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## 5 A short history of the relationship between EU agricultural GIs and the Common Agricultural Policy: from the beginning to Regulation 2024/1143

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<fs:lrh>The future of geographical indications

<fs:rrh> EU agricultural GIs and the Common Agricultural Policy

### Abstract

This chapter analyses the evolution of the EU *sui generis* GI system for the protection of agricultural products and foodstuffs, specifically focusing on the interrelations between this area of Intellectual Property (IP) Law and the broader framework of the Common Agricultural Policy (CAP). This chapter argues that understanding the nature and goals of the current EU regime, including those that have guided its recent comprehensive reform, requires considering the evolution of the CAP as a whole. Therefore, a broader vision is recommended to investigate the past, present, and potential future of EU GIs.

Additionally, the chapter discusses the role that the reformed EU *sui generis* GI system should play within the context of the 'Farm to Fork Strategy' and the broader European Green Deal. Furthermore, it evaluates the new provisions of Regulation 2024/1143 that are specifically related to the key objective of enhancing the sustainability of the European system for the production of agricultural products, wines, and spirits. This includes a focus on the newly introduced rules that invite producers to incorporate mandatory sustainability standards in product specifications, as well as to produce optional 'sustainability reports'.

<fs:keywords> EU GI law; Common Agricultural Policy; history of EU geographical indications; sustainability; EU regulation 2024/1143

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### <b> 1. Introduction

This is a period of important change in the Law of Geographical Indications (GI) of the European Union (EU).

On 18 October 2023 Regulation 2023/2411 came into force, finally introducing GI protection for craft and

industrial products, ending a discussion that lasted more than ten years.<sup>1</sup> This reform was followed on 11 April 2024 by Regulation 2024/1143 on Geographical Indications for wine, spirit drinks, and agricultural products (Regulation 2024/1143).<sup>2</sup>

The latter text constitutes an important step forward for EU *sui generis* GIs as it brings some relevant structural innovations. In particular, the new set of rules has repealed the previous Regulation 1151/2012 on agricultural products and foodstuffs,<sup>3</sup> and for the first time, has introduced a unitary frame, common to agricultural, wine and spirit drinks GIs, that regulates procedural aspects such as the registration, amendment and cancellation process, the general principles of monitoring and enforcement as well as technical assistance measures. Moreover, it has brought relevant conceptual innovations, such as making specific reference to the definition of the concept of ‘evocation’ as developed by the Court of Justice of the European Union (CJEU) as well as introducing new rules on GI products used as ingredients.<sup>4</sup>

This chapter analyses the evolution of the EU *sui generis* GI system for the protection of agricultural products and foodstuffs focusing specifically on the interrelations between this area of Intellectual Property (IP) Law and the broader frame of the Common Agricultural Policy (CAP). These two domains have rarely been analysed in combination.<sup>5</sup> This is a limitation of the current literature because the CAP provides the strategic context necessary to fully appreciate the development of the rationale, nature and functions of EU

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<sup>1</sup> Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products [2023] L Series (27 October 2023). Prof Montero García-Noblejas analysed this text in Chapter 7 below.

<sup>2</sup> Regulation (EU) 2024/1143 of the European Parliament and of the Council of 14 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products [2024] L series (23 April 2024).

<sup>3</sup> 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 [2012] OJEU L 343 (14 December 2012).

<sup>4</sup> Prof Ribeiro de Almeida critically reflects on various aspects of this new reform in Chapter 8 below.

<sup>5</sup> For example, the highly detailed commentary by Michael Blakeney, who also wrote Chapter 3 of this volume, only briefly touches upon the impact of the CAP on the development of the EU *sui generis* GI system. Similarly, the work of Joseph McMahon, widely considered the foremost expert in EU agricultural policy, does not engage specifically with the EU GI framework. See Joseph A McMahon, *EU Agricultural Law* (Oxford University Press 2007); Joseph A McMahon, *Law of the Common Agricultural Policy* (Longman 2000); Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Second edition, Edward Elgar 2019).

GIs. The latter, in turn, constitutes an essential component of the CAP, now more than ever necessary, to meet its goals.

Therefore, this work contributes to the literature by providing a review of the history of the EU *sui generis* GI regime from a combined perspective that considers the conceptual evolution of both the GI system and of the broader CAP frame. In particular, the chapter demonstrates that the nature and goals of the current EU regime, including the new Regulation 2024/1143, can be fully understood only by focusing also on the evolution of the CAP as a whole. In light of this, it recommends that a broader vision is required to investigate the past, present and – tentatively – the future of EU GIs. Next, it emphasises the role that the reformed EU GI frame should play in the context of the ‘Farm to Fork Strategy’ and, more broadly, of the European Green Deal. Finally, it assesses the new provisions of Regulation 2024/1143 specifically related to the key objective of enhancing the sustainability of the European system for the production of agricultural products, wines and spirits.

In detail, Section 2 presents the evolution of the CAP from its origin until the introduction of the unitary EU *sui generis* GI system; Section 3, focuses on the parallel evolution of the CAP and of EU GIs, providing an outline of the key policy goals and objectives that characterised regulations 2081/1992, 510/2006 and 1151/2012; finally, Section 4, first, introduces the new Regulation 2024/1143, its objectives and relationship with the European Green Deal and the EU ‘Farm to Fork Strategy’; then, it highlights the important role played by the concept of sustainability in this new set of rules and assesses the novelties introduced aimed at making EU GIs an essential tool for ensuring the sustainability of the EU production of agricultural products, wines and spirits. This includes a focus on the newly introduced rules that invite producers to incorporate mandatory sustainability standards in product specifications, as well as to produce optional ‘sustainability reports’.

