Although this characteristic makes this label more flexible, in practice it also makes it less appealing. Indeed, as will be discussed in depth in the following sections, PDOs/PGIs, because of their link to a place, represent a specific community and contribute to sustaining it. By contrast, the TSG protects generic goods that can be produced anywhere.

This observation leads to the second substantive difference between PDOs/PGIs and TSGs: as the European

Commission has restated on several occasions, the TSG is not an intellectual property right (IPR).⁶ This is because it matches neither the profile of ‘geographical indication’, owing to the absence of an origin link, nor that of ‘trade mark’, because of the lack of distinctive character of the names that it protects.⁷

These are some of the reasons why the TSG has always had very limited success. Indeed, only 67 TSGs have been registered to date, compared with 906 PGIs and 671 PDOs. Moreover, this quality scheme is also severely under-researched, with little to no scholarship dedicated to it.⁸ There is therefore a gap in the literature that needs to be filled for at least three reasons. Firstly, the fact that few TSGs have been registered does not mean that they are irrelevant. In fact, this quality scheme protects some of the most famous products in the world, such as ‘Pizza Napoletana’ or ‘Jamón Serrano’. It is therefore important to investigate a label that provides protection to goods that belong to the world’s gastronomic heritage. Secondly, while the concept of ‘origin link’ is well-rooted in the tradition of the EU and, more specifically, of some of its Member States, such as France and Italy, it is less common in other parts of the world.⁹ By contrast, the concept of ‘traditional product’ is generally better understood at international level. Therefore, the TSG model may attract as much interest as PDOs/PGIs in non-EU countries.¹⁰ Thirdly, as will be shown below, despite limited use of the quality scheme, the European Commission has always supported and justified it, although the Inception Impact Assessment that preceded the most recent amendments to Regulation 1151/2012 highlighted it as a problematic issue to take into consideration.¹¹ It is therefore important to assess whether this quality scheme can have a future.

In the light of the above, the present article will contribute to the existing literature by presenting the results of an overall assessment of the nature and functioning of the registered TSGs. In particular, Section I provides a short history of this quality scheme; Section II illustrates the results of the first empirical analysis of the contents of the Single Documents (SDs) for the TSGs

³ Andrea Zappalaglio, *The Transformation of EU Geographical Indications Law: The Present, Past, and Future of the Origin Link* (Routledge 2021) 3.

⁴ The analysis of the nature and functioning of the origin link in *sui generis* GI systems would exceed the scope of the present contribution. However, it has been tackled in Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3). See also Laurence Bérard and others, ‘Les Facteurs Historiques, Culturels, Économiques et Environnementaux Dans La Délimitation Des Zones IGP’ in Bertil Sylvander, Dominique Barjolle and Filippo Arfini (eds), *The Socio-Economics of Origin Labelled Products in Agri-Food Supply Chains: Spatial, Institutional, and Co-ordination Aspects* (Actes et Communications 2000); Andrea Zappalaglio, ‘Getting Article 22(1) of the Agreement on the Trade-Related Aspects of Intellectual Property Rights Right: A Commentary on the Definition of “Geographical Indications” from a European Union Perspective with a Focus on Wines’ (2022) 23 JWIT 179.

⁵ Barham brilliantly distinguishes the two by stating that ‘origin labels’ focus on *where* a product was made whereas a ‘quality label’ focuses on *how*. See Elizabeth Barham, ‘“Translating Terroir” Revisited: The Global Challenge of French AOC Labeling’ in Dev Gangjee (ed), *Research handbook on intellectual property and geographical indications* (Edward Elgar 2016) 52–53.

⁶ See European Commission, ‘Inception Impact Assessment (Geographical Indications)’ (2020) Ref. Ares(2020)6037950 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12664-Food-&-drink-EU-geographical-indications-scheme-revision_en> accessed 20 July 2022; European Commission, ‘Evaluation of Geographical Indications and Traditional Specialities Guaranteed Protected in the EU’ (2021) SWD(2021) 428 final, 45–46.

⁷ cf art 22(1) TRIPS for the definition of ‘geographical indication’ and art 15 TRIPS for that of ‘trademarks’.

⁸ Before the present contribution, the only journal article dedicated to this topic was: Andrea Tosato, ‘The Protection of Traditional Foods in the EU: Traditional Specialities Guaranteed’ (2013) 19 European Law Journal 545.

⁹ Indeed, the concept of the ‘origin link’ does not even belong to the tradition of many EU countries. See Dev Gangjee, *Relocating the Law of Geographical Indications* (CUP 2012) ch 3.

¹⁰ This point emerged in several discussions, for instance during a seminar on this topic organised by the National Law University of Jodhpur (online on 11 September 2021).

¹¹ European Commission, ‘Inception Impact Assessment (Geographical Indications)’ (n 6). All the EU *sui generis* GI systems – for agricultural products and foodstuffs; wines and aromatised wines – have been updated recently by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 [2021] L435/262 (Regulation 2021/2117).

registered, retrieved through the eAmbrosia database;¹² Section III maps the different functions played by TSGs by dividing them into six ‘profiles’; Section IV discusses two hypotheses as to why this quality scheme has not been successful; finally, Section V reflects on its possible future.

It will be concluded that it is highly unlikely that TSGs can acquire more importance as market-related labels. Hence, from this point of view, discontinuing them may lead to a simplification and clarification of the EU quality schemes. However, they may nonetheless play a meaningful role as tools aimed at connecting the names of traditional products with their original recipes and production methods, thus contributing to the preservation of relevant pieces of European gastronomic heritage that would otherwise be denied any form of recognition.

All figures and data are valid as of 10 May 2022.

II. History and evolution of TSG rules and policy

1. The ‘certificate of specific character’: rationale and flaws

In the second half of the 1980s, the Commission began discussing a new reform of the Common Agricultural Policy (CAP). Among other things, it was planned that this should include the use of innovative labels.¹³ In this context, in early 1991 the Commission proposed the introduction of ‘certificates of specific character for agricultural products and foodstuffs’ (CSCs), that is the predecessor of TSGs.¹⁴

The EU institutions intended this label to become the European version of the French ‘Label Rouge’.¹⁵ In the French legal framework, this is a sign that refers to a wide range of products – food, non-food and non-processed – that, owing to how they are produced or manufactured, are of higher quality than similar goods. In particular, this label is awarded to products that prove superior to others because of, for example, their exceptional sensory characteristics, production conditions, or product image and presentation. This label has been successful in France, with approximately 500 goods registered to date. This positive experience encouraged the EU institutions to introduce an ostensibly similar scheme at regional level.¹⁶ Hence, Regulation 2082/1992 introduced CSCs, contextually

establishing a specific register for them.¹⁷ On the same day, Regulation 2081/1992 was adopted. This introduced the PDO and PGI quality schemes, thus giving birth to the EU *sui generis* GI regime for agricultural products and foodstuffs.¹⁸ Generally speaking, the requirements for the registration of a CSC were similar to those in force today for TSGs, as described in the previous Section.¹⁹

The text of Regulation 2082/1992 contained some important flaws, however. The most notable was the contradictory way in which it treated the concept of ‘tradition’. In fact, the label, as suggested by its name, was meant to concentrate not on the ‘traditional’ but on the ‘specific character’ of the goods. This was defined under Art. 2(1) as:

[...] the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category.

Nevertheless, the rules of the Regulation that focused on the registration of the names specified that ‘[i]n order to be registered, a specific name ... must be *traditional* and comply with national provisions or be established by custom’.²⁰ Furthermore, for the CSC to be granted, the specification had to include ‘aspects allowing appraisal of traditional character’.²¹ Just like today, such ‘traditional character’ arose from the fact that the product was made from traditional ingredients and/or employed a traditional production method.²² However, the very concept of ‘tradition’ was not defined at all. Hence, in the final analysis, the text of Regulation 2082/1992 failed to clarify an essential point, i.e. the relationship between ‘specific’ and ‘traditional’ character.

This and other flaws in the CSC rules were discussed in 2005, during the process that eventually led to the reform of both Regulation 2082 and 2081. It was at this point that the Commission concluded that the terminology used in Regulation 2082/1992 was too complex and incomplete and that this had contributed to the limited success of the label.²³ In fact, back then, only 15 CSCs had been registered since 1992. Hence, to promote its use, the Commission proposed making the system more appealing to producers by clarifying and simplifying it. As part of this strategy, it was proposed to change the name CSC into TSG. The latter, in fact, was already popular in practice and was considered ‘easier to understand’.²⁴ The

¹⁷ Council Regulation (EEC) No 2082/92 of 14 July 1992 on certificates of specific character for agricultural products and foodstuffs.

