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Territorial Identity as Legal Value: Reconstructing the Legal Protection of Made in Italy from Origin to Market

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INTRODUZIONE

In un'epoca in cui i segni distintivi non si limitano più ad assolvere una funzione meramente identificativa, ma divengono strumenti di creazione di valore economico, di consolidamento reputazionale e di proiezione culturale, poche espressioni racchiudono una forza simbolica pari a quella del *Made in Italy*. Nel mercato globale, esso non rappresenta soltanto l'indicazione di una provenienza geografica: incarna un vero e proprio patrimonio immateriale, capace di sintetizzare in un'unica formula secoli di tradizione artigianale, eccellenza estetica e vocazione innovativa. Il *Made in Italy* assurge, così, a meta-segno che opera simultaneamente quale garanzia di qualità e veicolo identitario, generando un surplus reputazionale che ha reso le produzioni italiane sinonimo di affidabilità ed esclusività nei mercati internazionali.

A tale centralità economica e culturale non corrisponde, per contro, una disciplina giuridica proporzionata al suo valore. Di fatti, ciò che nel panorama globale rappresenta un simbolo collettivo di qualità e tradizione, nel diritto positivo non è che un'entità priva di autonoma tipizzazione giuridica, se non nella riduttiva qualificazione contenuta nell'articolo 60 del Codice doganale dell'Unione, che circoscrive il *Made in Italy* alla nozione di origine non preferenziale. Tale disposizione individua il Paese di origine del prodotto nel luogo in cui esso è stato fabbricato o in cui ha subito l'ultima trasformazione o lavorazione sostanziale. Si tratta, dunque, di una qualificazione meramente funzionale a esigenze di trasparenza doganale, ma priva della capacità di conferire protezione sostanziale all'enorme valore immateriale che il *Made in Italy* porta con sé. Emblematiche, in tal senso, sono eccellenze come il Parmigiano Reggiano o il Prosciutto di Parma, divenute nel tempo simboli globali di autenticità e pregio, la cui reputazione collettiva trascende di gran lunga il mero dato di origine e costituisce un potente fattore di attrazione per il consumatore mondiale, incline ad associare tali denominazioni a valori di affidabilità e prestigio.

Tale frattura tra rilevanza socio-economica e invisibilità normativa non è priva di conseguenze: la mancanza di un inquadramento sistematico lascia ampi margini a pratiche elusive, come il fenomeno dilagante dell'*Italian sounding*, e apre

la strada a condotte di sfruttamento parassitario che minano la credibilità stessa del segno.

Non sorprende, allora, che il legislatore italiano abbia tentato più volte di rafforzare la tutela del *Made in Italy* attraverso interventi settoriali: dalla legge n. 350 del 2003 al d.l. n. 135 del 2009, dalla legge n. 55 del 2010 fino alla legge n. 206 del 2023, tutte accomunate dall'obiettivo di presidiare l'autenticità dell'origine e contrastare fenomeni di evocazione ingannevole. Parallelamente, la protezione delle eccellenze italiane si realizza per il tramite di istituti eterogenei: le denominazioni di origine protetta (DOP) e le indicazioni geografiche protette (IGP), i marchi collettivi e di certificazione, la disciplina delle pratiche commerciali scorrette e le azioni di concorrenza sleale ex art. 2598 c.c., nonché gli artt. 29 e 30 del Codice della proprietà industriale. Ne risulta un mosaico normativo significativo ma frammentario, che difende il particolare senza restituire l'unità semantica e identitaria del *Made in Italy* quale bene collettivo trasversale.

Questa lacuna sistemica si riflette anche sul piano del mercato. L'esperienza dimostra come la difesa dell'origine non sia solo questione di *nomen iuris*, ma anche di governo delle modalità distributive. Sistemi di distribuzione selettiva e pratiche come il *dual pricing*, disciplinati dal Regolamento (UE) 2022/720 e oggetto di consolidata giurisprudenza europea e nazionale, costituiscono strumenti indiretti di salvaguardia del valore reputazionale, particolarmente rilevanti nei settori del lusso e dell'artigianato di eccellenza. Al tempo stesso, le recenti innovazioni introdotte dal Regolamento (UE) 2023/2411, che estende la protezione delle indicazioni geografiche ai settori non agroalimentari, aprono prospettive inedite di tutela anche per comparti come il tessile e l'artigianato industriale.

È su questo terreno, segnato da tensioni ma anche da possibilità, che si colloca il presente lavoro. Esso non si limita a una ricognizione delle discipline vigenti, ma assume una prospettiva critica e *de iure condendo*, interrogandosi sulla possibilità di elaborare un modello normativo unitario e coerente, capace di conferire al *Made in Italy* la dignità di bene giuridico autonomo e di predisporne una tutela sistematica, adeguata al suo valore economico, culturale e reputazionale.

La trattazione si articola in tre capitoli, ordinati secondo una progressione logico-critica che dal piano ricostruttivo conduce a quello propositivo.

Il primo capitolo affronta l'interrogativo preliminare: che cosa sia, giuridicamente, il *Made in Italy*. Non si tratta, infatti, di un concetto univocamente tipizzato, ma di una categoria che ha conosciuto nel tempo molteplici tentativi di definizione e di protezione. Un cenno è dedicato anche ai protagonisti economici che ne hanno plasmato l'identità, ossia i distretti industriali, le piccole e medie imprese e le società a conduzione familiare, cui si deve la trasformazione dell'origine italiana in un modello competitivo e riconosciuto su scala internazionale. Dunque, ci si soffermerà prevalentemente sulla stratificazione normativa nazionale che, nel corso degli anni, ha cercato di presidiare l'autenticità dell'origine, pur nei limiti posti dal diritto sovranazionale, tentando di elaborare strumenti di protezione *ad hoc*. Dalla legge n. 350 del 2003 fino alla recente "legge quadro per il Made in Italy" (l. n. 206 del 2023), si snoda una traiettoria normativa discontinua, animata da intenti di valorizzazione e difesa, ma segnata da una costante tensione con il diritto sovranazionale. Tale fragilità si traduce, sul piano applicativo, in vulnerabilità che segnano profondamente il modello del *Made in Italy*. L'*Italian sounding*, con la sua capacità di appropriarsi indebitamente della reputazione collettiva mediante evocazioni semantiche e simboliche, rappresenta il fenomeno più eclatante. A esso si aggiunge la crescente frammentazione dei canali distributivi, che incrina la coerenza identitaria del marchio Paese, così come i processi di delocalizzazione, formalmente compatibili con il criterio tecnico dell'art. 60 CDU, ma potenzialmente corrosivi della promessa insita nell'italianità. Né minore rilievo assume la digitalizzazione dei mercati, capace al contempo di offrire strumenti di tracciabilità e di spalancare nuove vie allo sfruttamento parassitario e alla diffusione di prodotti contraffatti.

Il secondo capitolo sposta lo sguardo dalla questione definitoria al panorama degli strumenti che, pur senza tipizzare il *Made in Italy*, concorrono a tutelarne le eccellenze. L'indagine si apre con l'esame delle denominazioni di origine protetta (DOP) e delle indicazioni geografiche protette (IGP), cardini del diritto agroalimentare europeo, recentemente estesi ai settori *non food* dal Regolamento (UE) 2023/2411. Accanto a essi, vengono analizzati i marchi individuali ed in particolare quelli collettivi e di certificazione, disciplinati tanto dal Codice della proprietà industriale quanto dal Regolamento (UE) 2017/1001, che consentono di

assicurare standard di qualità e trasparenza, ma restano confinati a logiche settoriali e residuali, finendo talvolta in contrasto con la disciplina delle indicazioni geografiche. L'analisi si arricchisce poi con la ricostruzione degli strumenti di enforcement: dalle azioni di concorrenza sleale ex art. 2598 c.c., agli artt. 29 e 30 CPI, sino al ruolo dell'Autorità Garante della Concorrenza e del Mercato nella repressione delle pratiche commerciali scorrette ai sensi della Direttiva 2005/29/CE. La lacuna sistemica è evidente: le attuali forme di protezione, pur sofisticate, restano confinate entro logiche frammentarie, incapaci di offrire una cornice giuridica coerente che sappia tradurre l'origine italiana in un valore normativamente tipizzato e stabilmente difeso nel mercato interno ed internazionale.

Il terzo capitolo amplia ulteriormente la prospettiva, mostrando come la tutela dell'origine, pur trovando nel diritto dei segni distintivi il suo fondamento naturale, non possa oggi prescindere dal confronto con le dinamiche concorrenziali e distributive proprie del mercato contemporaneo, entro cui, poi, la proposta di un marchio europeo "Made in" si colloca quale strumento di razionalizzazione e di garanzia sistemica. L'analisi prende avvio dalle recenti innovazioni introdotte dal Regolamento (UE) 2023/2411, che ha esteso la protezione delle indicazioni geografiche ai prodotti non agroalimentari, includendo per la prima volta settori strategici come il tessile, il vetro artistico, la ceramica e la pelletteria. Questo ampliamento testimonia una crescente consapevolezza dell'Unione circa la necessità di tutelare patrimoni immateriali legati non soltanto all'agricoltura e all'alimentazione, ma anche all'industria e all'artigianato di qualità. Su questa base, il discorso si volge al diritto della concorrenza, mettendo in luce come sistemi di distribuzione selettiva e pratiche di *dual pricing*, disciplinati dal Regolamento (UE) 2022/720 e al centro di importanti pronunce giurisprudenziali, dalla sentenza *Coty Germany* ai casi italiani *Sisley v. Amazon* e *Chantecler v. Gens Aurea*, possano fungere da strumenti indiretti di difesa della reputazione e della coerenza dei prodotti di pregio, consentendo alle imprese di presidiare immagine e qualità anche in un contesto dominato dalla digitalizzazione e dalla disintermediazione.

In questa prospettiva, l'istituzione di un marchio pubblico europeo per le designazioni Made in, affidato all'EUIPO e concepito come regime *sui generis*,

assumerebbe una funzione sistemica: non un mero segno formale, ma un presidio giuridico capace di assicurare un legame sostanziale con il territorio, di certificare standard produttivi e culturali, e di garantire strumenti effettivi di *enforcement* contro pratiche di evocazione, usurpazione e sfruttamento parassitario. Solo così il *Made in Italy* potrebbe essere sottratto alla sua condizione di etichetta evocativa e giuridicamente fragile, per essere finalmente riconosciuto quale categoria normativa compiuta, bene collettivo a rilievo strategico e asset competitivo dell'Unione. Si tratterebbe, in definitiva, non solo di un adeguamento del diritto alla realtà economica, ma della consacrazione di un principio fondamentale: che l'identità produttiva e culturale dei popoli europei esige una protezione non accessoria, bensì costitutiva dell'ordinamento giuridico comune.

ABSTRACT

Few legal constructs illustrate more vividly the distance between economic force and juridical recognition than *Made in Italy*. In market practice it has acquired the status of a cultural and reputational asset: a sign that immediately evokes craftsmanship, design, and innovation, and that functions as a collective promise of authenticity and distinction. From Parmigiano Reggiano to Prosciutto di Parma, from Murano glass to Tuscan textiles, Italian products embody a reputational surplus that transforms geographical origin into a competitive resource of global reach.

Positive law, however, has not kept pace with this evolution. At the European level, *Made in Italy* remains confined to the narrow scope of Article 60 of the Union Customs Code, which defines non-preferential origin by reference to the place of manufacture or the last substantial transformation. Such a criterion may serve administrative needs of customs transparency, yet it fails to reflect the symbolic, economic, and cultural capital that the designation embodies. What in commerce operates as a collective good continues in law to appear as a residual technicality, deprived of autonomous recognition.

The consequences of this asymmetry are considerable. In the absence of a coherent framework, parasitic strategies have multiplied: the spread of "Italian sounding", the exploitation of evocative imagery, and the erosion of consumer trust all weaken the credibility of the sign. National legislators have repeatedly sought to counteract these vulnerabilities, from Law No. 350 of 2003 to Decree-Law No. 135 of 2009, from Law No. 55 of 2010 to the recent Law No. 206 of 2023. Each of these interventions, though animated by the ambition to safeguard authenticity of origin, has been fragmented in scope and often constrained by the principles of Union law, resulting in incomplete and uneven protection.

