

An aerial photograph of a river valley. The river is a vibrant blue-green color, winding through the landscape. On the left, a large dam structure is visible, with water cascading over its spillways. The surrounding hills are covered in terraced vineyards, showing a mix of green and brownish-yellow, suggesting different stages of growth or harvest. The sky is a clear, bright blue with a few wispy white clouds. The overall scene is a beautiful representation of a wine-growing region.

# DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

## An added value that needs protection

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Fotografias: João Ferrand

# SUMMARY

- **DO and GI - Industrial property rights**
  - A very long and complicated conquest in time
  - Three pillars – essential to have a DO or GI
- **An autonomous IPR (with its own legal regime different from the other IPR)**
- **They are competition tools on a competitive market**
- **Strong distinctive power**
  - Create impact on the consumer decision
- **News from Europe on the protection of DO and GI**
- **International protection of DO and GI**

# Introduction – the three pillars



# DO AND GI

## Geographical Indications

Industrial Property Rights

Autonomous regime

Different from other IPR

**Legal functions:**

**Origin**

**Quality**

**Publicity**

## Legal nature

A group of producers (1<sup>st</sup> pillar)

## Quality guarantee and origin

Specifications (2<sup>nd</sup> pillar)

## Certification body (3<sup>rd</sup> pillar)

Who can use the geographical indication?

# PDO AND PGI

- Means of identification of the products on the marketplace
- Symbols of quality
- Quality and diversity of agricultural products
- Tool at the service of producers and traders
- Fair return for farmers and producers
- High level of protection
- Protection of cultural and gastronomic heritage – a territory
- A competitive tool on a competitive market
- A tool to promote the rural development and the maintenance of the rural population
- A “territorial mark” – it is not possible to produce in other countries with the same name
- The image of a region, a territory, a country in a globalized world
- Identification: better price (for the control and image)
- Tourism development (several types)

# Douro demarcated region



# **CERTIFICATION SCHEME**

**Certification of products with appellation of origin or geographical indication**

**Each product must comply with a specification**

Interests of the community

**Establishment of means of control and certification**

Interests of the community

**Certification body**

**Conformity with the specification**

**Principle of objectivity**

**Principle of impartiality and independence**



# WHO CAN USE A GI?

**Those whose products comply with a specification**

Geographical origin

Quality

Conformity with a specification

## **Scheme of certification**

**The right belongs to all the producers (in a large concept) of the demarcated region whose products comply with a specification**

**The appellation of origin or the geographical indication is owned by the collectivity of the producers, but each producer can use that right independently from the others.**



# Protection



# IN EUROPE AND INTERNATIONALLY

## Protection in the European Union:

Registration system – special procedure

**High level of protection** – an IPR

Problems – conflicts with trademarks and generic terms

PDO and PGI with reputation – **special protection**

## Internationally:

Paris Convention – a first step

Madrid Agreement – a second step

Lisbon Agreement – a unique example

**Geneva Act** – an great act for the protection of DO and GI

TRIPS Agreement – a important example

**Bilateral Agreements** – an important tool

FTA and DCFTA

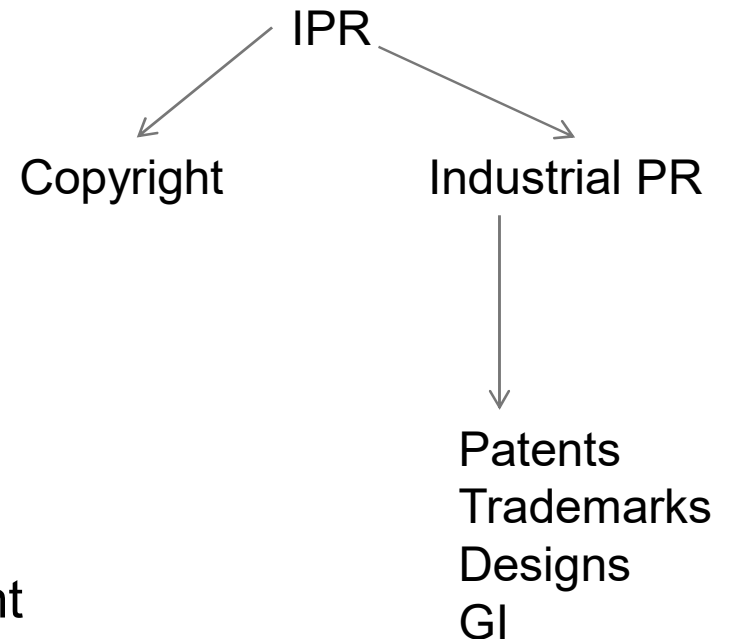
# European Union protection



# HIGH LEVEL OF PROTECTION

## Positive right

- Right to use the PDO/PGI
- Authorization to use
- Intellectual Property Right
- Not only unfair competition
- A great evolution on the last decades
- A distinctive sign that is a subjective right
- Similar to a trademark, a patent or other IPR



# HIGH LEVEL OF PROTECTION

## Negative rights:

- Any direct or indirect commercial use of a protected name by comparable products not compliant with the product specification of the protected name, or in so far as such use exploits the reputation of a designation of origin or a geographical indication;
- Any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavor', 'like' or similar;
- Any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- Any other practice liable to mislead the consumer as to the true origin of the product
- Use of PDO and PGI as an ingredient (pizza and chocolates issues)

# NON COMPARABLE PRODUCTS

## 1) Dilution of the distinctive power of the DO or the GI

- It will lose its brightness because it will be associated with several products or services.

