

## Some key points on how to ensure optimal management and protection of geographical indications

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Geographical indications were used very early on to refer to agricultural products in France. However, it was only after a serious production crisis that legislation was adopted with regard to appellations of origin. That legislation was subsequently amended to make it more effective. The French winegrowing industry, which boasted a swath of appellations of origin, was hit by the phylloxera crisis in the 20<sup>th</sup> century. Phylloxera, originally an insect from America, laid waste to a large part of the grape vines and vineyards in Europe from 1864 onwards.<sup>1</sup> This disrupted the market supply and resulted in wines that were “manufactured” according to fraudulent practices, involving usurpations of the most famous names in the wine industry. The French Government reacted to the situation by adopting the law of August 1, 1905, which introduced the concept of appellations of origin. It made provisions for their protection and gave the French authorities the power to delimit winegrowing regions. These delimitations, however, caused great controversy among wine producers. After the First World War, a new law was passed on May 6, 1919 and was subsequently amended in 1927. This law empowered French courts to define both the areas and the conditions of production for appellations of origin and enabled them to arbitrate in case of conflicts between producers. This law was another relative failure, on account of the discrepancies in the judgements handed down and the technical difficulties that the judges encountered. Finally, it took a second crisis (overproduction) to enact the decree-law of July 30, 1935. This text provided for the creation and management of the “*appellation d’origine controlee*” (AOC). It brought together various market operators, such as producers, processors and merchants, in addition to government authorities, including what was later to become the *Institut national de l’origine et de la qualité* (INAO).<sup>2</sup>

If we fast forward several decades, legislation on appellations of origin (AOs) and geographical indications (GIs) was introduced by the European Union as part of the Common Agricultural Policy (CAP) under the aegis of countries concerned, such as Italy and France:

- From the late 1970s onwards, this legislation included quality wines that were produced in specific regions (nowadays known as wines with a Protected Designation of Origin (PDO)), and wines with a protected geographical indication (PGI).
- The late 1980s saw the inclusion of geographical indications for spirits.

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<sup>1</sup> It took more than 30 years to overcome this crisis by using rootstocks from American plants that were naturally resistant to phylloxera.

<sup>2</sup> For further developments in French law on AOCs, please see article by F. Hélin, INAO, at [http://www.wipo.int/mdocsarchives/OMPI\\_CEIPI\\_PI\\_SB\\_98/OMPI\\_CEIPI\\_PI\\_SB\\_98\\_17\\_F.pdf](http://www.wipo.int/mdocsarchives/OMPI_CEIPI_PI_SB_98/OMPI_CEIPI_PI_SB_98_17_F.pdf).

- In 1992, PDOs and PGIs were introduced for agri-food products.

By applying such rules, France could boast 700 appellations of origins (AO) and geographical indications (GIs) by 2015.<sup>3</sup>

France therefore has a wealth of AOs and GIs. They keep the rural economy alive, create employment and opportunity in the countryside, protect traditional areas of production, increase the expertise of local companies and engage local producers in joint projects. The diversity of farm products ensures biodiversity and provides a variety of landscapes and natural resources.

In 2014, goods with an initial, estimated turnover of 22 billion euros (excluding tax) were placed on the market (the figure for wine and spirits was slightly less than 16 billion euros). AOs and GIs create added value throughout the entire food production chain. Furthermore, AO and GI exports result in positive agri-food trade balances. Lastly, it is common knowledge that AOs and GIs provide consumers with clear information enabling them to make informed choices when purchasing agricultural food products.

If we look at the life cycles of these AOs and GIs (some of which have been protected since the early 20<sup>th</sup> century) we can conclude that there are a number of key elements that ensure optimal management and protection. The following two points stand out:

1. collective professional governance; and
2. effective involvement of public authorities.

## **I – The need for collective professional governance**

Under French and European law, AOs and GIs are collective undertakings that involve producers of raw materials and processors, even merchants, within a given branch. In other words, the market operators are obliged to organize themselves collectively from the outset. French law calls these common undertakings Defense and Management Organizations (DMOs).

These professional organizations are financed by contributions from their members. Their aim is to ensure strong collective management in order to preserve the heritage of the AO or GI. They have to manage the AO or GI in the best possible manner, for the common good. There has to be a long-term vision.