At present, the protection of Italian excellence rests on a constellation of heterogeneous instruments. Geographical indications such as PDOs and PGIs, now extended to non-food goods by Regulation (EU) 2023/2411; individual, collective and certification marks under the Industrial Property Code and Regulation (EU) 2017/1001; unfair competition actions under Article 2598 of the Civil Code and the

safeguards provided by Articles 29 and 30 of the Industrial Property Code; as well as consumer law remedies against unfair commercial practices. This assemblage secures particular interests and sectors, yet it fails to capture the overarching identity of *Made in Italy* as a transversal and collective asset. The protection it affords is valuable but incomplete: a mosaic without a unifying frame. The same fragmentation is visible in market practice. Defending origin is not merely a matter of *nomen iuris*, but also of regulating distribution channels and ensuring reputational coherence. Mechanisms such as selective distribution systems and dual pricing, governed by Regulation (EU) 2022/720 and elaborated in case law, including *Coty Germany*, *Sisley v. Amazon*, and *Chantecler v. Gens Aurea*, demonstrate how competition law can indirectly safeguard reputation and image, particularly in luxury and high-end craftsmanship. Taken together with the systemic expansion brought by Regulation (EU) 2023/2411, these developments underscore both the potential and the limits of the current framework.

It is against this background that the present work positions itself. It does not limit itself to cataloguing existing provisions, but proceeds critically, exposing the tension between the symbolic strength of *Made in Italy* and its normative weakness, and asking how this gap might be bridged.

The first chapter reconstructs the legal foundations of the designation, from the customs definition of origin to the succession of national legislative attempts, highlighting the vulnerabilities generated by such incongruence: "Italian sounding", delocalization, and the disaggregation of distribution channels. Digitalization, in turn, accentuates both risks and opportunities: it facilitates counterfeiting and parasitic exploitation on a scale previously unknown, while at the same time opening unprecedented avenues for transparency and traceability through new technologies, including blockchain. Some attention is paid to the role of industrial districts, small and medium-sized enterprises, and family-owned firms, which transformed Italian origin into a globally recognized competitive model.

The second chapter examines the array of instruments that, while not defining Made in Italy as such, nevertheless cover important parts of its protection. It begins with geographical indications, long the most consolidated model of Union law. It then considers collective and certification marks, under both the Industrial

Property Code and Regulation (EU) 2017/1001, which often come into conflict with GIs regime, and then considers national remedies such as actions for unfair competition under Article 2598 of the Civil Code and the safeguards provided by Articles 29 and 30 IPC. Finally, it turns to consumer protection and the enforcement powers of the Italian Competition Authority under Directive 2005/29/EC.

The third chapter engages with the dynamic dimension of market regulation. Building on the findings of Chapter II, where it became evident that the most effective instruments of protection are the regimes of PDOs and PGIs, the analysis begins with the systemic innovation of Regulation (EU) 2023/2411, through which the Union itself acknowledged the strength of this model by extending geographical indication protection beyond the agri-food sector. This development provides the foundation for a broader reflection on how origin can be preserved across industrial and artisanal domains. From there, the discussion moves to competition law, examining how selective distribution systems and dual pricing contribute to safeguarding identity and reputation, before culminating in a proposal *de iure condendo*.

This argument crystalizes the need for a Union action towards the establishment of a European public trademark for *Made in* designations. Such a mark, entrusted to the EUIPO and conceived as a *sui generis* regime, would transcend the boundaries of customs law, guaranteeing a substantive link between product and territory, certifying qualitative and cultural standards, and offering robust enforcement against evocation, parasitic exploitation, and misappropriation. It would give to Made in Italy and to comparable designations such as Made in Germany or Made in France the status of autonomous legal categories, thereby aligning legal recognition with economic reality.

The relevance of such a reform lies in the fact that the single market cannot rely solely on efficiency and competition: its strength also derives from reputation, authenticity and cultural heritage. Without clear juridical recognition, designations such as *Made in Italy* risk being undervalued, their reputational capital dissipated rather than secured. The recognition of origin as a collective legal good would affirm that the internal market is sustained not only by rules of trade, but by the

legal protection of the immaterial values upon which Europe's competitiveness ultimately rests.

Chapter I

THE MADE IN ITALY MODEL: CORE FEATURES, LEGAL FOUNDATIONS, AND EMERGING CHALLENGES

1. Made in Italy as a hallmark of excellence.

1.1. Made in Italy: From Origin Label to Legal Category.

One well-known principle when it comes to production is that: «*Quality is everyone's responsibility*»[1], and it is not by chance that, over the years, and within several industries, Italian manufacturers have created a label that, according to data, is the third most well-known brand in the world after Coca-Cola and Visa[2].

Made in Italy is an origin symbol, an indicator applied to a single product or package certifying its production in Italy. This allows the consumer to recognize domestic goods and distinguish them from imported ones.

However, it is far more than a simple origin marking able to indicate the domestic production[3], it also represents the values of «*il Bello, il Buono e il Ben Fatto*» (literally: the Good, the Beautiful, and the Well-made). "*Bello*", in the context of this analysis, refers to the opportunity to create the conditions that foster the development of creative skills within Italian companies. Although it cannot be entirely planned or designed in advance, it is nonetheless possible to build a suitable framework and context in which these skills can be revealed, enriched, and cultivated within a structured system of research and distribution[4]. The notion of *"Buono*" encompasses the ethical dimension of enterprise, the enhancement of human capital, as well as environmental, social and economic sustainability, all

[1] Citation commonly attributed to William Edwards Deming.
[2] KPMG, *Made in Italy un Asset Prezioso*, in Going Global Internazionalizzazione ed Evoluzione dei Modelli di Business, 2013, 29.
[3] On this point, see GRANELLI, *L'economia dell'esperienza e le nuove politiche per l'innovazione,* in Nòva24 Rev., Il Sole 24 Ore, 2006. He discusses the phenomenon of the *experience economy*, where economic value is increasingly linked to the creation of memorable experiences instead of the mere possession of goods. In this regard, the act of purchasing a *Made in Italy* product is often associated with a lifestyle, a story, and an emotional connection, reinforcing the idea that economic value is increasingly tied to the feeling a product enables rather than the product itself.
[4] FONTANA, CAROLI, *L'industria della moda in Italia: strutture di settore, dinamiche competitive e lineamenti di politica industriale*, 373. The authors further discuss that industrial policy in this field should be oriented towards establishing systemic conditions under which Italy may serve as a legal and commercial hub: a privileged crossroads between diverse geographical origins and the notion of elegance.

within an inclusive business model[5]. As for the "*Ben fatto*", it means to enhance the strategic value of manufacturing excellence by fostering the transmission of traditional know-how and technical expertise rooted in specific territorial and cultural ecosystems[6].

Historically, certain Italian regions have developed unparalleled expertise in specific industries, such as Murano for glassmaking, the Langhe hills for the famous Barolo red wine, the *Pianura Padana* for the production of world-renowned cheeses, and the broader Italian landscape for luxury, fashion, food, and high-end design. These districts must not be considered as mere "production hubs" but custodians of knowledge, technological advancements, and, above all, an enduring commitment to quality. Thus, the designation "*Made in*" is an essential tool in orienting consumer choice[7]. Origin labeling, in fact, reflects a legally significant connection between a good and a specific country or territory[8]. The concept of *country branding* is built upon the interplay between history, culture, and national values. Just as a commercial brand fosters consumer trust (a key driver of purchasing decisions), the association between a brand and a nation's identity can significantly enhance the appeal of goods and services originating from that country[9]. The relationship is reciprocal: a brand can project the values and image of a nation, while a positive national reputation can in turn elevate the perceived value of the brand. In this way, both national identity and brand identity reinforce one another in the global marketplace.

The territorial linkage implicitly communicates added commercial value, even where the product's characteristics are not intrinsically tied to its geographical origin. In many cases, a product may benefit from favorable consumer perception simply by virtue of its association with the broader "country system" that the geographical reference evokes. Consequently, once acknowledged that this

[5] As stated by Stefania Lazzaroni, Director General of the Altagamma Foundation, on the occasion of its 30th anniversary and the presentation of the "*Charter of Values*" to President Sergio Mattarella.
[6] Again, FONTANA, CAROLI in *L'industria della moda in Italia: strutture di settore, dinamiche competitive e lineamenti di politica industriale,* 374*,* do specify that the leveraging of such excellence necessarily entails the recognition of the territorial embeddedness of production and marks a departure from a purely cost-minimization approach in manufacturing activities.
[7] Although the indication of origin is formally distinct from a trademark, it nevertheless shares several functional similarities, particularly in its commercial, distinctive, and reputational roles.
[8] VISMARA, *Corso di diritto doganale*, 137.
[9] CORBELLINI, SAVIOLO, *La scommessa del Made in Italy e il futuro della moda italiana*, 22.

designation conveys a strong reputational value, it becomes essential to consider the extent to which it must be protected: its intrinsic prestige and commercial appeal make it an asset of paramount importance, whose protection must be rigorously ensured to safeguard its authenticity and prevent its undue exploitation.

Therefore, its legal qualification remains both complex and contested. This label's symbolic charge has significant implications for the functioning of the internal market and for the legislative instruments designed to regulate it. In legal terms, the affixation of such origin labels continues to raise numerous interpretative challenges, regulatory uncertainties, and structural tensions. Within the Italian legal system, one of the most debated issues concerns whether protecting "Made in Italy" constitutes a legitimate form of adaptation to EU rules against unfair commercial practices, or whether it risks becoming a technical barrier to the free movement of goods within the internal market. This ambivalence is further intensified by the broader context of EU trade liberalization and the consolidation of the Single Market, which require rules that safeguard consumers from counterfeiting, misleading origin claims, health-and-safety risks, while keeping cross-border economic operations flexible and efficient[10]. These challenges remain at the heart of the ongoing legislative debate[11], as lawmakers persist in attempting to balance flexibility in commercial operations with the need to preserve the authenticity and integrity of national production.

1.2. The Economic Value and the Role Played by SMEs.

Italy stands out globally for its excellence in manufacturing, with four key sectors that place the country at the forefront of the industry. These branches, often referred to as the "4 A's" of Italian manufacturing excellence, encompass areas where Italy excels both in innovation and in tradition[12]. The four principal fields that define the essence of *Made in Italy* are: (i) apparel and fashion; (ii) home

[10] ANTONACCHIO, *Etichettatura dei prodotti. Tutela del "Made in Italy", sicurezza dei prodotti e contrasto alla contraffazione dei marchi*, in Teoria e Pratica del Diritto (Sez.I-136. Diritto e procedura civile), 1.

[11] Most recently, this issue has once again raised attention following the adoption of Law No. 206 of 27 December 2023, entitled *"Provisions on the Promotion, Enhancement and Protection of Made in Italy"* (*Disposizioni organiche per la valorizzazione, la promozione e la tutela del Made in Italy*), which aims to provide a more coherent legal framework for the defence and promotion of Italian-origin goods.

[12] FORTIS, *Il Made in Italy nel "nuovo mondo": Protagonisti, Sfide, Azioni*, Ministero delle Attività Produttive, Janauary 2005.

furniture and design; (iii) automation and mechanics; and (iv) food and beverage.[13] Just taking into consideration the first area, the Italian fashion industry stands as a key pillar of the national economy, accounting for 5.1% of the GDP and employing around 1.2 million people, which represents 5.8% of the country's workforce. With an added value estimated at approximately 75 billion euros, the sector includes over 53,000 companies (79% are SMEs) —equivalent to 13% of Italy's total manufacturing base[14]. Furthermore, Italy holds a leading position in the European supply chain: about 29% of suppliers to European fashion groups are Italian, a figure that rises to nearly two-thirds in the case of luxury brands[15].

In this context, the small and medium-sized enterprises (SMEs) represent the backbone of Italian industry, playing a crucial role in the manufacturing excellence of the "4 A's". These businesses account for 76% of total employment and 63% of the country's value-added, figures significantly higher than the averages in other advanced economies, where SMEs contribute 66% to employment and 54% to economic output[16]. The relatively small size of these enterprises, together with their strong ties to local industrial districts, has given them a unique ability to adapt. This flexibility allows them to react quickly to changes in the market, to introduce innovations while preserving traditional methods, and to stay competitive even in a global environment characterized by instability[17].

