

I. ANALYSIS OF CURRENT LEGISLATION AND CASE LAW

1. *Are GIs and AOs protected under your Group's current law?*

The French Group deemed it necessary to define the notion of geographical indications in terms of international, European and French law when completing Q 191, with an update for legislation entering into force since 2006.

INTERNATIONAL CONVENTIONAL LAW

- Within the framework of the 1883 Paris Convention, a Special Union was constituted, through the Lisbon Agreement of 31 October 1958 (as amended on 28 September 1979), relating to the protection of appellations of origin and their international registration.

Article 2 defines appellations of origin as: *"The geographical denomination 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"*.

Furthermore, the Geneva Act of the Lisbon Agreement (as adopted on 20 May 2015) extends the protection conferred by the Lisbon Agreement to geographical indications: *"any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin"*.

- Article 22 § 1 of the TRIPS Agreement defines geographical indications as *"indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin"*.

EUROPEAN LAW

A number of EU regulations make provision for a system of protection for geographical indications.

There are three categories of such geographical indications: protected designations of origin (PDOs), protected geographical indications (PGIs), and geographical indications for wines and spirits.

Each PDO – PGI is also divided into two categories: PDOs-PGIs for agricultural products and PDOs-PGIs for wine and spirits.

Each category is governed by a Regulation applicable to it:

- Regulation No 1151/2012 of 21 November 2012, relating to PDOs and PGIs for agricultural products.
- Regulation No 1308/2013 of 17 December 2013, relating to wine PDOs and PGIs.
- Regulation No 110/2008 of 15 January 2008, relating to spirit drinks.

Within the context of this study we will address only PDOs-PGIs governed by Regulation No 1151/2012 of 21 November 2012.

Appellations of origin and geographical indications are defined in Article 5 of Regulation (EU) No 1151/2012:

- Designation of origin (PDO) is defined as a *"name which identifies a product: a) originating in a specific place, region or, in exceptional cases, a country; b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and c) the production steps of which all take place in the defined geographical area"*.
- Geographical indication (PGI) is defined as *"a name which identifies a product: a) originating in a specific place, region or country; b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and c) at least one of the product steps of which take place in the defined geographical area"*.

To benefit from protection in Member States, geographical indications (PGIs) and designations of origin (PDOs) have to be registered at Community level.

NATIONAL LAW

In French law, the notion of geographical indication (GI) corresponds to two legal notions: the designation of origin (DO) and the geographical indication protecting industrial or handicraft products (IGPIA, in French). Mention should also be made of the legal notion of "indication of provenance", which is not covered by any law or jurisdiction but is recognized in case law.

- Designations of origin (DOs) are defined in Article L.431-1 of the Consumer's Code (formerly, Art. L. 115-1): *"a designation of origin comprises the name of a country, a region or a locality which denotes a product originating therefrom, the quality or the characteristics of which are due to the geographical environment with its inherent natural factors and human factors"*. This article picks up the terms of Article 2(1) of the Lisbon Agreement for international protection of appellations of origin.

In French law, designations of origin comprise:

- First, *simple designations of origin*, instituted by the law of 6 July 1966, which, under the law of 2 July 1990, became the preserve of industrial and manufactured goods;
- Second, *controlled designations of origin (CDOs)*, which relate to all agro-foodstuffs, including wine.
- Geographical indications protecting industrial and handicraft products (IGPIAs) were created by the Consumer's Act of 17 March 2014 and are defined in Article L.721-2 of the Intellectual Property Code (IPC) as *"the name of a geographical zone or of a specific place denoting a product, other than an agricultural or forestry product, foodstuff or produce of the sea, originating therefrom, which possesses a specific quality, a reputation or other characteristics that may be attributed essentially to that geographical origin"*.
- Lastly, mention should be made of the indication of provenance, which is not the subject of a definition and is not covered by legal arrangements but which is sometimes recognized in case law.

According to case law, a geographical name may be described as an indication of provenance when, in the mind of the public, a link is established between the place of manufacture and characteristics arising from geographical or human factors. (Court of Appeal, Paris, 6 February 1986 "Savoie Coutellerie").

In the absence of any legal status, an indication of provenance cannot be protected against the exploitation of an identical or similar sign other than by civil or criminal provisions of general law, such as unfair competition (Art. 1240 of the Civil Code) or deception (Art. 441-1 of the Consumer's Code).

LINK BETWEEN EUROPEAN LAW AND NATIONAL LAW

Currently, rules of national law and European union law coexist.

The French system of designations of origin is set to disappear, to be replaced by a harmonized European system.

- The Court of Justice, in fact (CJEC, 8 September 2009, *Budweiser*, C-478/07) ruled, on the one hand, against cumulative national and European systems of protection and, on the other, in favour of the application of the single, harmonized European system.

In the area of agro-foodstuffs, France is the last Member State in the EU to still operate a national system of designations of origin.

- However, French law now requires beneficiaries of a French controlled designation of origin to seek a PDO at European level where the controlled designation of origin meets the conditions of Regulation No 1151/2012. (Art. L. 641-10 of the Rural Code).

