

Chapter 8

Silent Registered EU GIs: What Is at Stake?



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Abbreviations

GI	Geographical Indications
PDO	Protected Designations of Origin
PGI	Protected Geographical Indication
EU	European Union
IPRs	Intellectual Property Rights
ISMEA	Istituto di Servizi per il Mercato Agro-alimentare

8.1 Introduction

This contribution presents the results of a research on the topic of ‘silent Geographical Indications’ (GIs) in the EU. These are defined as registered Protected Designations of Origin (PDO) or Protected Geographical Indications (PGI) which, for a relevant period of time, have not been employed or employed considerably beyond their expected potential, with little to no evidence of administrative activity from the relevant producers’ associations and no related activities such as marketing, online promotion and alike.

The under-utilisation of registered GIs is a phenomenon evident worldwide and in the EU itself (European Commission 2021; Marie-Vivien 2020), despite the fact that the European regulatory framework in place ensures a bottom-up registration

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process, which requires the active participation of producers for its activation. Very often, in fact, protected GIs remain empty boxes due to the fact that the recognition process is implemented top-down, without any involvement of the producers who then have to use them, or the registration results useless or ineffective due to changed market conditions or too high implementation costs.

The matter of under-utilisation of registered GIs is also extremely relevant from a theoretical point of view, as it is related to a number of fundamental questions concerning the role, nature, and functioning of GIs, as well as to the justifications of GI Law and its relationship with other Intellectual Property Rights, such as trademarks. However, this topic is still deeply under-researched in both economic and legal literature, with no substantive analysis published yet. In fact, the issue of silent GIs can be tackled from two diverging perspectives: one considers silent GIs as detrimental to the GI system as a whole, while the second argues for the need to maintain their protection in view of, among others, the prevention of genericisation of GIs, the need to protect intellectual property rights to avoid misleading indications and misuses, and the indirect economic, social, and patrimonial effects they can still play.

Hence, this paper contributes to the debate by conducting a first analysis on a subset of registered geographical indications, the Italian PDOs and PGIs that appear in the EU register under Class 1.6 (Fruit, vegetable, and cereals fresh or processed). Following the application of a mixed economical/legal methodology, the work carries out an assessment of this class of products, identifying the potential ‘silent GIs’ and investigating their peculiarities. A complete presentation of the methodology adopted in this study is provided below.

This contribution is structured as follows. Section 8.2 introduces the state of the art and the legal framework concerning the cancellation of GIs and concludes that the formal analysis of the applicable rules is insufficient to conduct an in-depth assessment of the topic of silent GIs; Sect. 8.3 presents the methodology applied to the present analysis; Sect. 8.4 illustrates the results of the conducted assessment and, finally, Sect. 8.5 discusses the meaning of such findings and draws some conclusions.

8.2 Legal Framework and State of the Art

Regulation (EU) 2024/1143 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialties guaranteed and optional quality terms (Regulation 2024/1143) takes into consideration the possibility for registered GIs to fall into disuse, by featuring provisions on their cancellation. In particular, art 25(1) reads:

1. The Commission may, on its own initiative or on a duly substantiated request by a Member State, a third country or any natural or legal person having a legitimate interest and established or resident in a third country, by means of implementing acts, cancel the registration of a geographical indication in the following cases:

- (a) where compliance with the requirements for the product specification can no longer be ensured; or
- (b) where no product has been placed on the market under the geographical indication for at least the preceding seven consecutive years.

This provision largely reflects the previous rules applicable at the time where the research presented in the present contribution was conducted, thus confirming the validity of the argument presented here (cf. art 54(1) Regulation 1151/2012).

The national legislation of Member States also includes provisions on GI cancellation, which usually replicate the text of the above-mentioned rules. This is the case, for instance, of article 14 of the Italian *Decreto Ministeriale* 14 October 2013.

