Contents

	List of figures	xiv
	List of tables	XV
	List of cases	xvi
	Table of legislation	xvii
	National laws and statutes	xix
	Foreword	xxi
	Preface	xxiii
	Abbreviations	XXV
	Introduction	1
	1 This book: a research on the 'origin link' in the EU Law of Geographical Indications 1 2 The concept of 'origin link' 3 3 The origin link in EU Regulation 1151/2012 6 4 EU policy and debates on GIs: the state of the art 7 5 The academic debate on GIs and the contribution of the present research 10 6 Structure of the book 14 7 A note on methodology 17 References 21	
PA	RT I	
Th	ne origin link: roots, nature and structure	29
1	Terroir, the early sui generis IGO regimes and the roots of PDO	31
	1.1 Introduction 31 1.2 The French legislation: brief chronology and context 35	

1.2.1 Phylloxera and its consequences: adulteration and
fraud 35
1.2.2 The French legislation from 1905 to 1935:
an outline 36
1.3 Terroir or terroirs? Origin and evolution of the concept 40
1.3.1 Terroir today: overview of the concept 40
1.3.2 A possible classification of terroir(s): a tripartite
structure 42
1.3.2.1 Terroir as a dual concept 43
1.3.2.2 Physical terroir 44
1.3.2.3 Cultural terroir 45
1.3.3 The genesis of terroir in France 45
1.4 The evolution of terroir in the French parliamentary debate
on AO and AOC 48
1.4.1 Terroir in the French AO policy: phase I
(1905–1925) 48
1.4.1.1 The period 1905–1913 48
1.4.1.2 The road to the Law of 1919 and the early
1920s 49
1.4.2 The turning point: the protection of Roquefort and the
doctrine of Capus 51
1.4.2.1 Joseph Capus and his doctrine 51
1.4.2.2 The Roquefort AO 52
1.4.3 The Law of 1927 and Calmel's definition of terroir:
phase II begins 55
1.4.4 The 1930s: the transformation of terroir outside and
inside the parliament 56
1.4.4.1 Outside the parliament 56
1.4.4.2 Inside the parliament 57
1.5 IGO rules and terroir: only a French story? The case of
Italy 58
1.5.1 Background: the Italian situation 58
1.5.2 The main features of the Italian system in the 1920s 60
1.5.2.1 The consortia 60
1.5.2.2 The definition of 'vino tipico' and identification of the
designated areas 62
1.5.3 The reforms of the 1930s and the demise of the system 63
1.5.4 The first Italian law on AOs for wines (1963):
an outline 65
1.5.5 Terroir in Italy? 66
1.6 Conclusion 68
References 69

2	The reputational link and the roots of PGI
	2.1 Introduction 76 2.2 The origin of the reputational link 80 2.2.1 Alternatives to appellation of origin: indication of source and unfair competition law 80 2.2.2 IGO protection based on unfair competition law and passing off in Europe before 1992 83 2.2.2.1 The German approach to IGO protection before 1992 83 2.2.2.2 The British approach to IGO protection before 1992 85 2.2.3 Conclusions on the origin of the reputational link 87 2.3 Mapping the reputational link: literature review and proposal for a twofold structure 87 2.4 Analysis of the twofold structure of the reputational link 89 2.4.1 The market reputation 89 2.4.2 The bistorical element: general concept and structure overview 91 2.4.3 The historical element: analysis of its three-part structure 93 2.4.3.1 Part 1: historical information and recount of the roots of the product 93 2.4.3.2 Part 2: traditional know-how 95 2.4.3.3 Part 3: socio-economic relevance and importance for rural development 96 2.5 Conclusion 97 References 99
	ART II the origin link in the evolution of EU GI law and policy 101 Joining terroir and reputation: the path to the EU sui generis GI regime 103
	3.1 Introduction 103 3.2 The Sekt and Bocksbeutel cases and the need for harmonisation 105 3.3 The foundations of the policy of the EU sui generis GI system: brief history of the CAP from 1985 to 1992 107 3.3.1 The Green Paper (1985) 108

4

3.3.2 The report on 'Environment and Agriculture' and the communication on 'The Future of Rural Society' (1988) 109
3.3.3 The reflection paper on 'The Development and Future of the CAP' (1991) and the MacSharry reforms 110 3.4 The role of the EC in the Uruguay Round 111
3.4.1 The 1988 EC proposal: the definition of 'Geographical Indication' and the emergence of the reputational link 112
3.4.2 The 1988 EC proposal: the level of protection granted 115
3.5 The path to Regulation 2081/1992 and the making of PGI 117
3.5.1 The report of the WIPO Committee of Experts (28 May to 1 June 1990) 118
3.5.2 The proposal of the Commission and the opinion of the EESC 120
3.5.2.1 The Wiesbaden GI symposium (17–18 October 1991) 122
3.5.2.2 The discussions of the European Parliament and the role of the supporters of a broad regime 123 3.5.2.3 The agreement on the final text: the role of PGI 125 3.6 The early years of the EU sui generis GI regime 127
3.6.1 The Exportur decision and the recognition of 'reputation' as a standalone origin link 127 3.6.2 Applicants and nature of the origin link in the specifications of the first registered EU GIs 128 3.7 Conclusion 130
References 131
The evolution of the origin link in the EU sui generis GI regime: the centrality of the historical element
4.1 Introduction 135