In order to better understand the role of DMOs, below are various examples of the type of activities that they are involved in:

### *1- Activities relating to the quality and typicity of the product*

DMOs must define and implement key aspects and conditions that enable AOs and GIs to become successful and evolve with the times. DMOs prepare a list of specifications which in turn provide a blueprint for the conditions in which AOs and GIs are produced and processed. These

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<sup>3</sup> A total of 719 AOs/GIs, i.e., 366 wine PDOs, 3 cider PDOs, 74 wine PGIs and 2 cider PGIs, 54 GIs for spirits, 50 dairy PDOs and 44 PDOs for other agri-food products, 126 PGIs for agri-food and dairy products, as indicated under “Chiffres clé 2015”, on the INAO website at <http://www.inao.gouv.fr/Publications/Donnees-et-cartes/Informations-economiques>.

specifications characterize quality and typicity. For example, the *Comité Interprofessionnel de Gestion du Comté* included in its specifications list the stipulation that each dairy cow must have at least one hectare of grass to graze upon. Indeed, the food that a cow eats affects the quality of the milk and subsequently the cheese. The Committee is currently requesting that milking robots be banned, with a view to leaving unchanged the age-old length of time that the cows spend outdoors.

- The *Syndicat des Producteurs de Piment d'Espelette* PDO included in its specifications the obligation to harvest manually (100 per cent) ripe red chili peppers. The harvesting period extends from the month of August until first frost (through to and including the month of December). The fact that harvesting is staggered in such a way and performed manually influences the quality of the chili peppers that are covered by the PDO.
- The DMO for the *Camembert de Normandie* PDO reintroduced local breeds of cows for the production of the PDO known as Camembert cheese from Normandy. Since May 1, 2017 specifications have made it obligatory to include at least 30 per cent dairy cows from Norman breeds in each herd. The local breed of cow that best adapts to the Norman soil and landscape is seen as the best vector of the typicity of this cheese.
- The *Association de Défense de l'Oignon Doux des Cévennes* included the need for crop sheets in its specifications for the sweet onion PDO known “*Oignon doux des Cévennes PDO*”. Producers are obliged to maintain an up-to-date register of the crops harvested from each plot of land. The register for each crop must be kept for at least five years. These crop sheets enable optimum monitoring of the PDO and are an efficient and rapid way of combatting crop disease.

DMOs also play a key role in product control.

## 2-Product control and conditions of production

GI product control is carried out by independent bodies. DMOs, however, set up their own control mechanisms to improve the quality and specificity of their GI products. Examples are provided below:

- The *Union Viticole Sancerroise*, which is the DMO of *Sancerre PDO* wine,<sup>4</sup> decided in the 1970s to create a committee of winegrowers that would specify and monitor how the vines are pruned. This was a pioneering concept at the time. Vine-pruning has a direct impact upon the characteristics of the wine harvest (the harvested grapes are vinified), wherein the characteristics of the wine harvest determine the quality of the wine produced. The Winegrowers' Union also chose to check each vinified batch from each producer. The results of these tests are sent to the independent product control body.
- Activities of the inter-professional group known as Inter-Rhone led to the adoption of “downstream quality control” by producers of wines from the Rhone Valley.”<sup>5</sup> This involved sampling wines directly at the points of sale in France, England, Belgium, Germany, Holland,

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<sup>4</sup> This includes 328 winegrowers and 257 winemakers of the PDO known as “Sancerre” which is marketed by 33 merchants.

<sup>5</sup> This includes winegrowers and merchants.

Switzerland and Denmark for analysis and/or wine-tasting purposes.

The DMO also intends to invest in R&D product development.

### 3 – *Collective Research and Development*

Although AO and GI products are the result of local practices and customs, this does not mean that they should remain frozen in time. Such products are part of a dynamic process and benefit from research and development as provided for by the relevant professional structures. Please see the examples below:

- In 1994, the *Union Viticole Sancerroise* set up an inter-professional agricultural advice, vinification and analysis service for the center of France, belonging to winegrowers of the *Sancerre* appellation. Its activities center on winemaking and wine itself. It explains how to take good care of vines and how to bring them to maturity in an environmentally-friendly manner. It arranges wine-tasting sessions in order to monitor vintages and blends. All winegrowers who are members of the *Union Viticole Sancerroise* can take part in these activities.
- Eighty-nine per cent of the DMOs in the dairy PDO sector organize training courses and provide technical support sessions for their members in order to ensure that knowledge is transferred to market operators. Organizations that train future cheesemakers and manufacturers are also used to spread information on the production of PDO cheeses. If a product is to last, the expertise that is used to produce that product must be passed onto future generations.
- The *Conseil National des Appellations d'Origine Laitières* (CNAOL), which represents French dairy DMOs and PDOs,<sup>6</sup> has published a series of articles on major topics of interest in order to ensure sustainability of the various branches. This research covers areas such as the management of microbial ecosystems in milk and cheese, maintenance of expertise and enhancement of resources, in addition to societal acceptance of the sectors.<sup>7</sup> The use of wooden boards to mature cheese is a common practice in many areas of France. Scientific studies have confirmed the value of what was hitherto anecdotal evidence and have resulted in the publication of a practical handbook on the “use of wood to mature cheeses.”