Furthermore, French law stipulates that a French controlled designation of origin ceases to exist as of the date on which a decision is given on the registration of the European PDO. Thus, registration as a European PDO gives rise to the disappearance of the French controlled designation of origin. Similarly, a refusal to register a sign as a European PDO gives rise to cancellation of the French controlled designation of origin.

A French controlled designation of origin is thus now, of necessity, temporary, in force until the PDO is registered by the European Commission.

- This temporary system does not apply to French IGPIAs, since Regulation No 1151/2012 excludes industrial goods and the protection thereof.

2. *If yes, please briefly describe the following:*

- a) *How many AOs and GIs are defined and the prerequisites (in particular the type, nature and intensity of link with a territory).*

NATIONAL LAW

A geographical indication is a sign affixed to goods having a precise geographical origin and possessing particular qualities or a reputation due to that place of origin. There are two such indications in French law: designations of origin – DOs (1) and geographical indications protecting industrial or handicraft products – IGPIAs (2).

1. Designations of origin (DOs)

Designations of origin are defined in Article L.431-1 of the Consumer's Code (formerly, Art. L. 115-1) as *"the name of a country, a region or a locality denoting a product originating therefrom, the quality or the characteristics of which are due to the geographical environment with its inherent natural factors and human factors"*.

There are two prerequisites in French law for recognition of a designation of origin:

- In principle, designations of origin must consist of verbal signs comprising a place, i.e. geographical names. These geographical names must not be generic, in particular by becoming generic.
- The product for which controlled designation of origin protection is requested must possess a *"duly established reputation"* (Article L.641-5 of the Rural Code).
- The product must have a close link with its terroir.

This link is characterized by two criteria connected with (i) the uniformity of the zone of designation, and (ii) the typical features of this zone, which confer certain qualities on the product.

(i) Concerning uniformity, the designation of origin must cover a homogeneous area defined by its natural properties (not on the basis of administrative territorial boundaries), which confers typical properties on goods.

Article L. 641-7 of the Rural Code states that *"Recognition of a controlled designation of origin is given in the form of an order from the relevant minister or ministers, based on approval of a specification featuring, in particular, the boundary of the geographical area of production of this designation and also the production conditions thereof"*.

(ii) Concerning typical features, the designation of origin must cover a territory in which there is a *combination* of natural factors (soil, climate, raw material, etc.) and human factors (production methods, know-how, etc.), which, cumulatively, confer certain particular qualities on the product.

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

Geographical indications protecting industrial and handicraft products (IGPIAs) are defined in Article L.721-2 IPC as *"the name of a geographical zone or of a specific place denoting a product, other than an agricultural or forestry product, foodstuff or produce of the sea, originating therefrom, which possesses a specific quality, a reputation or other characteristics that may be attributed essentially to that geographical origin"*.

This notion was created by the Consumer's Act of 17 March 2014 and relates to industrial and handicraft products.

In French law there are a number of prerequisites for recognition of an IGPIA (Art. L. 721-2 IPC):

- The IGPIA must consist of a geographical name or a complex name incorporating a geographical name.
- The IGPIA must denote industrial or handicraft products and may not be used for "*agricultural or forestry products, foodstuffs or produce of the sea*".
- Products must have "*a specific quality, a reputation or other characteristics that may be attributed essentially to that geographical origin*".
- Products covered by an IGPIA must originate from the zone in question, i.e. they must have been produced there or, in certain cases, only processed if processing is an essential step in the manufacture of the product.
However, it is not necessary for the product to draw *all* its qualities or characteristics from its geographical origin.

The notion of "geographical origin" in the case of IGPIAs is less restrictive than that for "geographical environment" in the case of DOs, since it requires only that the most important and characteristic manufacturing step be performed in the specific geographical zone.

The IGPIA system thus requires a looser link with the territory. The geographical zone may evolve as a function of the evolution of human factors.

EUROPEAN LAW

- PDOs are defined in Article 5(1) of Regulation No 1151/2012 as "*a name which identifies a product:*
 - a) *originating in a specific place, region or, in exceptional cases, a country;*
 - b) *whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and*
 - c) *the production steps of which all take place in the defined geographical area*".
- PGIs are likewise defined in Article 5(2) of Regulation No 1151/2012 as "*a name which identifies a product:*
 - a) *originating in a specific place, region or country;*
 - b) *whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and*
 - c) *at least one of the production steps of which take place in the defined geographical area*".
- Regulation No 1151/2012 thus contains two prerequisites for registration of a PDO-PGI:
 - The PDO-PGI must consist of a place name referring to the geographical origin of the product. This may be a specific place, a region or a country. (Art. 5(1)(b) and 5(2)(b) of Regulation No 1151/2012). However, certain *non-geographical* references may be accepted as PDOs-PGIs where they are traditionally used to denote a product originating from a particular geographical zone.
 - **The geographical name must not be generic (Art. 6 of the Regulation).**

This aspect arose, in particular, in the context of the "Feta" case. The Hellenic Republic had applied for registration of the "Feta" name as a designation of origin.