¹⁸ Council Regulation (EEC) No 2081/92 of July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

¹⁹ Regulation 2082/1992, arts 4 and 5; cf Regulation 1151/2012, art 17. One key difference consisted in the fact that this first Regulation allowed the registration of a CSC ‘with’ or ‘without’ reservation of the name. In the latter scenario, the applicants could register a name only to publicise a traditional product, and the name was merely protected against misuse or misleading use. In the former, the protection conferred extended to ‘imitation’ practices. See Regulation 2081/1992, art 17.

²⁰ Regulation 2082/1992, art 5(3). Emphasis added.

²¹ *ibid* art 6(2).

²² *ibid* art 4(1).

²³ European Commission, ‘Proposal for a Council Regulation on agricultural products and foodstuffs as traditional specialities guaranteed: explanatory memorandum’ COM(2005) 694 final, [9].

²⁴ European Commission, ‘Proposal for a Council Regulation: explanatory memorandum’ (n 23) [3]; cf Council Regulation (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed [2006] OJ L93/1, Recital 5.

¹² This features a section exclusively dedicated to TSGs, see European Commission, ‘Traditional Specialities Guaranteed’ (*eAmbrosia*) <<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/tsg>> accessed 20 July 2022.

¹³ See European Commission, ‘The Future of Rural Society: Commission Communication Transmitted to the Council and to the European Parliament’ [1998] COM(88) 338 final, 43-44. For more information, see Joseph A McMahon, *Law of the Common Agricultural Policy* (Longman 2000).

¹⁴ European Commission, ‘Proposal for a Council Regulation (EEC) on certificates of specific character for agricultural products and foodstuffs’ SEC(90) 2414 final.

¹⁵ Economic and Social Committee, ‘Opinion on the proposal for a Council Regulation (EEC) on certificates of specific character for foodstuffs’ [1992] OJ C40/3.

¹⁶ A complete analysis of this label would exceed the purposes of the present paper. For more information and for the relevant rules, see INAO, ‘Label Rouge (Red Label)’ <<https://www.inao.gov.fr/eng/Official-signs-identifying-quality-and-origin/Label-Rouge-Red-Label>> accessed 20 July 2022.

1. Overview of the sample: TSGs per country, per product class and by overall value

To date, 67 TSGs have been registered by 18 EU Member States, plus the United Kingdom, while 4 are ‘multicountry’, i.e. jointly registered by more than one Member State.³⁷ As shown in Table 1, it transpires that the countries that joined the EU after 2003–2004, most of which are eastern European,³⁸ have used this quality scheme more than the others.³⁹ In particular, Poland is the country that has registered the most.

With regard to the classes of products for which TSGs are registered, Table 2 shows a prevalence of bakery and meat products, followed by cheese.

Turning now to the economic value of TSGs, it must be observed that there is little relevant data. Nevertheless, a study conducted for the EU Commission presents the scenario summarised in Table 3.⁴⁰

What emerges from this table is that the sales value of TSGs fluctuated during the period in question, but rarely exceeds EUR 2 billion. Figure 1 specifically extracts the data on TSGs, thus providing a better view of this trend.

Moreover, the Commission’s study has calculated the value premium for PDOs/PGIs and TSGs. This is estimated at 2.07, meaning that, on average, the sales value of a PDO/PGI or a TSG is 2.07 times higher than that of a comparable product that does not use these quality schemes.⁴¹ Unfortunately, no specific figure has been put on the value premium for TSG products alone. However, the study states that, if TSG products are omitted from the calculation, the figure rises to 2.11.⁴² This means that the average TSG value premium is certainly lower than that for PDOs/PGIs, although not excessively so.

Finally, the same study shows that TSGs are mainly sold on the local markets of the Member State that registered them.⁴³ By contrast, the value of intra-EU exports is essentially negligible, and that of extra-EU exports even more so, as shown in Table 4.

Figure 2 highlights this scenario more effectively.

2. Legal grounds for registration and translatability of product names

As mentioned in the Introduction, Art. 18(1) and (2) of Regulation 1151/2012 stipulates that, to register a TSG, the applicant must prove that two requirements have been fulfilled – one related to the product and one to its

Table 1. Registered TSGs per EU Member State

| | |
|----------------|----|
| Austria | 3 |
| Belgium | 5 |
| Bulgaria | 5 |
| Czech Republic | 1 |
| Finland | 3 |
| France | 2 |
| Hungary | 2 |
| Italy | 4 |
| Latvia | 3 |
| Lithuania | 2 |
| Netherlands | 4 |
| Poland | 10 |
| Portugal | 1 |
| Romania | 1 |
| Slovakia | 3 |
| Slovenia | 4 |
| Spain | 4 |
| Sweden | 2 |
| United Kingdom | 4 |
| Multicountry | 4 |

Table 2. Product classes of registered TSGs

| | |
|---|----|
| 1.1 Fresh meat | 3 |
| 1.2 Meat products (cooked, salted, smoked, etc.) | 13 |
| 1.3 Cheese | 11 |
| 1.4 Other products of animal origin (eggs, honey, various dairy products except butter, etc.) | 6 |
| 1.5 Oils and fats (butter, oil etc.) | 1 |
| 1.6 Fruit, vegetables and cereals | 1 |
| 1.7 Fresh fish, molluscs and crustaceans and products derived therefrom | 4 |
| 1.8 Other products of Annex I of the treaty (spices, mead, cider, etc.) | 4 |
| 2.24 Prepared meals | 2 |
| 2.25 Beer | 5 |
| 2.27 Bread, pastry, cakes, confectionery, biscuits and other baker’s wares | 15 |
| 2.29 Pasta | 2 |

name. More specifically, a TSG can be registered if the product: (a) results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff, or (b) is produced from raw materials or ingredients that are those traditionally used. In addition, the name of the product must: (a) have been traditionally used to refer to the specific product, or (b) identify the traditional character or specific character of the product. These provisions of Regulation 1151/2012 correspond, with only some differences in the wording, to Art. 4(1) and (2) of Regulation 509/2006 and Arts. 4(1) and 5 of Regulation 2082/1992.

The requirements concerning the products are relatively straightforward. In practice, the applicant must be able to establish that either the method of production

³⁷ These are four products jointly registered by the Czech Republic and Slovakia.

³⁸ More specifically, the 2004, 2007 and 2013 enlargements concerned 11 central/eastern European countries: Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia; plus two Mediterranean countries: Malta and Cyprus.

³⁹ For a specific focus on this trend, see Zappalaglio (n 3) 151–55.

⁴⁰ European Commission, Directorate General for Agriculture and Rural Development, ‘Study on Economic Value of EU Quality Schemes, Geographical Indications (GIs) and Traditional Specialities Guaranteed (TSGs): Final Report’ (Publications Office 2020) 16.

⁴¹ *ibid.* 102.

⁴² *ibid.*

⁴³ *ibid.* 18.

Table 3. Sales value by scheme in the EU between 2010 and 2017 (million €)

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|--------------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Wines | 29 630 | 32 099 | 33 934 | 34 976 | 35 741 | 37 586 | 37 889 | 39 418 |
| Agricultural Products and Foodstuffs | 16 603 | 19 672 | 21 433 | 21 922 | 23 068 | 23 714 | 26 074 | 27 339 |
| Spirit Drinks | 8 249 | 9 140 | 9 458 | 9 500 | 9 063 | 9 456 | 9 493 | 10 347 |
| Aromatised wine products | 31 | 36 | 35 | 32 | 37 | 39 | 39 | 43 |
| Total GIs (excluding TSGs) | 54 513 | 59 357 | 62 852 | 64 215 | 66 151 | 69 483 | 71 592 | 74 759 |
| Total (GIs + TSGs) | 54 513 | 60 946 | 64 861 | 66 431 | 67 909 | 70 794 | 73 495 | 77 148 |