The European market is characterized by an abundance of food products. It is always useful to enhance the value of a product and to ensure customer loyalty by promotion. This is exactly what DMOs do.

#### 4- *Collective promotion*

DMOs pool promotional tools in the interest of the sector as a whole. Examples are provided below:

- The *Comité Interprofessionnel de Gestion du Comté* (CIGC) chose a collective management system to promote *Comté PDO* cheese, using print media and the CIGC's website (<http://www.comte.com/>).
- The same can be said of the DMO for Roquefort PDO cheese (*Confédération Générale des Producteurs de Lait de Brebis et des Industriels de Roquefort*) which spends a large part of its

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<sup>6</sup> CNAOL defends and promotes French dairy PDOs, i.e., 45 cheeses, 3 types of butter and 2 types of cream. This corresponds to 230 000 tons of marketed products, approximately 17% matured cheese.

<sup>7</sup> <http://www.fromages-PDO.com/espace-presse/?typed=dossiers-dinformatiions>.

promotional budget on the export market that accounts for one-quarter of all sales. (<http://www.roquefort.fr/en/news/discovering/the-lacaune-ewe/>);

- The *Syndicat des producteurs de Piment d'Espelette* PDO, the DMO for the protected designation of origin, is a much smaller outfit. It invests in one-off events. During the annual Chili Pepper Festival in Espelette, it organizes a series of workshops enabling participants to discover the PDO by means of sensory analysis. The festival provided a key opportunity for it to work in synergy with other PDOs from the Basque country, such as “Ossau-Iraty” (ewe’s cheese), “Kintoa” (pork from Basque pigs) and Irouléguy (red wine), and organize classes in creative cooking.
- Finally, the site of the DMO for “Beaune” wine (PDO) promotes hiking tours interspersed with information terminals, in order for people to get to know its wines. It also organizes wine-tasting sessions at professional events such as *Les Grands jours de Bourgogne* or amateur gatherings such as the Saint-Vincent of Beaune Festival, at the end of January.

Obviously, market operators should not be the only people involved in the running of their AOs or GIs. It is also necessary to enlist the support of public authorities.

## **II – The need for effective involvement of public authorities**

We have already looked at the historical, cultural and socio-economic importance of AOs and GIs, and the development of laws related thereto. This has resulted in the consequences below. The French Government continues to allocate substantial resources to the management and protection of AOs and GIs. AOs and GIs benefit from a specially adapted, protective system of public law. They are monitored closely on an international scale. They are granted protection from an environmental and territorial point of view.

### *I- Substantial resources allocated to AOs and GIs in public policies*

INAO, as mentioned earlier, is a state-run institution that implements legislation relating to AOs and GIs. It consists of a main office, providing central services, and local branches that are close to producers and the geographical areas concerned. It is highly distinctive in that it brings together government authorities and professionals. Its decision-making bodies consist of a majority of professionals, and representatives from the administrative authorities. The President of the Institute is a professional, while its chief executive is a top-ranking civil servant.

Given the important role played by INAO in shaping French policy on AOs and GIs, the French State funds<sup>8</sup> approximately 70 per cent of its activities. Professionals provide the remaining 30 per cent of its budget.

No fewer than three ministries are involved in its activities: the Ministry of Agriculture, the Ministry of the Economy and Foreign Affairs, and the office of the Prime Minister (General Secretariat of Foreign Affairs). All three ministries work together to monitor AOs and GIs at the national, European and international levels.

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<sup>8</sup> INAO’s revenues in 2015 amounted to just over 24 billion euros.

All of these ministries and departments contribute to specific legislation on and protection of AOs and GIs.