The cancellation of a GI, however, is a rare occurrence. Indeed, according to the EU legal register of protected GIs, ‘eAmbrosia’, to date, only 4 agricultural products have been cancelled. These are:

- ‘*Salaisons Fumée, marque nationale Grand-Duché de Luxembourg*’ and ‘*Viande de porc, marque nationale Grand-Duché de Luxembourg*’. These Luxembourgish goods were registered in 1996 following the ‘Simplified Procedure’, i.e. art 17 of the old Regulation 2081/1992. They were cancelled on 18 February 2022 due to lack of use after having remained substantively inactive on the register, without amendments or notifications of any kind.
- The German PGI ‘*Holsteiner Karpfen*’ was cancelled on 9 February 2022 due to the deterioration of the conditions of production that made it impossible.
- The French PGI ‘*Volailles de Loué*’ was cancelled on 3 February 2022 due to the decreasing volume of products marketed under the registered name and the decision of the producers to promote the sales under a different name, focusing on the promotion of a trademark instead of the PGI label.

This is because of various nonexclusive factors. For instance, in some countries, such as Germany, the National Competent Authority is considered lacking the ‘legitimate interest’ to take action (Guerrieri 2022, p. 72). Moreover, practice suggests that the presentation of a cancellation request usually falls within the essential roles of producer associations rather than National Competent Authorities. This is also what the new Regulation 2024/1143 suggests in Recital 41 of its Preamble.¹

However, both scholars (Galtier et al. 2013; Carbone et al. 2014; Belletti et al. 2014a, b; Cardoso et al. 2022; Belletti and Marescotti 2021) and practice suggest that GIs can become inactive or severely underused for a number of reasons, among other things: (1) the raw materials/methods of production related to the GI good can become very rare and/or expensive; (2) the GI is the result of a top-down registration

¹ ‘Producer groups play an essential role in the application process for the registration of geographical indications and in the management of their geographical indications. Producer groups may be assisted in the preparation of their application by interested parties such as regional and local authorities. Producer groups should be equipped with the means to better identify and market the specific characteristics of their products. The role of the producer group should therefore be clarified.’

processes conducted by local public authorities without proper level of involvement of the local communities of producers; (3) there is a disproportionate imbalance between the costs of the use of GIs as certification tools and the obtained benefits that make the use of the GI inconvenient. Hence, a formal analysis of the legal framework is insufficient to evaluate the extent of the ‘silent GIs’ phenomenon.

Therefore, based on this background, the present contribution hypothesizes that the phenomenon of inactive or underused protected GIs must be more widespread than what the EU register may lead to believe. This theory is tested based on the results of an empirical analysis, the methodology of which is presented in detail in the next section.

8.3 The Methodology Adopted for the Identification and Analysis of ‘Silent GIs’

The present analysis tracks Italian GIs that, albeit registered, appear to be silent. This was accomplished by implementing a three-step methodology:

1. Identification of PDO-PGI products for which there are no or very small certified values and volumes in 2018–2021, according to the ISMEA-Qualidò databank, in order to build a first list of potential silent GIs. Every year, Ismea carries out a survey of Control Bodies, PDO-PGI Consortia, Producers’ Associations and any other subjects, aimed at detecting for each registered PDO-PGI product the number of companies belonging to the PDO-PGI chain, the certified production of each company, the ex-farm, wholesale and consumer prices, and other data on the destination of sales. In this way, the turnover at origin and consumption of each PDO and PGI is also estimated, using both the prices recorded by ISMEA itself both at origin and consumption, and the prices provided by the Consortia or Associations.²

The methodology was operationalised by identifying a composite set of turnover threshold values, aimed at identifying potential silent PDOs-PGIs. The turnover is measured at origin, i.e. at the time of sale of the product from the farm that applied for certification, depending on the product so at the gate of the farm or processor. Based on the distribution of the annual turnover values of the universe of the 114 products surveyed in the database, we identified three thresholds: 20,000, 30,000 and 50,000 euro. For each threshold, products with an average of 4 years below the threshold were identified, and then identified those with at least 1 year above the threshold; this is to take into account years of non-production caused by abnormal adverse weather or pathogenic phenomena,

