

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).

All EU regulations concerning PDO and PGI are automatically incorporated in the national legislations of Member States, but with major differences in institutional settings.⁸ In France, PDOs already existed in the form of *appellation d'origine contrôlée* and only PGIs had to be introduced. A special regulation, which had huge potential ramifications for the nature of French GIs, was set up to facilitate the implementation of PGIs: to benefit from a PGI, all candidate products had first to be certified according to “Official Quality” rules, a system of public certification managed by the Ministry of Agriculture, of compliance with characteristics or rules previously defined in a given specification. Two Official Quality labels were available: the “Label rouge” certification, created in 1960, indicating superior quality, and the “Product conformity certification”, which was created in 1988.⁹ Conversely, when associated with a geographical name, a Label rouge or Product conformity certification had to be registered as a PGI. PGIs were controlled according to the scheme in place for “Official Quality” labels, i.e., by a private third-party certification organization, accredited under the EN 45011 standard.

As a consequence, despite the participation of INAO representatives in decision making concerning the registration of PGIs, PGIs were initially managed directly by the Ministry of Agriculture and not by INAO. In 1999, PGIs were entirely transferred to INAO,¹⁰ and, in 2006, the condition requiring the pre-existence of an Official Quality label was removed.

Once PDOs or PGIs have been examined at the French level under the subsidiary principle of the EU,¹¹ they are sent to the EU Commission by the French Ministry of Agriculture, which in France is the exclusive interlocutor of the EU.

The EU Commission scrutinizes the application to check that it is justified and, if the application meets the required conditions, it is published in the Official Journal of the EU.¹² If there is no opposition, the procedure culminates in the PDO/PGI being registered in the EU Community Register. If the PDO or PGI is refused by the EU Commission, it loses the right it had been granted in the Member State.¹³ To benefit from domestic protection, it is thus mandatory to register with the EU.

In 2006, which was a major year in the history of GIs in Europe (Thévenod-Mottet & Marie-Vivien, 2011), both the EU Regulation and the French legal framework were amended. The EU regulation 2081/92 was amended to ensure compliance with the 2005 decision of the WTO Dispute Settlement Body.¹⁴ Besides amendments concerning access to protection in the EU for foreign GIs, the nature of controls has been specified with the introduction of third-party product certification bodies as defined in the EU Food law in place of a private body.¹⁵ The general EU food law principles reshaped the organization of controls by differentiating between what fell within the ambit of public authority and what could be delegated to private bodies. Historically, the role of public authorities in the organization of controls was pronounced by the EU Court of Justice which, following the Exportur case, decided that the quality requirements or production standards should be ascertained by a public authority.¹⁶ There was an attempt to defend this position before the WTO panel, but there was little evidence of the benefit of a system founded on public rather than private monitoring. WTO panel condemnation of the requirement of the State involvement in controls in foreign countries strongly influenced the new EU Regulation in 2006.¹⁷ The new EU regulation 510/2006 provides for control at two levels: the first is at the macroscopic level, and enshrines the principle of overall control of the whole PDO/PGI system, the so-called “official controls”,¹⁸ that shall be ensured by the competent authority of

the Member State. The second, at a microscopic level, concerns the monitoring of compliance with the specifications for each PDO/PGI, which is ensured by the competent authorities of the Member State and/or by a product certification body, an independent third party,¹⁹ accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65.²⁰ The term “certification body” was introduced by the 2006 regulation and marks the inclusion of PDO/PGI in the general standards for product certification (Gonzales_Vaqué, 2006). When Member States choose a public entity to verify compliance with the specifications, they shall offer adequate guarantees of objectivity and impartiality.²¹

At the same time, under the false pretext of EU obligations, the French legal framework was substantially amended by the Ordinance of 7 December 2006 *relatif à la valorisation des produits agricoles, forestiers ou alimentaires et des produits de la mer*, which, based on the alleged need for adjustment to the EU Regulation 510/2006, reorganized the whole system of protection of GIs. INAO became the National Institute of Origin and Quality, and its domain of competence was extended to other quality signs such as “Label Rouge”, guaranteed traditional specialties and organic agriculture.²² INAO continues to be a multilayer institute.²³ It has (i) 25 local branches²⁴ (18 in 2013) working with producers and decision-making bodies; (ii) five national committees in charge of the approval of labels of quality and origin: a committee for appellations for wines and spirits, a committee for GIs for wines and ciders, a committee for appellations for dairy products and food and forestry, a committee for PGI, Label rouge and guaranteed traditional specialties, and a committee for organic agriculture (Kieffer, 2007).²⁵ All the national committees bring together representatives of producers/processors engaged in the relevant products and benefiting from PDO/PGI (or other quality labels), who account for at least 50% of the members of the committee, qualified experts and members of Ministries and governmental agencies. The structure of INAO was completed with an approval and control board that supervises official controls and enacts control principles for all products. Finally, the top governance level of INAO is the governing board, which decides on strategy and on the budget. Around 250 civil servants in charge of legal and technical expertise at the national and local level implement INAO strategies. In spite of apparent continuity of the composition of INAO as a mixed public/private body, the 2006 reform profoundly modified INAO's role in the definition and control of PDO/PGI specifications.