On 12 June 1996, the Commission registered the "Feta" name as a PDO.

In an order of 16 March 1999, the Court of Justice (CJEU) cancelled the registration of this PDO on the basis of the generic character of this designation, which had been used as a generic name in certain Member States other than the Hellenic Republic for a long time.

The Commission then embarked upon a broad consultation throughout the European Union with a view to determining whether the "Feta" term is or is not generic. In the wake of this investigation, on 14 October 2002 the Commission finally registered the "Feta" name as a PDO.

The Federal Republic of Germany and the kingdom of Denmark then appealed from the Commission's decision on the ground that the "Feta" name was generic.

The Court of Justice ultimately rejected that appeal on the ground that *"as regards the consumption of feta in the various Member States, as opposed to its production, the Court notes that the 19th recital in the preamble to the contested regulation indicates that more than 85% of Community Consumption of feta, per capita and per year, takes place in Greece. (...) Those various factors relating to the consumption of feta in the Member States tend to indicate that the name "feta" is not generic in nature"* (CJEC, 25 October 2005, C-465/02 and C-466/02).

- The characteristics of the products must be linked with the origin of the products: the strength of the link varies according to the type of geographical indication. **The PDO requires a close link between the characteristics of the products and their origin whereas, in the case of a PGI, the link may be looser.**

- b) *Whether that protection is provided by sui generis laws; solely as aspects of other laws, such as by registration as collective or certification marks; or by other (and if so, what) means?*

NATIONAL LAW

Reference should be made to the reply given to Question 2 of Q191, indicating that, in French law, designations of origin have *sui generis* status.

- DOs and IGPIAs are protected by a *sui generis* right.

1. Designations of origin (DOs)

The DO system is governed by the IPC, the Consumer's Code and the Rural Code.

The Rural Code thus provides broad protection for designations of origin (Art. L. 643-1 to 643-3-3). Furthermore, certain particular appropriations are penalized in the Consumer's Code and may thus lead to specific criminal actions (Art. 453-1 to 453-10).

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

The IGPIA system is governed by the IPC, which makes provision for civil and criminal actions in the event of an offence (Art. L. 722-1 *et seq.* IPC).

- Furthermore, protection for DOs and IGPIAs may also be provided via common-law actions, such as an action for unfair competition or for free riding.
- Lastly, a DO or an IGPIA may not be registered as an individual trademark, collective mark or collective certification mark.

This prohibition on filing a DO or an IGPIA as a trademark is justified by the fact that they cannot be appropriated by a private person and cannot confer a monopoly on exploitation. They must be available for all those whose products can benefit therefrom.

However, case law acknowledges that a complex sign that includes a DO or an IGPIA may be registered as a trade mark if one or more distinctive elements are added, but solely to denote products originating from the zone covered by the DO or IGPIA.

EUROPEAN LAW

- PDOs-PGIs are protected by a *sui generis* right.

Regulation No 1151/2012 provides for the protection of PDOs-PGIs at national level by each Member State (Art. 13 of Rule No 1151/2012).

Protection in France is thus provided both by French *sui generis* law and by the provisions of civil and criminal common law.

- European law states that a PDO-PGI may be registered as a collective mark (Art. 66 of the European Union Trade Mark Regulation)

Legislation pertaining to the European Collective Trade Mark is thus likewise applicable thereto.

- c) *If GIs and/or AOs are protected by sui generis laws, whether your Group's laws provide for a system of registration. If so, what are the steps of this procedure including the content of the application and the possibility of opposition by third parties.*

NATIONAL LAW

As indicated at the time of the Q191 consultation, French law has no provision for a DO or IGPIA registration procedure; rather, an approval procedure exists.

The approval procedure addresses recognition of the DO or IGPIA by the public authorities.

1. Designations of origin (DOs) (Art. L. 641-6 *et seq.* of the Rural Code)

The National Institute for Origin and Quality (INAO) is responsible for recognition of DOs.

A Defence and Management Body (ODG) initiates the request and represents applicants, known as "the operators", and files an approval request at the INAO.

In the case of DOs, these bodies (ODGs), which have legal personality, submit to the INAO, at the same time as the request for recognition, a dossier comprising the precise designation of the candidate product for the DO and the exhibits proving its link with the terroir, the specification, and also the name of the regulatory body.

The INAO studies this request, having regard to the specification, after public investigations and after consulting various entities (regional bodies, groups of interested professionals, director of the National Institute for Origin and Quality, approved Consumer's Associations, etc.).

The INAO then formulates a recognition proposal; this proposal must include the definition of the area covered by the DO, the production conditions laid down in an approved specification, and also the conditions of accreditation of the designation.

The Ministry of Agriculture then issues an order (a decree, prior to ruling No 2015-1246 of 7 October 2015), which may accept or reject the INAO's proposal but may not modify it (EC, 30 July 1997, *Confédération nationale des vins doux naturels*). (Art. L. 641-7 of the Rural Code).

The order may be appealed on the ground of illegality before the administrative judge. The judge monitors external and internal legality.