²More details about the ISMEA-Qualidò methodology of data collection and elaboration are available at: <https://www.ismeamercati.it/flex/cm/pages/ServeAttachment.php/L/IT/D/5%252Fe%252F5%252FD.b9e56f4fb1d37702772d/P/BLOB%3AID%3D2934/E/pdf>

which are frequent in the case of fruit and vegetable production³. Subsequently, we checked for each product whether the lack of turnover in 1 or more years was due to a lack of prices, but nevertheless quantities of marketed product were present, in order to exclude it from the list of silent GIs. Finally, for products identified as silent or suspect, we checked the year of registration in order to exclude those products registered very recently (after 2016).

2. Identification of PDO-PGI products in this first list whose specifications have never undergone amendments, even minor, according to the *eAmbrosia* EU database⁴ as well as to the Italian ministerial documentation.⁵
3. The GIs identified following the application of the above-mentioned criteria will then be subject to additional desk research aimed at gathering more information on the real status of the PDO-PGI products identified in the previous steps. The desk analysis followed a predetermined grid and was carried out by drawing information from the web, in particular from the Qualigeo website⁶ (<https://www.qualigeo.eu/>) and from the Google search engine, including the ‘news’ and ‘shopping’ sections. The analysis focused in particular on the existence and level of activity of a Consorzio di tutela or Association of producers and of an updated website and/or Facebook page related to the GI product; on the presence of firms marketing the GI product even without the PDO-PGI label, and on local fairs and festivals centred on the GI product; and other signs of life of the protected product.

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

8.4 Presentation of the Results

Figure 8.1 represents the distribution ordered according to the average turnover at origin in the 4-year period 2018–2021 of the 114 PDO-IGP products registered in Italy under Class 1.6 (Fruit, vegetable, and cereals fresh or processed) and included in the Ismea database. It is evident from the Pareto diagram the enormous concentration of turnover, in fact the most important product (*Mela dell’Alto Adige*) represents 31.3% of the total PDO-IGP turnover of the Class, the first three products 56.9% and the first ten 76.5%. At the other extreme, the 60 smaller products all together account for 1% of the total turnover of the Class. The situation is very

³ An emblematic case is that of chestnut cultivation, which in Italy in recent years has suffered attacks from a parasite, the pine beetle, which has reduced or cancelled production in some areas.

⁴ <https://ec.europa.eu/agriculture/eambrosia/geographical-indications-register/>