1.3. Territories, Governance, and Production Structures.

Made in Italy thrives on a triangulation of legally relevant actors whose coordinated roles transform territorial creativity into durable competitive advantage. First, *industrial districts*[18], the legally recognized clusters that operate as *loci,* where Article 45 of the Italian Constitution's protection of labor melds with EU principles on regional development, creating a distinctive *milieu* in which know-how, supply-chain integration, and collective trademarks converge. Second,

[13] Translated as: (i) Abbigliamento e moda, (ii) Arredo e casa, (iii) Automazione e meccanica, (iv) Alimentari e bevande.
[14] Cassa Depositi e Prestiti, *Challenges and Opportunities of the Fashion Sector: What Future Awaits Made in Italy?*, Sectoral Strategies and Impact Directorate, November 2024, 2.
[15] *Ibid.*
[16] MADGAVKAR, PICCITTO, WHITE & OTHERS, *A microscope on small businesses: The Productivity Opportunity by Country*, in McKinsey Global Inst., 5, (2024).
[17] FITTANTE, *Brand, industrial design e made in Italy: la tutela giuridica: lezioni di diritto della proprietà industriale***,** 212.
[18] See note No.89 of Paragraph 3.3, Chapter I.

the *family-owned enterprise* constitutes Italy's archetypal governance model: under Article 230-bis of the Civil Code and the preferential share-transfer mechanisms permitted, ownership and control remain interwoven across generations, mitigating classic agency costs and embedding long-term stewardship directly into the corporate structure. Third, *consorzi di tutela*, private bodies formally recognized under Article 53 of Law 128/1998 that oversee PDO and PGI products, exercise quasi-public powers of standard-setting and collective enforcement, and project Italy's reputational capital abroad. In this paragraph, we concentrate on the second pillar, demonstrating how its legal architecture sustains enterprise longevity and intergenerational continuity; the detailed examination of consortia and their market-monitoring prerogatives is deferred to Chapter II.

1.3.1. Family-Owned Businesses and Intergenerational Legal Stability.

Among the most distinctive features of the Italian industrial fabric is the remarkable entrepreneurial dynamism rooted in a cultural predisposition towards self-employment and independent business activity. Empirical data consistently confirm Italy's high rate of business creation and entrepreneurial intent, as evidenced by *Eurobarometer* surveys, which historically place Italy among the EU countries with the strongest inclination toward self-employment[19]. Simultaneously, the Italian weak regulatory frameworks for social protection[20] have historically fostered a context in which entrepreneurship has flourished as a necessity rather than a planned outcome. Within such a framework, the Italian entrepreneur emerges as a self-made figure, relying predominantly on personal ingenuity, labor, and sacrifice[21]. These conditions have made the family the first and main source of support for Italian entrepreneurs and made it a model with structural relevance, especially in the *Made in Italy* sectors.

It is now necessary to clarify the notion of *family business*, a concept that, while widely employed in both legal and economic discourse, does not benefit from

[19] GARONNA, GROS-PIETRO, *Il modello italiano di competitività*, 5. Specifically, the survey cited by the authors—conducted by the European Commission in 2002 as part of the Eurobarometer series—reports that the percentage of respondents in Italy who declared a preference for starting their own business over salaried employment was 57%, ranking among the highest in Europe, following Portugal (71%) and Ireland (61%), slightly lower than the United States (67%).
[20] *Ibid*., such as unemployment benefits or protective bankruptcy legislation.
[21] *Ibid.*

a single, universally accepted definition. A variety of formulations[22] have been proposed across jurisdictions and academic traditions, reflecting the complexity and multidimensional nature of family involvement in enterprise. According to the most authoritative and widely adopted definition, family firms are characterized by the presence of one or more family groups, bound by blood relations, marital ties, or long-standing alliances, that maintain a controlling stake in the company's equity capital, thereby enabling them to shape strategic management and influence key corporate decisions[23]. This definition perfectly highlights the key element of the success of the *Made in Italy* model: the intersection between ownership and governance. A governance model characterized by strong kinship-based control, embodied in generational leadership models[24] becomes a driver of quality and long-term commitment.

The personal involvement of the entrepreneur and their family, which could be captured in the expression *"I put my name and my family on the line"*, fosters a culture of responsibility and reputational investment that directly reflects on the product itself. The firm becomes not only a source of income, but it stands as a direct reflection of the family's honor, legacy, and identity, which at one time favors the high standards and authenticity associated with the indicator of origin itself. In such enterprises, governance bodies are frequently composed entirely of family members, who may formally or informally dominate decision-making processes[25]. Beyond traditional structures such as the Board of Directors, many family firms also establish internal mechanisms such as a *Family Assembly*, a *Family Board*, or

[22] For example, ASTRACHAN and SHANKER in *Family business' contribution to the U.S. economy: a closer loo*k, 16 Fam. Business Review (2003), clairfy that family business shall refer to an enterprise in which there is active participation by one or more members of a family, who not only hold a significant ownership stake but also exercise control over the business's strategic direction. This definition further presumes an intention to transfer the business to the next generation, thereby ensuring continuity of familial governance. The family's involvement may manifest in a variety of forms—ranging from the founder or a descendant serving as chairperson, to siblings occupying senior management roles, relatives holding ownership without daily operational responsibilities, and younger family members beginning their integration through entry-level positions. Again, for DAVIS, *in Realizing the potential of the family business*, 12, Organizational Dynamics, 47-56, (1983) the actual influential power that one or more family members may have over major decisions becomes a major defining attribute of family businesses.

[23] CORBETTA, *Le imprese familiari. Caratteri originali, varietà e condizioni di sviluppo,* 39.

[24] The founder retains executive authority while passing strategic functions to heirs, who are the vision and the strategic direction of the firm.

[25] ESPOSITO DE FALCO, *Family business, Ownership Governance and Management*, 151-154.

an informal *Family Council*, where strategic decisions are discussed among a broader circle of relatives, sometimes outside official governance procedures. However, families can sometimes rely on "external structures" to adopt decisions that influence the firm's managerial actions: paradigmatic is the example of the Agnelli family[26].

The concentration of control within the family may often lead to governance dynamics in which the entrepreneur-owner holds substantial, and at times disproportionate, influence. To counterbalance the risks associated with excessive centralization of authority, family firms may resort to the appointment of external managers or independent board members, whose role is to provide technical and strategic counsel, and, where necessary, mediation in the event of internal disputes—much like independent directors in larger corporations—and serve to protect minority shareholders and reinforce board accountability[27].

To counter the disproportionate power within the family, thus allocating more fairly economic rights and administrative powers within the family's business, the Italian Civil Code regulates the *impresa familiare* under Article 230-bis[28]. It

[26] The Agnelli family is one of the most important entrepreneurial families in Italy. In order to control and, most importantly, transfer said control from one generation to another, they have adopted a peculiar solution. Ownership can be traced back to the *Dicembre Società Semplice*, which has a majority stake in the *Giovanni Agnelli B.V.*, which has a controlling stake in Exor N.V., which owns majority and minority shares in companies such as Stellantis (which is the result of the fusion of Fiat Chrysler Automobiles and Peugeot Société Anonyme), Ferrari, Juventus, The Economist, etc. The *Dicembre* shares may only be transferred between blood relatives or individuals who already held shares in *Giovanni Agnelli B.V*., thereby preventing any dispersion of power outside the Agnelli's inner circle.

[27] *Ibid.* and BINZ ASTRACHAN, BOTERO, *Business Family Governance 2.0, Leveraging Business Family Governance for Family Business Continuity.*

[28] Art.230-bis, Royal Decree No. 262 of 16 March 1942 (Italian Civil Code), which states:

1. Unless a different legal relationship can be established, a family member who continuously works within the family or in the family business is entitled to maintenance in accordance with the family's economic condition, and is further entitled to a share of the profits of the family business and of the assets acquired with such profits, as well as to any increase in the value of the business, including goodwill, in proportion to the quantity and quality of the work performed. Decisions concerning the use of profits and business growth, as well as those relating to extraordinary management, production strategies, and the cessation of the business, shall be adopted by a majority of the family members participating in the business. Family members who do not have full legal capacity are represented in voting by those who hold parental authority over them.
2. The work performed by a woman shall be considered equivalent to that performed by a man.
3. For the purposes of this provision, "family member" shall mean the spouse, relatives up to the third degree, and in-laws up to the second degree; "family business" shall mean a business in which the spouse, relatives up to the third degree, and in-laws up to the second degree collaborate.
4. The right of participation referred to in the first paragraph is non-transferable, except in the case of transfer to one of the family members mentioned above, and only with the consent of all

provides a legal framework for the involvement of family members, namely, the spouse, relatives within the third degree, and in-laws within the second, in the business. It grants them the right to maintenance in proportion to the family's economic condition, participation in profits and in the assets acquired through the business, and a share in any increase in business value, including goodwill. It operates as a vehicle of strategic influence, reputational continuity, and intergenerational control, while fostering a long-term strategic vision, increasing the predictability of internal decision-making, thus reducing agency costs [29]. Indeed, in Italian family businesses, the principal-agent problem is significantly reduced, or even neutralized, by the fact that members of the same family typically hold key governance and managerial functions[30].

2. The Legal Framework for the Registration of the Made in Italy label

2.1 Preferential and Non-Preferential Origin: EU Legal Classification and Relevance.

In the context of EU customs law, the concept of the "origin of goods" is not primarily relevant for its potential influence on the commercial attractiveness or consumer perception of a product. Rather, its significance lies in determining the applicable tariff regime and related fiscal obligations within the internal market. From this perspective, it is essential to clarify that the notion of "origin" in a customs context may differ from the actual geographical provenance of goods. As such, the two concepts, origin and provenance, are not necessarily interchangeable

participants. This right may be liquidated in money upon the termination of the work relationship for any reason, including in the case of transfer of the business. Payment may be made in several annual instalments, determined, in the absence of an agreement, by the court.
5. In the case of inheritance partition or transfer of the business, the participating family members referred to in the first paragraph shall have a right of pre-emption over the business. Article 732 shall apply, insofar as it is compatible.
6. Unregistered family partnerships in agricultural activities are governed by customary practices, provided these are not in conflict with the foregoing provisions.

[29] CORBETTA in *Il Modello Italiano di Competitività*, 55.

[30] For an overview of the legal structure and governance dynamics of family-owned businesses in Italy, see the rules on “impresa familiare” under Article 230-bis of the Italian Civil Code. This provision embeds a form of internal democracy within the enterprise, granting participating family members voting rights over extraordinary management decisions, profit allocation, and succession. Despite being formally rooted in the typology of small enterprises, its principles often extend to medium-sized companies that adopt governance models grounded in familial cohesion. Mechanisms such as *retratto successorio* and *patti di famiglia* reflect the preference for intra-family succession, while pre-emption and approval clauses are commonly inserted into corporate statutes to ensure long-term continuity and control.

and may diverge in practice, leading to legal and economic consequences that deserve careful consideration. In this sense, understanding the legal distinction between preferential and non-preferential origin is crucial, as the Italian legislator has built this concept in alignment with the framework of European Union law. This reconstruction not only determines the applicable regulatory regime concerning the movement and labeling of goods but also provides the necessary groundwork for situating the "Made in Italy" designation within its proper legal context.

Preferential origin serves as a legal and economic mechanism to operationalize preferential trade relations between the EU and selected third countries, functioning as both a customs tool and a vehicle for international economic policy. It is determined through a distinct set of criteria, which differ in substance and structure from those applicable to non-preferential origin. While the latter relies on the "last substantial transformation rule" as codified in Article 60 of the Union Customs Code[31], the preferential origin may instead be attributed based on the "last sufficient processing or working", a standard that is generally less stringent and aims to facilitate trade. Thus, it entails the granting of tariff benefits by the EU to goods considered as originating in certain countries or geographic areas[32]. The applicable rules of origin are not uniform but are defined bilaterally or multilaterally in each trade agreement or autonomous EU regulation[33]. These instruments set out detailed provisions for determining origin, including the territoriality principle, the requirement of direct transport (or non-manipulation), and the obligation to provide valid proof of origin. Such proof typically takes the form of a certificate of circulation (EUR.1 or EUR-MED) or, in certain cases, a duly formulated invoice declaration by the exporter[34].