3. THE DECLINE OF INAO'S CONTROL OF PDOS IN FAVOR OF PRIVATE THIRD-PARTY CERTIFICATION BODIES

One of the essential pillars of the protection of GIs in Europe is the control of the compliance of the product with its specification, which, in France, led to the creation of the “*appellation d'origine contrôlée*” in 1935.

The EU Regulation 510/2006 specified the nature of the controls and opened the door to private certification bodies. Although it was not mandatory, France chose to shift from controls undertaken by the competent public authority, INAO, to controls by certification bodies. The objective was to meet the expectations of consumers who often questioned the impartiality and the continuing guarantee of effectiveness of controls, and to reduce public spending. It also allowed harmonization of the diverse control and certification mechanisms between PGIs and PDOs, which before 2006, were very different.

(a) *The situation in France before 2006*(i) *The previous PDO approval procedure*

Before 2006, products that benefited from a PDO were subject to an approval procedure that involved control of the production conditions as well as of the products.²⁶ At the initiative of INAO, the approval procedure was defined in the Rural Code, according to specific provisions for each PDO, olives, nuts, or wine, for example (Olszak, 2008). There were thus no common rules of control for all PDOs. INAO could delegate all or part of the approval procedure to an organization it authorized. In practice, the producers' associations carried out checks on production conditions, while authorized organizations carried out tests on the product, such as screening of characteristics that could be identified in an objective manner (e.g., moisture content for lentils) or sensorial evaluation, which was more subjective. The organization for tests of the product could be the producers' association itself, who would then be in charge of controlling the conditions of production and the characteristics/sensorial properties of the product.

Approval of PDO products possibly included a "declaration of PDO capability" that focused on a farm's production and processing facilities.²⁷

In the "Volaille de Bresse" PDO, for example, an agreement was reached in 2005 between the local INAO office and the "Association of Farmers and Meat Processors of Bresse Poultry" to define the number and nature of the checks on breeding and fattening conditions. Farmers and meat processors joined a tasting committee, and organized the inspection of the product under INAO supervision. The product was tasted following guidelines established by a specialized sensorial laboratory. When farmers received a "non-conformity" warning, an INAO technician would come and help them improve their production conditions. After two warnings, the "Association of Farmers and Meat Processors of Bresse Poultry" would be consulted before INAO withdrew the farmer's right to use the PDO (Bérard, 2012).

(ii) *The former certification of PGIs*

The former Rural Code stated that checking compliance with PGI specifications was the responsibility of INAO, which was free to delegate it to an approved certification body.²⁸ Because of the link between PGIs and official quality labels, in practice, PGIs were checked by the certification body in charge of the label. Certification bodies were required to guarantee impartiality and independence, they were not supposed to be producers, manufacturers, importers, or sellers of similar products, and they had to demonstrate the ability and effectiveness of their control.²⁹ The pairing of PGIs with labels thus introduced the practices of control by certification bodies in the field of GIs, and at the same time, in INAO.

(b) *The French reform in 2006*

Although control of GIs by private third-party certification bodies was introduced in France only in 1994 and only for PGIs, in 2006, the decision was made to apply the same system to PDOs.

In 2002, a "Label rouge" poultry producer, who was convinced a third-party control system was appropriate, but who knew little about PDOs, was nominated by the government to be the new chairman of INAO. In 2003, a report by the National Food Council (*Avis sur le développement des signes d'identification de la qualité et de l'origine des produits agricoles et alimentaires, nationaux et communautaires*, 2003),

recommended a shift toward a new system of control able to ensure competency, independence, and impartiality. The new system should combine the specificity of GIs: INAO's responsibility as a public authority, the responsibility of the producers, and private third-party implementation.