The Minister for Agriculture forwards DO recognition decisions to the European Commission for registration (Art. R. 641-20 of the Rural Code).

In the wake of a decree dated 5 January 2007, the INAO's investigation procedure involves, for third parties, a possibility of opposition during a period of two months from the INAO's publication of the request for recognition. Any interested party may then forward a reasoned opposition to the INAO (Article R. 641-13 of the Rural Code).

2. Geographical indications protecting industrial and handicraft products(IGPIAs)
(Art. L. 721-3 and R 721-1 *et seq.* IPC).

The National Institute for Intellectual Property (INPI) has jurisdiction over IGPIA recognition.

A Defence and Management Body (ODG) submits the request, represents applicants, known as the "operators", and files a request for approval, after drafting a specification.

Upon receipt of the dossier, the INPI forwards a filing receipt, together with the request number, to the applicant body or the latter's authorized representative.

The INPI starts to examine the application for approval by checking the content of the specification; the institute can ask for complementary information when the application is not complete enough.

Then, the part of the public investigation begins with the public investigation's opening and the consultation of regional bodies, professional groups and associations of interested consumers.

Upon completion of the investigation and consultation, the INPI gives a decision, which it forwards to the applicant; the latter has two months in which to formulate observations. If the public investigation has revealed relevant observations, the INPI can suggest to modify the specification. If these modifications cover some fundamental points, the INPI opens a second public investigation, but only on the changed parts.

Concomitantly, INPI forward the complete dossier to the Minister for Industrial Property, for notification to the European Commission, and then publishes the request for approval of the specification in the Official Intellectual Property Bulletin (BOPI).

After this procedure, the INPI gives a decision to approve or to reject approval.

Unlike the system applicable to DOs, there is no opposition procedure for IGPIAs before the INPI.

However, the INPI decision can be appealed before the Court of Appeal.

EUROPEAN LAW

The European system provides a procedure for registration of PDOs-PGIs.

It does, however, distinguish between two situations: first, whether the PDO-PGI is filed by a Member State Group (ODG) (i); and, second, whether the PDO-PGI is filed by an ODG in a third country (ii).

i) When registration of a PDO-PGI is requested by an ODG in a Member State, the procedure takes place in two steps: a national phase and a European phase.

- ***National phase:*** (Art. 49 of Regulation No 1151/2012)

As indicated previously, in France the INAO examines requests for recognition of designations of origin.

In the wake of a decision by the INAO, the Ministry for Agriculture forwards the request, together with a declaration indicating that this request fulfils the conditions set under the Regulation, to the European Commission.

- ***European phase:*** (Arts 50, 51 and 52 of Regulation 1151/2012)

When the Commission receives a request from a Member State, it publishes the request for registration in the Official Journal of the European Union (EU), prior to embarking upon a formal examination thereof.

When the Commission publishes the supporting document for the application in the EU Official Journal, an opposition period of three months commences.

The grounds of opposition are the same as during the national phase of the procedure.

If the Commission takes the view that the application fulfils all the conditions for protection, it adopts the implementing acts for registration of the designation.

Only those having a legitimate interest may lodge an appeal against Commission decisions by requesting cancellation of the registration (Art. 54 of Regulation No 1151/2012).

- ii*) When the registration application is filed by an ODG in a third country, there is only a European phase for registration of a geographical indication. In order to proceed to registration, the Commission verifies, however, that the designation is protected in the country of origin.

After their registration, PDOs-PGIs are entered in a register held by the Commission.

3. *If your country does not protect GIs and/or AOs, was this a deliberate decision and, if so, why?*

French law provides a system of protection for geographical indications (DOs and IGPIAs).

4. *What are the grounds of invalidity/loss of rights for GIs and/or AOs under your Group's law (e.g. becoming generic, lack of use, not paying fees) and where can such be invoked (which Court, office, etc.)? Please specify the applicable test, how such is proven (e.g. consumer surveys, expert advice, dictionaries, etc.) and who bears the burden of proof.*

NATIONAL LAW

- In French law, DO and IGPIA validity conditions are verified at the stage of investigating the approval request, but there is no provision for invalidation after approval.

1. Designations of origin (DOs)

DOs cannot become generic and fall into the public domain (Art. L. 643-1(1) of the Rural Code).

The right conferred by the protection of a controlled designation of origin in France cannot be lost through lack of use, as set forth in Question 4 of Q191.

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

IGPIAs can no longer become generic and fall into the public domain (Art. L. 721-8(II) IPC).

There are thus no grounds for invalidity in the case of geographical indications.

- On the other hand, private operators may individually lose their right to exploit a geographical indication.

Indeed, operators who no longer comply with the specification may have the benefit of a geographical indication withdrawn (Art. L.642-27 *et seq.* of the Rural Code, in the case of DOs / Art. R. 721-7 *et seq.* IPC, in the case of IGPIAs).

EUROPEAN LAW

A PDO-IGP may not become generic (Art. 13(2) of Regulation No 1151/2012).