In contrast, non-preferential origin—under which the *Made in Italy* designation falls—serves an entirely different legal function. Rather than

[31] Article 60 of Regulation (EU) No. 952/2013 (Union Customs Code). It distinguishes between two situations for the determination of non-preferential origin. Paragraph 1 applies when a product is *wholly obtained* in a single country; Paragraph 2, instead, applies when two or more countries are involved in the production process. In such cases, origin is attributed to the country where the product underwent its *last substantial transformation*, defined as the final economically justified processing resulting in a new product or a significant stage of manufacture.
[32] ANTONACCHIO, *Etichettatura dei prodotti*, 10.
[33] MANCA, MORICONI, *Iva, Intrastat, Dogane*, 262. In particular: Reg. (UE) 2446/2016, Reg. (UE) 2447/2015, Reg. (UE) 978/2012.
[34] *Ibid.*

granting access to tariff benefits, it operates as a regulatory instrument aimed at determining the country of origin for the purposes of commercial policy measures, labelling requirements, and origin marking in the internal market. Also referred to as *commercial* or *common* origin[35], it is governed by a unified set of EU rules[36]. Such origin is attributed either when the product has been wholly obtained in that country or, if production involves multiple countries, when it has undergone its last substantial, economically justified processing or working in that territory[37]. This criterion, while offering a degree of legal certainty, may nevertheless prove structurally inadequate to address the legal and economic realities of contemporary production. By attributing origin to the country where the final substantial transformation occurs, regardless of where the majority of value creation, design, or craftsmanship may have taken place, the rule risks producing outcomes that are formally compliant yet materially misleading. In high-reputation systems such as *Made in Italy*, this may result in a legal fiction that undermines both consumer trust and the legitimate expectations of domestic producers. Despite being rooted in EU customs law, and particularly in the Union Customs Code, this framework has been strategically appropriated by the Italian legislator as a legal foundation upon which to build a national system of origin protection. Familiarity with the Union's legal definitions and classification mechanisms is thus essential, not only to determine the "economic nationality" of a product at the border, but also to understand how national regulatory strategies have been constructed in alignment with, or in reaction to, the European legal order.

2.2 Made in Italy and the Italian Legislator's regulatory challenge

Legislation in this domain has long struggled to reconcile two fundamentally divergent rationales[38]. On one side lies the logic of offshoring, driven by large multinational corporations seeking to minimize production costs by

[35] *Ibid.,* 263.
[36] The core legal framework is provided by Articles 59 to 63 of Reg. (EU) No. 952/2013 (Union Customs Code), complemented by Articles 31 to 36 and Annex 22-01 of Commission Delegated Reg. (EU) No. 2015/2446, and by Articles 57 to 59 and Annex 22-14 of Commission Implementing Reg. (EU) No. 2015/2447.
[37] Again, as stated in Art.60 of Regulation (EU) No. 952/2013.
[38] On this matter: CRETA, DI SABATINO, *Quale Made in italy? Ancora molti dubbi da sciogliere*, in *Riv. dir. ind.,* 2011; POZZO, *"Bello e Ben Fatto" - The Protection of Fashion "Made in Italy"* in FIU Law Review, 14(3), (2021).

relocating manufacturing abroad. On the other stands the interest of brands that have deliberately preserved domestic production in Italy and seek to distinguish their goods with a specific quality mark. Yet, the Italian legal system has never provided a positive definition of what qualifies as *Made in Italy*. The notion must instead be reconstructed indirectly through Article 60 of the Union Customs Code, which governs non-preferential origin across the EU[39].

This discrepancy is all the more critical given the Italian Parliament's numerous, yet often incoherent, attempts to regulate the use and enforcement of origin marking, through a layered set of provisions scattered across the Penal Code, the Civil Code, and special legislation (e.g. Law No. 350/2003, Law No. 55/2010). This «fragmented regulatory landscape[40]» not only hampers legal certainty for economic operators but has also generated recurring tensions with EU law, particularly in light of the Treaty's guarantees on free movement of goods[41].

2.2.1 From Law No. 350/2003 to the Establishment of the "100% Made in Italy" Certification.

The first formal intervention of the Italian legislator in the field of origin protection dates back to Article 4(49) of Law No. 350/2003, which aimed to sanction the false or misleading use of the *Made in Italy* designation[42]. The rule established that it was unlawful to affix *Made in Italy* labels to products that were not fully or partially manufactured in Italy, as determined by the rules of origin under EU customs law[43]. The provision did not offer a positive legal definition of what *Made in Italy* entails but described its exclusionary boundaries, adopting a

[39] This stands in sharp contrast to Geographical Indications (GIs), which enjoy autonomous and harmonized protection under Regulation (EU) No. 1151/2012 (on agricultural products and foodstuffs) and Regulation (EU) 2019/787 (on spirit drinks). GIs confer exclusive rights linked to the geographical origin of a product and are recognized as intellectual property within the meaning of Article 1(2) of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, in 33 Int. Leg. Matters 81 (1994)).

[40] SATTA, *Non-preferential origin and Made in Italy*, in 14(10) Global Trade and Customs Journal, 460 (2019).

[41] *Ibid*.; see also FITTANTE, *Brand, Industrial Design e Made in Italy*, 217.

[42] Although a detailed analysis of criminal law is beyond the scope of this research, it is nevertheless important to note that Italian law still provides for a specific offence concerning false origin indications. Pursuant to Article 517 of Royal Decree No. 1398 of October 19, 1930 (Italian Criminal Code), anyone who places on the market industrial products or works of authorship bearing false or misleading national or foreign marks, likely to deceive consumers as to their origin, provenance, or quality, is subject to criminal sanctions, unless the conduct falls under another criminal provision.

[43] Article 4, paragraph 49, of Law No. 350 of 2003.

negative and reactive approach. While this legislative move marked a turning point in recognizing the legal relevance of national origin claims, its formulation led to interpretive vagueness and enforcement problems. Once criminal law became the preferred regulation tool, the legislator effectively equated commercial origin with customs origin. Therefore, products originating from Italian companies that have entirely or predominantly outsourced their processing and manufacturing operations to foreign entities are excluded from being legally recognized as Italian[44].

Eventually, settling for the E.U.'s definition of "Made in..." did not seem enough to preserve the full value of Italian production chains. This is why, in 2009, under the broader reform introduced by Decree-Law No. 135/2009, later converted into Law No. 166/2009, the legislator sought to offer a positive legal framework through Article 16, which introduced the definition of *100% Made in Italy* goods[45]. It complemented the *Made in Italy* according to E.U.'s customs regulations with the new so-called "100% Made in Italy" collective trademark. Now, a product or merchandise can be classified as 100% "Made in Italy" if the design, planning, processing, and packaging have been carried out solely within the Italian territory. The law also provides for a certifying body that would verify that the product is made following the regulation. The Institute for the Protection of Italian Manufacturers has developed the Certification System "IT01 - 100% Original Italian Quality" and has also set up a traceability system for "100% Made in Italy certified products". Firstly, the manufacturing company has to sign in to the IT01 System Rules and apply for certification. Secondly, once the existence of the goods has been demonstrated, the institute grants the certification (with a yearly validity). Thirdly, after one month, an official from the appointed body will proceed to complete the preliminary investigation with the acquisition of the necessary documentation and the compilation of the specification sheets. He must verify that the products have been made: (i) with semi-finished Italian products; (ii) with natural materials of first choice and quality; (iii) with designs and planning

[44] FLORIDIA, *La disciplina del "Made in Italy": analisi e prospettive* in *Dir. Ind.* (4) 2010, 343.
[45] Article 16 of Law No. 166 of 2009 expressly defines the conditions under which is possible to obtain the certification: "The product or good, classifiable as 'Made in Italy' under the applicable legislation, for which the design, planning, manufacturing, and packaging are carried out exclusively within Italian territory".

exclusive to the company; (iv) by adopting traditional Italian craftsmanship; (v) in compliance with safety laws in the workplace; (vi) in compliance with hygiene rules. The last step occurs when, by the end of the following month, the official will confirm to the company that it has obtained the certification and that it will then be entered into the National Register of Italian Producers. The certified manufacturer will have to use the distinctive signs issued by the Institute, equipped with a holographic anti-counterfeiting mark and progressive numbering. The register of companies that have applied for and obtained the 100% Made in Italy certification is publicly accessible, allowing any party to consult the list of certified participants.

An examination of the register highlights a structural imbalance: the certification appears to attract predominantly small and medium-sized enterprises, while leading luxury brands—such as Brunello Cucinelli[46]—are conspicuously absent. This asymmetry raises important questions about the actual function and perceived value of the "100% Made in Italy" label. Far from operating as a universal standard, it serves primarily as a reputational tool for lesser-known producers seeking legitimacy in competitive markets. In contrast, globally recognized brands, whose identity is already inseparably tied to Italian excellence, appear to view such certification as redundant. As a result, the system risks reinforcing a dual-track perception of Italian production: one institutionalized and certified, the other implicitly legitimized by market prestige. The legislative logic behind this distinction was to offer a **"**premium" status to companies resisting delocalization. Unlike goods that simply undergo the "last substantial transformation" in Italy—which under the EU origin rules may still legally bear the Made in Italy label—products falling under Article 16 of the 2009 Law must meet a much stricter territorial requirement. However, from a legal coherence perspective, the need for such a provision may appear questionable[47].

2.2.2 Law 55/2010 and the EU: A Difficult Dialogue

[46] See POZZO*, Made in Italy: l'identità di un brand storico*, 196.

[47] CARTELLA, *Il Made in Italy e l'apprendista stregone*, in *Dir. Ind.* (5) 2010, 418-419. As the Union Customs Code (Reg. EU No. 952/2013), currently in force, already states under Article 60(1) that goods wholly obtained in one country are to be considered as originating from that country, and Article 60(2) assigns origin based on the last substantial transformation, both scenarios are already legally accounted for. The same principles were previously set out in Regulation (EEC) No. 2913/92 and reaffirmed in Regulation (EC) No. 450/2008, applicable at the time of the adoption of Article 16 of Decree-Law No. 135/2009.

In addition to the two pre-existing *Made in Italy* models—one grounded in Law No. 350/2003, which refers to EU customs origin rules, and the other introduced by Law No. 166/2009, which reserved the label for goods entirely produced in Italy—the Italian legislator introduced a third configuration in 2010, specifically tailored to the textile, leather, and footwear sectors through Law No. 55/2010 (commonly known as the Reguzzoni–Versace–Calearo Law). While politically positioned as a response to the demands of small and medium-sized manufacturers[48] (the so-called *contadini del tessile*), it introduced a mandatory system of origin labelling for the industrial sectors mentioned above. The legislative rationale was to provide consumers with maximum transparency[49] and to defend the integrity of Italian manufacturing from practices such as the evocation of Italian identity by non-Italian goods. In this sense, the law established a specific procedural framework. For each of the industrial sectors covered, it outlined the relevant stages of production, requiring that at least two of these stages (e.g., spinning, weaving, finishing, assembly) be carried out in Italy, while the remaining phases had to be fully traceable throughout the supply chain[50].