This research is based on a mixed methodology that combines an archival approach centred on the analysis of a variety of historical primary sources, such as policy papers, explanatory memoranda, and preparatory works, with doctrinal arguments and the empirical findings of the best available research.

## <b> 2. The early days (1962–1992)

### <c> 2.1 The roots of the CAP and of the EU *sui generis* GI system

Authoritative sources trace the early rudiments of a unitary system for the protection of European indications of origin in the 1970s, with the introduction of the first rules on the organisation of the common market in wine.<sup>6</sup> Although this periodisation can, at least to some extent, be accepted, some care is required to avoid confusing concepts that are substantially and operationally different. In fact, these systems have little in common with the current EU *sui generis* GI system.

Indeed, in the 1970s, the European Economic Community (EEC) was still a relatively young regional organisation with limited scope and objectives when compared to today's EU.<sup>7</sup> The CAP was also in its infancy. Introduced in 1962, this shared policy was essentially aimed at boosting agricultural production and shielding European farmers from foreign competition. This was deemed necessary, considering that the region was still shaken by the aftermath of World War II and geographically located between the United States and the Soviet Union in the context of the Cold War.<sup>8</sup> A more determined government intervention in agricultural matters was deemed justified by the conceptualisation of this field as a special sector with special needs, for which the term 'agricultural exceptionalism' was coined.<sup>9</sup>

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<sup>6</sup> European Commission, 'Evaluation of Geographical Indications and Traditional Specialities Guaranteed Protected in the EU' (2021) SWD(2021) 428 final, 8.

<sup>7</sup> This was the name of the regional organisation created in 1957 by the Treaty of Rome. In 1993 it was renamed European Community and integrated in the structure of the new-born European Union.

<sup>8</sup> McMahon, *EU Agricultural Law* (n 5) Chapter 2; Rosemary Fennell, *The Common Agricultural Policy: Continuity and Change* (Clarendon Press 2002) Chapter 1; Institute for Agriculture and Trade Policy, 'The Common Agricultural Policy: A Brief Introduction' (2007) <[https://www.iatp.org/sites/default/files/451\\_2\\_100145\\_0.pdf](https://www.iatp.org/sites/default/files/451_2_100145_0.pdf)>.

<sup>9</sup> See Carsten Daugbjerg and Peter H Feindt, 'Post-exceptionalism in the Common Agricultural Policy' (ECPR General Conference, 30 August–3 September 2021).

This strategy was operationalised through two key principles: financial solidarity and community preference.<sup>10</sup> The early CAP also featured another pillar, the development of a unified market. This is where the early regulations on wine, which was, and still is, a strategic product extremely relevant in terms of exports to non-EU countries and overall value, played a role. For instance, Regulation 816/70,<sup>11</sup> focused on the introduction of a ‘price and intervention system, a system of trade with third countries, rules concerning production and for controlling planting and rules concerning oenological processes and conditions for release to the market’. Instead, Regulation 2133/74 concerned the adoption of common definitions, description and labelling practices.<sup>12</sup>

These rules were deemed essential for the functioning of the European common market because, for the first time, they promoted uniform standards across the region in the area of wine. However, the system was not aimed at introducing a quality scheme for the protection of the names of wines *because of* their substantive link to a specific area. In this sense, these sets of rules had little in common with the Lisbon Agreement for the Protection of Appellations of Origin, that was specifically dedicated to the protection of ‘denomination[s] of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors’.<sup>13</sup>

This international agreement, discussed by Gueze in Chapter 2, predates the first EU regulations of the common market in wine. It was signed in 1958, came into force in 1966, and, from the beginning, counted

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<sup>10</sup> The first meant that the costs of the CAP were to be shared among all member states, rather than each country bearing the costs of its own agricultural policies; the second, that agricultural products from within the European Community should be given preference over imports from outside the Community. See European Parliament, ‘The common agricultural policy at 60: A growing role and influence for the European Parliament’ (European Parliamentary Research Service, October 2022).

<sup>11</sup> Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organisation of the market in wine [1970] OJEC L 99/1.

<sup>12</sup> Regulation (EEC) No 2133/74 of the Council of 8 August 1974 laying down general rules for the description and presentation of wines and grape musts [1974] OJEC L 227/1.

<sup>13</sup> Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958, entry into force 25 September 1966), art 2(1).

among its parties two founding members of the EEC, France and Italy, which joined in 1966 and 1968, respectively.<sup>14</sup> However, at the European level, the key principles that characterised the CAP in the 1970s which, as mentioned earlier, were essentially aimed at increasing and protecting the regional production, do not anticipate the logic of *sui generis* GIs, that focuses on quality and niche productions, usually characterised by higher production costs than similar but not place-specific goods.