The European Regulation makes provision, however, for two instances of loss of a PDO-PGI:

- Where compliance with the conditions of the specification is not ensured (Art. 54(1)(a) of Regulation No 1151/2012);
- Where the PDO-PGI is not used over a period of at least seven years (Art. 54(1)(b) of Regulation No 1151/2012).

In these two cases, the European Regulation empowers the Commission, of its own motion or at the request of a person having a legitimate interest, to cancel registration of a PDO-PGI.

The possibility that PDOs-PGIs may be cancelled is aimed at forcing competent authorities to ensure compliance with the specification.

5. *What is the scope of protection of GIs/AOs under your Group's current law*

NATIONAL LAW

First, in French law, geographical indications protect products originating from the zone covered by these designations.

Protection accorded by French law applies exclusively to a French designation. However, in certain cases, the protection accorded by French law may apply to a designation from a third country if it benefits from the same protection under a bilateral or multilateral international treaty (Court of Cassation, Commercial Division, 11 January 2005, referring to the CJCE judgment of 20 May 2003).

Geographical indications are protected independently of any principle of specialization.

1. Designations of origin (DOs)

Protection for a DO lasts in perpetuity (Article L. 643-1(1) of the Rural Code).

As indicated in Question 5 of Q191, protection accorded in France applies to the DO name itself (Art. L.431-1 of the Consumer's Code; formerly, Art. L.115-1), and also to its translation into any language.

In the case of complex DOs, only certain terms of the DO may be protected independently of the DO overall (see decisions cited in Question 5 of Q191 relating to "fourme d'Ambert: Court of Cassation, Commercial Division, 26 October 1993; "Epoisses de Bourgogne": Court of Cassation, Commercial Division, 6 February 2001).

DOs are public in nature. Any appropriation for private purposes is therefore prohibited. (Court of Cassation, Commercial Division, 9 November 1981 "Cru du Fort-Médoc"; Court of Cassation, Commercial Division, 1 December 1987 "Romanée-Conti"; Court of Cassation, Commercial Division, 26 October 1993 "Fourme d'Ambert").

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

IGPIAs are protected in perpetuity.

Protection applies to the IGPIA itself and also to its translation (Art. L. 721-8 IPC).

Furthermore, protection may also be obtained by means of an action for unfair competition.

EUROPEAN LAW

PDO-PGIs are protected in perpetuity insofar as they may not become generic (Art. 13(2) of Regulation No 1151/2012).

Translations of PDOs-IGPs also benefit from the protection of their translation (Art. 13(1)(b) of Regulation No 1151/2012).

6. *Against what kind of conduct are GIs/AOs protected? For example, against use misleading consumers, parasitism and free riding.*

NATIONAL LAW

1. Designations of origin (DOs)

- DOs are protected against any commercial use designating products having no entitlement to the sign.

This protection is ensured by administrative monitoring, and also by legal monitoring (Articles 642-1 to 642-35 of the Rural Code, in the case of DOs).

- DOs are also protected against "appropriations" (Art. L.643-1(2) of the Rural Code).

Appropriation consists of the prohibited use of the designation of origin for any reason whatsoever. It may thus stem from a use as a trade mark, a simple mention on products or on documents accompanying their sale, or, furthermore, as a commercial name or emblem, corporate name or domain name.

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

(Art. L. 721-8, IIPC)

IGPIAs are protected by the IPC against:

- any commercial use designating products with no entitlement to the sign,
- appropriations,
- any other false or fallacious indication relating to the products,
- any other practice likely to mislead consumers.

EUROPEAN LAW

PDOs-PGIs are protected against any direct or indirect commercial use (Art. 13(1)(a) of Regulation No 1151/2012).

PDOs-PGIs are likewise protected against "misuse, imitation or evocation" (Art. 13(1)(b) of Regulation No 1151/2012).

According to the Court of Justice, "evocation" covers a situation wherein, when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected (CJCE, 4 March 1999, Case C-87/97).

European law prohibits misuse of protected designations in any way whatsoever - trade mark, mention designating products, and it is of little importance that the mention appears on the product itself, aside from any likelihood of confusion.

Such denominations are likewise protected against:

- any other false or fallacious indication relating to the products;
- any other practice likely to mislead consumers.

7. *Who has legal standing to protect a GI/AO? For example, individual producers, consortiums and associations, public bodies.*

1. Designations of origin (DOs)

In France, the Defence and Management Bodies (ODGs) are responsible for recognition and monitoring of DOs.

The order of 7 December 2006 replaced former producers' syndicates, an ODG having a legal personality (Art. L. 642-17 of the Rural Code).

All operators concerned by the DO must be members of the ODG that represents them (Art. L. 642-3(3) of the Rural Code).

ODGs then have to be recognized by the INAO when applying for DO approval (Art. L. 642-17 of the Rural Code).

The ODGs have multiple roles (Art. L. 642-17 and L. 642-22 of the Rural Code):

- preparation of the draft certification;
- assisting with the application thereof by operators;
- involvement in implementing monitoring and inspection schedules;
- updating the list of operators;
- taking part in actions to defend and protect the name, the product and the terroir, and contributing to promoting the product.