Furthermore, the use of the "Made in Italy" mark was restricted to finished goods that satisfy the conditions previously set forth, without taking into account the origin of intermediate production phases. This implies that, as affirmed by leading academic commentary, if taken into consideration the context of textile sector, weaving may be carried out abroad, and the geographical origin of the raw materials, whether natural, artificial, or synthetic, is deemed legally irrelevant. As a result, a finished good composed of foreign fabrics, woven outside Italy and derived from non-Italian materials, may lawfully bear the Made in Italy label[51]. By contrast, a fabric entirely manufactured in Italy from domestically sourced inputs

[48] *Ibid.,* 420. The expression "contadini del tessile" refers to a category of entrepreneurs who deliberately choose not to relocate production abroad. This group includes both fully and partially subcontracted firms that operate as suppliers to larger textile manufacturers.
[49] It is stated in the very first article of the law. Article 1 of Law No. 55/2010 reads: In order to allow final consumers to receive adequate information on the processing of products…a mandatory labelling system has been established for both finished and intermediate products, understood as those intended for sale, in the textile, leather goods and footwear sectors, indicating the place of origin of each stage of processing and ensuring the traceability of the products themselves.
[50] Art. 1(4) Law No. 55/2010.
[51] CARTELLA, *Il Made in Italy e l'apprendista stregone*, 422.

cannot be marketed as Made in Italy if sold as an intermediate product[52]. Once framed within the broader context of EU internal market, Law No. 55/2010 reveals structural frictions that extend beyond national policy choices. The Italian regime diverges from the Union Customs Code (Article 60), which determines non-preferential origin based on a single decisive criterion (the last substantial transformation) regardless of the location of the earlier production stages. Instead, Italian law superimposes a cumulative territorial requirement, adding new domestic conditions that can exclude from the Made in Italy designation products otherwise deemed Italian under EU rules. Such regulatory stratification produces effects functionally equivalent to a technical barrier to trade: it is capable of indirectly hindering the free movement of goods[53] among Member States[54]. While not prohibiting access outright, the measure discourages foreign operators from entering the Italian market by attaching commercial value to a national label governed by non-harmonized rules. This results in a system where compliance with EU origin law is insufficient to ensure legal or competitive equivalence on the Italian market. This concern becomes more acute when considering that the law applies only to selected industries. The exclusion of other sectors from similar obligations further undermines the proportionality of the measure and raises questions about equal treatment across the single market. Indeed, such asymmetry undermines the principle of competitive neutrality, in contrast with the spirit of the internal market, which seeks to ensure equal conditions of competition across Member States, particularly where sector-specific compliance acts as a *de facto* condition for marketability.

[52] *Ibid*., this discrepancy raises doubts as to the consistency and fairness of the legislative framework, especially considering the central role that fabric plays in determining the overall quality of finished clothing and furnishing products.

[53] The principle, which constitutes one of the four fundamental economic freedoms laid down in the EU founding treaties is aimed at creating and developing an area without internal borders, where there are no unjustified restrictions to trade between EU Member States. Artt. 34-36 TFUE also prohibit «measures with an equivalent effect» to a quantitative restriction.

[54] On this matter see CRETA, DI SABATINO, *Quale Made in Italy?: Ancora molti dubbi da sciogliere;* SATTA, *Non-preferential origin and Made in Italy*; CARTELLA, Il *Made in Italy e l'apprendista stregone*. Moreover, procedural concerns also emerged: the European Commission, in its letter of formal notice dated 28 July 2010, explicitly warned that the Italian measure might violate Directive 98/34/EC (now 2015/1535), as Italy failed to notify the Commission of a national technical regulation liable to affect intra-Union trade.

In practice, the Reguzzoni–Versace–Calearo Law never fully entered into force. Following the European Commission's objections[55], the Italian government suspended its implementation, and no ministerial decree was ever adopted to activate the labelling obligations provided for. As a result, Law No. 55/2010 remained legally in force but practically inoperative, serving as a political statement rather than a functioning regulatory framework.

2.2.3 Law No. 206/2023 and a New Hope for Made in Italy.

The enactment of Law No. 206/2023[56] marks an ambitious and comprehensive[57] attempt to systematize the fragmented and heterogeneous legislative interventions historically characterizing the protection and promotion of Italian excellence on global markets. It combines both general and sectoral interventions, aiming to provide consumers with all the necessary information to make informed choices and to resist the deceptive phenomenon of "Italian sounding". Finally, it introduces an official mark, issued directly by a public authority, certifying the Italian origin of the products bearing it, an element that will be the object of closer examination in the following analysis. Article 41[58] is specifically aimed at protecting and promoting the intellectual and commercial property of goods manufactured within the national territory. To this end, it provides for the establishment of an official State mark certifying the Italian origin of goods, which companies producing within the national territory may voluntarily affix to their products. This new mark, designed as a *carta valori* under Law No. 559/1966, will be issued exclusively by the *Istituto Poligrafico e Zecca dello Stato* and reserved for products manufactured in Italy according to EU rules on origin. Consistent with this framework, the official seal will not constitute a trademark, as

[55] Both on procedural grounds, due to the lack of notification under Directive 98/34/EC, and on substantive grounds, relating to its incompatibility with the free movement of goods

[56] Law No. 206 of 27 December 2023, *Provisions for the Promotion and Protection of Made in Italy*, commonly knonw as "Made in Italy Law".

[57] In this sense, the Law introduces initiatives such as the National Made in Italy Day (Art.3) and the establishment of Made in Italy High Schools (Art. 18), aiming to promote the cultural, historical, and technical excellence of Italian craftsmanship from an educational perspective. It introduces a series of repressive measures (Articles 49 to 56) aimed at strengthening the enforcement framework against counterfeiting. It enhances the investigative powers of district prosecutors and provides for the specialized training of judges and public officials through the "Scuola Superiore della Magistratura", specifically in the field of anti-counterfeiting law. In addition, Art. 4(49) Law 350/2003 has been amended to increase the administrative penalties.

[58] Article 41, Law No. 206/2023.

it will merely indicate the Italian origin of the goods without carrying any qualitative function. Like the expression "Made in Italy", it will have purely descriptive value and, as such, will not be eligible for exclusive appropriation and monopolization[59].

However, the most innovative component is the explicit promotion of blockchain technologies for the traceability and valorization of supply chains[60], a measure that aligns with a global trend towards digital certifications and immutable proof of provenance. Originally developed for finance and cryptocurrencies, they have evolved into a decentralized system for certifying individual data entries, whether transactions, documents, or processes. Once added, each entry timestamped and geolocated with certainty becomes virtually tamper-proof, as any alteration would require the agreement of all participating "nodes," whose number can be unlimited[61]. This mechanism could offer unparalleled guarantees in protecting the authenticity and integrity of Italian-made products, thus enhancing consumer trust both domestically and abroad.

Despite the 2023 Made in Italy Law renewing hopes for a more structured defence of Italy's industrial identity, the reality remains far less reassuring. Italian SMEs, alongside major luxury and industrial groups, continue to face the global market without an effective and comprehensive international legal shield. The Made in Italy ecosystem, built upon craftsmanship, entrepreneurial continuity, and family governance structures remains dangerously exposed to risks that current legislative initiatives, both at the Italian and EU level, have not yet been able to mitigate adequately.

Precisely these gaps motivate the private-law defences analysed in Chapter III and, *de lege ferenda*, the proposed EU Public Trademark for "Made in" designations. A more effective protection could perhaps be achieved through a

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[59] GALLI, *Tutela e valorizzazione dei prodotti italiani in prospettiva globale attraverso la proprietà intellettuale* in *Riv. Dir. Ind.* 2024, 344. The author strengthens the argument saying that to ensure compliance with European Union law, the official sign must certify solely the Italian origin of the goods (pursuant to the UCC), without in any way suggesting a link to their quality, reputation, or other characteristics. Such a requirement is satisfied insofar as the mark indiscriminately applies to all goods manufactured in Italy under EU law, irrespective of whether their "Italian-ness" contributes to their intrinsic value.

[60] Article 47, Law No. 206/2023.

[61] GALLI, *Tutela e valorizzazione dei prodotti italiani in prospettiva globale attraverso la proprietà intellettuale,* 349.

broader extension of trademark law to encompass these competitive challenges. Nonetheless, as will be discussed in the next section, such a path encounters significant legal and structural obstacles that currently prevent its realization.

2.3 Is Made in Italy Merely an Indicator of Non-Preferential Origin?

Historically, the "Made in" label has fulfilled two distinct yet complementary roles within international trade dynamics. In countries like France and Italy, it operated as a validation effect, enabling lesser-known domestic producers to gain credibility and access foreign markets by leveraging the reputational capital associated with national origin[62]. This "export-oriented" use of origin labeling contrasts with the more protectionist approach seen in the U.S., where labels such as *Made in USA* have been used to appeal to patriotic sentiments and discourage the consumption of imported goods, particularly those perceived as competitive, such as European food, fashion, and design[63]. Over time, however, the meaning of *Made in* has evolved in response to the increasing complexity of global supply chains and the rise of delocalization. As manufacturing has become fragmented across multiple jurisdictions, the legal and economic connection between a product and its country of origin has weakened. Consequently, the notion of country of origin has gradually expanded beyond the strict place of manufacture, coming to represent the country with which a consumer associates the identity, image, or perceived source of a given product or brand, regardless of where the product was actually produced. Such practices risk constituting a form of cultural misappropriation, potentially misleading consumers while unfairly capitalizing on a given nation's reputational heritage[64].

Reconnecting with the critique above-mentioned, exclusive reliance on Article 60 of the Union Customs Code, based solely on the criterion of substantial transformation, risks producing formally correct yet materially deceptive results. This approach fails to reflect the economic, cultural, and symbolic realities embedded in origin labels such as *Made in Italy*. In this perspective, extending legal

[62] CORBELLINI, SAVIOLO, *La scommessa del Made in Italy*, 24.
[63] *Ibid.*
[64] *Ibid*., 25.

protection through the complementary use of trademark law would offer a more coherent and layered response.

It's true that traditionally, the trademark has been defined as the distinctive sign used to identify the goods and services of an enterprise, its primary legal function being to indicate the commercial origin of a product[65]. Yet alongside individual trademarks, the legal system also recognizes the category of collective marks, which, pursuant to Articles 2570[66] of the Italian Civil Code and 11 of the Italian Industrial Property Code[67] may be registered by entities entrusted with certifying the geographical origin, nature, or quality of certain goods or services[68]. Such collective marks, while governed by private law, share with trademarks the fundamental *potestas excludendi alios* and serve as powerful tools for category-based communication, particularly in sectors where origin, tradition, and reputation are crucial market factors[69]. In this regard, geographical collective marks, as expressly contemplated in the fourth paragraph of Article 11, differ markedly from the public law discipline of non-preferential origin, which is primarily regulated at the EU level for customs and consumer protection purposes[70]. While the provision introduces an exceptional dimension to the traditional scope of collective marks, allowing their use to certify geographical origin, it simultaneously embeds a mechanism of institutional oversight. This safeguard clause serves as a balancing tool, mitigating the potential tension between private trademark rights and broader public interests. By requiring the involvement of competent public authorities and stakeholders, the legal framework ensures that collective marks—though rooted in private law—do not operate in isolation from the public objective of market integrity. As such, the private law regime of geographical collective marks is

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[65] ABRIANI, *I segni distintivi*, in *Trattato di Dir. Comm*[2], 2001, 15.

[66] Article 2570 of the Italian Civil Code, literally stating: Persons who perform the function of guaranteeing the origin, nature or quality of certain goods or services may obtain registration for specific marks as collective marks and have the right to grant the use of the marks to producers or traders.

[67] See Article 11 of Legislative Decree No. 30 of 10 February 2005 (Industrial Property Code).

[68] For an in-depth discussion of collective, individual and certification trademarks, see Chapter II, § 2. Here the focus is narrower: under the current legal framework the phrase "Made in Italy" itself cannot be classified within any of those trademark categories, whereas the individual products that constitute its identity may do so.

[69] ZANNINO, *Aspettando il regolamento dell'UE in materia di etichettatura di origine di alcuni prodotti: panacea, ricostituente o placebo per il Made in Italy?* In *Rivista del commercio internazionale*, 2012, 179.

[70] *Ibid.,* 180.

effectively anchored within a hybrid regulatory space, where proprietary interests and public policy intersect.

However, «*the expression "Made in Italy" cannot be classified as a collective mark*[71]*, as it lacks the necessary requirement of belonging to an associative body, whether private or public, on the part of the user. Rather, it presents greater similarities with indications of origin*[72]». Building on this, the impossibility of reinforcing the protection of what represents the "crown jewel" of Italian excellence, namely, the *Made in Italy* label, stems from decisions made at the highest institutional levels, particularly within the European Union. Article 7(1)(c) of Regulation (EU) 2017/1001, under the heading "*Absolute Grounds for Refusal*," expressly prohibits the registration of trademarks consisting exclusively of signs or indications that may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of the goods or services. This provision, while aimed at ensuring free and undistorted competition within the internal market, inevitably sacrifices the ability of national systems to provide a comprehensive and enforceable legal protection to strategic expressions of their industrial identity, thereby exposing them to systemic vulnerabilities.