4.2 The evolution of the EU sui generis GI rules and of the

4.3 The evolution of the origin link in the EU sui generis GI

4.4 Quantitative assessment of the evolution of the origin link in

the EU sui generis GI regime: general trends

CAP after 1992 136

regime: methodology 141

135

Communication of the contract
4.4.1 Overview 143
4.4.2 Regional trends: northern/central Europe 144
4.4.3 Regional trends: southern Europe 146
4.5 GI policies in the 'new EU member states' 148
4.5.1 The legal background 148
4.5.2 The choice of PGI and the use of TSG by the new EU
member states 151
4.6 The nature of the origin link in the quality schemes: empirical assessment 155
4.6.1 Reputation and historical element in PDO
specifications 155
4.6.2 Qualitative link and historical element in PGI
specifications 156
4.6.3 The importance of the historical element 157
4.7 Focus 1: why the PGI quality scheme has become

4.7.1 PGI is more flexible than PDO and grants the same level of protection 159

4.7.2 PGI protects local products that do not qualify for PDO 160

4.7.2.1 Overview of the issue 160

predominant 158

4.7.2.2 Specific focus: fruit, vegetables, cereals – fresh or processed 162

4.7.3 The majority of PDOs were registered at the beginning of the EU sui generis system 163

4.7.4 Do the national competent authorities influence the type of GI that is granted? 165

4.8 Focus 2: the why of the success of the historical element as a linking factor 167

4.8.1 Is mentioning the history of the product in the specifications a legal requirement? 167

4.8.2 The relevance of the history of the product in the text of Regulation 1151/2012 169

4.8.2.1 The relevant provisions in Regulation 1151/2012 169

4.8.2.2 The EU 'Guide to Applicants' 170

4.8.3 History has always been an inherent component of the origin link 171

4.9 Conclusion 173 References 174

PART III The historical element and its role in the future of the EU sui generis GI regime	
5 The suitability of history to constitute the basis of the origin link	181
5.1 Introduction 181 5.2 Why history constitutes a valid basis for the origin link 182 5.2.1 History and terroix are related and operate in a similar way 182 5.2.2 History is the description of the interaction between a place and a human community 185 5.3 History outlines the identity of a product: case studies 186 5.3.1 History and appellation of origin: the case of Gruyère cheese 186 5.3.2 History and PGI: selected case studies 187 5.3.2.1 Product class 1: pasta 188 5.3.2.2 Product class 2: baker's wares 189 5.3.2.3 Product class 3: cured meat 190 5.4 Evidence 191 5.4.1 The function of evidence 191 5.4.2 Types of acceptable evidence 193 5.4.2.1 Official and public documents 193 5.4.2.2 Newspapers, magazines and other 193 5.4.2.3 Oral sources 194 5.5 The limits of history as a basis of the origin link 194 5.5.1 The history and the tradition of the product can be invented or mystified 195 5.5.1.1 Objection 1: tradition is an invention 196 5.5.1.2 Objection 2: the traditional version of the product is a mere marketing tool 197 5.5.2 The product is not linked to its tradition and history 198 5.6 When history does not establish an origin link: practical cases 199 5.6.1 Scenario 1: the production method does not match the traditional image of the product 200 5.6.2 Scenario 2: the raw materials are sourced from areas completely unrelated to the reputation of the	
product 202	

5.6.2.1 The raw materials are unrelated to the area to which	
the reputation of the product is linked 202	
5.6.2.2 The area of origin of the raw materials is	
excessively broad 203	
5.6.3 Scenario 3: the present and the historical versions of the	
product are unrelated 205	
5.7 Some policy prescriptions for a stronger origin link 206	
5.8 Conclusion 208	
References 209	
6 Protection for non-agricultural products:	
the future of the EU sui generis GI regime?	215
6.1 Introduction 215	
6.2 The debate on non-agricultural GIs in the EU 218	
6.3 Sui generis and 'quasi-sui generis' approaches: some case	
studies from France and Italy 221	
6.3.1 The French sui generis regime for the protection	
of non-agricultural products 221	
6.3.2 Two case studies from Italy: the trade marks 'Ceramica	
artistica e tradizionale' and Vetro di Murano' 223	
6.3.2.1 Ceramica artistica e tradizionale (artistic and	
traditional pottery) 223	
6.3.2.2 Vetro artistico di Murano (artistic	
Murano glass) 224	
6.4 The possible role of the EU quality schemes in the protection of non-agricultural IGOs 225	
6.4.1 Dual or single system of protection? The opinion of the	
stakeholders in 2014 225	
6.4.2 An argument in favour of a single system of protection based on PGI 226	
6.5 The Geneva Act and its possible impact on the protection of	
non-agricultural products in the EU 228	
6.6 Conclusion 233	
References 234	
General conclusions	237
Index	242