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

In France, the system set up for IGPIAs is equivalent to the system for DOs.

IGPIA defence and management is also the responsibility of private bodies that have legal personality - ODGs (Art. L. 721-4 IPC).

An operator may exercise a right to an IGPIA only if he is a member of that IGPIA's ODG and is registered on the list of operators featured in the specification (Art. L. 721-5 IPC).

The role of the ODGs in the case of IGPIAs is similar to their role with reference to DOs (Art. L. 721-6 IPC).

8. *What remedies are available in the case of violation of rights in a GIAO?*

NATIONAL LAW

French legislation makes provision for a number of actions in the event of the violation of a right conferred by a geographical indication.

1. Designations of origin

There are several sanctions when a DO is infringed:

- A civil infringement action, brought in by the law of 11 March 2014 (Art. L. 722-1 IPC).

Before that, civil actions were founded on the notion of DOs misuse and French case law in the past tended to ascertain whether there was a likelihood of confusion between goods when penalizing the use of a DO.

However, demonstration of a likelihood of confusion is not a condition: it is not envisaged either by Articles L.643-1 of the Rural Code (DOs) or by Article L.721-8 IPC (IGPIAs) (Court of Appeal, Paris, 25 April 2007).

Furthermore, Community regulations likewise prohibit all evocative references, irrespective of whether a likelihood of confusion exists (Regulation [EU] No 1151/2012 of the European Parliament and of the Council, Art. 13(1)(b)).

The French courts appear to be progressively adopting the European position by no longer ascertaining whether a likelihood of confusion exists (Court of Cassation, Criminal Division, 22 February 2011, No 10-80.721).

Anyone infringing a DO is liable to be ordered to stop using the unlawful sign (cancellation of the trade mark in the event of reproduction of a DO in a trade mark) and also to pay damages.

- It is also possible to instigate an action for unfair competition or free riding when a DO is infringed, pursuant to Articles 1240 and 1241 of the Civil Code (civil liability).
- Criminal actions in the event of fraud (Art. L 453-1 to 453-10 of the Consumer's Code), which allow for imprisonment and fines.
- Administrative sanctions in the event of operators' non-compliance with the specification (Art. R 642-39 *et seq.* of the Rural Code), such as withdrawal of the DO from the wrong-doing operator.

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

There are a number of sanctions in the event of infringement of an IGPIA:

- A civil sanction, in the form of a civil infringement action introduced by the law of 11 March 2014 (Art. L. 722-1 IPC). It is also possible to instigate an action for unfair competition or free riding in the event of infringement of an IGPIA pursuant to Articles 1240 and 1241 of the Civil Code (civil liability).
- Criminal sanctions in the event of infringement and the common-law offence of fraud (Art. L. 441-1 and L. 454-1 of the Consumer's Code).

- Sanctions, taken by the ODG, in the event of operators' non-compliance with the specification (Art. L.721-6(3) IPC).

These measures may, in particular, include a warning, suspension, or withdrawal of the possibility of using the IGPIA, for a batch or for all the relevant operator's production. The measures can only be taken by the ODG.

If the ODG doesn't monitor the operators, the INPI has to withdraw their approval.

EUROPEAN LAW

PDO-PGI protection is guaranteed by the Member States, which are responsible for taking the measures necessary to that effect (Art. 13(3) of Regulation No 1151/2012).

It is thus the system of protection under French law that applies to PDOs-PGIs in France.

There is also a common-law customs procedure at European level that allows seizure of goods from third countries that infringe PDOs-PGIs.

9. How does your Group's law regulate the conflict between a GIAO and a prior trademark? Does the GIAO or the trademark prevail or do they coexist? Under what conditions?

NATIONAL LAW

1. Designations of origin (DOs)

- In French law, DOs benefit from an exceptional status enabling them to take precedence over trade marks.

French case law gives DOs protection against any rival trade mark, whether earlier or later, owing to the public order nature of DO legislation.

Thus, in a Romanée-Conti case, the "Domaine de la Romanée-Conti" and "Romanée-Conti appellation Romanée-Conti contrôlée" trade marks, filed in 1928, were cancelled on the basis of the fact that they conflicted with the Romanée-Conti DO recognized subsequently, in 1936 (Court of Cassation, Commercial Division, 1 December 1987).

This principle was confirmed subsequently, in a general fashion, in a "Bain de champagne/Royal Bain de champagne" case. The Court deemed the *"status of controlled designations of origin to be a matter of public order, preventing any private appropriation thereof, irrespective of the date on which the disputed trade mark was filed"* (Court of Appeal, Paris, 12 September 2001; Court of Cassation, Commercial Division, 18 February 2004).

Thus, any trade mark that infringes a designation of origin is cancelled by the French courts, irrespective of whether the designation of origin or the trade mark is the prior right.

However, in the event of a complex mark filed in respect of goods benefiting from a DO and composed of a DO and of one or more other distinctive elements, case law recognizes the validity thereof (Champagne Alexandra, Court of Appeal, Aix-en-Provence, 23 May 2013, No 12/15820; Château de la Brède Côtes de Bourg, Court of Cassation, Commercial Division, 8 May 1973).