⁵ <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/396>

⁶ <https://www.qualigeo.eu/>

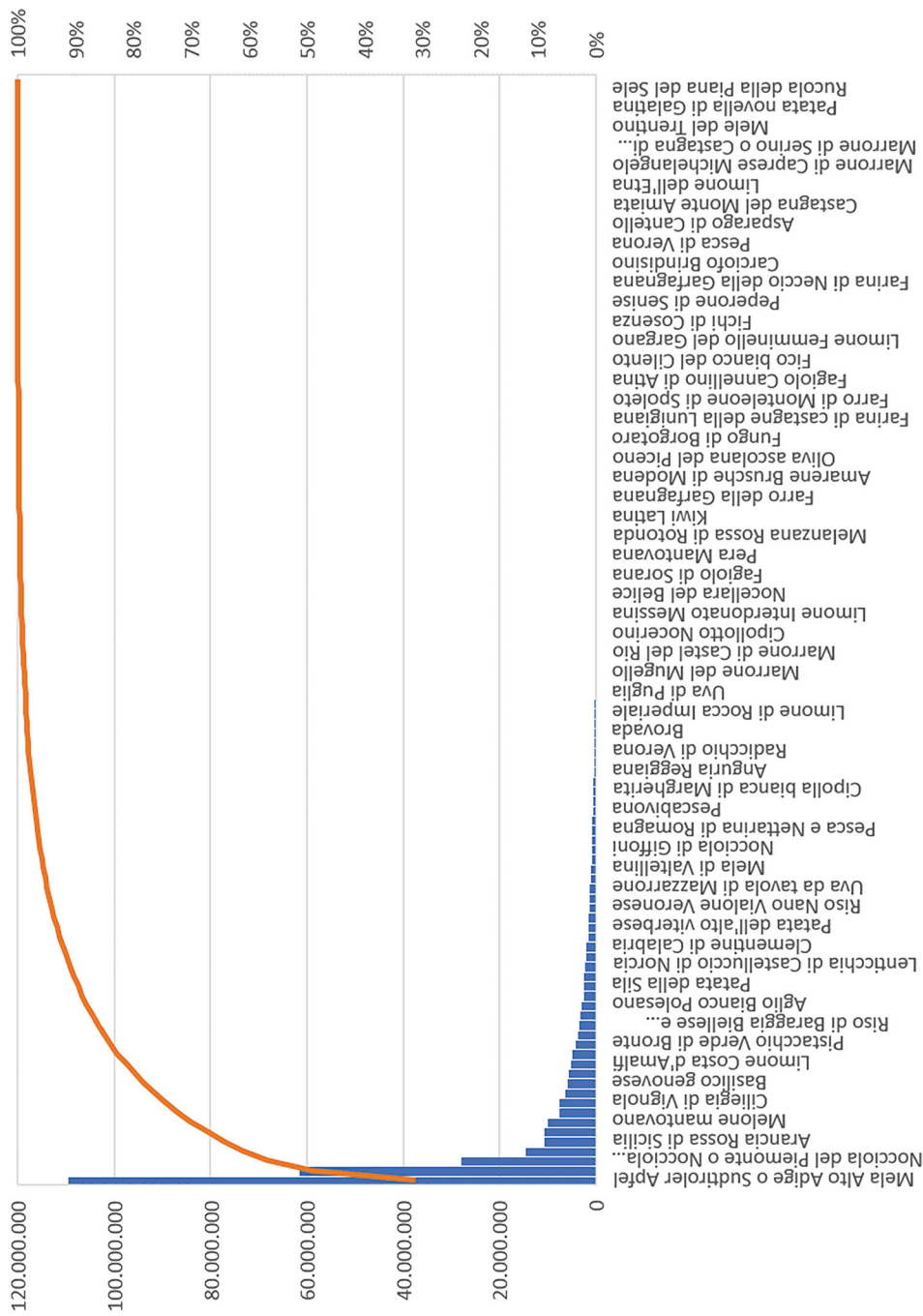


Fig. 8.1 Turnover at the producer's gate for Class 1.6 PDO-PGI products, Italy
Caption: the figure shows the value of turnover at origin of each PDO-PGI product and the cumulated total of turnover at origin for all the products registered under Class 1.6. (Source: our elaborations on ISMEA data)

similar if, instead of looking at the average turnover, one analyses the turnover of the best year: the share of the 60 smallest products (52.6% of the total number of registered GI in the class) rises to 1.3% while that of the top three falls to 54.4%.

The high level of concentration of turnover should not be surprising, since alongside some GIs with a very large extension (sometimes an entire province or region, such as the *South Tyrolean Apple*, the *Piedmont Hazelnut* or the *Sicilian Orange*) and therefore a very high potential number of producers, there are GIs linked to small products with a very small territory delimited by specifications (the Sorana Bean, in Tuscany, is an example). However, even if these figures are influenced by the fact that, for some products, the sales prices and thus the turnover have not been communicated, although quantities are present, albeit in many cases modest, the presence of numerous products with little or very little certified production is evident.

Step 1 of the methodology presented in the previous section identified, for each of the three thresholds, those products with an average turnover value at origin of the 4 years below the threshold, and those with no value above the threshold in any year. Considering for example the highest threshold of €50,000, the potentially silent PDO-PGIs are 31 (Table 8.1, Section A).