3. Systemic vulnerabilities and consequences of the Made in Italy model

3.1 The Italian Sounding phenomenon: misleading commercial practices

Ascarelli famously wrote that «the consumer is a judge», «the market a field», and «competition a game». According to this perspective, the legal regulation of entrepreneurial activity reflects a structural dialogue between the abstract interest of consumers and a privileged position granted to the entrepreneur within the market system[73]. In light of this interpretation, the regulation of unfair competition is designed to prevent fraudulent market victories and below-the-belt tactics that distort the competitive process by misleading the criteria through which

[71] Nor can it be regarded as a certification mark under Article 11-bis of the Italian Industrial Property Code, as it does not serve to guarantee specific qualities, nature, or origin under the institutional control required for such marks.
[72] Italian Supreme Court, Civil Section I, judgment of 23 June 2022, No. 20226.
[73] SPEZIALE, *Le pratiche commerciali scorrette nell'evoluzione della normativa e del mercato*, in Monografie di Contratto e impresa[3], 2024, 193 with reference to Ascarelli's market theory.

the public, acting as the ultimate *arbiter*, determines business success[74]. This tension between lawful market participation and misleading appropriation, between authentic economic value and mere aesthetic imitation provides the conceptual framework within which the *Italian Sounding* phenomenon must be understood.

Before defining the phenomenon in concrete terms, however, it appears necessary to first situate it within the normative structure of unfair competition, both at the national and European level. Under Italian law, it is governed by Article 2598 of the Civil Code[75], which prohibits any conduct that (i) creates confusion with the business or products of a competitor, (ii) misappropriates the merits of another enterprise, or (iii) infringes the principles of professional fairness. At the European Union level, there is no general provision on unfair competition comparable to Article 2598 of the Italian Civil Code. The main instrument lies in Directive 2005/29/EC[76] on Unfair Commercial Practices, which aims to protect consumers from misleading and aggressive conduct within business-to-consumer transactions[77]. These include misleading actions, such as false claims about a product's origin, and misleading omissions, such as failing to disclose essential information likely to affect the consumer's transactional decision.

The Italian Sounding strategy is a sophisticated act of narrative piracy: the usurper borrows fragments of Italian identity—"Nonna", *famiglia*, a tricolour ribbon on a bottle of "Tuscan-style" oil—and stitches them onto goods conceived,

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[74] BERTANI, COGO, FABBIO, GENOVESE, OTTOLIA, *Lineamenti di diritto industriale: concorrenza e proprietà intellettuale*, 92; Of a different opinion is CAMPOBASSO, *Diritto commerciale,* I, 246. While he acknowledges that consumers are not entirely external to the system of unfair competition, he nonetheless denies that their interest qualifies as a directly protected legal one within this framework. Rather, he views the consumer interest as mediated and indirect, protected only insofar as it coincides with the integrity of market competition.

[75] Article 2598 of the Italian Civil Code precisely states: "Subject to the provisions concerning the protection of distinctive signs and patent rights, acts of unfair competition are committed by anyone who:

1.uses names or distinctive signs likely to cause confusion with the names or distinctive signs lawfully used by others, or slavishly imitates a competitor's products, or uses any other means capable of creating confusion with a competitor's products or business activity;

2.spreads information or opinions about a competitor's products or business that are likely to discredit them, or appropriates the merits of a competitor's products or enterprise;

3.directly or indirectly makes use of any other means not in conformity with the principles of professional fairness and likely to harm another's business".

[76] Directive 2005/29/EC of the European Parliament and of the Council of 11 June 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive).

[77] Unlike the Italian model, which centers on the protection of competitors, the European approach places the consumers at the core, treating market transparency as a fundamental objective.

produced and even branded abroad. In so doing, the trader does not cross the bright red line of *confusion* traditionally punished by Article 2598(1) of the Italian Civil Code.; rather, he operates relying on the consumer's associative shortcuts to monetize a reputation he never earned. From a legal standpoint, this manoeuvre sits at the exact intersection between paragraph (2) (misappropriation of merits) and paragraph (3) (breach of professional fairness) of the aforementioned article of the Italian Civil Code. "Made in" claims fall within the scope of protection offered by Article 6 of Directive 2005/29/EC[78], which considers a commercial practice to be misleading when it is likely to deceive the average consumer, even by means of the product's overall presentation, particularly in relation to key attributes such as manufacturing process, composition, or geographical origin[79].

The regulatory framework may be elegant in design, but enforcement remains a reactive mechanism, considering that in economic terms, the Italian Sounding market is estimated to be worth over €100 billion, more than double the value of genuine Italian exports[80]. Several structural trends exacerbate this enforcement challenge. Firstly, digital marketplaces have eroded traditional border controls, allowing Italy-evoking products to circulate globally with a single click, beyond the reach of customs systems built for bulk trade, not decentralized e-commerce. Secondly, free-riding on promotional investment undermines genuine producers, whose brand-building efforts are exploited by imitators crafting faux-Italian narratives online. In this sense, the overuse of symbolic claims such as "artisan," "heritage," or "authentic" has led to informational dilution: when every product tells a story, it is no longer authenticity, but price and rhetorical skill, that shape consumer choice.

3.2 Fragmented Commercial Channels and the Threat to Brand Identity

The "Made in Italy" label derives much of its legal and commercial value from brand coherence—that is, from the ability to control not only the origin of the product, but the conditions under which it is marketed, perceived, and priced. Yet this coherence is increasingly threatened by the fragmentation of distribution channels. In sectors such as fashion and agri-food, where origin is a core value

[78] Article 6, Directive 2005/29/EC.
[79] RUBINO, *I limiti alla tutela del "made in" fra integrazione europea e ordinamenti nazionali*, 146.
[80] COLDIRETTI, *Italian Sounding: il falso Made in Italy vale 120 miliardi di euro*, 2023.

proposition, the inability to govern how goods are presented weakens the narrative that *Made in Italy* seeks to protect.

The Italian upstream supply chain in the Fashion and Luxury sector is quite fragmented. This structural complexity generates a significant imbalance of bargaining power, where dominant brands exert strong cost pressures while small-scale suppliers remain contractually weak. Such asymmetry fosters poor compliance practices, facilitates uncontrolled subcontracting, and ultimately creates an industrial fabric that is difficult to monitor, certify, or hold legally accountable.

A parallel problem emerges in the agri-food sector, where producers often represent the weakest link in contractual chains dominated by powerful retailers. As noted in recent scholarship, agricultural producers face significant structural disadvantages in their dealings with both food processors and large-scale distributors, particularly where competition is high and bargaining power is low[81]. Supermarket environments, described as "mute markets" in which consumers receive no guidance beyond labels and advertising, do amplify this vulnerability[82]. Preserving brand identity in this scenario requires not only the enforcement of EU unfair commercial practices law, but a reengineering of distribution strategies, capable of aligning presentation with truth.

3.3 Made in Italy and Delocalization: A Contradiction That Still Holds?

Since the late 1980s, Italian firms, including those embedded in historical industrial districts[83], have engaged in an increasingly intensive process of production delocalization[84]. This phenomenon was largely driven by two converging factors: the progressive liberalization of international trade and the rise of digital technologies, which have significantly reduced the costs and complexity

[81] POZZO, *Made in Italy: l'identità di un brand storico*, 146.
[82] *Ibid.,* 88.
[83] Contrary to the global delocalization trends that would emerge later, the early organization of *Made in Italy* production, particularly during the 1970s, was characterized by domestic dispersion rather than offshoring. Italian firms opted to decentralize operations within national borders, consolidating regional clusters across the North-East, Tuscany, and the Adriatic corridor. These industrial districts, shaped by socio-territorial proximity and craft specialisation, became the structural hallmark of the Italian manufacturing model, diverging sharply from the centralised, corporate-driven systems prevalent in other industrialised economies.
[84] PROTA, VIESTI, *La delocalizzazione internazionale del made in Italy*, in *L'industria*, (3) 2007, 395.

associated with managing geographically dispersed production processes[85]. The resulting landscape has allowed companies to offshore labor-intensive phases to lower-cost countries while retaining the final assembly stages domestically, an arrangement that, again, still permits use of the "Made in Italy" label under Article 60 of the UCC[86], which attributes origin based on the last substantial transformation criterion.

Perhaps unexpectedly, recent years have seen a reversal of the offshoring logic that had long dominated Italian industrial strategy, and the fashion industry has been at the forefront of this reorientation towards domestic production. A notable example is Gucci, which has made public and strategic investments in Italian manufacturing, reinforcing its alignment with national production values and cultural authenticity[87]. This movement, however, is far from isolated. An increasing number of Italian firms are deliberately returning their operations to national soil, driven by the recognition that the *Made in Italy* designation is not merely a matter of regulatory compliance but a core component of their competitive identity and an irreplaceable source of global market value. Not all brands, however, followed this approach. Some, like Brunello Cucinelli, have made it a point of principle to preserve Italy's manufacturing artistic soul, anchoring production in a humanistic vision of luxury that blends territorial rootedness with ethical purpose[88]. Others, by contrast, continue to push the boundaries of the legal definition, stretching the concept of origin for cost-efficiency while risking the erosion of trust that underpins the Made in Italy promise.

Today, digital technologies, ironically, among the original enablers of delocalization, could prove to be either a threat or a regulatory opportunity. On one hand, they facilitate platform-based sourcing and algorithmic price competition that incentivize further offshoring. On the other hand, they provide firms with tools to build transparent, traceable, and digitally verifiable production frameworks capable of anchoring value creation within the national territory.

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[85] POZZO, *Made in Italy: l'identità di un brand storico*, 203.
[86] Regulation (EU) No. 952/2013, Article 60(2).
[87] FITTANTE, *Brand, industrial design e made in Italy: la tutela giuridica: lezioni di diritto della proprietà industriale,* 214.
[88] NAPOLITANO, FUSCO, CUCINELLI, *La creazione di valore condiviso nell'impresa umanistica*, in Micro & Macro Marketing, Riv. quadr., (2) 2019, 334-360.

3.4 Digital Transformation and the Reshaping of the Made in Italy Ecosystem.

Digitalization has profoundly reshaped the traditional relationship between consumers and businesses, prompting a reconsideration of strategies across industries. The global COVID-19 pandemic and the subsequent lockdown measures exposed vulnerabilities in retail channels, affecting both traditional brick-and-mortar commerce and smaller enterprises lacking the means and expertise to adapt to digital transformation[89]. The fashion industry serves as an illustrative example of these transformations. Once heavily reliant on the expansion of physical retail networks through the opening of new boutiques, the sector has shifted its focus toward digital channels and the expansion of wholesale operations[90].

While the integration of digital channels presents clear opportunities in terms of performance, competitiveness, and market expansion, these benefits have not been equally accessible across the industry. Larger brands and established *maisons* have the resources and infrastructure to capitalize on digital transformation rapidly and strategically. For small and medium-sized enterprises, however, the transition is more complex. Many SMEs struggle not only to adopt digital tools, but to reshape their distribution architecture in a way that is both operationally efficient and aligned with brand positioning[91].

In parallel, the growth of e-commerce has created fertile ground for the large-scale dissemination of counterfeit goods, further complicating efforts to protect origin-based distinctions. As noted by the OECD and EUIPO, the expanding reach of digital marketplaces has been strategically exploited by counterfeiters, who increasingly rely on these platforms to market fake products directly to consumers[92]. Notably, the report highlights a dual consumer dynamic: while some buyers are misled into believing they are purchasing genuine goods, others intentionally seek low-priced imitations.

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[89] LANNA, *Fashion Law: diritti e prassi nell'industria della moda tra tradizione e innovazione,* 14.
[90] *Ibid.,* 31.
[91] GILMORE, MCAULEY, GALLAGHER & OTHERS, *Researching SME/entrepreneurial research: A study of journal of research in marketing and Entrepreneurship* in Journal of Research in *Marketing and Entrepreneurship* (15) 2013, 87-100.
[92] OECD/EUIPO, *Misuse of E-Commerce for Trade in Counterfeits,* 2021.