## 2- Specific legislation and protection

According to the French and European *sui generis* system, the rights conferred on AOs or GIs are equivalent to other intellectual property rights such as patents and trademarks. French law provides as follows:

- It is unlawful to adopt signs infringing prior marks, in particular a PDO or GI.<sup>9</sup>
- Action will be taken against counterfeit AOs or GIs under existing law.<sup>10</sup>
- The notoriety of an AO or GI can be protected when it is misappropriated or impaired;<sup>11</sup> e.g., cancellation of the Darjeeling trademark registered in classes 16, 35 & 41, Judgment of the Paris Court of Appeal dated November 22, 2006: Darjeeling is a GI, as defined in the TRIPS Agreement and Article 10*bis* of the Paris Convention. The applicant sought to take advantage of the reputation of the “Darjeeling” GI in the form of a drawn teapot and the slogan “Communication is our cup of tea.” This parasitic behavior, quite apart from the possibility of causing confusion, is an error. A GI is a prior right that can be used against a trademark, by virtue of its seniority and notoriety. “Darjeeling” was unavailable to constitute a word mark, hence the trademark was cancelled.

The French Government continued to improve legislation on AOs and GIs at the beginning of the 21<sup>st</sup> Century.

- In 2001, it made it possible for forest products to attain AOC status.
- In 2006, the legal instruments relating to AOs and GIs were revised to ensure greater consistency and to modernize the control system.
- In 2010, it enabled the environmental characteristics of the territory and animal welfare to be taken into account by DMOs outside of the specifications.
- In 2014, legislation was issued to regulate geographical indications relating to crafts, as recognized by National Intellectual Property Office of France (INPI).
- In 2014, legal protection of AOs and GIs was enhanced in cases where the registration of a trademark harms the name, notoriety, reputation or image of an AO or GI,<sup>12</sup> or when it leads people to believe that products are covered by an AO or IG.

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<sup>9</sup> See Article L. 711-4 of the French Intellectual Property code at [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=CCC4225B58C52DECF3E211A32081F1DA.tpdila14v\\_3?i dSectionTA=LEGISCTA000006161690&cidTexte=LEGITEXT000006069414&dateTexte=20170612](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=CCC4225B58C52DECF3E211A32081F1DA.tpdila14v_3?i dSectionTA=LEGISCTA000006161690&cidTexte=LEGITEXT000006069414&dateTexte=20170612).

<sup>10</sup> See Articles L. 722-1 *et seq* of the French Intellectual Property Code at [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=CCC4225B58C52DECF3E211A32081F1DA.tpdila14v\\_3?idS ectionTA=LEGISCTA000028716978&cidTexte=LEGITEXT000006069414&dateTexte=20170612](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=CCC4225B58C52DECF3E211A32081F1DA.tpdila14v_3?idS ectionTA=LEGISCTA000028716978&cidTexte=LEGITEXT000006069414&dateTexte=20170612).

<sup>11</sup> See Articles L. 643-1 *et seq* of the French Rural and Maritime Fishing Code at [https://www.legifrance.gouv.fr/affichCode.do;jsessionid=8B9804AA394BF4F91857AFE52C898FB0.tpdila07v\\_2?idSe ctionTA=LEGISCTA000006168035&cidTexte=LEGITEXT000006071367&dateTexte=20190101](https://www.legifrance.gouv.fr/affichCode.do;jsessionid=8B9804AA394BF4F91857AFE52C898FB0.tpdila07v_2?idSe ctionTA=LEGISCTA000006168035&cidTexte=LEGITEXT000006071367&dateTexte=20190101).

<sup>12</sup> Article L. 712-4 of the French Intellectual Property Code and Articles L. 643-3-1 and L. 643-3 of the French Rural Affairs and Maritime Fishing Code.

Very early on, the French authorities became aware that when an AO or GI becomes successful, it will be copied both nationally and internationally. As a result, the authorities monitor AOs and GIs very closely at the international level.

### *3- Close monitoring at the international level*

France has conducted negotiations with other countries on the protection of its AOs and GIs since the end of the 19<sup>th</sup> century. Nowadays, it monitors closely all negotiations carried out by the European Union with regard to the protection of AOs and GIs with affected third parties. The French authorities and INAO also follow very closely the work carried out on AOs and GIs in international fora. They welcomed the adoption of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, which occurred under the aegis of WIPO, and have high hopes that it will result in increased international protection.

INAO, in conjunction with the services of the Ministries and the economic departments of the French Embassies, continues to combat usurpation and counterfeiting of GIs in third countries. The Institute deals with approximately 200 new cases each year.

The French authorities attach great importance to knowledge and dissemination of the AO and IG concept, as managed and protected in France. The MAA, for example, subsidizes special GI training courses for civil servants from other countries. The training itself is theory-based and includes field studies. It enables students to understand the socio-economic and legal approach to AOs and GIs as understood and applied in Europe.