Source: AND International study for DG AGRI

Table 4. Trade of GI/TSG products by market, 2010 and 2017 (EUR million)

| | Total Sales | National Market | Intra-EU market | Extra-EU Market | Total Sales | National market | Intra-EU market | Extra-EU market |
|--------------------------------------|-------------|-----------------|-----------------|-----------------|-------------|-----------------|-----------------|-----------------|
| Wines | 29 630 | 18 244 | 6 352 | 5 034 | 39 418 | 23 151 | 7 711 | 8 557 |
| Agricultural products and foodstuffs | 16 603 | 13 039 | 2 526 | 4 730 | 10 347 | 1 330 | 2 311 | 6 706 |
| Spirit drinks | 8 249 | 1 235 | 2 284 | 4 730 | 10 347 | 1 330 | 2 311 | 6 706 |
| Aromatised wine products | 31 | 23 | 4 | 4 | 43 | 37 | 3 | 3 |
| Total GIs (excluding TSGs) | 54 513 | 32 542 | 11 166 | 10 806 | 74 759 | 43 337 | 14 473 | 16 948 |
| Total (GIs + TSGs) | na | na | na | na | 77 148 | 45 045 | 15 069 | 17 033 |

Source: AND International study for DG AGRI

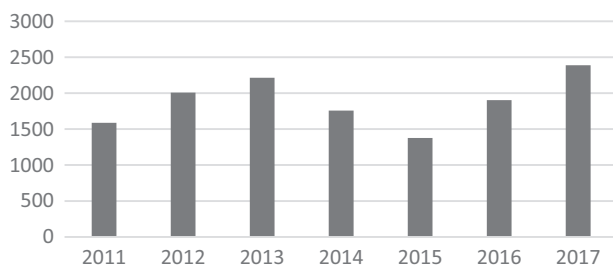


Figure 1. Sales value of TSGs in the EU between 2011 and 2017 (in EUR million).

or the raw materials used are traditional in character. For instance, the specification for the Hungarian cheese ‘Rögös túró’ states that the product is produced following a traditional method of production that makes the product distinctive and unique.⁴⁴ By contrast, the applicants for the Romanian ‘Salată tradițională cu icre de crap’ focus on the fact that this dish, based on salted carp roe, is traditional because it is made from the raw materials that have always been traditionally used.⁴⁵

The rules regarding the name of the goods deserve a more detailed explanation. The first option, i.e. that the name ‘has been traditionally used to refer to the specific product’, is used in cases where the name does not directly express the traditional character of the product but is nonetheless traditionally associated with it. This is the case of ‘Prague Ham’, for instance. Here, the name does not indicate the traditional character of the product. However, it unmistakably points to a well-known kind of

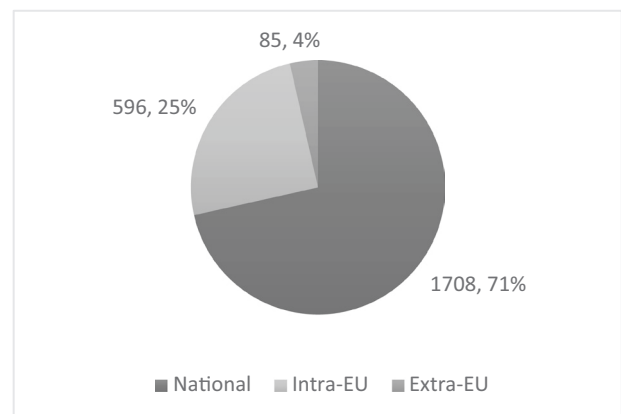


Figure 2. Trade of TSG products by market in 2017 (EUR million and %).

ham that is by nature traditional. However, with regard to the second option, i.e. when the name ‘identifies the traditional or specific character of the product’, it is the name of the product itself that expresses the traditional character. For instance, the indications ‘Traditionally Farmed Gloucestershire Old Spots Pork’ or ‘Bacalhau de Cura Tradicional Portuguesa’ explicitly inform the consumer that the product is ‘traditional’.

The empirical assessment conducted in the present research has determined how often each specific ground for registration discussed above has been used in applications. For the sake of clarity, it is important to specify that, since 2012, the template of SDs has been improved: these elements are now explicitly indicated in two boxes that the applicants themselves must tick. This was not previously an option. However, the grounds on which the applicants based their applications can be easily inferred.

⁴⁴ ‘Rögös túró’ [2019] OJ C111/5, [3.1], [4.3].

⁴⁵ ‘Salată tradițională cu icre de crap’ [2021] OJ C222/31, [3.1].

Table 5. Legal grounds for the registration of TSGs

| The product: | Ratio | % |
|--|-------|-------|
| results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff | 56/67 | 83.5% |
| is produced from raw materials or ingredients that are those traditionally used | 16/67 | 22.3% |
| The name: | | |
| has been traditionally used to refer to the specific product | 42/67 | 62.6% |
| identifies the traditional character or specific character of the product | 33/67 | 49.2% |

For example, the specification for ‘Jamón Serrano’ states that ‘Jamón Serrano is produced using traditional methods’⁴⁶ while the importance of the raw materials is not discussed. Finally, the reader will notice that the percentages displayed below do not add up to 100%. This is because, although the text of Regulation 1151/2012 – and its predecessors – seems to consider the two abovementioned elements as alternatives, some product applications are based on both legal requirements.⁴⁷ In these cases, therefore, both elements have been counted. The results of the analysis are presented in Table 5.

The analysis shows that the vast majority of TSG specifications claim that the method of production of the goods is ‘traditional’, with fewer registrations being based on the traditional character of the raw materials. Hence, TSGs present themselves essentially as labels that distinguish products made in a specific way, regardless of where they are produced. With regard to the function of the name, however, the scenario is more nuanced. In fact, even if most of the specifications concern names usually employed to identify a specific product, half of them use names that simply indicate the traditional character of the product.

Finally, the analysis shows that only nine registered names (13.4%) can be translated into languages that are not those of the country of registration. The best example is ‘Prague Ham’, which is registered and can therefore be lawfully used, in 22 EU languages.⁴⁸

3. Product specification and content of applications for registration

The registration process for TSGs mirrors that for PDOs and PGIs. Thus, a group of producers – individual applications are acceptable only in exceptional cases – must submit an application to the competent national authority. The latter conducts a first assessment and then submits the application dossier to the EU Commission. If the EU phase also reaches a positive conclusion, the name is officially registered as a TSG.⁴⁹

In particular, Art. 20 of Regulation 1151/2012 provides that the application for the registration of a TSG must include some specific elements, the most important of which is the product’s specification. The contents of

the latter are listed under Art. 19. In sum, these are: (a) the name of the good; (b) its description; (c) its method of production, including the nature and characteristics of the raw materials; and (d) the key elements establishing its traditional character. At the end of the application process, the specification, which is usually written in the applicants’ native language, is transposed into what is known as a ‘Single Document’ (SD). This is, as outlined above, a standardised template adopted at EU level and translated into all the EU languages.⁵⁰

In the following paragraphs the research will present some empirical findings that shed light on the contents of these SDs, thus providing a better view of the nature of TSG goods. In particular, the investigation has focused on three of the elements mentioned earlier: the method of production, the raw materials, and the way in which the traditional character of the product is established.

a) The origin of the raw materials

The research focused on the origin of the raw materials to determine whether, despite not being protected origin products, TSG goods are nonetheless characterised – at least in some cases – by raw materials sourced from a specific place, thus featuring ‘local’ elements. In particular, this part of the assessment grid featured two questions:

1. ‘Is the sourcing of raw materials from a specific area required or at least recommended?’ Possible answers: Yes; No/Not given;
2. ‘If the TSG includes a geographical name, is the sourcing of raw materials from the area indicated by the indication of origin mandatory or at least recommended?’

Possible answers: Yes; No/Not given.

Concerning the first question, a positive answer was provided in relation to the following five TSGs, three of which are Italian:

1. ‘Bacalhau de Cura Tradicional Portuguesa’ requires a specific raw material, i.e. the *Gadus Mohrua* codfish, which must be fished exclusively in the North of the Atlantic Ocean.⁵¹
2. ‘Pizza Napoletana’ can be made either from (a) ‘Mozzarella’ TSG or (b) ‘Mozzarella di Bufala Campana’ PDO. In the latter case, the origin of the

⁴⁶ ‘Jamón Serrano’ [1998] OJ C371/3, [4.2].

⁴⁷ See, for instance, ‘Dwójniak staropolski tradycyjny’ [2007] OJ C268/22 and ‘Czwórniak staropolski tradycyjny’ [2007] OJ C266/27.

⁴⁸ ‘Pražská šunka (Prague Ham)’ [2016] OJ C180/5, [1].

⁴⁹ For the full application procedure, see Regulation 1151/2012, arts 48 ff.