The French Ordinance of 2006 thus stipulates that INAO is the competent authority responsible for official controls, i.e., the macroscopic level of control.³⁰ To this end, an approval and control board was created within INAO, which defined the control principles to be applied by all PDO/PGIs, and to this end, approves and regulates certification bodies and approves control plans for each PDO/PGI. INAO approval of the certification bodies is not required by the EU regulation but shows that France still wants INAO to be involved in the controls. Certification bodies shall also be accredited by the French Accreditation Committee (Cofrac) in accordance with EN 45011.³¹

In collaboration with the appropriate producers' organization, the certification body draws up a plan for the control of each PDO/PGI.³² The certification body then sends the control plan to INAO³³ approval and control Board. The inspection plan is then sent to the producers' organization which, in turn, sends it to all producers and processors.³⁴ The certification body decides on the granting, maintenance, and extension of certification. It takes action against violations of specifications and can, after having allowed producers/processors to express their opinion, suspend, or withdraw certification.³⁵ The certification bodies inform INAO of any decision resulting in losing the right to use a PDO or PGI.³⁶ All costs incurred toward monitoring compliance with the specification shall be borne by producers/processors.³⁷

The sensory tests, which mainly involve tasting and are often criticized as being subjective, were maintained for PDOs and are carried by a panel made up of skilled producers and experts who can ensure the inspection of the products is independent and impartial.³⁸ The forming of the panels and training of the members are the responsibility of the producers' organization concerned. These panels still play an important role in the characterization of the typicality of PDOs. They allow the validation of the know-how of the producers. "Even if physical-chemical tests do not reveal non-conformity, the product may be refused if the tasting test is not satisfactory. The tasting panel is an ingenious idea, as it allows some cultural dimension in the validation of PDO" a member of staff of a certification body told us. This tasting panel generally includes "bearers of memory", which guarantees the inclusion of local criteria.

In addition to external controls by the certification body, the control plan includes auto-controls by producers/processors, and internal controls by the producers' organization. Internal controls using the same checklist as the one used by the certification body may be implemented by staff of the producers' organization on behalf of the certification body, which changes the relations between the producers and their organization. In the case of "Volaille de Bresse", a member of the staff of the producers' organization recognizes that the relations with the farmers have been altered: "I am sorry, but when I encounter non-conformity, I'm obliged to order corrective action. In the framework of an inspection, I have to check. I would prefer to support them in their production practices". When the staff arrives on the farm, she warns the farmer: "take care, I am no longer your advisor, but an inspector".

To solve any problems that may have arisen in the new inspection procedures, each year, INAO meets the producers' organization and the certification body to share their experience over the past year and if necessary, to improve the proce-

dures. In this case, INAO regulates actions undertaken by others, while playing only a marginal role in the control activities themselves.

(c) *Exceptions to the procedures for PDOs*

For those PDOs who so wished, it was possible that compliance with specifications was checked by an inspection body, which in contrast to certification bodies, still functions on behalf of and under the authority of INAO, while offering guarantees of competence, impartiality and independence.³⁹ The controls are the same as those made by the certification body, but in the case of non-conformity, the inspection body does not impose the sanction but only reports to INAO, who makes the decision and takes the necessary measures against violations.⁴⁰

As an inspection body works more closely with INAO than a certification body,⁴¹ in 2006, 80% of producers' organizations of PDO products chose this option.

We observe here a residual interest of the State in the control of specifications, but it tends to be more of an exception (Olszak, 2008), which since July 2013, has been limited to PDOs in the wine sector.

4. THE DECLINE OF INAO IN DEFINING GI SPECIFICATIONS

The content of the GI specification describing the specificity of the product needs to be combined with the content of the control plan, a necessary characteristic of GIs (Allaire *et al.*, 2011; Teil, 2014).

Therefore, in France, changes in the management of controls have led to changes in the drawing up of GI specifications, also called codes of practice. The originality of the combination of the State and producers in INAO was mainly in the recognition of GIs, but since the reform of 2006, which marginalized local INAO offices in controls, their support in drafting the specifications is also declining, upsetting the balance in the sharing of responsibilities between public and private stakeholders.

(a) *The first step: almost "private" drafting of the GI specification by a group of producers*

In France, since the creation of the National Committee for Wines and Spirits in 1935, (the ancestor of INAO), the definition of the conditions of production of the appellation of origin, and later of the PDO/PGI specification, has always been driven by producers'/processors' organizations, who wrote the first draft in collaboration with local INAO offices who provided technical and legal support.