The introduction of origin labels required a paradigm shift in the CAP that needed almost 20 years to be completed. In fact, although in 1968 the European Commissioner for Agriculture, Sicco Mansholt, presented an ambitious reform plan, also known as the '1980 Agricultural Programme', this was essentially unrealised.<sup>15</sup> Hence, due to the lack of timely reforms, still at the beginning of the 1980s, the EEC applied an obsolete policy based on outdated goals. Unsurprisingly, this led to negative consequences, as summarised by McMahon:

Surpluses appeared in a number of areas, with consequent negative impact on prices and increased budgetary expenditure, and trade relations with third countries deteriorated with increases in the level of Community subsidized exports and continuing restrictions on imports.<sup>16</sup>

This is where the conceptual transformation that led, among other things, to EU *sui generis* GIs began. In sum, from 1985 until the end of the 1990s the reform process of the CAP was based on one key principle: shifting the focus from the *product*, which had been protected by prices control and imports regulation, to the *producers*.<sup>17</sup> This transformation was also accompanied by the gradual reconceptualisation of the function of rural space, as shown below.

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<sup>14</sup> Portugal, Bulgaria and Hungary also joined the Lisbon Agreement between 1966 and 1975. However, they joined the EU significantly later, in 1986, 2004 and 2007, respectively.

<sup>15</sup> A discussion on the difficulties to reform the CAP can be found in Wyn Grant, *The Common Agricultural Policy* (Palgrave 2003).

<sup>16</sup> McMahon, *EU Agricultural Law* (n 5) 81.

<sup>17</sup> This was the key principle on which the 'MacSharry Reform', which shaped the CAP during the 1990s, was based. See European Commission, 'The Development and Future of the CAP' (1991) COM(91) 100 final.

## <c> 2.2 The shift from product to producers; the Uruguay Round and the road to the first EU *sui generis*

### GI Regulation

In the late 1980s, an innovative view of European rural space emerged. This transformation began with the publication of some important policy documents, such as the green paper entitled 'Perspectives for the Common Agricultural Policy' (1985),<sup>18</sup> shortly followed by the Commission's report 'Environment and Agriculture' (1988)<sup>19</sup> and the Communication of the European Parliament 'The Future of Rural Society' (1988).<sup>20</sup> These introduced the concept of a 'Green Europe' based on quality production, rather than quantity, in which the producers were empowered as managers of the rural space and keepers of the richness and diversity of European productions. Therefore, in the intentions of the Commission, the rural space had to evolve, from being an area of intensive production to a driver of innovation and value creation.<sup>21</sup>

It was in this context that the EU started to take into consideration the adoption of a regional 'coherent policy on labels, descriptions and designation of origin'.<sup>22</sup> This occurred in parallel with the external action of the EU, which, from 1986 to 1994, was involved in the Uruguay Round of international negotiations that led to the establishment of the World Trade Organization (WTO).<sup>23</sup> Indeed, the study of the preparatory works shows that the EU was the first negotiating party to submit, in 1988, a proposal for the introduction of a *sui generis* GI right in the discussions that eventually led to the Agreement on Trade-related Aspects of

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<sup>18</sup> European Commission, 'Perspectives for the Common Agricultural Policy' (1985) COM(85) 333 final.

<sup>19</sup> European Commission, 'Environment and Agriculture' (European Commission 1988) COM(88) 338 final.

<sup>20</sup> European Commission, 'The Future of Rural Society: Commission Communication Transmitted to the Council and to the European Parliament on 29 July 1988' (European Commission 1988) COM(88) 501.

<sup>21</sup> European Commission, 'Perspectives for the Common Agricultural Policy' (n 18) ii–vi; European Commission, 'Environment and Agriculture' (n 19) 1, 15–16.

<sup>22</sup> European Commission, 'The Future of Rural Society' (n 20) 9.

<sup>23</sup> For an analysis of the external action of the EU from 1958, see McMahon, *EU Agricultural Law* (n 5) 73–80. For the history of the participation of the EU in the Uruguay Round, concerning GIs, see Andrea Zappalaglio, *The Transformation of EU Geographical Indications Law: The Present, Past, and Future of the Origin Link* (Routledge 2021) 111–117.

Intellectual Property Rights (TRIPS),<sup>24</sup> confirming that already in the late 1980s the EU considered this a priority.

On 14 July 1992, i.e. two years before the conclusion of the Uruguay Round,<sup>25</sup> EU Regulation 2081/1992, the first on the protection of *sui generis* GIs for agricultural products and foodstuffs, was adopted.<sup>26</sup> This is the first piece of EU legislation that introduced the Protected Designation of Origin (PDO) and the Protected Geographical Indication (PGI), that is the two quality schemes that, still today, characterise the EU system. The unitary frame for the protection of agricultural GIs in the EU was born. The development of this regime, with a focus on the evolution of the policy goals underpinning it, is investigated in the next section.

### **<b> 3. The evolution of the law and policy of EU GIs for agricultural products and foodstuffs (1992–2024)**

#### **<c> 3.1 Regulation 2081/1992**

As mentioned in the Introduction, the nature and strategic importance of EU GI Law can be fully understood only by referring to the goals of the CAP in a given period. Indeed, Regulation 2081/1992 is the incarnation of all the principles developed in the CAP from the second half of the 1980s, summarised in the previous section. In particular, in its Preamble, this Regulation mentions a number of goals, including: (1) stimulating rural development and sustaining communities of producers by securing higher income, and (2)

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<sup>24</sup> European Community, ‘Guidelines and Objectives Proposed by the European Community for the Negotiations on Trade Related Aspects of Substantive Standards of Intellectual Property Rights’ (Negotiating Group on Trade-Related Aspects of Intellectual Property Rights 1988) Multilateral trade negotiations Uruguay Round Restricted MTN.GNG/NG11/W/26.

<sup>25</sup> The WTO system commenced operations on 1 January 1995.