Subsequently, for each product below the threshold, we verified the certified quantities and excluded all products with non-negligible certified quantities, and for which therefore the lack of turnover was caused by the lack of price indication. This check identified 8 products (out of the 31 with a 50k threshold) with a certified production volume but no price indication. These products were excluded from the list of potentially silent GIs (Table 8.1, Section B).

Finally, PDO-PGIs registered after 2016 (see step 2 of the methodology) were excluded from the list of silent suspect products on the assumption that a period of several months or even a few years may elapse from the moment of registration to the actual start of certification. In fact, the preparation of the control plan and its approval by the competent authorities, the registration of companies, the activation of traceability procedures, etc. are necessary. In the list of silent products, there were four PDO-PGI products registered in the year 2020, which have been removed.

At the end of the procedure, the total number of registered GIs to be considered as suspected silent GIs is 22 if the most inclusive criterion is applied, and 14 if the most selective criterion is applied. This is a not insignificant number, respectively 19% and 12% of the total universe observed (Table 8.1, Section C). The value resulting from the application of the most selective criterion (14 PDO-PGI silent) seems to us the most correct, since there are some registered products of very limited size, involving a small number of enterprises and characterised by strong seasonality; in these cases, therefore, achieving a turnover of 50,000 € can already be considered a relative commercial success.

We applied the next steps of the methodology (step 3) on the larger group resulting from step 1, i.e. 22 PDO-PGI products (threshold 50k€ on average in years 2018–2021). Steps 2 and 3 were implemented jointly. Table 8.2 summarises the results of this analysis. Orange coloured cells indicate the presence of criticality. In the last column we express a summary judgement on the level of ‘silence’ on a

Table 8.1 Potentially silent PDO-PGI based on the application of different criteria based on average and yearly turnover, quantities certified, and year of registration

Threshold 20k €		Threshold 30k €		Threshold 50k €					
	Average 2018–2021 < 20k (a)	Peak > 20k€ in at least 1 year (b)	(a)–(b)	Average 2018–2021 < 30k (a)	Peak > 30k€ in at least 1 year (b)	(a)–(b)	Average 2018–2021 < 50k (a)	Peak > 50k€ in at least 1 year (b)	(a)–(b)
Section A) All the products based on turnover (average and peak)									
Number	31	5	26	32	3	29	34	3	31
Section B) All the products based on turnover (average and peak) excluded products with a relevant quantity									
Number	23	5	18	24	3	21	26	3	23
Section C) All the products based on turnover (average and peak) excluded products with a relevant quantity and products registered after 2016									
Number	19	5	14	20	3	17	22	3	19

Caption: The table shows the potential silent GIs according to the different criteria presented in the text
Source: our elaborations on ISMEA data