As control plans have been prepared by the certification organizations since 2006, the specification, which is closely linked to the control plan, is also increasingly influenced by the certification bodies and less by the local INAO staff, who only take part as advisors. Second, the 2006 reform places a new obligation on producers, who have to join an Organization for the Defense and Management of the PDO/PGI. This organization, which is hereafter referred to as Producers' Organization, shall have fair representation of all kinds of operators (producers and processors) who contribute to the elaboration of the product's typicity and shall be approved by INAO.⁴²

Such producers' groups existed before 2006, but there was no obligation to join them (Casabianca, de Sainte-Marie,

Prost, & Dubeuf, 1998), and some GI producers refuse to be members (and hence to pay for) other activities undertaken by the Producers' Organization such as providing technical advice, or support for marketing. There have also been reports of PDOs in which several producers' associations were in conflict (Olszak, 2007).

Strengthening the representation of the producers through mandatory membership of the Producers' Organization was motivated by the increasing number of tasks facing the Producers' Organization, in particular, regarding the drafting of the initial specification of the GI.

Indeed, for some of the older appellations of origin, the definition of the conditions of production was quite basic, with a mere delimitation of the geographical area, while the concept of specification or code of practices was not included. However, since 1990 and the extension of the AOC to all products and not only wines and spirits, the task of drafting the conditions of production shall be more detailed and shall be consistent with the wishes of all the producers and processors, who shall be brought together as soon as possible.

In addition, the Producers' Organization ensures the proper use of the GI by producers following the implementation of the control schemes, updates the register of operators, and takes any legal actions in court.⁴³

The pairing of the content of the specification and the control plan combined with the stronger Producers' Organization led to a stronger partnership between the Producers' Organization and its certification body and to a less important role for the local INAO offices, which have been reduced in number and in their staff, with the controversial cancellation of seven local centers out of the original 25, decided in 2013.⁴⁴

(b) *The second step: "mixed privat/public" scrutiny of PDO/PGI applications*

The following procedure includes scrutiny of the PDO/PGI proposed code of practices by the appropriate national INAO committee to ensure conformity with the definition of PDO/PGI.

The five national INAO committees represent the decision-making level, and meet three to four times a year. They are composed of representatives of the Ministry of Agriculture and of the Ministry of Finance, i.e., the administration of fraud, and of at least 50% of producers/processors involved in the PDO-PGI sector concerned. For example, the national committee for the PDO of dairy products and food and forestry comprises one representative of each of the four other national committees, one representative of the board of control and approval, 42 representatives of producers, processors, and traders in dairy products, food and forestry who already benefit from a PDO or a PGI, six representatives of public authorities and a maximum of eight experts including representatives of consumer organizations, retailer organizations, certification bodies, researchers, and other professional representatives.⁴⁵ Among the representatives of the "producers" are some representatives of processing industries (dairy processing firms, mills, meat processors, etc.). The "expert" contingent includes some industry or trade representatives.⁴⁶

All the members of the national INAO committees are nominated for a period of 5 years by the Minister of Agriculture from a list presented by the Producers' Organization. The composition of the national INAO committees is thus a compromise between the views of the Minister and those of the organized agricultural profession. Yet, once the committee is

formed, the national committees confer a pro-eminent role on the producers.

Each national committee delegates its tasks to a “permanent commission” composed of maximum 20 members of the national committee, who are elected after being proposed by the chairman of the committee. The permanent commission meets from a minimum of six times a year up to once a month and deals with ordinary questions on behalf of the national committee.⁴⁷ Since this commission is an emanation of the committee, producers continue to play an important role.

The permanent commission of the national committee receives the application for a PDO/PGI and decides if the process should continue; if so, the application is examined by the national committee, who then designates some of its members to form an enquiry committee, i.e., a working group in charge of inspecting the case in the field, with the support of the local INAO staff. The enquiry committee and the Producers’ Organization collaborate on the proposed PDO/PGI specification and decide what kinds of requests they should expect from the national committee, the European Commission, and whether there is any risk of refusal. This shuttling back and forth between the enquiry committee and the Producers’ Organization can last several months or even years, but ensures that a wide consensus is reached concerning the PDO/PGI. When the PDO/PGI application is approved by the national committee, there is a public consultation. In the case of opposition, the enquiry committee negotiates the appropriate amendments with the opponents and with the Producers’ Organization.

The national committees and their permanent commission can only debate the PDO/PGI proposals listed on the agenda,⁴⁸ which is drawn up by the president of the national committee.⁴⁹ However, in practice, the agenda is drawn up by the INAO central services, and has already been discussed with the different Ministries involved (Agriculture, Food, Economy). When a PDO/PGI application does not satisfy all the requirements or raises some local or political issues, its discussion in the national committee may be postponed, which can lead to considerable delays before the PDO/PGI is finally recognized.