<sup>26</sup> Council Regulation (EU) No 2081/92 of 14 July 1992 on the protection of geographical Indications and designations of origin for agricultural products and foodstuffs [1992] OJEC L208/1. For an analysis of the origin of this set of rules, see Zappalaglio, *The Transformation of EU Geographical Indications Law* (n 23) 117–126.

answering the needs of European consumers, who were becoming increasingly interested in the quality of goods and wanted to receive better and more effective information on them.<sup>27</sup>

Another important innovation introduced by Regulation 2081/1992 is the GI registration process, which still constitutes a *unicum* in IP Law. Specifically, it is a two-step mechanism, normally accessible exclusively to groups of applicants, and only in exceptional cases to individuals, in which the application is first submitted to a national competent authority – the ‘national’ phase – and then to the Commission for the ‘EU phase’.<sup>28</sup>

Moreover, the Regulation set the standard for the protection of EU *sui generis* GIs that has remained unchanged until today. The provision combines a number of, if not all, existing approaches to the protection of signs and indications, as well as introducing some novelties. In particular, since 1992 and up to the present,<sup>29</sup> EU GIs enjoy protection against:

1. ‘any direct or indirect commercial use’ for comparable products or insofar as the use of such name exploits the reputation of the names themselves. This is a form of protection similar to that awarded in the EU to trademarks, and specifically well-known brands, with the notable difference, however, that in the field of marks the reputation of a sign in a given field must be specifically demonstrated;
2. ‘any ... false or misleading indication as to the provenance, origin, nature or essential qualities of the product’. This recalls the general Unfair Competition provision set forth under art 10bis of the Paris Convention.<sup>30</sup>
3. ‘any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type” ... or similar’.

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<sup>27</sup> Regulation 2081/1992, Recitals 2–3.

<sup>28</sup> Ibid, arts 5–7.

<sup>29</sup> The text of the different EU regulations has not substantively changed over time. Cf Regulation 2081/1992, art 13; Regulation 510/2006, art 13; Regulation 1151/2012, art 13 and Regulation 2024/1143, art 26.

<sup>30</sup> Paris Convention for the Protection of Industrial Property (as amended on September 28, 1979).

This provision introduces the ‘absolute’ level of protection granted by the Lisbon Agreement to Appellations of Origin and by Article 23 TRIPS to wine and spirit GIs. However, EU Law expands this already broad concept by introducing the elusive concept of ‘evocation’, that it is absolutely alien to the Law of Trademarks and, in general, outside the EU.<sup>31</sup>

4. Finally, the EU Law of GIs protects registered names against ‘any other practice liable to mislead the public as to the true origin of the product’. This provision introduces an open-ended clause that can protect GIs against any practices not explicitly mentioned by the rules.

The implementation of Regulation 2081/1992 was not immediate and only in 1996 were the first agricultural GIs added to the newly introduced EU register. In these early days, the system predominantly attracted applications from France, Italy, Spain, Portugal and Greece, which are countries with a longstanding tradition of Appellation of Origin, in which the protection of place-specific products has always played an important role for the sake of local development and, more generally, national heritage. However, countries such as Germany and the UK also registered dozens of PDOs and PGIs in a few years, contributing to the determination of a satisfactory outcome of the reform.<sup>32</sup>

### **<c> 3.2 The CAP in the late 1990s and Regulation 510/2006**

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<sup>31</sup> In an excellent article, Song and Zhou trace the roots of the concept of evocation in the discussion taking place in the 1930s concerning the strength of famous geographical names such as Bordeaux or Champagne. These, in fact, attract the attention of consumers even in the presence of other elements that may prevent the likelihood of confusion. More recently, in the 1990s, the French Parliament discussed the concept of evocation again, initially as a way to counter acts of unfair competition. Eventually, however, the expansive view prevailed, concluding that this concept constituted the best way to protect registered GIs from any form of free-riding. See Xinze Song and Ying Zhou, ‘The Mismatch between Geographical Indication Protection against Evocation and Its Underlying Objectives’ (2024) 14 Queen Mary Journal of Intellectual Property 48. In Chapter 11 below, Song provides his analysis of the current state of Chinese GI Law.

An assessment of the EU case law on Evocation is provided in this volume by the contributions of Montero García-Noblejas and Ribeiro de Almeida. For a critical view, see Andrea Zappalaglio, ‘EU Geographical Indications and the Protection of Producers and their Investments’ in Enrico Bonadio and Patrick Goold (eds), *The Cambridge Handbook of Investment-Driven Intellectual Property* (1st edn, Cambridge University Press 2023).

<sup>32</sup> For a complete analysis of all the relevant historical trends in the evolution of EU *sui generis* GIs, see Andrea Zappalaglio, Flavia Guerrieri and others, ‘Overall Assessment of the EU Law of Geographical Indications for Agricultural Products and Foodstuffs’ (Max Planck Institute for Innovation and Competition 2021).

In this early phase, as explained above, EU policy essentially focused on transforming the basic structure of European agricultural production. However, in the second half of the 1990s, the CAP evolved, and alongside market measures and the requirements of a competitive agricultural sector, it also began to focus on the expectations not just of the rural world, but also of society as a whole. These were included in the 'Agenda 2000', published in 1997<sup>33</sup> and were later developed further at the beginning of the new millennium. Specifically, this new policy introduced the concept of 'European model of agriculture'. Among other things, this included the idea that the agricultural sector had to be intended as 'multifunctional', in the sense that it could make a contribution in a variety of fields, including environmental sustainability and the preservation of rural heritage.<sup>34</sup> These concepts were totally absent in the text of Regulation 2081/1992, where, as an example, the words 'sustainability' and 'heritage' did not appear even once. It is in this period that the EU policy began to discuss the idea that the role and image of the agricultural producer had to be transformed, turning from a mere producer of food to the manager of the rural space.