⁵⁰ See n 36.

⁵¹ Bacalhau de Cura Tradicional Portuguesa’ [2013] OJ C292/8, [37]; cf ‘Salată tradițională cu icre de crap’ (n 45) [4.2(a)]. In this case, the specification stipulates that the product must be made from carp roe with specific characteristics. The origin of this raw material, however, is not discussed at all.

raw material is, of course, localised in a clearly determined area described by the specification.⁵²

3. 'Amatriciana tradizionale' recommends two ingredients when it comes to the kind of cheese that should be used in the preparation of the product: 'Amatrice pecorino' or 'Pecorino Romano' PDO. Just as in the previous case, the latter is produced in a specific area.⁵³
4. 'Berthoud' features 'Abondance' PDO cheese as its mandatory main ingredient as well as a choice of wines or liqueur wines that need to be used in the preparation of the product and that are all protected by PDO: 'Vin de Savoie'; 'Madeira' or 'Port'.⁵⁴
5. 'Vincisgrassi alla Maceratese', like 'Amatriciana Tradizionale', provides for a choice between 'Parmigiano Reggiano' PDO or 'Grana Padano' PDO.⁵⁵

With regard to the second question, the analysis identified only two products:

1. 'Pizza Napoletana TSG'. In this case, as mentioned above, one ingredient recommended is 'Mozzarella di Bufala Campana PDO' whose area of production includes the territory of 'Naples', to which the adjective 'Napoletana' refers.
2. 'Amatriciana tradizionale TSG'. Here, the specification recommends the use of 'Pecorino Romano PDO' whose area of production is represented by the territory of the Italian region 'Lazio', thus encompassing the area where 'Amatrice', the town that gives the product its name, is located.

Finally, again concerning the second question, 'Berthoud TSG' can be considered a special case. The SD states that the product originates from the French Haute Savoie region and that 'Berthoud' is a typical surname of that area, if not actually a geographical name.⁵⁶ Therefore, the fact that the specification recommends the PDO 'Vin de Savoie' as an ingredient can be seen as an attempt to preserve the traditional version of the product.

b) Variants in the method of production

As shown earlier, the TSG protects products that are for the most part defined by the way in which they are produced.⁵⁷ It is therefore important to determine how flexible the specifications can be. In fact, traditions are often complex, diverse and rich in nuance. Thus, it is important to understand whether and to what extent TSG specifications take such diversity into account. This issue is way too broad to be settled here, however. Hence, the present quantitative assessment focuses specifically on product variants that are explicitly recognised by the SD. In particular, the following question was asked:

– Are variants of the recipe/method of production explicitly admitted?

Possible answers: Yes; No/Not given.

For the sake of the analysis, the variants that have been taken into consideration are those that, in commercial

practice, result in different versions of the product, are all included in the SD and are considered equally traditional. For instance, the specification for 'Prague Ham TSG' admits three variants of the product, each one with its own method of production: 'on the bone'; 'boneless' and 'tinned'.⁵⁸

However, two main kinds of variant have been excluded. These are in particular: (1) minor variants that do not impact on the substantive nature of the product as found on the marketplace and that are not extensively covered in the text of the specifications, a typical example being 'add a pinch of [ingredient X] at the cook's discretion'; and (2) variants in the presentation of the product owing to packaging and marketing standards only, for instance, cases in which the product can be sliced in different ways purely for packaging purposes.

The result of the assessment is summarised in Table 6.

These results seem to suggest that the TSG is a relatively flexible quality scheme, which recognises variants in the method of production in approximately one in three cases. However, as mentioned earlier, a quantitative assessment is not enough to determine whether and to what extent TSGs can accommodate diversity. Hence, more research on this specific point would be useful.

c) Traditional local character of the method of production

The research has focused on whether the SDs discuss or at least mention the area of origin of TSG products. In particular, the assessment grid featured the following question:

– Was the method of production traditionally localised in a specific geographical area?

Possible answers: Yes; No/Not given.

The present analysis shows that, even if TSGs are not origin labels, a relevant number of specifications, although not the majority, state that the method of production was historically rooted in specific areas. In particular, the results of the investigation are presented in Table 7.

It is important to note that this is not a feature exclusive to TSGs that include geographical names. For instance, the specification for 'Heumilch' mentions that the production method for this product was characteristic of the Tyrolean Alps,⁵⁹ while the origin of 'Berthoud' is identified in the Chablais area, in the north of Haute-Savoie,⁶⁰ similarly, the specification for the Hungarian 'Tepertős Pogácsa' describes in detail the areas in which production was generally rooted, even quoting ethnographical and anthropological studies.⁶¹

d) Elements establishing the traditional character of the product

According to Art. 19(1)(d) of Regulation 1151/2012, every TSG specification has to establish the traditional

⁵² 'Pizza Napoletana' [2008] OJ C40/17, [3.6].

⁵³ 'Amatriciana Tradizionale' [2019] OJ C393/12, [4.2].

⁵⁴ 'Berthoud' [2020] OJ C115/16, [4.3].

⁵⁵ 'Vincisgrassi alla maceratese' [2021] OJ C504/57, [4.1].

⁵⁶ 'Berthoud' (n 54) [3.2].

⁵⁷ Table 5.

⁵⁸ 'Pražská šunka (Prague Ham)' (n 48) [3.6]–[3.8].

⁵⁹ 'Heumilch' [2021] OJ C392/8, [4.3].

⁶⁰ 'Berthoud' (n 54) [4.3].

⁶¹ 'Tepertős pogácsa TSG' [2012] OJ C180/16, [3.8].

Table 6. Explicitly admitted variants of the recipe/method of production

| Parameter | Yes | | No/Not given | |
|--|-------|-------|--------------|-------|
| | Ratio | % | Ratio | % |
| Are variants of the recipe/method of production explicitly admitted? | 22/67 | 32.8% | 45/67 | 67.2% |

Table 7. Method for the production of TSGs traditionally localised in a specific area

| Parameter | Yes | | No/Not given | |
|--|-------|-------|--------------|-------|
| | Ratio | % | Ratio | % |
| Was the method of production traditionally localised in a specific area? | 27/67 | 40.9% | 40/67 | 59.1% |

character of the product to be registered. It is therefore important to understand how this element is treated in the specifications. In order to achieve this result, the assessment grid has adopted a map composed of five non-exclusive factors: (1) cultural history; (2) socio-economic history; (3) market reputation based on the product's traditional character; (4) traditional know-how in the selection of ingredients and; (5) traditional know-how in the method of production. Each of these factors is described below.

– Cultural history

This factor takes into consideration cases where the traditional character of a product has been proved by means of a description of the product's history and cultural importance. Usually, this consists of the history, documented or folkloristic, of the product.

For instance, the specification for the French 'Moules de Bouchot TSG' states:

The tradition of cultivating mussels on stakes goes back to 1235. The story has it that an Irishman, Patrick Walton, was shipwrecked that year in the Bay of Aiguillon; '... the only person saved, he settled in Esnandes and lived off birds he would snare in a special (*allouret*) net stretched above the water between two large poles embedded in the seabed. He soon noticed that mussels gathering on the poles grew bigger and were of a superior quality to wild mussels...'.⁶²

– Socio-economic history

For the purposes of the present analysis, this factor indicates the influence that, according to the specification, the product has had on the development of its area of production in social and economic terms. For instance, the production of 'Heumilch', according to the specification, led to the foundation of permanent settlements on the Alps dedicated to dairy farming and cattle stock.⁶³ Sometimes, however, the present and the previous parameter – cultural history – tend to blur. In unclear cases, they have therefore both been counted. For instance, the specification for 'Prague Ham' mixes an account of the historical origin of the product with the another of the spread of industry for its production in the mid-19th century.⁶⁴

– Market reputation based on the product's traditional character

This factor takes into account market success, consumer perception and international recognition of the product. For instance, the specification for 'File Elena' recounts that the product has won various international awards outside its country of registration (Bulgaria), thus showing how gastronomes appreciate it all over the world.⁶⁵ Other specifications as well, for instance those for 'Jamón Serrano' and 'Pizza Napoletana', include statements concerning the international recognition of these traditional products.⁶⁶

– Traditional know-how in the selection of ingredients

Some products justify their traditional character by making reference to longstanding practices related to the selection of their ingredients. For instance, the specification for the Slovenian 'Idrijski Zlikrofi' emphasises that the choice and selection of the ingredients constitutes one of the bases of the traditional character of the product.⁶⁷ Another example is the specification for 'Traditionally Farmed Gloucestershire Old Spots Pork', which mentions the tradition in selecting and breeding the animals involved.⁶⁸

– Traditional know-how in the method of production

This factor concerns the specifications that explicitly claim that the method of production possesses traditional character. For instance, the specification for 'Mozzarella' states that 'Mozzarella is a cheese which is the product of a well-established technology in the making of fresh pulled-curd cheese, *part of the Italian dairy tradition*'.⁶⁹

The application of the above-mentioned parameters led to the results presented in Table 8.