The French State also protects fundamental tools for the production of AOs and GIs, the land used and the environment linked to it.

### *4- Protection of land and the environment*

- Protection of land that yields AO and GI products

Preserving agricultural land is a central issue for agriculture, which is itself a source of employment and an economic driver of rural development. Agriculture is the first link in a chain: if agriculture disappears, tourism is threatened, as are services, especially schools, and the economy in general, especially crafts. In addition, grassland, moorland and pastures help reduce the risk of avalanches, mudslides and fires. Agricultural land also plays a role in carbon capture (grasslands, agroforestry, etc.).

This protection is all the more fundamental for AO and GI production areas. In fact, the production of AOs and GIs cannot be delocalized; the actual location is a working tool and a shared heritage for producers. Consequently, the French Government has entrusted the duty of protection mainly to INAO and DMOs.

In addition to their general role as protectors, the DMOs can take action to ensure that the Minister of Agriculture, after consultation with INAO, responds to a project (construction, equipment, land use, etc.) that would adversely affect the area or the conditions of production and the quality or

image of the AO product.<sup>13</sup> This procedure made it possible, for example, to change the trajectory of the high-speed railway line in the Rhone Valley.<sup>14</sup>

In addition, INAO had been entrusted with a mission to defend production lands as far back as the 1950s and can now issue an opinion the following:

- all infrastructure classified as intended for environmental protection (waste storage area, construction of wind farms, quarries, etc.) which would affect an AO production area;
- any expropriation of AO vines; and
- urban planning documents affecting AO/GI.<sup>15</sup>

In the case of urban planning documents in particular, the number of cases dealt with by INAO continues to increase (from 200 notices in 1995 to more than 2,000 today). The French authorities have therefore recently buttressed this function by allowing INAO to sit on the departmental committees for the preservation of natural, agricultural and forest areas in order to express their views on the planning and urban planning documents examined by such committees, which would reduce the areas that produce AO or GI products. Consequently, INAO is expanding its outreach to local services regarding the issues that GIs might raise for a given region. For example, in Normandy, it presented maps of production areas and explained the content of certain specifications. Thus, this committee was able to understand the importance of AOs and GIs on its territory.

Finally, given the implementation of the United Nations sustainable development goals and the implementation of the Paris Climate Agreements, there is an increasing need for environmental protection of areas producing AO or GI products.

- *Environmental protection for AO and GI*

In order to protect AO and GIs, the French authorities encourage professionals to choose from among the various tools at their disposal, that is:

- The initiatives included in the agro-ecological project for France. Launched in 2012, the project seeks to ensure that French agriculture reconciles economic performance with environmental performance by producing differently. For example, reducing the use of pesticides; encouraging agroforestry; developing the pooling of projects and feedback from the “pioneers” through the Economic and Environmental Interest Groups (GIEE), etc.
- Using of other signs or indications with the AO or GI. These are either the “organic farming” label regulated by the European Union or the environmental certification of the farm. This French certification promotes farms that follow environmentally-friendly processes in respect of on biodiversity-related issues, pesticide strategy, fertilization management and water resource management. French winegrowers have been particularly interested in this certification.
- The incorporation of existing agro-ecological measures into specifications, which then

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<sup>13</sup> Article L. 643-4 of the Rural Affairs and Maritime Fisheries Code. For example, in 2012, DMOs wrote to the Minister of Agriculture 20 times about PDO wines and twice about other products, in relation to projects likely to adversely affect appellations.

<sup>14</sup> Jacques Audier, professor at the Faculty of Law in Aix-Marseille University, *Aspects juridiques des terroirs*.

<sup>15</sup> Article L 112- 3 of the Rural Affairs and Maritime Fisheries Code for documents reducing an AOC area.



become binding for all. For example, the “St Nicolas-de-Bourgueil” (wine) DMO has stipulated in its specifications the obligation of the grassing of vines or headlands.

This environmental protection policy is in line with the concerns of DMOs in this area that are involved in landscape and environmental projects. For example, the “Costières de Nîmes” (wine) DMO has been developing an environmental and landscape policy for several years: it promotes the planting of hedges and the use of organic means of control; it also runs a network of winegrowers engaged in agro-environmental measures for the protection of water resources.

In conclusion, it can be seen that GIs, national wealth and agricultural collective heritage can only be recognized, managed and protected by a skillful combination relying on a deep and continuous involvement of farmers and public authorities for the collective benefit of the State, regions, the sector’s stakeholders and consumers.