To some extent, the Agenda 2000, followed by the Mid-Term Review in 2003,<sup>35</sup> anticipated some aspects that appear in today's EU Green Deal, particularly the importance of agriculture and of the management of rural areas to meet the goals of sustainable development. However, despite the importance of this evolution, the second EU regulation on GIs for agricultural products and foodstuffs, Regulation 510/2006,<sup>36</sup> did not acknowledge them. In fact, this new set of rules was essentially aimed at ensuring compliance of the EU GI Law with the TRIPS Agreement, which was questioned by some Member States of the World Trade Organization (WTO).

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<sup>33</sup> European Commission, 'Agenda 2000: for a stronger and wider Europe' COM(97) 2000 (15 July 1997).

<sup>34</sup> For an official explanation of the rationale and goals of the Agenda 2000, see European Commission, 'CAP Reform: Rural Development' (August 1999); European Commission, 'The Common Agricultural Policy. Promoting Europe's agriculture and rural areas: continuity and change' (March 1998). For a more detailed analysis, see McMahon (n 3) 234–250.

<sup>35</sup> McMahon, *EU Agricultural Law* (n 5) 250–270.

<sup>36</sup> Council Regulation (EC) 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2006] OJEU L93.

In particular, Regulation 2081/1992 allowed the protection of non-EU GIs on the condition that the third country granted geographical names a level of protection ‘identical or equivalent’ to that provided under EU Law.<sup>37</sup> Australia, supported by the US, considered this rule discriminatory and trade-restrictive, and successfully argued the case before the WTO Panel in the dispute *EC – Trademarks and Geographical Indications*, decided on 15 March 2005.<sup>38</sup> Regulation 510/2006 was essentially introduced to comply with this decision. Indeed, the text of the 1992 legislation remained almost identical. However, specific rules were introduced to emphasise the relevance of the TRIPS agreement on EU GI law, thus ensuring protection for any third-country products ‘where these are also protected in their country of origin’.<sup>39</sup>

Even if Regulation 510/2006 did not embody the latest trends that characterised the evolution of the CAP, the realm of EU GIs expanded constantly and, quoting Gangjee, ‘came of age’.<sup>40</sup> In this regard, the work developed during this period by several scholars, many of whom are featured and/or cited in this volume, was crucial. Among the other things, the different nature of GIs and Trademarks, and the status of the former as a standalone IPR, was convincingly established;<sup>41</sup> the first comprehensive analyses of GI Law, also in a comparative perspective, were published;<sup>42</sup> their multifunctional nature, which makes them

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<sup>37</sup> See Regulation 2081/1992, art 12.

<sup>38</sup> Timothy E Josling, ‘The War on Terroir: A Transatlantic Trade Conflict’ (2006) 53 *Journal of Agricultural Economics* 337.

<sup>39</sup> Regulation 510/2006, Recital 13.

<sup>40</sup> Dev Gangjee, ‘Introduction: Timeless Signs or Signs of the Times?’ in Dev Gangjee (ed), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar Pub 2016) 1.

<sup>41</sup> Louis Lorvellec, ‘You’ve Got to Fight for Your Right to Party: A Response to Professor Jim Chen’ (1996) 5 *Minnesota Journal of Global Trade* 65.

<sup>42</sup> Bernard O’Connor, *The Law of Geographical Indications* (Cameron May 2004);

particularly impactful on rural development, was assessed;<sup>43</sup> their functioning investigated,<sup>44</sup> as well as their history.<sup>45</sup>

Meanwhile, the evolution of the CAP did not stop; rather, it developed further in an attempt to adopt a more holistic view of the production of agricultural products. In 2010 the Commission began discussing a new reform plan capable of leading the policy of the EU until 2020. This project was based on the principles of Agenda 2000. However, these were reworked in the form of a 'partnership between Europe and farmers', as the Commission described it, in which farmers were considered the true managers of the rural space and, therefore, had to be supported accordingly. In particular, the reform introduced a new system of payments and income support mechanisms aimed at achieving several goals. These included, among others, the preservation of rural areas and heritage, the fostering of rural development with specific attention to small and niche producers, as well as a focus on green and innovative practices.<sup>46</sup>

### **<c> 3.3 The evolution of the CAP after 2006 and the turning point: Regulation 1151/2012**

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<sup>43</sup> Giovanni Belletti and Andrea Marescotti, 'Origin Products, Geographical Indications and Rural Development' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011); Filippo Arfini, Luis Miguel Albisu and Corrado Giacomini, 'Current Situation and Potential of Geographical Indications in Europe' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011); Sarah Bowen, 'Embedding Local Places in Global Spaces: Geographical Indications as a Territorial Development Strategy' (2010) 75 *Rural Sociology* 209; Dwijen Rangnekar, 'The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe' (UNCTAD-ICTSD 2004) Issue Paper No 8.