These findings match those of Table 5, thus confirming that most TSGs essentially present themselves as products characterised by a method of production that the producers define as 'traditional'. In addition, there are historical elements that qualify them as important for the history, heritage and sometimes folklore of a specific area or entire country. Indeed, these elements are also

⁶² 'Moules de bouchot' [2012] OJ C239/13, [3.8.1].

⁶³ 'Heumilch' (n 59) [4.3].

⁶⁴ 'Pražská šunka (Prague Ham)' (n 48) [4.3].

⁶⁵ 'Филе Елена' (File Elena) [2020] OJ C73/11, [4.3].

⁶⁶ 'Jamón Serrano' (n 46) [4.3]; 'Pizza Napoletana' (n 52) [3.8].

⁶⁷ 'Idrijski Zlikrofi' [2009] OJ C104/14, [3.7], [3.8].

⁶⁸ 'Traditionally Farmed Gloucestershire Old Spots Pork' [2009] OJ C238/8, [3.8].

⁶⁹ 'Mozzarella TSG' [1996] OJ C246/9, [5(c)]. Emphasis added.

Table 8. Elements to establish the traditional character of the product in the SDs

| Parameter | Ratio | % |
|--|-------|-------|
| Cultural history | 46/67 | 70.1% |
| Socio-economic history | 25/67 | 37.3% |
| Current economic situation linked to its traditional character | 7/67 | 10.4% |
| Market reputation based on its traditional character | 7/67 | 10.4% |
| Traditional know-how in the selection of ingredients | 8/67 | 11.9% |
| Traditional know-how in the method of production | 36/67 | 53.7% |

very frequent in the specifications for PDOs and PGIs, as shown by previous research.⁷⁰

4. Oppositions, length of registration proceedings and amendments

As mentioned above, at the end of the domestic phase of application, the competent national authority submits the application file to the Commission. The latter has six months to examine it, in order to verify that it does not include ‘manifest errors’.⁷¹ If the outcome of the scrutiny is positive, the application is published in the Official Journal of the European Union.⁷² This act officially opens a three-month window in which a variety of stakeholders with a legitimate interest – foreign authorities, non-EU countries, natural or legal persons, and so on – can lodge a statement of opposition with the Commission.⁷³

Previous research shows that only 6% of applications for PDOs/PGIs are opposed at EU level.⁷⁴ By contrast, the present investigation reveals that 19 out of 67 TSG applications (28.3%) have been opposed. This surprisingly high figure may be explained by considering that, since TSGs focus on products based on specific recipes and/or raw materials, but are not substantively linked to a given place, they can exist in different versions and, above all, be produced in different countries. It is therefore understandable that it is pressing for EU Member States to oppose foreign applications that might restrict the possibility for their own producers to use a name because their local method of production does not respect the proposed specification. This does not happen as often in the case of PDOs and PGIs because these are based on a know-how that is specifically localised in one place. Therefore, potential disagreements are usually settled among local producers during the national phase, i.e. before the application is filed with the Commission.⁷⁵

⁷⁰ See Andrea Zappalaglio, ‘Quantitative Analysis of GI Registrations in the DOOR Database’ in Andrea Zappalaglio and others (eds), *Study on the Functioning of the EU GI System* (Max Planck Institute for Innovation and Competition 2022) 25-37 <https://www.ip.mpg.de/fileadmin/ipmpg/content/forschung/Study_on_the_Functioning_of_the_EU_GI_System.pdf> accessed 20 July 2022.

⁷¹ Regulation 1151/2012, art 50(1).

⁷² *ibid* art 50(2).

⁷³ *ibid* art 51.

⁷⁴ Zappalaglio, ‘Quantitative Analysis of GI Registrations in the DOOR Database’ (n 70) 39.

⁷⁵ For more on the complexities of the national phase of the application, see Flavia Guerrieri, ‘Cross-National Comparative Analysis of Procedural Laws and Practices in the EU Member States’ in Andrea Zappalaglio and others, *Study on the Functioning of the EU GI System* (Max Planck Institute for Innovation and Competition 2022) <https://www.ip.mpg.de/fileadmin/ipmpg/content/forschung/Study_on_the_Functioning_of_the_EU_GI_System.pdf> accessed 20 July 2022.

With regard to the average length of the registration process, the present analysis shows that registering a TSG takes approximately 33 months from the date of submission of the application to the EU Commission until its official registration.⁷⁶ The relatively high frequency of oppositions may help explain why the process is so slow.

Finally, 27 TSGs (40.2%) have been amended at least once. This figure shows that TSGs are dynamic instruments, capable of constant evolution.

IV. What exactly do TSGs protect? Six TSG product profiles

The previous sections focused on the functioning of TSGs as inferred from the content of the SDs. Now, the analysis will focus on the nature of TSG products, thus investigating what exactly this quality scheme protects. The research has revealed a scenario that is more nuanced than expected. This has been condensed into six not mutually exclusive ‘profiles’ that will provide an original view on this topic.

1. Profile 1: TSGs as last resort for generic/genericised GIs

Some TSG product names are purely generic indications. For instance, ‘Boerenkaas’ or ‘Jamón Serrano’ simply mean ‘Farmers’ Cheese’ and ‘Ham from the Mountains’ in Dutch and Spanish, respectively. In these cases, TSGs are practically the only option available to producers to provide some protection for their goods. In fact, given the generic nature of the indication, trade marks are essentially unavailable. In addition, the lack of a demonstrable link between the products and a specific place makes them impossible to register as *sui generis* GIs.

However, other TSGs include rather specific indications of geographical origin. For instance, ‘Pizza Napoletana’ refers to Naples and ‘Prague Ham’ to Prague. Indeed, the present research has determined that 18 out of 67 registered TSGs (26.8%) include a reference to a geographical location.⁷⁷ Moreover, it was shown earlier that 40% of

⁷⁶ The EU records do not provide information on the duration of the national phase of application. Hence, this aspect exceeds the scope of the present analysis.

⁷⁷ These are: File *Elena* (Bulgaria); Kayserovan Vrat *Trakiya* (Bulgaria); Lukanka *Panagyurska* (Bulgaria); Role *Trapezitsa* (Bulgaria); *Prazska Sunka* (Czech Republic); *Karljalampirakka* (Finland); *Pizza Napoletana* (Italy); *Amatriciana* tradizionale (Italy); Vincigrassi alla *Maceratese* (Italy); *Zemaitiskas* Kastinys (Lithuania); Bacalhau de Cura Tradicional *Portuguesa* (Portugal); *Bratislavsky Rozok* (Slovakia); *Belokranjska Pogaca* (Slovenia); *Idrijski Zlikrofi* (Slovenia); *Slovenska Potica* (Slovenia); Tortas de Aceite de *Castilleja de la Cuesta* (Spain); Traditionally Reared Pedigree *Welsh* Pork (U.K.); Traditionally Farmed *Gloucestershire* Old Spots Pork (U.K.).

the specifications for TSG products state that the know-how on which they are based was originally localised in a specific place.⁷⁸

Why then can these products, or at least some of them, not be registered as PGIs? The answer is that, despite not being generic in the beginning, they have become so. As observed in the Introduction, PGIs can be registered if the presence of one – or more – of these three linking factors is proved: (1) quality, (2) reputation, (3) other characteristic. In particular, previous research has shown that the reputational link is fairly flexible and its existence can be proved in various ways, including in the form of evidence of the history of the product and/or of its market reputation.⁷⁹ The fact that, in the above-mentioned cases, this kind of proof could not be provided in any way confirms the generic status of these names and means they can be defined as ‘failed GIs’ as they have lost their link to a place and turned into mere ‘styles’.⁸⁰

2. Profile 2: TSGs that preserve the recipes of products removed from their place of origin

This profile is a variant on that presented in the previous paragraph. In fact, goods do not acquire generic character only when they turn from indications of geographical origin into ‘styles’, but also when they are removed and displaced from their traditional place of manufacturing. In the latter scenario, TSGs perform an important task, i.e. providing recognition for products that have been displaced from the area with which they were traditionally associated.