Table 8.2 Results from steps 2 and 3 and identification of Silent PDO-PGIs

	Year of registration	Producers' organization	Website	Facebook profile	Festival/Fair	Shop on line	Amendment PS 2018-2023	Silent (from 0 to 4)
<i>Arancia del Gargano</i>	2007	Yes	Yes, active	Yes, active	Yes	Yes	No	0
<i>Asparago di Cantello</i>	2016	Yes	No	No	Yes	No	Yes (2023)	2
<i>Carciofo Brindisino</i>	2011	Yes	No	Yes, but not updated	No	Limited	No	4
<i>Castagna Cuneo</i>	2007	Yes	Yes, partially active	No	Yes	Yes	Yes (2023)	1
<i>Castagna del Monte Amiata</i>	2000	Yes	Yes, but not updated	Yes, active	Yes	No	No	2
<i>Ciliegia dell'Ema</i>	2011	Yes	Yes, but not updated	No	Yes	Limited	No	3
<i>Fagioli Bianchi di Rotonda</i>	2011	Yes	Yes, but not updated	Yes, but not updated	Yes	Limited	No	3
<i>Fagiolo Cammellino di Atina</i>	2010	Yes	Yes, but not updated	No	No	Limited	No	4
<i>Fagiolo di Sarconi</i>	1996	Yes	No	Yes, but not updated	Yes	Yes	No	3
<i>Farina di Neccio della Garfagnana</i>	2004	Yes	Yes, but not updated	Yes, active	Yes	No	Yes (2022)	2
<i>Farro di Monteleone di Spoleto</i>	2010	No	No	No	Yes	Yes	Yes (2021)	3
<i>Fichi di Cosenza</i>	2011	Yes	Yes, active	Yes, active	Yes	Yes	No	0
<i>Fico bianco del Cilento</i>	2006	Yes	No	No	Yes	Yes	No	3
<i>Ficodindia di San Cono</i>	2013	Yes	No	No	Yes	No	No	3
<i>Limone Femminello del Gargano</i>	2007	Yes	Yes, active	Yes, active	Yes	Yes	Yes (2018)	0
<i>Marrone di Caprese Michelangelo</i>	2009	Yes	No	Yes, but only dedicated to the Festival	Yes	No	No	3

<i>Nocciola Romana</i>	2009	Yes	No	No	Yes	Yes	Yes (2022)	2
<i>Patata novella di Galatina</i>	2015	Yes	No	Yes, but not updated	No	No	No	4
<i>Peperone di Pontecorvo</i>	2010	Yes	No	Yes, but only dedicated to the Festival	Yes	Yes	No	2
<i>Peperone di Senise</i>	1996	Yes	Yes, partially active	No	Yes	Yes	Yes (2020)	1
<i>Pesca di Verona</i>	2010	Yes	Yes, but not updated	No	No	No	No	4
<i>Scalognò di Romagna</i>	1997	Yes	Yes, active	Yes, active	Yes	Yes	Yes (2022)	0

Caption: The table shows the PDO-PGIs that according to the application of criteria 2 and 3 presented in the text have characteristics of silent PDO-PGIs of greater or lesser intensity, measured on a scale of 0 (less silent) to 4 (more silent)
Source: our elaborations on data from various sources

scale from 0 (unsilent) to 4 (fully silent) that takes into account the various elements in the table. Obviously, the summary assessment is not the mere sum of the criticalities, as it takes into account their specific relevance to the product⁷, as well as other aspects not in the table such as the presence of research activities on the product itself.

The assessment led to the identification of four registered PDOs/PGIs which can be considered fully silent. Particularly, these share some common characteristics, such as: (1) no recent online presence, or no online presence at all, including online shopping; (2) no social activities, such as participation in fairs or events; and (3) no signs of amendments and/or other administrative activities.

Other 7 PDO-PGIs are identified as likely silent (score = 3). In these cases, there are some signs of online sales of the product, but above all, there are yearly festivals or fairs centred on the product of origin, sometimes even explicitly referring to the PDO or PGI.

At the other extreme, 4 of the 22 products on the short list were identified as active: in fact, there is a Consortium or Association with a website and an up-to-date Facebook profile, a product festival held regularly at least once a year, usually in the harvest season, widespread presence of online sales of the product with clear reference to the PDO-PGI.

8.5 Discussion and Conclusions

The paper makes a contribution to the existing literature on GIs by exploring the under-researched topic of ‘silent-GIs’ in the EU. These are defined as the registered PDOs/PGIs which, for a relevant period of time, have not been employed or employed considerably beyond their expected potential, with little to no evidence of administrative activity from the relevant producers’ associations and no relevant marketing activities, real-life presence and alike.