<sup>44</sup> Delphine Marie-Vivien, 'The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India' (2010) 13 *The Journal of World Intellectual Property* 121; Erik Thévenod-Mottet and Marie-Vivien Delphine, 'Legal Debates Surrounding Geographical Indications' in Elizabeth Barham and Bertil Sylvander (eds), *Labels of origin for food: local development, global recognition* (CABI 2011). Bertil Sylvander, Dominique Barjolle and Filippo Arfini, *The Socio-Economics of Origin Labelled Products in Agri-Food Supply Chains: Spatial, Institutional, and Co-Ordination Aspects* (Actes et Communications, 2000).

<sup>45</sup> The most prolific of the historians of GI Law is Prof Stanziani. For one of his most remarkable outputs published in the 1992–2012 period see Alessandro Stanziani, 'Information, Quality and Legal Rules: Wine Adulteration in Nineteenth Century France' (2009) 51 *Business History* 268.

<sup>46</sup> The plan for the new reform of the CAP was published by the Commission on 12 October 2011. For a summary, see European Commission, 'The European Commission proposes a new partnership between Europe and the farmers' (Press release, 12 October 2011) <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_11\\_1181](https://ec.europa.eu/commission/presscorner/detail/en/IP_11_1181)>. See also, European Commission, 'The Common Agricultural Policy: a partnership between Europe and farmers' (2012).

Just like in the early 1990s GIs were used as a tool to strengthen the common market in agricultural products, in 2010 it was evident that this IPR had a crucial role to play in the implementation of the new regional agricultural strategy. EU institutions themselves linked the GI quality schemes to the CAP. For instance, the Committee of the Regions, in its opinion on the development of an ‘ambitious European policy for agricultural quality schemes’, held that the ‘quality schemes implemented collectively are integral to the European Union’s cultural, agricultural and culinary heritage’ and that contributed to differentiate and preserve the diversity of the EU agricultural products. It also defined quality schemes as key tools for land-use planning and the development of rural areas, capable of allowing single regions to participate in globalisation.<sup>47</sup> The European Parliament expressed the same view.<sup>48</sup>

These goals, which linked *sui generis* GIs with the broader strategy of the CAP, were eventually made explicit in Regulation 1151/2012. Published 20 years after Regulation 2081/1992, this set of rules constituted a turning point in the conceptualisation of the nature of GIs and of the functions that they perform. From a historical perspective, the first thing that meets the eye is the progress made in terms of content, language and drafting techniques.

Indeed, some elements did not change. The Preamble reiterates the goal of protecting the diversity of European agriculture. However, it does so by stressing the importance of the work of the producers to keep traditions alive while leading the development of the rural space. In addition, just like the 1992 and 2006 regulations, it restates that a policy focused on quality is essential to meet the expectations of producers.<sup>49</sup>

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<sup>47</sup> Committee of the Regions, ‘Opinion of the Committee of the Regions on “Towards an ambitious European policy for agricultural quality schemes”’ [2011] C 192/28.

<sup>48</sup> ‘... the protected designation of origin and geographical indication system [are] one of the CAP instruments intended to support the development of rural areas, protect the cultural heritage of regions and foster the diversification of employment in rural areas’, see European Parliament, ‘European Parliament resolution of 25 March 2010 on Agricultural product quality policy: what strategy to follow?’ (2009/2105(INI), [30].

<sup>49</sup> Regulation 1151/2012, Preamble Recitals 1–5.

In contrast, it is interesting to notice the unprecedented emphasis put by Regulation 1151/2012 on the relevance of non-market-related concerns in EU GI Law. In particular, it links GIs with the European developmental policy, thus including them among the measures devised by the EU to promote smart, sustainable and inclusive growth.<sup>50</sup> Moreover, this Regulation marked a distinct evolution compared to its predecessors by explicitly stating for the first time that GIs are IPRs and that one of the main goals of the quality schemes is rewarding producers' efforts.<sup>51</sup> Hence, Regulation 1151/2012 ideally closes the first phase of EU GI Law from 1992 to 2012 and introduces a new one that fully acknowledges the multifunctional nature of this IPR and its strategic importance, such as its beneficial effects on rural development and empowerment of local communities.

#### **<b> 4. The present and future: 'Farm to Fork Strategy' and Regulation 2024/1143**

The analysis presented in the previous sections has shown how the history of GIs cannot be assessed without considering the evolution of the key principles of the CAP, as these provide the essential context for understanding the nature and strategic importance of GIs beyond the realm of IP Law. The progressive development of the CAP anticipated two conceptual revolutions in the area of GIs: that of the first Regulation and, 20 years later, of Regulation 1151/2012. The link between this set of rules and the aims of the CAP has become increasingly more explicit as the latter has transformed, encompassing an increasing number of goals not immediately related to market, production, and trade, but to environmental sustainability, rural development, and heritage preservation.

This trend is not over. Currently, the EU policy locates *sui generis* GIs as a component of the 'Farm to Fork Strategy'.<sup>52</sup> Introduced in 2020, the Farm to Fork Strategy is a policy frame to guide the transition of EU

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<sup>50</sup> Ibid, Recital 5.

<sup>51</sup> Ibid, art 1(1)(c). In general, this new set of rules defines the objectives of *sui generis* GI protection in a clearer and more defined way than its predecessors. Cf Regulation 1151/2012, Preamble Recitals 3–4; art 4(b).