When a PDO/PGI specification is approved by its respective national committee, it is forwarded by INAO to the Minister of Agriculture who shall approve it and forward it to the EU Commission. The Minister is not allowed to amend the content of the specification, he/she can only refuse, or delay, the approval of the PDO/PGI and its transmission to the EU.⁵⁰ The content of the PDO/PGI specification is thus decided at national level by representatives of the producers, who benefit from the fact they are in the majority.

Since the EU Regulation for the protection of PDO/PGI in 1992, the power of the Ministry of Agriculture as the sole interlocutor of the EU Commission, has increased considerably, as after almost 15 years of experience with PDO and PGI, the European Commission intervenes more accurately in the scrutiny. Indeed, in 1992, a simplified procedure for automatic registration with the EU of all PDO and PGIs pre-existing in the Member States was set up,⁵¹ i.e., with no scrutiny by the EU Commission. At this point, the EU Commission started to examine PDO/PGI applications, relying mainly on the domestic procedures. But, since 2006, the EU Commission is increasingly commenting on PDO/PGI applications, requesting additional data and even refusing applications, as it did in the original proposal for a PDO for Châtaigne d’Ardèche.⁵²

In France, the Ministry of Agriculture is the only body that interacts directly with the EU Commission and thus has more knowledge of the criteria used by the EU commission to

decide to grant or refuse a PDO/PGI. This means that the representatives of the Ministry of Agriculture on the national committees have more power to influence the decision on the grounds of possible refusal by the EU Commission. This is to the disadvantage of the central services of INAO who consequently do not have much to contribute to the National Committees compared to previously, when the European procedure played a less prominent role.

5. DISCUSSION

The use of geographical names as public goods represented a breakthrough for the moralization of markets by protecting a collective interest and the well-being of the population. With the internationalization of GI worldwide, there is growing debate about the governance of GIs at national level. How can this public good be reconciled with the logic of competition in a free market in which standard procedures, and normalization of the contents are increasing? How should a state interact with private stakeholders in the regulation of such a public good? In France, the birthplace of the appellation of origin, the debate has crystallized around changes in the joint public–private national institute for origin and quality, a unique system of monitoring GIs.

We have shown that the governance of GIs in France changed dramatically in the last decade under the influence of the internationalization of GIs. The specificity of INAO, which was originally created for appellation of origin, was jeopardized by the introduction of the concept of PGI, which in France, has been linked with Label rouge or with the certification of conformity, thus opening the door to a different form of governance. The practice of agricultural third-party certification and the examination by the Ministry of Agriculture of Label rouge and of certification of conformity has influenced the implementation of the PGI concept since 1994, and, since 2006, has also influenced the appellation of origin concept. The pairing of Label rouge and PGI, which only lasted 12 years, was nevertheless long enough to change the appellation of origin into a certified standard, with the Ministry of Agriculture and the private certification bodies taking the lead rather than INAO.

Next, we discuss the implications of the decline of INAO, thereby highlighting the complexities of finding the most appropriate system for the regulation of the link to the origin.

(a) *How to monitor the controls of the link to origin?*

In response to the absence of a common procedure for monitoring the compliance of the product with the PDO/PGI specifications, the French 2006 reform standardized all procedures based on the procedure in place for PGIs, even if this was the most recent. Allowing control by certification bodies was a French decision, as the EU Regulation in 2006 did not did not make this mandatory.

But the choice of monitoring control by certification bodies was more an automatic consequence of the decision to pair PGI with Label rouge in 1994 than the result of serious thought about what is the most suitable control system.

Yet, the decision matched the opinion of civil society, which was apprehensive that the controls, although officially under the authority of INAO, which we can call a “public third-party control” were, in practice, delegated to producers’ associations and thus considered to be insufficiently impartial, especially concerning wines for which “arrangements” between producers were notorious (Olszak, 2007). The introduction of private

third-party certification is not so much the end of INAO's responsibility in the controls as the end of the practice of delegating the organization of controls to producers' organizations. The philosophy of controls has been transformed from a peer review into certification by third parties.

Beyond this call for impartiality, we assume that the declining role of INAO is mainly due to the reduction in INAO's budget, which was 20 million euros in 2007 but only 16 million euros in 2013 despite the fact INAO's mandate was extended to include more quality labels. At a time of neo-liberalism and a strong policy in favor of reducing public spending in France, it is logical for the State to externalize the costs of controls.

What are the consequences?