## 2) Risk to the distinctive character of the DO and GI

- When there is a risk of negative associations, for examples because the products are of bad quality or there is incompatibility between the products, for example the image of quality and services of rat removal or disinfection or transport of waste (this would create negative associations).

## 3) Takes unfair advantage of the DO and GI

- In this case we are trying to avoid free riding attitudes or parasites.
- Someone is taking undue advantage of the reputation or distinctive power of the designation of origin or geographical indication.

## 4) Contribute to its degeneration

- Sales denomination or generic term.

# SOME EXAMPLES

## **Comparable products:**

Cambozola (trademark) *versus* Gongozola (PDO)

Grana Biraghi (trademark) *versus* Grana Padano (PDO)

Konjakki (trademark in Finland) *versus* Cognac (PDO)

Castel (trademark) *versus* Castell (PGI)

## **Non comparable products:**

DIPORTOFINO *versus* PORTO

Perfumaria Bordeaux *versus* Bordeaux

Miller-High Life – The Champagne of Beers *versus* Champagne

Royal Cognac *versus* Cognac

Bordeaux Buffet *versus* Bordeaux

Champagner bekommen, Sekt bezahlen: IBM Aptiva jetzt zum Vobis-Preis *versus* Champagne

Biscuits Champagne *versus* Champagne

An aerial photograph showing a landscape with terraced hillsides. The terraces are arranged in a wavy, rhythmic pattern across the hills. In the upper left, a river flows through a valley. The foreground and middle ground are dominated by the terraced slopes, which appear to be covered in low-lying vegetation or are bare earth. The background shows more green, forested hills.

# Denominación de Origen Protegida Queso Manchego

ECJ: Case C-614/17, 2 May 2019





# EVOCATION

**A registered name may be evoked through the use of figurative signs:** *“Article 13(1)(b) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs must be interpreted as meaning that a registered name may be evoked through the use of figurative signs.”*

- It is interesting to note here that **the ECJ criticizes the restrictive interpretation of the European Commission on this point.** It finds that: *“as regards the context in which the term ‘evocation’ occurs, it cannot be accepted, as the Commission maintains, that the evocation of a registered name through the use of figurative signs can be examined only in the light of Article 13(1)(c) of Regulation No 510/2006.”*

**Evocation can be established including where such figurative signs are used by a producer established in that region, but whose products, similar or comparable to those protected by the designation of origin, are not covered by the PDO:** *“Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the use of figurative signs evoking the geographical area with which a designation of origin, as referred to in Article 2(1)(a) of that regulation, is associated may constitute evocation of that designation, including where such figurative signs are used by a producer established in that region, but whose products, similar or comparable to those protected by the designation of origin, are not covered by it.”*

**An average consumer can be understood as including consumers of the Member State where the product is produced and mainly consumed:** *“The concept of the average consumer who is reasonably well informed and reasonably observant and circumspect, to whose perception the national court has to refer in order to assess whether there is ‘evocation’ within the meaning of Article 13(1)(b) of Regulation No 510/2006, must be understood as covering European consumers, including consumers of the Member State in which the product giving rise to evocation of the protected name is made or with which that name is geographically associated and in which the product is mainly consumed.”*

# WHY PROTECT?

We are protecting **the investment** made by producers and traders on the use of the DO or GI

Protecting the **selling-power** of the DO or GI

Protecting the consumer

Protecting instruments to develop poor regions

Protecting tools in a competitive market

Protecting **symbols** (of quality) as any other symbols in the capitalist economy

# International protection



# INTERNATIONAL PROTECTION

## Bilateral agreements:

- Concluded by each country
- Celebrated by the European Union
  - South Africa, Canada, Chile
  - Indonesia, China
  - Australia, New-Zealand
  - Japan, China, Mexico
  - Mercosur
  - Etc.

## Registration systems:

- India,
- Brazil, Peru, Colombia,
- Angola, Cabo Verde,
- Etc.



Map of Pangaea

# INTERNATIONAL PROTECTION

## Multilateral agreements:

- **Paris Convention (1883)**
  - Very weak protection
- **Madrid agreement** for the repression of false or deceptive indications of source on goods (1891)
  - Wine appellations of origin cannot become generic
- **Lisbon agreement** for the protection of appellations of origin and their international registration (1958)
  - Strong protection
  - **Geneva Act (2015)**
- **TRIPs agreement**
  - Unbalance agreement
  - “The maintenance of past sins”
- **Other Multilateral agreements**

# Conclusion

## DO and GI

### Industrial property rights

- Legal functions:
  - Geographical origin
  - Quality
    - Conformity with a specification
  - Publicity
- High Level of protection
- Prestigious names
- There are still several difficulties in understanding these IPR
- Specially it has been difficult to understand the consequences of not protecting prestigious DO/GI