<sup>52</sup> European Commission, 'Farm to Fork Strategy: For a Fair, Healthy and Environmentally-Friendly Food System' (2020) <[https://ec.europa.eu/food/sites/food/files/safety/docs/f2f\\_action-plan\\_2020\\_strategy-info\\_en.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/f2f_action-plan_2020_strategy-info_en.pdf)>.

food production towards a sustainable food system capable of a neutral or positive environmental impact, thus helping to mitigate climate change and reversing the loss of biodiversity, while ensuring that EU citizens have access to safe and affordable food. It is explicitly described as the ‘heart of the European Green Deal’, a large-scale plan launched in 2019 to transform the EU into a climate-neutral region by 2050 by guiding essentially every aspect of the action of the EU.<sup>53</sup> For a focus on these policies, I refer the reader to the contribution of Flavia Guerrieri in Chapter 10.

Once again, the evolution of this context influenced the development of the general principles that inform EU *sui generis* GIs. These, introduced to play a role in the transformation of the CAP from a capacity- to a quality-based approach, and then reconceptualised as the ideal IPR to ensure rural development, sustenance of rural communities, and the preservation of heritage in the countryside, have now been linked to the goals of environmental sustainability. The new EU GI Law and, in particular, its cornerstone, Regulation 2024/1143, reflects this evolution. The following sections focus on the role of sustainability in this set of rules and on new tools specifically designed to enhance sustainable food production in the EU.

#### **<c> 4.1 Regulation 2024/1143: sustainability-related strategic goals and policy**

Regulation 1151/2012 mentioned ‘smart, sustainable and inclusive growth’ in its Preamble.<sup>54</sup> However, it did not provide any detailed definition or featured specific provisions related to environment and sustainability. Regulation 2024/1143, instead, clearly places EU GIs within the domain of sustainability.

From a general perspective, the Explanatory Memorandum to Regulation 2024/1143 states that the new legislation addresses two general objectives: ‘ensuring effective protection of IPR in the Union, including efficient registration processes, to fairly reward producers for their efforts’ and ‘increasing the uptake of

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<sup>53</sup> European Commission, ‘The European Green Deal’ <[https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en)>.

<sup>54</sup> Regulation 1151/2012, Recital 5.

GIIs across the Union to benefit the rural economy'. Then, it presents six 'specific objectives', including, at n 3, 'contribute to making the Union food system more sustainable by integrating specific sustainability criteria'.<sup>55</sup>

Turning now to the actual provisions, Regulation 2024/1143 dedicates its opening Recitals 2–4 to sustainability and sustainable food production, thus confirming the prominent position occupied by these topics in the legislative text. In particular, the set of rules opens with a reference to the European Green Deal, followed by a more specific one to the Farm to Fork Strategy. It is also specified that GIIs can play an important role in circular economy.<sup>56</sup> This is not a negligible point, and indeed, the author takes this opportunity to stress that more research would be welcome on this issue.

Next, the Preamble further focuses on the concept of 'sustainability', stating, under Recital 24, that 'sustainable practices should contribute to one or more environmental, social or economic objectives'. Thus, the Regulation introduces, for the first time in EU GI Law, an explicit reference to the 'triad' that traditionally composes the concept of sustainable development.

Finally, Regulation 2024/1143 has introduced other novelties, such as a provision on 'mandatory sustainability standards' and a new optional tool, the 'sustainability report'. This is discussed in the next section.

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<sup>55</sup> The remaining five are: improve the enforcement of GI rules to better protect IPR and better protect GIIs on the internet; streamline and clarify the legal framework to simplify and harmonise the procedures for application for registration of new names and amendments to product specifications; empower producers and producer groups to better manage their GI assets and encourage the development of structures and partnerships within the food supply chain; increase correct market perception and consumer awareness of the GI policy and Union symbols to enable consumers to make informed purchasing choices; safeguard the protection of traditional food names to better valorise and preserve traditional products and production methods.

See Proposal for a Regulation of the European Parliament and of the Council on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products (COM(2022) 134 final/2), 2.

<sup>56</sup> Regulation 2024/1143, Recital 3.

## <c> 4.2 Mandatory sustainability standards and sustainability reports: important novelties or destined to flop?

As mentioned in the previous section, the Preamble of Regulation 2024/1143 emphasises the importance of sustainability for EU *sui generis* GIs. Accordingly, the new legislation introduces specific provisions aimed at fostering sustainability in the field of origin products. In particular, it is expedient to comment on the innovations introduced under articles 7 and 8.

Article 7 encourages producers to agree on enhanced sustainability standards and makes them mandatory by including them directly in the text of the product specifications:

A producer group ... may agree on sustainable practices to be adhered to in the production of the product designated by a geographical indication, or in carrying out other activities subject to one or more obligations provided for in the product specification. Such practices shall aim to apply sustainability standards higher than those laid down by Union or national law in terms of environmental, social or economic sustainability or animal welfare ... Where the producer group ... decides that the sustainable practices ... are mandatory for all producers of the product concerned, those practices shall be included in the product specification in accordance with the registration or amendment procedure.

The article continues, at paragraph 2, by providing a more specific definition of 'sustainable practice' as 'practice which contributes to one or more social, environmental or economic objectives' and presenting a non-exhaustive list of various practices considered falling into this category.<sup>57</sup> This is a relevant innovation that finally provides a more specific definition of 'sustainability' in this context.