(i) First, third-party certification raises the problem of the standardization of GIs. Third-party certification was used for "Label rouge" which is a standard. The checklist for a standard is not designed to assess the skills of the producer but to check if the product complies with a predetermined standard, the development of traceability linked with that of the standardization process (Rot, 1998). Do certification bodies check the link to the origin, i.e., typicity and specificity? Can a very normative control system comprising a checklist with measurable technical criteria assess the typicity of a product? Third-party certification is an "industrial" certification process; it undermines the traditional "domestic" aspect of GI. Before 2006, for PDOs, in the whole production process, only the steps that mattered in terms of the link with origin needed to be defined in detail. Regarding products, only the typicity criteria were subject to approval. Typicity check consisted in checking that the product was really part of the family to which it claimed to be attached. PDOs recognize local and constant usages, which are collective. It is distinct from the assessment of conformity used for a standard. But with the introduction of PGI in 1994, the two concepts of production conditions and characteristics of the product were replaced by specifications that are more normative. The PDO/PGI specification now comprises a long checklist that downplays these points, such as the method of production prompted by the link to the origin, or the sensory typicity of the product, which are said to be too difficult to check, which is of course true if the producers, whom INAO considered as experts in their products, are no longer involved in the control.

(ii) Second, it raises the issue of the economic consequences for producers. A preliminary cost was the need in 2006 for the Producers' Organization to both amend the specifications and draft the control plan, formatted by the certification body. The latter task, which was new for many stakeholders, required a considerable investment in time and energy. The complexity of the process often discourages producers from even trying.

Then, control by private certification organizations implies that the cost is borne by the producers/processors, where the impact depends on the size of the value chain. Small-scale value chains are penalized (Belletti & Maressotti, 2011; Power, 1997) and some could not afford the cost without help from the local authorities. In contrast to some PDOs in Italy, the costs in France are not shared either horizontally or vertically (Belletti *et al.*, 2007). We observed disengagement by some producers who prefer to abandon the use of PDOs and sell their produce directly, or, in some cases, even to stop production (Bérard, 2012). Most producers complained about the slow cumbersome checks, which are too many and take too long (an internal or external check takes between 2 and 3 h) but the reactions differed depending on the sector con-

cerned. Dairy or livestock farmers are far more accustomed to all kinds of checks than cereal farmers and are not surprised to be asked to write down what they do (Weller, 2012). If the criticisms of the control plan are often so virulent, it is because they undermine the perception actors have of a "job well done" (Bérard, 2012).

The consequences were not the same for other bigger supply chains, where the estimated cost of control by private certification bodies is less than 1% of the total cost of the product of the good.⁵³

(iii) On the other hand, control by third-party organizations has some advantages. It enables more accurate specifications to be drawn up, and the specifications are limited to what will actually be controlled, which is particularly important for products other than wines and spirits, which until 1990 were not managed by INAO and were not systematically checked. Inspections by a third party may also be considered to be more impartial.

Interestingly, the producers' collective of the newly created non-agricultural GIs,⁵⁴ is presently arguing strongly for a third-party certification system, as they do not trust the peer review system.

(iv) Finally, it raises the issue of a certification body market. Is a certification body that is paid by the Producers' Organization more independent than INAO, which is funded by the State? (Garcia-Parpet, 2012). The existence of a market for certification bodies will create competition between them, and may lead some of them to be less strict in their assessment of their clients because they are cheaper and do not want to lose a possible contract.

(b) *How can the link to origin be assessed?*

The decision to recognize a PDO/PGI has shifted from a balanced decision taken jointly by the public authority (the Minister and the services of INAO) and the producers (represented on the national committees) toward increased intervention by the Ministry of Agriculture, as the only point of contact with the EU Commission.

The designation of the Ministry of Agriculture and not of the INAO as the only interlocutor of the EU Commission was a decision freely taken by France, not driven by the EU Regulation, which only refers to transmission of the documents from the Member State, without providing details. Thus, nothing prevented INAO from representing France and from communicating directly with the EU Commission. The French decision has led to the marginalization of INAO in the process of recognition of PDO/PGIs that has shifted toward a more contrasted but classical public *versus* private stakeholders' governance.

The examination of PDO/PGIs by the national INAO committee could be perceived as a conflict of interest because producers assess the application of other producers for a PDO/PGI for the same kind of goods, i.e., by their competitors. Yet INAO was regulated in such a way that all the procedures were transparent, with regular publications of all debates in the different national committees and interactions with local offices.