In this regard, Poland presents an interesting case study. An interview conducted with a senior officer of the Polish Ministry of Agriculture revealed that TSGs have been used in Poland more than in other countries⁸¹ because: (1) the concept of ‘origin product’ is not particularly well-known in Poland; (2) unlike in Member States where GIs are more widespread, there is no longstanding tradition of producers’ associations in Poland; and (3) much traditional production was removed from longstanding areas of their manufacture. According to the interviewee, these last two points are the result of the economic model imposed on Poland during the Soviet regime.⁸²

Other case studies confirm this account. For instance, the specification for the Finnish product ‘Kalakukko’ reads:

After the Second World War, part of Karelia passed to what was then the Soviet Union, and the

population of the region was moved to other parts of Finland. Thus the art and tradition of making kalakukko spread throughout Finland.⁸³

3. Profile 3: TSGs that focus on methods of production rather than on the products themselves

PDOs and PGIs are defined as systems that protect ‘names’ that identify products with specific characteristics, in particular a substantive link to a place.⁸⁴ By contrast, the data presented above⁸⁵ shows that TSGs are predominantly defined by their methods of production, i.e. the recipes. Of course, this does not mean that in the context of PDOs/PGIs the methods of production are irrelevant. For instance, in the case of PDOs, the product – with some exceptions – must be entirely produced in the area designated by the specification, while, for PGIs, only one step of the process has to take place there. Furthermore, the history and nature of the methods of production can be used to establish the link between the product and its place of production. Finally, these represent a crucial component of the specifications. However, it is a fact that, while PDOs/PGIs are based on proof of an ‘origin link’, TSGs essentially provide protection for recipes and methods of production. As a result, it is possible to find TSGs that appear to codify and focus on methods of production, rather than on the actual goods.

For instance, the TSG register features several kinds of Belgian ‘Lambic’ beers.⁸⁶ These are produced using a peculiar process called ‘spontaneous fermentation’ that was traditionally carried out using ‘alembics’, which give the product its name. Indeed, this method of production is considered by some sources to be the oldest brewing method still in use in the Western world. It has been kept alive, especially in Belgium, in sometimes difficult social and economic circumstances.⁸⁷ Thus, today, the name ‘Lambic’ identifies the style of the beer but also the method of production that gives the product its distinctive characteristics. Another relevant example is ‘Moules de Bouchot TSG’. These are mussels grown on vertical stakes arranged in straight lines. Again, it is this ancient method of production that identifies the product itself. In fact, although the name of the product cannot be translated, these mussels can be produced anywhere in the EU.⁸⁸ Therefore, the TSG ‘Moules de Bouchot’ represents a method of production rather than a specific kind of mussel.

⁷⁸ ‘Kalakukko’ [2001] OJ C235/12, [4.3].

⁷⁹ See the definition of PDO and PGI, text to n 2.

⁸⁰ See Table 5.

⁸¹ ‘Kriek / Kriek-Lambic / Framboise-Lambic / Fruit-Lambic / Kriek / Kriekenlambiek / Frambozenlambiek / Vruchtenlambiek’ [1997] OJEC C21/07; ‘Lambic / Gueuze-Lambic / Gueuze / Lambiek / Geuze-Lambiek / Geuze’ [1997] OJEC C21/13; ‘Vieille Gueuze / Vieille Gueuze-Lambic / Vieux Lambic / Oude Geuze / Oude Geuze-Lambiek / Oude Lambiek’ [2016] OJEU C174/24; ‘Vieille Kriek / Vieille Kriek-Lambic / Vieille Framboise-Lambic / Vieux fruit-Lambic / Oude Kriek / Oude Kriekenlambiek / Oude Frambozenlambiek / Oude Fruit-lambiek’ [2016] OJ C174/24.

⁸² For a history of Lambic, see Jean-Xavier Guinard, *Lambic* (Brewers Publications 1990).

⁸³ Moules de Bouchot (n 62) [3.1].

⁷⁸ Table 7.

⁷⁹ Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) ch 4.

⁸⁰ This is indeed clearly stated in the specification for ‘Pizza Napoletana’: “‘Pizza Napoletana’ has become so widespread that everywhere, including outside Europe and in particular in Central America [...] and in Asia [...], the product in question is known by its name ‘Pizza Napoletana’, although the inhabitants sometimes do not have the slightest idea of the geographical location of the city of Naples.” See, ‘Pizza Napoletana’ (n 52) [3.8].

⁸¹ See Table 1.

⁸² Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) 154-55.

4. Profile 4: TSGs used as marketing tools

TSGs, just like PDOs/PGIs, are encountered by consumers as labels, and therefore also perform the function of marketing tools, contributing to the promotion of the protected goods on the market. Indeed, this is made clear by some specifications, which state that the protected name is not linked to the nature and/or qualities of the product but nonetheless possesses specific character because it is well known by consumers and has entered into common use. Examples of this are the Bulgarian TSGs ‘File Elena’ and ‘Role Trapezitsa’.⁸⁹ This article has already presented some figures that show the economic importance of the EU quality schemes on the marketplace.⁹⁰ More research is needed on the economic value of TSGs. However, this data confirms their potential as marketing tools, at least in cases where no other label is available.⁹¹

Finally, it has already been mentioned that 35 out of 67 TSGs (52.2%) have been registered by the 13 countries that joined the EU after 2003/2004.⁹² Although an in-depth analysis of the impact of *sui generis* GIs on these EU Member States would exceed the purpose of the present work, it can be hypothesised that, in these countries, in which agriculture often plays an important economic role, the registration of TSGs has played, inter alia, a strategic marketing role. Indeed, as confirmed by the case study of Poland presented above,⁹³ in these countries the concept of origin and origin link may still not be particularly well known and/or there is no tradition of cooperation among producers. In this scenario, TSGs may present themselves as useful and understandable tools for promoting local traditional products on the market.

5. Profile 5: TSGs that protect products of great national importance

The fact that TSGs are residual does not mean that the names that they protect are worthless. In fact, as indicated in the Introduction, this quality scheme protects some of the most famous products in the world, many of which have lost their substantive link to a place because they have become part of the heritage of a whole country.

Indeed, various TSG products are explicitly presented as ‘national dishes’. This is the case, for instance, of the Swedish ‘Falukorv’;⁹⁴ the Lithuanian ‘Lietuviškas Skilandis’⁹⁵ and the Latvian ‘Sklandrausis’.⁹⁶ TSGs such as ‘Pizza Napoletana’, ‘Bachalau de Cura Tradicional Portuguesa’, ‘Prague Ham’ and ‘Jamón Serrano’ are major representatives of the gastronomic heritage of their respective countries. Finally, the Finnish beer ‘Sahti’ is described as an ‘ethnobeer’, to highlight its specific features that are unique to the tradition in its area of origin.⁹⁷

National dishes are not the only relevant example, however. In fact, some TSG goods are described as essential

holiday foods, for instance the Slovenian ‘Prekmurska Gibanica’⁹⁸ and the Latvian ‘Jāņu Siers’.⁹⁹ Others, meanwhile, are presented as everyday products, important for people’s daily life. This is the case of the Hungarian ‘Tepertős pogácsa’,¹⁰⁰ for instance.

6. Profile 6: TSGs that prevent products from disappearing or losing their traditional characteristics

The last class of TSGs identified by the present research encompasses rare products or practices that need to be protected in order not to disappear. For instance, the ‘Traditionally Reared Pedigree Welsh Pork’ is an endangered species and is classified as a ‘rare breed’. Hence, the TSG contributes to its preservation.¹⁰¹

Furthermore, the quality scheme also plays an important role in an opposite, albeit related, scenario, which concerns products that are very popular. Here, a TSG can be used to codify the traditional production method, thus distinguishing it from other versions that can be found on the market. An example is ‘Amatriciana Tradizionale’.¹⁰² Pasta Amatriciana sauce is commonly sold in most EU Member States as well as in non-EU countries. Hence, the TSG codifies its traditional or ‘original’ production method, ingredients and recognised variants.

V. Why do TSGs not work? Two hypotheses

After having analysed the functioning of TSGs and provided a description of the nuanced nature of TSG goods, it is possible to tackle a key question – why do these labels not work? Indeed, despite the attention paid to them by the Commission and the positive impetus provided by new EU Member States, it is undeniable that the label has had only modest success. It is therefore expedient to reflect on the reasons why. In particular, the research will focus on two specific hypotheses.