In today's platform-dominated marketplace, origin, quality and brand rights no longer travel down a single, monitorable supply chain; they now pass through tiers of online intermediaries, logistics operators and secondary traders that escape traditional customs checks and consumer-law oversight. This fragmentation undermines not only the enforcement machinery of customs and consumer protection, but also the capacity to guarantee that the indication of origin, whether established in law or in the consumer's imagination, arrives uncorrupted at the point of purchase. Take, for instance, a bottle of Amarone della Valpolicella offered on a global e-commerce platform. The name is not decorative: it certifies that the Corvina-based wine was produced within the Valpolicella area of Verona, that yields, grape-drying times, and ageing periods comply with the *disciplinare di produzione,* and that each lot passed the analytical and organoleptic checks required for the EU-registered DOP. The online merchant thus monetizes a reputation secured by consortium audits, numbered counter-labels and *ex-officio* EU enforcement. Yet once seller identities are masked, cross-border dropshipping can channel deceptively branded bottles that erode consumer trust and dilute the legal value of the DOP scheme. A damage felt most acutely by the small and medium wineries for whom "Amarone della Valpolicella" is both heritage and competitive lifeline.

Chapter II

FRAGMENTED LEGAL INSTRUMENTS TO SAFEGUARD THE MADE IN ITALY IDENTITY

1. Protected Designations of Origin and Geographical Indications: Scope and Limits.

1.1 PDO, PGI, TSG: Definitions and Regulatory Architecture.

In light of the analysis developed in the preceding chapter, it emerges that *Made in Italy* does not denote a unitary legal category, but rather a multifaceted economic and symbolic asset. Its scope extends across a wide range of sectors, including agri-food, textile, fashion, design, and craftsmanship, each of which interacts differently with the legal system and relies on distinct regimes of protection. This structural heterogeneity reflects the absence of a unified regulatory framework for the protection of *Made in Italy*. Instead, a fragmented system of legal instruments operates across various domains, combining public and private law mechanisms, European regulations, national statutes and international agreements. Despite lack of formal cohesion, these instruments converge toward the functional objective of preserving the reputation, authenticity, and economic value associated with Italian origin.

Within this complex normative mosaic, the agri-food sector constitutes the area where the protection of origin has reached the highest degree of legal formalization. Here, the EU regime of geographical indications embodied by Protected Designations of Origin (PDO), Protected Geographical Indications (PGI), and Traditional Specialities Guaranteed (TSG) represents the most structured model of origin-based legal safeguard. The architecture is not just legally advanced, but also economically significant that the expression "*DOP economy*" has been coined to identify the production and transformation segment of geographically indicated agri-food products, which today constitutes a major competitive asset within our national agro-industrial system[1]. With a total of 856 certified food and wine

[1] RUBINO, *La disciplina giuridica del marchio nel settore agroalimentare*, 93.

products, Italy ranks first in Europe for the number of PDO, PGI, and TSG recognitions. This figure rises to 891 when including the 35 spirit drinks protected by geographical indications. From a financial perspective, the most recent estimates from the ISMEA Qualivita Observatory indicate that the Italian PDO and PGI agri-food sector is worth approximately €20.19 billion, while the GI spirit drinks sector, according to data from the European Commission, contributes an additional €151 million[2]. Therefore, the total value of Italy's geographical indication system amounts to nearly €20.34 billion.

Established as part of the broader regime of the Common Agricultural Policy[3], this system of quality combines market support mechanisms and market differentiation with a territorial logic that ties the product's value to its origin. Regulation (EU) No. 2024/1143 is the culmination of a regulatory trajectory initiated with Regulation (EEC) No. 2081/92 and Regulation (EU) No. 1151/2012, which responded to the need for a unified legal framework within the internal market. The new piece of legislation is thus the "Foundational legal act" governing qualified geographical indications. Prior to this harmonization, several Member States had already implemented domestic systems granting exclusive rights to producers adhering to customary methods[4]. However, the effects of such protections were confined to national borders, rendering them inadequate in an increasingly integrated economic space. Indeed, to address this shortcoming, the European Commission introduced a unified scheme for the registration and

[2] ISMEA & Fondazione Qualivita, *Osservatorio Economico delle Indicazioni Geografiche italiane*.
[3] Launched in 1962, the Common Agricultural Policy (CAP) is a cornerstone of EU policy aimed at supporting farmers' incomes, enhancing agricultural productivity, ensuring a stable and affordable food supply, promoting environmental sustainability, preserving rural landscapes, and fostering employment in farming and related sectors. It represents a strategic partnership between agriculture and society, as well as between the European Union and its agricultural producers.
[4] In Italy, such domestic protection was first introduced by Law No. 125 of 10 April 1954, concerning "The protection of designations of origin and typical names of cheeses." The law, structured in four chapters, made a key distinction between *denominazioni di origine* (referring to cheeses produced in geographically defined areas according to consistent and fair local practices, with qualities deriving primarily from the environment) and *denominazioni tipiche* (identifying cheeses made nationwide using traditional production techniques). It also established a National Committee under the Ministry of Agriculture with supervisory powers and provided for criminal sanctions against fraud.

preservation of traditional product names, despite initial opposition from industrial stakeholders wary of potential conflicts with trademark rights[5].

1.1.1 Three Labels, One Purpose? A Comparative Look at PDO, PGI, and TSG.

The system of Protected Designations of Origin (PDO), Protected Geographical Indications (PGI), and Traditional Specialities Guaranteed (TSG), as established under Regulation (EU) No 2024/1143, serves six primary objectives, and, in particular, it aims to: (i) secure equitable remuneration for producers whose products possess distinctive qualities linked to a specific territory; (ii) guarantee uniform and effective legal protection of names as intellectual property rights within the Union; (iii) provide consumers with transparent information on the value-added attributes that derive from origin and tradition; (iv) empower producer groups with the necessary responsibilities and prerogatives to manage the geographical indication concerned, including the ability to respond to broader societal expectations, such as animal welfare, and market competitiveness ; (v) promote fair competition and generate added value throughout the supply chain, ensuring a fair return for producers, enhancing their capacity to invest in the quality, reputation, and supporting rural development through the preservation of know-how; (vi) ensure effective enforcement, transparent registration procedures, and the protection of geographical indications both within the internal market, including digital commerce, and in third-country jurisdiction[6].

Within this broader legal architecture, the PDO constitutes the most rigorous and territorially anchored scheme. It reflects the idea that certain products cannot be meaningfully separated from their place of origin, as their unique qualities derive directly and predominantly from the natural and human factors specific to that area. According to Art. 46(1) of Regulation (EU) No 2024/1143, a designation of origin is defined as: «*a name which identifies a product originating in a specific place, region or, in exceptional cases, a country; eristics are essentially or exclusively due to a particular geographical environment with its inherent*

[5] COSTATO, *Globalizzazione, Identità, Tutela,* in Lucifero (ed.), *La tutela internazionale delle indicazioni geografiche dei prodotti agroalimentari*, 3.

[6] Article 4, Regulation (EU) 20241/1143. The revised provision expanded and developed the three goals previously set out in article 4 of Regulation (EU) No 1151/2012 by including also the objectives contained in Art. 1 of the aforementioned Regulation.

natural and human factors, and the production steps of which all take place in the defined geographical area»[7]. The notion of "*geographical environment*" is thus understood to encompass human factors, such as artisanal techniques or local know-how, and natural factors, including soil composition, climate, and altitude. It is precisely the combination of these elements that generates a product whose qualities are not reproducible outside the designated area[8]. The PDO scheme, therefore, is not merely concerned with provenance, rather with the inseparability between a product and the unique socio-natural ecosystem from which it originates[9].

If the PDO regime is rooted in the notion of inseparability between product and territory, the PGI offers a more adaptable legal framework that reflects a functional approach to origin rather than an essential one. Here, the link with place remains necessary, but it may materialize in a partial and reputational form, consistent with the pluralism of contemporary agri-food systems. Pursuant to Article 46(2) of Regulation (EU) No 2024/1143, a Protected Geographical Indication refers to a product: «*originating in a specific place, region or country, possessing a given quality, reputation, or other characteristic attributable to that origin, and whose production, processing or preparation takes place, at least in part, within that area*»[10]. The central feature of the PGI, therefore, lies in its reduced territorial requirement, which allows for some phases of production to be carried

[7] Article 46(1), Regulation (EU) 2024/1143. This definition is echoed, with sector-specific adaptations, in Article 93(1)(a)(ii) of Regulation (EU) No 1308/2013[7], which requires that the grapes used for wines protected under PDO originate exclusively from the delimited geographical area.

[8] RUSCONI, CESANA, *Il Diritto Alimentare*, 667.

[9] See Court of Justice of the European Union*, Case C-108/01, Consorzio del Prosciutto di Parma v Asda Stores Ltd*, judgment of 20 May 2003, ECLI:EU:C:2003:477. The Court held that Regulation (EEC) No 2081/92 did not preclude a product specification from requiring that slicing and packaging of a PDO take place within the geographical area of production, as long as such a requirement is properly notified. While this condition may amount to a measure having equivalent effect to a quantitative export restriction, it may be justified on grounds of quality and reputation protection. The Court explicitly recognized that «*slicing and packaging operations carried out upstream of the retail sale or restaurant stage constitute, because of the quantities of products concerned, a much more real risk to the reputation of a PDO […] than operations carried out by retailers and restaurateurs*» and that the requirement «*is intended to allow the persons entitled to use the PDO to keep under their control one of the ways in which the product appears on the market».* However, in this case, the restriction was held to be unenforceable, due to its lack of adequate publicity at EU level.

[10] Article 46(1), Regulation (EU) 2024/1143.In the wine sector, this more flexible territorial connection is reflected in Article 93(1)(b)(iii) of Regulation (EU) No 1308/2013[10], which allows a wine to be recognized as a PGI provided that at least 85% of the grapes used originate from the defined geographical area.

out elsewhere, provided that the essential link to the geographical origin is preserved.

The coexistence of PDOs and PGIs within the same regulatory regime reflects not only a graded system of protection but also a conceptual bifurcation in the legal understanding of what it means for a product to be "from" somewhere. But when the “somewhere” is Italy, the legal implications of origin acquire a distinct normative and evocative weight. The Protected Designation of Origin constructs this bond as a condition of ontological dependence. The link with the territory is far more complex in the case of PDOs, as the product is inextricably tied to geomorphological, climatic, and other human factors, as well as to the production cycle itself, to the point that a PDO cannot be authentically reproduced outside those specific conditions and/or areas. Take, for example, Gorgonzola, Mozzarella di Bufala Campana, or Aceto Balsamico Tradizionale di Modena: these are not merely commodities with a place of production, but cultural artefacts whose legal protection presupposes a continuity of environment, technique, and collective memory. In such cases, the product’s identity becomes territorially non-fungible. This “evolution of concept” has been recently acknowledged and further consolidated by Regulation (EU) No. 2117/2021[11]; in particular, Article 49 of the new Regulation (EU) No. 2024/1143[12] explicitly requires that PDO product specifications include details concerning the human factors of the geographical environment. This dimension was already included in Art. 7 of Regulation (EU) No. 1151/2012[13], but previously ignored and left implicit or marginal[14]. This raises a broader reflection: PDOs do not merely signal where something is made, but how, why, and by whom—and in doing so, they challenge the logic of standardization[15] that governs much of modern agri-food law.

[11] Article 7(1)(f)(i) Regulation (EU) 2117/ 2021.
[12] Article 49 Regulation (EU) 2024/1143.
[13] Article 7 Regulation (EU) 1151/2012.
[14] AMBROSIO, SAIJA, CARRARA *Prodotti alimentari di qualità: Regole, casi e questioni*, 56.
[15] The reference to *standardization* captures the dominant regulatory trend in EU agri-food law, which prioritizes harmonized production requirements, food safety protocols (e.g. Regulation (EC) No 178/2002 on general food safety), and uniform labelling standards to ensure market efficiency and consumer protection. PDO regimes, by contrast, resist this logic by legally codifying context-specific practices, variable techniques, and geographically rooted know-how. Rather than aligning with a model of interchangeable compliance, they institutionalize differentiation.