An unexpected consequence of the decline of INAO is the increasing lack of transparency concerning who decides on the agenda of the meetings of the national committees, and which PDO/PGI application will be examined is no longer clear. The Minister is not obliged to justify his/her decisions. In addition, since 2006, neither the minutes of the debates of the national committee, nor the reports of the enquiry committees are published. We suspect that the

lack of transparency is due to the different producer's organizations lobby for or against approval of a PDO/PGI application in the national committees but also in the Ministry of Agriculture. Lobbying also influences the nomination of the members of the national committee by the Minister of Agriculture. With more powerful producers' organizations and weaker local INAO offices with less feedback on the reality of PDO/PGI applications in the field, the lobbying of the Producer's Organization is increasingly powerful, emerging as a consequence of more contrasted public-private governance than was the case during the joint public-private governance of INAO.

6. CONCLUSION

In the past decade, INAO (the French National Institute of Appellation of Origin) has undergone transformations that threaten its identity. Although the general organization of official controls is still entrusted to INAO, control of the compliance of the product with the specification on the ground escapes local INAO experts, who are being marginalized by certification bodies, despite their invaluable expertise. In national committees, producers and experts are finding it more and more difficult to fulfill their mandate faced with an increasingly interventionist Ministry of Agriculture. In becoming PDOs, appellations of origin have gradually lost their own regulatory principles, particularly at local level where the number of INAO offices has been significantly reduced. The redistribution of responsibilities throughout the decision-making hierarchy leaves little future for this original mixed public-private system whose very survival is called into question. This implies the disappearance of a strong formalized institutional body where different views are openly expressed and shared. The shift toward a more "classical" sharing of the role between private stakeholders and public authorities signals the end of the self-managed dimension of INAO, which worked simply because INAO was a mixed structure.

Third-party certification emanates from standards, but PDO/PGIs are not standards, they are associated with local culture and represent a collective intellectual right, as they protect an intellectual creation, the creation over time of a reputation of a place based on local shared practices.

The 2006 reform endorsed the dominance of quality over origin, and the name of INAO changed to include the word quality. In 2012, the name of the EU regulation itself was changed to "Regulation on quality schemes for agricultural products and foodstuffs", including provisions on traditional specialties guaranteed and other voluntary quality terms.

Eager not to miss the quality bandwagon, INAO has expanded its mandate to include all voluntary quality labels: organic farming, guaranteed traditional specialties, Label rouge. However, we wonder if this does not involve diluting INAO's specific skills for appellation of origin that have been acquired progressively throughout its long history. INAO could have profited from its unique skills concerning the link to the origin by extending its activities to GIs for non-agricultural products, transcending the Ministries of Agriculture and Industry. However, the French government decided otherwise, and allocated the registration of GIs for non-agricultural products to the National Institute of Intellectual Property (Marie-Vivien, 2013).

Finally, we question the future of the link to origin personified by the appellation of origin. Stakeholders have reaffirmed their wish to maintain the geographical references, but to what end if the typicity of PDO is aligned with PGI? The new French law for non-agricultural goods linked with origin provides only for PGIs and not PDOs, which is inconsistent with the system in place for agricultural goods. We believe a clear choice is required here. Either full harmonization, in which case there is no need for two different labels, or two geographical references are maintained, with two control systems, and even two different levels of protection. To further clarify this issue, more research should be conducted in countries with a long tradition of appellations of origin such as Italy, Spain and Portugal, but which have different institutional schemes.

NOTES

1. The famous "Champagne" appellation was first defined according to a notification, the "décret" of September 3, 1907.

2. Loi du 2 juillet 1990 relative aux appellations d'origine contrôlées des produits agricoles ou alimentaires, bruts ou transformés, JO 6 juil. 1990, www.legifrance.gouv.fr.

3. Council Regulation (EEC) No 2081/92 of 14 July, 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJEU L 208, p. 1.

4. Schmidt-Szalewski J., "La protection des noms géographiques en droit communautaire", JCP, éd. E, 1997, Chr. N°703; Pollaud-Dulian F., "Appellations d'origine", Répertoire de droit communautaire, Paris, Dalloz.

5. Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organization of the market in wine.

6. CJEU, 20 February 1975, aff. C-12/74, Commission c./Germany: Rec. CJEU 1975 p. 181, point 7.

7. Council Regulation (CE) No. 510/2006 of March 20, 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJEU L 93, p. 12, replaced by Regulation (EU) No. 1151/2012 of November 21, 2012 on quality schemes for agricultural products and foodstuffs, OJEU L 343/1.

8. See for example: "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). DG Agriculture and Rural Development (By London Economics in association with ADAS and Ecologic), downloadable at: http://ec.europa.eu/agriculture/eval/reports/pdopgi/report_en.pdf.