1. Hypothesis 1: TSGs are partially absorbed by PGIs

There are some points of contact between PGIs and TSGs that suggest that the former may be absorbing the latter, at least to some extent. In particular, PGIs feature a flexible origin link that consists of the link between a specific place and the ‘quality, reputation and other characteristics’ of the product. Furthermore, PGI rules feature a very flexible locality requirement, according to which only one step of the production process must take place in the area of production designated by the specification.¹⁰³

⁸⁹ See, ‘Роле Трапезица / Role Trapezitsa’ [2020] OJ C26/5, [3.2]; ‘Филе Елена / File Elena’ [2020] OJ C73/11, [3.2].

⁹⁰ Section III.1.

⁹¹ For a more articulated reflection on this point, see Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) 154–55.

⁹² Text to n 38.

⁹³ Text to n 81.

⁹⁴ ‘Falukorv’ [2011] OJ C251/6, [6.8].

⁹⁵ ‘Lietuviškas Skilandis’ [2015] OJ C355/28, [3.8].

⁹⁶ ‘Sklandrausis’ [2012] OJ C349/23, [3.8].

⁹⁷ ‘Sahti’ [2001] OJ C125/5, [4.3].

⁹⁸ This specification quotes a poem according to which ‘[i]t has to be said that only a gibanica makes it a real holiday’; see ‘Prekmurska Gibanica’ [2015] OJ C235/16, [4.3].

⁹⁹ According to the specification, this product is associated with the solstice feasts and is regarded as a national treasure; see ‘Jāņu Siers’ [2015] OJ C204/22, [3.2], [4.3].

¹⁰⁰ ‘Tepertős pogácsa’ (n 61) [3.8].

¹⁰¹ ‘Traditionally Reared Pedigree Welsh Pork’ [2016] OJ C382/19, [4.3].

¹⁰² ‘Amatriciana Tradizionale’ (n 53).

¹⁰³ See Regulation 1151/2012, art 5(2). According to the EU guidelines the ‘production process’ includes every step from the sourcing of the raw materials until the end product. Optional operations such as packaging, slicing and grating are excluded. See European Commission, ‘Guide to Applicants’ (n 36) [3.4].

This combination of elements contributes to explain the success of this quality scheme, which, today, clearly surpasses PDOs in the number of registrations.¹⁰⁴ In previous research the author argued that, because of their characteristics, PGIs might be gradually absorbing PDOs.¹⁰⁵ Here, it is argued that the same trend can be found in the interface between PGIs and TSGs.¹⁰⁶ In particular, as mentioned earlier, in the context of PGIs, the origin can be proved merely by providing evidence of a reputational link between the product and the designated area. This can follow not just from the product's mere market reputation, but also from its history in the broad sense.¹⁰⁷ Furthermore, a recent study by the Max Planck Institute shows that the specifications for almost all registered PDOs/PGIs claim that the product is traditional in nature.¹⁰⁸

Hence, since PGIs – but also PDOs – overlap with TSGs in terms of traditional character, the substantive difference between them is represented by the origin link. However, as shown earlier, in the case of PGIs, there is a certain degree of flexibility in how the presence of the latter can be proved. It is therefore difficult for TSGs to play any function other than being a merely residual label for generic names. Theoretically, a stricter approach to examining the origin link might reduce the scope for PGIs, thus pushing producers to revive this quality scheme. This is unlikely to happen, however, for at least three reasons. First, the EU guidelines are indeed very general when discussing the nature of the origin link and how to prove it.¹⁰⁹ This limited guidance allows applicants a considerable margin of manoeuvre when drafting specifications, thus providing more ways to register a PGI. Second, although the registration procedures are harmonised overall by Regulation 1151/2012, analysis of the practices of the Member States demonstrates that national peculiarities still exist. The role of the Commission is indeed important to ensure the consistency and high quality of the registered specifications. However, according to Art. 50(1), the Commission's main duty is to scrutinise the applications and check for 'manifest errors' within a period of six months, as a general rule. Apart from the vagueness of the expression 'manifest error', the goal of the recent reforms of the EU *sui generis* GI system was to streamline the procedures.¹¹⁰ Although it is early to express a substantive judgement on this, there is a chance that the strategy adopted might limit the power of the Commission to enforce stricter standards and enhance uniformity.¹¹¹ Lastly, there is no sign that the EU will adopt an approach aimed at limiting the proliferation of

registered GIs, especially considering that they currently represent an important part of EU IP policy, both in the internal market¹¹² and in its external relations.¹¹³

2. Hypothesis 2: despite the efforts, TSGs remain simply uninteresting

Another reason that could help explain why TSGs have not been successful is simple: producers are not interested in them. In this regard, four observations can be made.

Firstly, as explained in the Introduction, TSGs are not considered to be IPRs. This makes their enforcement particularly challenging and possibly not worth the effort. Indeed, in spite of the fact that Art. 24 of Regulation 1151/2012 grants them a level of protection at least partially similar to that of a PDO/PGI,¹¹⁴ no case concerning TSGs has been brought before an EU court thus far. Although more research would be welcome, this fact might suggest that even the producers of internationally known products, e.g. the producers of 'Prague Ham' TSG, do not find it useful to enforce their TSG against producers that use the same, or a similar, registered name despite following a non-original recipe. Moreover, the fact that TSGs are not IPRs make them extremely challenging to protect in non-EU countries because it is highly unlikely that they will be recognised as enforceable rights outside the EU.

Secondly, TSGs, in contrast to PDOs/PGIs, are not origin labels. They are therefore incapable of performing the functions that are usually associated with the latter. More specifically, GI theory has demonstrated that origin labels can support local communities, especially those living in disadvantaged areas; foster rural development; keep niche productions alive, thus preserving local heritage; empower the producers and stimulate cooperation among different stakeholders, such as producers, sellers, local institutions, universities, and so on.¹¹⁵ By contrast, TSGs are not linked to a specific place and, therefore, do not represent a specific community. Hence, they do not possess the strategic

¹¹² For instance, they play a role in the EU Green Deal and, in particular, in the 'Farm-to-Fork Strategy'; see European Commission, 'Farm to Fork Strategy: For a Fair, Healthy and Environmentally-Friendly Food System' (2020) 13-14 <https://ec.europa.eu/food/sites/food/files/safety/docs/f2f_action-plan_2020_strategy-info_en.pdf> accessed 20 July 2022.

¹¹³ For examples concerning the complex role that GIs play in the external policy of the EU, see, *inter alia*, Roxana Blasetti, 'Geographical Indications: A Major Challenge for MERCOSUR' [2020] GRUR International 1113; Bernard O'Connor and Giulia de Bosio, 'The Global Struggle Between Europe and United States Over Geographical Indications in South Korea and in the TPP Economies' in William van Caenegem and Jen Cleary (eds), *The importance of place: Geographical Indications as a Tool for Local and Regional Development* (Springer 2017).

¹¹⁴ In particular, art 24 specifies that TSGs are protected against 'misuse, imitation or evocation' as well as 'any other practice liable to mislead the consumer'. This partially mirrors art 13(1)(a) and (d). Instead, the provisions of art 13(1)(b) and (c) are not applicable to the context of TSGs as they imply the presence of an origin link.

¹¹⁵ For an international perspective on the effects of GI protection, see Giovanni Belletti and Andrea Marescotti, 'Evaluating Geographical Indications' (FAO and Department of Economics and Management, University of Florence, 2021). For some recent contributions on the effects of *sui generis* GIs on rural development in the EU, see, *inter alia*, Filippo Arfini and others, 'Are Geographical Indication Products Fostering Public Goods? Some Evidence from Europe' (2019) 11 Sustainability 272; Riccardo Crescenzi and others, 'Geographical Indications and Local Development: The Strength of Territorial Embeddedness' (2022) 56 Regional Studies 381.

¹⁰⁴ Text to n 7.

¹⁰⁵ Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) 155-58.

¹⁰⁶ This argument was partially anticipated in Andrea Zappalaglio, Flavia Guerrieri and Suelen Carls, 'Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?' (2020) 51 IIC 31, 65.

¹⁰⁷ Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) 167-72.

¹⁰⁸ Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) 33-35.

¹⁰⁹ European Commission, 'Guide to Applicants' (n 36) [5].

¹¹⁰ This was one of the main goals of Regulation 2021/2117.