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<sup>57</sup> These are: '(a) climate change mitigation and adaptation, the sustainable use and protection of landscapes, the transition to a circular economy, including the reduction of food waste, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems; (b) the production of agricultural products in ways that reduce the use of pesticides and manage risks resulting from such use, or that reduce the danger of antimicrobial resistance in agricultural production; (c) animal welfare; (d) a fair income for producers, diversification of activities, promotion of local agricultural production, and valorisation of the natural fabric and local development; (e) preservation

Article 8, instead, introduces a new instrument, the 'Sustainability Report', defining it as follows:

1. A producer group ... may prepare and regularly update a sustainability report based on verifiable information, comprising a description of existing sustainable practices implemented in the production of the product, a description of how the method of obtaining the product impacts on sustainability, in terms of environmental, social, economic or animal welfare commitments, and information necessary to understand how sustainability affects the development, performance and position of the product.
2. The Commission shall make the sustainability report public.

From this provision, it emerges that this 'report' is conceived as an optional document which can be used by producers to provide tangible evidence of the sustainability of their practices, publicly sharing their data for the benefit of everyone.

At present, it is too early to assess whether this optional document will become a common practice and will bring useful results or, instead, will only be considered by producers as a superfluous surplus of administration in an already highly bureaucratic regime. Empirical research on the justifications for amendments to specifications has revealed that, to date, environmental concerns have played a limited role in the evolution of EU GIs.<sup>58</sup> These findings may be disappointing. However, there is no obligation on producers to highlight exactly how and to what extent their production methods are more sustainable than similar ones and to provide tangible evidence to validate such a claim. Indeed, it may also be difficult to motivate producers to add this extra data in an already complex document such as a specification, as it is

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of agricultural employment by attracting and sustaining young producers and new producers of products benefiting from a geographical indication; (f) improving working and safety conditions in agricultural processing activities.'

<sup>58</sup> The analysis of the justifications presented by a group of producers to amend the text of a specification is interesting because it provides valuable insight on the evolution a GI and the reasons that drive it. For an essential paper on this point, see Andrea Marescotti and others, 'Are Protected Geographical Indications Evolving Due to Environmentally Related Justifications? An Analysis of Amendments in the Fruit and Vegetable Sector in the European Union' (2020) 12 Sustainability 3571. This article provided the conceptual foundations for the development of one of my research projects, see Andrea Zappalaglio, 'Justifications and effects of the amendments: analysis of PGIs of product class 1.2 for meat products' in Zappalaglio and others (n 32).

unlikely that such additional information would lead to any advantageous result in terms of marketing, reputation, and appeal because consumers do not normally read it.

It is unlikely that Regulation 2024/1143 will reverse this trend. However, as explained by Giovanni Belletti and Andrea Marescotti in Chapter 15, GIs contribute to sustainability in various ways by creating a complex ‘ecosystem’ that operates on multiple levels. Therefore, the relationship between GIs and sustainable development is difficult to assess and too multifaceted to be condensed in the specification alone.<sup>59</sup>

In conclusion, it is unclear whether these new concepts introduced by Regulation 2024/1143 – mandatory sustainability standards and sustainability report – will be impactful from a practical perspective. Nonetheless, they can be considered positive additions to the legislation, as they denote a strong commitment towards sustainability and align EU GI Law with the strategic goals of the European Green Deal and of the Farm to Fork Strategy.

## **<b> Conclusions**

This research suggests that from a methodological perspective, the nature, goals, and functioning of EU GI rules can be fully appreciated only when read in parallel with the developments occurring in the CAP in a given period. Accordingly, this contribution provides an original overview of the history of the EU *sui generis* GI regime, with a specific focus on agricultural products and foodstuffs, by emphasising how the evolution of this IPR has always been essentially related to and influenced by the development of the EU CAP.

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<sup>59</sup> Giovanni Belletti and Andrea Marescotti, ‘Evaluating Geographical Indications’ (FAO and Department of Economics and Management, University of Florence 2021). See also, FAO and OriGIn, ‘Developing a Roadmap towards Increased Sustainability in Geographical Indication Systems’ (2024) [<https://openknowledge.fao.org/server/api/core/bitstreams/522e3e55-f440-4109-b0fc-cdc0be36b3ac/content>](https://openknowledge.fao.org/server/api/core/bitstreams/522e3e55-f440-4109-b0fc-cdc0be36b3ac/content).

In particular, this work begins by discussing the early European agricultural policy of the 1970s aimed at strengthening the European common market and its functioning. It then considers its subsequent evolution, exploring how this, combined with the international negotiations leading to the TRIPS Agreement, influenced the founding principles and goals of Regulation 2081/1992; that is, the first unitary EU *sui generis* GI Regulation. The analysis then assesses the parallel evolution of CAP and EU GIs from the 1990s to the present. It emphasises how the latter absorbed the key principles of the former, which transitioned from a system focused on enhancing, protecting and supporting agricultural production in the EU to a mechanism that prioritises producers and their role as managers of rural areas to promote and ensure rural development and the preservation of European gastronomic heritage. These principles shaped the policy goals on which Regulation 1151/2012 was based.

Finally, this chapter discusses the new Regulation 2024/1143 'on geographical indications for wine, spirit drinks, agricultural products, traditional specialities guaranteed, and optional quality terms for agricultural products'. The chapter specifically examines the Regulation's role in the Farm to Fork Strategy and the European Green Deal. It emphasises the important role attached by this set of rules to sustainability and explores two new features introduced by it: the encouragement for producers to incorporate mandatory sustainability standards in product specifications and the optional 'sustainability report'. It concludes by arguing that it is difficult to predict whether producers will widely adopt these new tools. However, it is emphasised that the impact of GIs on sustainable development is too complex to depend on the contents of the specifications alone, as it is the result of the interconnections between an origin product, its place of production, and the producers.

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