9. Loi d'orientation agricole du 5 août 1960. First Label Rouge recognized with the Decree of January 13, 1965. The Certification of conformity product (CCP) was created by the law of December 30, 1988, and implemented by the decree of September 25, 1990.

10. LOI n° 99-574 du 9 juillet 1999 d'orientation agricole Décret. Yet the PGI applications were still filed at the Ministry of Agriculture until 2003, see décret n° 2003-851 du 1er septembre 2003 relatif à la partie Réglementaire du livre VI du code rural et modifiant la partie Réglementaire des livres II et III du même code.

11. Art 49.2 of Regulation (CE) n°1151/2012.
12. Art 50.1 of Regulation (CE) n°1151/2012.
13. Art. L. 641-10 C. rur.
14. Report WT/DS174/R of March 15, 2005, adopted by the Dispute Settlement Body on April 20, 2005.
15. Establishing the European Food Safety Authority and laying down procedures in matters of food safety see Regulation (CE) n° 178/2002, January 28, 2002, *JO L 31, 1^{er} fév. 2002, p. 1–24*.
16. CJEU, *Exportur C.3-/91*, point 28, which settled the dispute brought by a Spanish confectionery company complaining about the use by a French company, LOR and Confiserie Tech established in Perpignan, of the names “Alicante” and “Jijona” to designate “nougat”.
17. See Olszak, “Les Nouveaux Règlements Européens Sur Les Appellations D’origine Et Indications Géographiques Protégées Et Les Spécialités Traditionnelles Garanties.” 1–6.
18. Regulation (CE) n° 882/2004 related to general rules applicable to official controls and art. 36.1 of Regulation (CE) n°1151/2012.
19. Art 37.1 of Regulation (CE) n°1151/2012 and Regulation (CE) n° 882/2004.
20. General requirements for bodies operating product certification.
21. Art. 36.2 of Regulation (CE) n°1151/2012.
22. INAO was responsible for PGI from 1994 on.
23. See Article L642-6 of Code Rural.
24. This number was reduced to 18 in 2013.
25. See Article R642-6 of Code Rural and See www.inao.gouv.fr.
26. Art. L.641-2 alinéa 2 former C. rur.
27. Art R. 641-8 former C. rur.
28. Art. L 641-6 former C. rur based on the decree n°96-193 of March 12, 1996 concerning the certification of food and non-food crops and unprocessed goods and the decree of 2003.
29. Art. L. 643-5 former C. rur.
30. Art R. 642-2 C. rur.
31. General requirements for bodies operating product certification.
32. Art. L. 642-29, art. R. 642-54, art. R. 642-39 C. rur. Art. R. 642-37 C. rur.
33. Art. R. 642-39 C. rur., art L. 642-10 du C. rur.
34. Art. R. 642-55 C. rur.
35. Art. L. 642-30 C. rur.
36. Art. R. 642-55 C. rur.
37. Art. L. 642-27 C. rur.
38. Art. L. 642-27 C. rur.
39. Art. L. 642-27 C. rur.
40. “La Réforme Des Signes De L’identification De La Qualité Et De L’origine.”
41. Art. L. 642-27 which states that all costs incurred by the necessities of monitoring compliance with the specifications shall be borne by the operators.
42. Art. L. 642-17 and art. R. 642-33 C. rur.
43. Article L. 642-22 of the Code Rural.
44. Decision of the Central Board, 23 September, 2013.
45. Arrêté du 8 février 2007 fixant la composition du comité national des appellations laitières, agroalimentaires et forestières de l’Institut national de l’origine et de la qualité, NOR: AGRP0700198A, modifié par l’arrêté du 1er juillet 2011 modifiant la composition du comité national des indications géographiques protégées, labels rouges et spécialités traditionnelles garanties, du comité national des appellations laitières, agroalimentaires et forestières, du comité national des vins, eaux-de-vie et autres boissons alcoolisées et du comité national de l’agriculture biologique de l’Institut national de l’origine et de la qualité.
46. From practice and from internal rules of the INAO, article 3.
47. Article R642-8.
48. Internal rules of INAO, article 6.
49. Id article 2.
50. See article R. 641-11 to R. 641-21 of the Code Rural.
51. According to art. 17 of the EU Regulation 2081/92.
52. Letter from the EU Commission, October 9, 2009. PDO registered on January 21, 2014.
53. According to Certipaq, interviewed on December 3, 2013.
54. PGIs for non-agricultural products were introduced in France by the Consumer Law of March 17, 2014.

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