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

The IGPIA system and the DO system are different. The law of 17 March 2014 set up a coexistence solution for IGPIAs.

- Thus, if an earlier trade mark, *"account being taken of its renown, repute and the length of time for which it has been in use, is the exclusive origin of the reputation or knowledge, on the part of the consumer, of the product in respect of which a geographical indication is requested"*, the INPI cannot grant an IGPIA (Art. L. 713-6 IPC).

In all other cases, the IGPIA is registered and earlier trade marks and IGPIAs can coexist.

EUROPEAN LAW

There is a distinction in European law between applicable systems, depending on whether the trade mark is earlier than (i) or subsequent to (ii) filing of the application to register the PDO-PGI.

- If the trade mark is later than filing of the application to register the PDO-PGI, European law makes a distinction based on the products designated in the application to register the trade mark.

- When the products designated in the application to register the subsequent trade mark are able to benefit from the PDO-PGI, the application for registration may not reproduce the PDO-PGI *alone* or accompanied by *non-distinctive* elements.

These indications may not be privately appropriated.

The PDO-PGI may, however, constitute (i) valid collective marks (Art. 66 of the European Union trade mark regulation) or (ii) complex marks that include a PDO-PGI and also other *distinctive* elements.

- On the other hand, in the case of an application to register a trade mark in respect of products that are unable to benefit from the PDO-PGI, it is not possible to proceed to the registration of a trade mark that includes the PDO-PGI (Art. 7(1)(j) of the European Union trade mark regulation and Art. 14 of Regulation No 1151/2012).

-
- ii*) If the trade mark pre-dates filing of the application for registration of the PDO-PGI, European law provides a system of coexistence for the signs, provided the earlier trade mark was filed in good faith and does not fall under any group for invalidity or revocation (Art. 14 of Regulation No 1151/2012).

However, the Regulation excludes the registration of a PDO-PGI when, given the reputation of an earlier trade mark, the latter's renown and the length of time it has been used, registration of the sign as a PDO would be liable to mislead the consumer as to the true identity of the product (Art. 6(4) of Regulation No 1151/2012).

10. *Is there any specific provisional practice concerning the inclusion of a GI/AO in a domain name?*

NATIONAL LAW

French legislation does not address the reproduction of a DO or an IGPIA in a domain name.

However, by analogy with trade mark law, the reproduction of a DO or an IGPIA within a domain name may constitute misuse/infringement.

It is thus established case law that misuse consists of use of the designation of origin in a domain name (Paris District Court, 7 September 2001, "Champ-pagne.com" domain name, referring to goods or services that constitute the subject of the website's activity; Paris District Court, 9 April 2008, "Champagne.ch" domain name, denoting biscuits).

EUROPEAN LAW

European law, likewise, does not address sanctions for the reproduction of a PDO-PGI in a domain name.

Regulation No 1151/2012 states that PDOs-PGIs are protected at national level by each Member State (Art. 13 of Regulation No 1151/2012).

French case law thus applies to PDOs-PGIs in France.

- 11. Is there anybody that administers GIs/AOs in your country and/or is responsible for the verification of compliance of goods bearing a GI/AO? Please briefly describe the relevant processes, e.g. the process by which compliance with product specifications is verified before such goods are put on the market and/or the subsequent market controls on such goods?**

NATIONAL LAW

1. Designation of origin (DO)

As indicated, the INAO has jurisdiction over the recognition of DOs (Art. L. 642-5 *et seq.*). A Defence and Management Body (ODG) initiates the application, represents applicants (known as the "operators") and files an application for approval.

- Once approval has been granted, the DO undergoes a number of monitoring exercises by various bodies, with a view to verifying its compatibility with the products:
 - A first, internal monitoring exercise, carried out by the operators in respect of their own activity and monitoring exercises carried out under the responsibility of the ODGs (Art. R.642-39(2) of the Rural Code).
 - A second monitoring exercise, led by third-party bodies. These exercises are carried out under the authority of the INAO (Art. L.642-27(1) of the Rural Code). These monitoring bodies are chosen by the ODGs.
 - The third monitoring exercise is performed by the INAO. The Institute can at any time suspend or withdraw the accreditation of the monitoring body.
Within its monitoring remit, the INAO can also carry out any useful verification directly with operators, accessing all premises, land or means of transport for professional use (Art. L. 642-3 and L. 642-34 of the Rural Code).
- The Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (DGCCRF) also monitors products in order to verify their compliance with rules applicable to them and the reliability of the notification.

The remit of DGCCRF officers includes establishing and taking legal proceedings in respect of fraud offences (Art. L 511-22 of the Consumer's Code; formerly, Art. L 215-1) and advertising offences (Art. L. 121-2 of the Consumer's Code).

2. Geographical indications protecting industrial and handicraft products (IGPIAs)

The INPI is responsible for the recognition of IGPIAs (Art. L. 721-3 IPC). A Defence and Management Body (ODG) initiates the application and represents applicants, known as "operators", and files an approval application (Art. L. 642-3 of the Rural Code defines the notion of "operators").