¹¹¹ Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 3) 207-08.

importance or create the same added value as PDOs/PGIs, and this makes them less appealing.¹¹⁶

Thirdly, in some instances it is hard to understand how TSGs can play a practical role on the marketplace. For instance, ‘Pizza Napoletana’ is a product that must be made exclusively by hand and consumed immediately after preparation. In particular, the specification excludes freezing or vacuum packing.¹¹⁷ This means that this label is substantively unusable on the market. In fact, no economic data on this TSG can be found on the relevant databases – it is as if it did not exist in practice.¹¹⁸ This suggests, however, that the reason for registering this TSG was not related to the market but to the desire of the producers to codify the correct recipe of the product. This is an important point that will be discussed in the next Section.

Fourthly, and finally, TSGs are simply little known and understood both by producers and consumers. This is a longstanding problem, highlighted by the EU institutions on multiple occasions.¹¹⁹ A recent survey conducted by the EU Commission states that, with regard to consumer awareness, TSGs and PDOs share the same – low – level of awareness: 14%.¹²⁰ In spite of this, origin labels remain clearly more attractive for the reasons presented earlier. In fact, the associations that manage TSG products try to switch to PDOs/PGIs whenever theoretically possible. For instance, in 2016, the association of producers of ‘Jamón Serrano’ filed an application for a PGI. Whether this will be granted is still unclear. However, this example confirms that TSGs are unlikely to become as popular as PDOs/PGIs in the future.¹²¹

VI. What future for TSGs? Arguments for and against TSGs

On the basis of the previous discussion, it is now possible to tackle the last question of this article. What is to be done with TSGs? History shows that the Commission has always supported this quality scheme despite its very limited success.¹²² Is its support justified? It depends on what one wants TSGs to be, i.e. on the function that they can and should realistically perform.

The role that TSGs play on the market is indeed extremely limited. The previous sections have shown that, apart from some evidence of value premium,¹²³ TSGs are

not widely used, do not provide IP protection, and are essentially impossible to protect outside the EU. In some cases, it is hard to determine their practical function on the marketplace. Furthermore, the ability of consumers to recognise the PDO/PGI and TSG labels and to understand their meaning is limited.¹²⁴ This scenario may suggest that it would be rational to discontinue this quality scheme, in order to simplify the EU system and make it more understandable for consumers. In this regard, it is relevant that the recent European Commission Proposal for a Regulation on non-agricultural GIs features only the ‘Geographical Indication’ paradigm, thus endorsing a simplified approach to protection.¹²⁵

However, the present research has also focused on a different side of TSGs. That is, it has shown that they perform the important function of distinguishing traditional products that cannot be registered as PDOs/PGIs. Observed through this specific lens, the small number of registered TSGs as well as their limited strength on the market should not be considered sufficient justification for doing away with this quality scheme. It might in fact be important for various purposes: for instance, for preserving the gastronomic heritage of a country; for fixing traditional recipes; and for promoting and providing recognition for these goods and the know-how on which they are based. It thus helps keep their production alive and rewards producers for their investments. Furthermore, despite not being origin labels, TSGs can nonetheless promote diversity and the adoption of specific high standards.

TSGs could therefore be intended as a niche label, which, in the EU, plays a role analogous to that of the ‘Representative List of the Intangible Cultural Heritage of Humanity’ at international level. The purpose of this scheme, administered by UNESCO, is to collect elements that demonstrate the diversity of the registered heritage and raise awareness about its importance.¹²⁶ TSGs may be presented as something that can perform a similar function, albeit in a different context.¹²⁷

In conclusion, the author does not have a strong opinion on whether TSGs should be retained or discontinued. For the reasons analysed in the previous Section, it is unlikely that their importance on the market will increase. However, this quality scheme may still have a future if intended as a system aimed at linking the names

¹¹⁶ For a recent assessment of this point, see European Commission, ‘Commission Staff Working Document: Evaluation of Geographical Indications and Traditional Specialities Guaranteed protected in the EU’ SWD(2021) 427 final (2021) 45-46.

¹¹⁷ ‘Pizza Napoletana’ (n 52) [3.6].

¹¹⁸ In particular, the Italian database ‘Qualigeo’ collects figures, data and news on every Italian PDO, PGI and TSG. However, it is unable to provide any statistics on the use of the TSG ‘Pizza Napoletana’ or on its economic value and generated gains. This is very unusual and indeed telling of the real impact and diffusion of this TSG. See Qualigeo, ‘Pizza Napoletana TSG’ <<https://www.qualigeo.eu/en/product/pizza-napoletana-tsg/#tab-ambiti-statistiche>> accessed 20 July 2022.

¹¹⁹ Text to n 23.

¹²⁰ European Commission, ‘Evaluation of Geographical Indications and Traditional Specialities Guaranteed’ (n 6) 36.

¹²¹ On 4 September 2019 a representative of the *Fundación Jamón Serrano Español* replied to some structured and semi-structured questions that we had prepared, and confirmed that the association had applied for a TSG because in 1996 it had not yet been established that non-geographical names could be protected by *sui generis* GIs.

¹²² See Section II.

¹²³ Text to n 41.

¹²⁴ European Commission, ‘Evaluation of Geographical Indications and Traditional Specialities Guaranteed’ (n 6) 36.

¹²⁵ European Commission ‘Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754’ COM(2022) 174 final. We proposed a simplified approach to the protection of non-agricultural GIs based on PGIs only in Zappalaglio, Guerrieri and Carls (n 106). However, the draft of the new set of rules that will repeal Regulation 1151/2012 still features TSGs. See, European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on European Union geographical indications for wine, spirit drinks and agricultural products [...]’ COM(2022) 134 final/2 (2 May 2022).

¹²⁶ See UNESCO, ‘Purpose of the Lists of Intangible Cultural Heritage and of the Register of Good Safeguarding Practices’ (*Intangible Cultural Heritage*) <<https://ich.unesco.org/en/purpose-of-the-lists-00807>> accessed 20 July 2022.

¹²⁷ This idea is not new. Indeed, some EU bodies, such as the Committee of the Regions, proposed something along these lines in 2011. See text to n 31.

of traditional products to their original recipes, and thus preventing relevant pieces of European gastronomic heritage from being left without any form of recognition.

VII. Conclusions

This contribution has presented the results of an in-depth analysis of the nature, functioning and flaws of the TSG quality scheme and has discussed its possible future.

In particular, Section II focused on the history of this label, specifically highlighting how the EU institutions have always supported it and have tried to find a way to make it more effective and successful.

Section III presented the results of the first qualitative assessment of the contents of the SDs for the TSGs registered. Among other things, the analysis has revealed that: (a) with regard to requirements for registration, more than 80% of SDs state that the TSG products are traditional because of the character of their method of production, whereas only one in five focuses on the characteristics of the raw materials. By contrast, the two requirements related to the names of the product, i.e. identifying the traditional character of the product or traditionally related to it, are both regularly used, the latter more frequently; (b) very few TSGs require ingredients sourced from a specific area, while in almost all cases their origin is indifferent; (c) approximately 40% of SDs state that the method of production is historically rooted in a specific place; (d) the traditional character of a TSG product is for the most part proved by making reference to its cultural history and to

the nature of the relevant know-how and, finally, (e) the number of oppositions filed during the EU application phase against the registration of a TSG is extremely – and surprisingly – high, i.e. approximately 28%.

In Section IV, the research presented six different ‘profiles’ of TSG products. These were aimed at providing a nuanced image of the nature of and functions played by TSGs, with a specific focus on what they protect and how they describe the object of protection.

Section V presented two hypotheses that might contribute to explaining why this quality scheme has not yet been successful. In particular, the article has reflected on (a) whether TSGs are *de facto* absorbed by PGIs, and (b) whether, despite the efforts of the EU institutions, TSGs remain uninteresting to and little known by producers.

Lastly, Section VI reflected on the possible future of this quality scheme. In particular, the paper concludes that TSGs have never had success on the market, especially compared with PDOs/PGIs. Therefore, from a purely market-oriented perspective, they are unlikely to become more relevant in the future and may be discontinued, thus simplifying the EU quality schemes. However, TSGs may also be conceptualised as a system to provide recognition for important components of the EU gastronomic heritage that might otherwise lose their traditional recipes or disappear altogether. From this point of view, TSGs may still be important, as they would protect, codify and promote pieces of European traditional know-how that would otherwise be left without any form of recognition or support.