Identifying cases of truly ‘silent’ GIs is a complex task that requires the combination of various criteria. Indeed, elements such as the turnover and the certified production volume cannot be decisive when taken in isolation. In fact, the conditions underpinning the production of a GI good can be extremely diverse, depending among other on the typology of the product and its seasonality, the number of active producers, the extension of the area of production and more. In other words, what a PDO/PGI may consider a ‘modest’ turnover, can be a successful result for another. Similarly, although the absence of administrative activity for a significant period of time, i.e. 15 or more years, can be considered suspect, it is not enough to determine

⁷For instance, the absence of online sales is considered in our analysis less indicative for fresh and very perishable products (e.g. cherries), while it is very indicative for storable products (e.g. spelt or dried beans). Similarly, the lack of amendments is less alarming for products whose recognition is more recent.

the ‘silent’ status of a GI. This is because the producers’ associations are not required to regularly exchange administrative information with their national competent authorities or the European Commission, unless they do not deem it necessary and/or are in the position of doing so.

This is why the present contribution has adopted a mixed economic and legal methodology, assessing the vitality of all the Italian PDOs/PGIs registered under Class 1.6 (Fruit, Vegetables and Cereals, fresh or processed) through a combination of elements applied progressively in three steps: (1) PDOs/PGIs for which there are no or very small certified values and volumes in 2018–2021 have been identified, thus leading to a list of ‘suspect’ silent GIs. From this starting point, the analysis has turned to (2) the administrative activity of the relevant producers’ associations, such as the presence of amendments and other communications to the competent national and EU authorities. Finally, (3) all these findings have been combined into a table that also included the results of desk research aimed at identifying online activities as well as the existence of social events related to the identified products, such as fairs and competitions.

This mixed methodology has led to the identification of a short list of 22 suspected PDO-PGIs products, among these only 11 products are classified on the basis of our parameters as fully or likely silent, representing the 9.6% of the Italian PDOs/PGIs registered in Class 1.6. Therefore, although many products have a low or very fluctuating volume and turnover certified and sold as PDO-PGI, in their territories, these products exist and are well represented in local traditions, as witnessed by festivals, fairs, and events. Thus, in a significant number of cases where the certified value is low, according to our analysis the GI product nevertheless exists and is marketed, albeit on a presumably local and/or more or less informal market, and exists an active production system. However, producers do not see the need to use PDO-PGI in marketing, as they do not perceive a cost-benefit advantage. In some cases, this can be caused by a Product specification containing rules perceived as too restrictive by producers; and in a couple of cases, we have verified that a request has recently been made to amend the Product specification in order to make the rules easier for users to comply with. It is also worth noting that there are some cases in which after long periods of under-utilisation/non-utilisation of the PDO-PGI there is a resumption, or attempted resumption, of activities. In the cases of manifest silence, there is always the absence of consortia/associations, or their *de facto* inactivity, which indicates how the presence of collective forms of organisation is a factor facilitating the effective use of the PDO-PGI.

However, on the basis of the analyses conducted in this study, it is not possible to state whether, despite a limited level of use by the companies, PDO-PGI plays a relevant role in the valorisation of the product and the maintenance of its production system and patrimonial value. The fact that in some small communities there are festivals and fairs centred on the product, even with explicit reference to the PDO-PGI, suggests that the EU formal recognition reinforces the product’s reputation and the producers’ sense of belonging to a local tradition. On the other hand, it is not known whether in these cases, the protection guaranteed by the PDO-PGI prevents misuse of the geographical name by companies outside the territory,

while still favouring local companies and maintaining the patrimonial value of the product of origin.

In conclusion, this paper represents the first attempt at a systematic analysis of the topic of ‘silent GIs’. At the same time, it aims to provide the stimulus for further research on this topic, especially on profiles that exceed the scope of the present investigation. These may include, among others, the assessment of the practical reasons for the non-use or under-use of registered GIs, as well as the role of other intellectual property instruments, such as trademarks, as possible competitors of GIs in this scenario. The implications in terms of public policies in support of GIs are also relevant, especially in those cases (particularly frequent in the Global South) where the state promotes the registration of GIs. A policy for the effective development of GIs should in fact also appropriately consider support for the take-off of GI initiatives, in terms of implementation of post-registration procedures, capacity-building of actors and strengthening of production chains.

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