- Once approval has been granted, the IGPIAs may be subject to various monitoring exercises with a view to ensuring their compatibility with the products:
 - A first, internal monitoring exercise, carried out by the operators in respect of their own activity and monitoring exercises carried out under the responsibility of the ODGs (Art. L. 721-6 IPC).
 - A second monitoring exercise, led by third-party bodies. These exercises are carried out under the authority of the INPI (Art. L. 721-9 IPC). These monitoring bodies are chosen by the ODGs.
 - The third monitoring exercise is performed by the INPI (Art. L. 721-6 IPC). The Institute can at any time suspend or withdraw the accreditation of the monitoring body, in case of bad management, lack of monitoring or lack of introduction of corrective measures.

- The Directorate-General for Competition, Consumer Affairs and Prevention of Fraud (DGCCRF) also monitors products in order to verify their compliance with rules applicable to them and the reliability of the notification.

The remit of DGCCRF officers includes establishing and taking legal proceedings in respect of fraud offences (Art. L 511-22 of the Consumer's Code; formerly, Art. L 215-1) and advertising offences (Art. L. 121-2 of the Consumer's Code).

EUROPEAN LAW

PDO-PGI protection is guaranteed by the Member States, which are responsible for taking the measures necessary to that effect (Art. 13(3) of Regulation No 1151/2012).

It is thus the system of protection under French law that applies to PDOs-PGIs in France.

The Regulation specifies that monitoring of compliance with the specification must be carried out at national level. (Art. 36 of Regulation No 1151/2012).

12. *Please describe any other developments in your country in relation to GIs or AOs which you consider relevant, including any proposals for reform. For example, to the extent that your country has been involved in any negotiations or discussions regarding the protection of GIs and AOs in any fora, such as multilateral, regional or bilateral agreements, please specify whether your country is negotiating or has signed any agreement with other countries that includes provisions on AOs/GIs and whether it was necessary to amend domestic legislation as a result of such agreements.*

II. PROPOSALS FOR IMPROVEMENTS AND FOR HARMONIZATION

13. *Should there be harmonized definitions of AOs and GIs? If so, please propose appropriate definitions and prerequisites.*

Yes, it is desirable that DOs and GIs should be covered by harmonized definitions.

The definition of appellations of origin is already harmonized by Article 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin, which defines appellations of origin as: "*The geographical denomination 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*".

Furthermore, the Geneva Act of the Lisbon Agreement (as adopted on 20 May 2015) extends the protection conferred by the Lisbon Agreement to geographical indications, which are defined as the: "*name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin*".

14. *Should there be a registration procedure for AOs and GIs? If so, what should its key features be? For example, content of the application; examination by competent bodies; possibility of opposition by third parties.*

Yes, it is desirable for DOs-IGs to be the subject of a registration procedure or any equivalent procedure.

The principal steps in the procedure should be:

- Submission of a dossier by an organization collectively representing producers in the territory of the DO-GI (demonstration of the typical nature of the terroir, specification, etc.).
- Analysis of the dossier by an independent public authority.
- Registration/provisional grant of the DO-PGI.
- Right to opposition by interested third parties.
- Definitive registration of the DO-PGI.

15. *What should be the grounds of invalidity/loss of rights for GIs and/or AOs be? For example, becoming generic, lack of use, not paying fees. Please specify what the applicable test should be, how such should be proven and who should bear the burden of proof.*

It should be possible for rights in DOs-GIs to belong only collectively to all producers in the geographical zone.

A DO-GI should not disappear on account of its generic character, through lack of use or failure to pay fees.

However, it should be possible to instigate a DO-GI revocation procedure if it is demonstrated that the collective producers' organization responsible for monitoring application of the specification and upholding the DO-GI is no longer performing its role.

16. *How should conflicts between GIs/AOs and prior trademark rights be regulated?*

In principle, it should be possible to register DOs-GIs, even if prior trade marks exist, unless it can be demonstrated that said earlier trade marks possess an exceptional level of repute and that the reputation of the geographical zone of the DO-GI arises only on account of that trade mark.

17. *What scope of protection should GIs/AOs have and should it matter if these are domestic or foreign? Against which conduct by third parties should they be protected?*

DOs-GIs should be protected in their translations.

They should be protected against any reproduction or imitation, with or without the likelihood of the public being misled.

It should not be possible to protect geographical names by means of a DO/GI if such names are generic.

18. *Who should have legal standing to protect a GI/AO and which remedies are appropriate?*

Protection of DOs-GIs should be provided by the collective bodies in which the DO-GI registration is vested.

The body should monitor not only compliance with the specification but also respect for the DO-GI on the part of third parties. In the event of infringement of the DO-GI, this body should be able to refer the matter to any competent court.

19. *Should there be a specific provision or practice concerning the inclusion of a GI/AO in a domain name?*

Only the body in which title in the DO-GI is vested or the body that manages the DO-GI should be able to file a domain name corresponding to the DO-GI.