As pointed out[16], a product that claims to be "traditional" cannot be fully detached from the socio-cultural and environmental context in which that tradition developed. It is precisely in this light that the legal nature and limits of Traditional Specialities Guaranteed (TSG)[17] must be understood, not as indicators of origin, but as quality schemes rooted in method rather than place, and perhaps also questioned[18], as their lack of territorial embeddedness may represent their most critical weakness. TSGs are designations aimed at protecting products that follow specific production methods and traditional recipes, where the use of historically established ingredients and raw materials qualifies them as specialties[19]. A name may qualify for TSG registration only if it identifies a specific foodstuff or agricultural product made using a mode of production, processing, or composition that reflects a recognized traditional practice[20]. Alternatively, the product must be derived from ingredients that are themselves traditionally used. These distinctive features, both in terms of content and method, must be detailed in a product specification drafted by the producers themselves and submitted as part of the registration application[21]. In order to be eligible, the name must have been traditionally used either in reference to the specific product or, at the very least, as a term expressing its traditional character. Generic designations or references to EU regulatory standards alone do not suffice. As a result, the system is formally grounded in the concept of documented tradition, but detached from the requirement of geographical origin, which is central to PDOs and PGIs.

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[16] See SAIJA, *Informazione alimentare e qualità nel mercato europeo e globale*, 152; TRAPÈ, Le Specialità Tradizionali Garantite, in *Trattato di diritto alimentare italiano e dell'Unione Europea*, 634.

[17] The Traditional Specialities Guaranteed (TSG) scheme was initially established by Regulation (EEC) No 2082/92 of 14 July 1992, later replaced by Regulation (EC) No 509/2006 of 20 March 2006, and ultimately repealed and consolidated into the current framework set out in Regulation (EU) No 1151/2012 of 21 November 2012, as subsequently amended by Regulation (EU) No 2021/2117. The current framework is set out in Regulation (EU) 2024/1143 of 11 April 2024 in Title III.

[18] It was Recital 34 of Regulation (EU) No 1151/2012 itself that acknowledged the limited success of the TSG scheme, explicitly pointing to the very low number of registered names as evidence that the regime did not realize its full potential. An almost identical assessment is echoed in Recital 64 of Regulation (EU) 2024/1143.

[19] RUBINO, *La disciplina giuridica del marchio nel settore agroalimentare*, 165.

[20] Art. 53, Regulation (EU) No 2024/1143.

[21] See Article 54 Regulation (EU) No 2024/1143, which outlines the required content of a TSG product specification, including: the name to be registered; a description of the product and its specific characteristics; the production method to be followed; and the key elements demonstrating its traditional nature.

Two fundamental weaknesses emerge from this framework, ultimately accounting for the limited appeal and underperformance of the TSG regime. First, there is a profound conceptual contradiction between the proclaimed objective of valorizing traditional agricultural and food products and the legal design that renders unnecessary any material or experiential link to place. This results in a paradoxical situation where the very knowledge and practices that the scheme intends to protect become abstracted from the environmental and human diversity that originally shaped them. The standardization promoted by the TSG designation, detached from the living context of production, leads not to the preservation of tradition, but to its artificial reproduction elsewhere: what one might call a "*qualified falsification of specificity*"[22]. Further concerns arise from the structural weakness of the TSG regime in terms of legal effectiveness. Although the current Regulation provides for registration only with reservation of the name, thus restricting its use to producers complying with the specification, this measure is not accompanied by a genuine right of exclusive use[23]. This raises a fundamental question: *why opt for a scheme offering limited safeguards when more robust legal tools are already available?* In this context, it is not surprising that some producers prefer to safeguard their legacy through discretion rather than formal registration. For instance, a small bakery that has refined a traditional almond-based pastry over generations may rationally choose to keep its recipe confidential. In such cases, discretion becomes a *de facto* form of legal protection. Yet this outcome is paradoxical: a scheme intended to valorize tradition ends up discouraging its transmission. If legal protection is to be grounded in transparency, the regulatory system must encourage, rather than deter, the act of making tradition legally visible.

These critical limits are not only theoretical but also empirically demonstrable: at the European level, TSG registrations remain strikingly low, and in Italy, only four products[24] currently benefit from this status. Given its marginal role, the TSG scheme cannot be regarded as a cornerstone for protecting the Made

[22] MASINI, *Sulla funzione delle specialità tradizionali garantite: una nomenclatura tra tradizione e delocalizzazione*, in *Dir. giur. agr.*, 2006, 491, at 494.
[23] GRAGNANI, *The EU Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs*, in *European Food and Feed Law Review*, 2013, 376, at 382.
[24]These are: Mozzarella tradizionale, Pizza Napoletana, Amatriciana tradizionale, and Vincisgrassi alla maceratese.

in Italy identity. The following section will therefore be devoted to the registration and enforcement of PDOs and PGIs, which, though limited to single products, stand as the most credible instruments and perhaps the most concrete legal tools for safeguarding the distinctiveness of Italian products within the EU framework.

1.1.2 The Registration Process: Procedural Steps and Product Specification Requirements.

The current procedure for the registration of Protected Designations of Origin and Protected Geographical Indications under Regulation (EU) No 2024/1143 is unfolded through a dual-stage process: a national phase, where the application is prepared and preliminarily assessed, and a Union phase, in which the European Commission evaluates and ultimately registers the designation in the Union register.

The backbone of this process is represented by the product specification or *disciplinare,* a document outlining *inter alia*: the product's name; its qualitative attributes, including physical, chemical, microbiological or organoleptic traits; the precise delimitation of the geographical area; evidence of historical and material linkage between the product and the place; a detailed description of the production method, including traditional, fair, and consistent techniques[25]. The centrality of the *disciplinare* is strictly connected with the whole aim of the registration procedure, which is to confer upon the name a form of intellectual property right under EU law, through a specific register divided into three sections (namely: wines, spirit drinks and agricultural and food products), whose management is entrusted to the European Commission, with operational responsibilities delegated to the European Union Intellectual Property Office (EUIPO). Indeed, the registration of a PDO or PGI thus constitutes a justified derogation from the principle of free movement of goods[26], as the specification operates as a binding rulebook for all producers wishing to use the registered name, requiring full compliance with the prescribed production methods and limiting eligibility to those operating within the geographically defined area.

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[25] Article 49 Regulation (EU) 2024/1143. It introduced a few differences from the text of Art. 7 of Regulation (EU) 1151/2012. Particularly, the product specification will have to include informations about plant varieties and animal breeds and the name, specific tasks and address of verifying authorities or bodies is no longer required. Moreover, sustainable practices can be included.

[26] AMBROSIO, SAIJA, CARRARA, *Prodotti alimentari di qualità,* 83.

Furthermore, Article 50[27] mandates the inclusion of a "single document" summarizing key elements of the specification: the name, a concise description of the product and geographical area, and a short explanation of the link to origin. This document serves both as a public communication tool and as a condensed legal reference for the Commission's scrutiny.

At the national level, Member States have considerable discretion in implementing the first phase of the registration process. In Italy, the procedure is governed by the Ministry of Agriculture, with additional guidance provided by Ministerial Decree No.12511 of 14 October 2013. The right to apply for registration lies with the group[28], irrespective of its legal form, as long as it is composed predominantly of producers or processors working with the product concerned. Once the application is complete, it is submitted to the competent authority of the Member State, which conducts a substantive and formal assessment. A reasonable period is then opened during which any natural or legal person may raise objections. This stage offers a critical safeguard for Italian producers who may perceive the proposed specification as detrimental to local practices, economic, and competitive equilibrium[29]. If no admissible objection is received, or following the resolution of any that are, the Member State formally adopts a decision to transmit the application to the European Commission and ensures adequate publication of the version of the product specification on which the Commission takes decision[30].

Passing to the Union phase[31], the application is subject to a renewed examination within six months from the date of reception aimed at ensuring

[27] Art. 50(1) Regulation (EU) 2024/1143.
[28] For a detailed discussion on the legal functions and quasi-public tasks entrusted to producer groups within the EU quality scheme, particularly with regard to their recognized role in market surveillance, product promotion and collective representation under both Union law and Italian law, see Section 1.3 below.
[29] MAURO, *Legittimazione a proporre opposizione alle richieste di registrazione DOP e IGP*, in Lucifero (ed.), *La tutela internazionale delle indicazioni geografiche dei prodotti agroalimentari*, 290.
[30] Art. 56(3)(4) Regulation (EU) 2024/1143.
[31] It is worth noting that, under Article 11 of Regulation (EU) No 2024/1143, a Member State may, on a transitional basis only, grant protection to a name under this Regulation at national level, with effect from the date on which an application is lodged with the Commission. This transitional national protection automatically ceases once a final decision on registration is taken or the application is withdrawn. Importantly, such measures produce effects solely at the national level and have no impact on intra-Union or international trade, remaining legally irrelevant beyond the borders of the granting Member State.

compliance with the substantive and procedural requirements set out in Regulation (EU) No 2024/1143. If, following its scrutiny and any necessary clarifications or corrections, the Commission reaches a favorable conclusion, it proceeds to publish the single document along with a reference to the full product specification in the Official Journal of the European Union. From that moment, a three-month window opens for potential oppositions by other Member States or interested parties. Given the real possibility that a new registration or its amendment may be strategically manipulated to secure an undue competitive advantage, «*the authorities of a Member State or of a third country[…]*» or «*any natural or legal person having a legitimate interest […] may lodge a notice of opposition*»[32]. This concern found a tangible manifestation in the *Prošek* case[33], where Italy lodged a formal objection to Croatia's request to recognise "Prošek" as a traditional term, given the phonetic resemblance to "Prosecco", an Italian PDO[34] of strategic economic and reputational value; raising fears of consumer confusion, dilution of distinctiveness, and a distortion of fair competition within the internal market. Again, as in the national phase, if no opposition is filed within this period, or if an opposition is submitted but successfully resolved through consultations between the objector and the applicant group, the Commission proceeds to adopt the implementing act that registers the designation formally.

1.1.3 The Protection of Geographical Indications and the Legal Duty of Ex Officio Intervention.

At this point, the analysis starts to reach its conceptual and normative core: the actual extent to which the jewels of the Made in Italy agri-food tradition, those bearing the PDO and PGI labels, are protected under the European quality regime. Beyond the formalities of registration, what matters is the effective legal shield conferred upon these designations within the internal market and beyond. This is where the full normative weight of the system comes into play, and

[32] Art. 17(1)(2) Regulation (EU) 2024/1143.

[33] The long-standing dispute over the use of the term *Prošek* has effectively been settled with the entry into force of Regulation (EU) 2024/1143, which introduces an unequivocal prohibition on any form of evocation, even indirect or merely phonetic, of protected geographical indications. As a result, the new legal framework restores the uniqueness of Prosecco and removes the lingering threat of imitation, thereby marking a decisive victory for Italian producers.

[34] See AMBROSIO, SAIJA, CARRARA, *Prodotti alimentari di qualità*, 159, noting that, as of today, there are three separate PDOs containing the name "Prosecco" officially registered.

where Article 26 of Regulation (EU) No 2024/1143 emerges as the pivotal provision. It is here that the scope, limits, and legal enforceability of protection are most clearly defined, revealing how European law seeks not only to recognize but to defend the cultural and economic identity.

Under Article 26[35]: *Geographical indications entered in the Union register of geographical indications shall be protected against:*

(a) Any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products registered under that name or where use of that geographical indication for any product or any service exploits, weakens, dilutes, or is detrimental to the reputation of, the protected name, including when those products are used as an ingredient. The notion of "use" of a protected geographical indication (PGI or PDO) refers not only to the direct reproduction of the registered designation, but also to the use of any term or sign that, owing to its visual or phonetic similarity, is so closely associated with the registered name as to create an inextricable link in the perception of the average consumer[36]. Indeed, a crucial legal distinction must be drawn between direct use, where the indication appears on the product itself or its packaging, and indirect use, where the protected term is featured in ancillary contexts such as marketing materials or product advertising[37]. Importantly, it is not enough for a term to vaguely recall the protected designation or its geographical origin when it comes to commercial use. The sign must establish a clear and unmistakable link with the registered name in the perception of the relevant public[38].

(b) Any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar, including when those products are used as an ingredient. This provision casts a wide net: it outlaws not only the literal misuse of a protected name, but also any imitation or "evocation"

[35] Art. 26, Regulation (EU) 2024/1143.
[36] Interpretation confirmed in Court of Justice of the European Union, *Scotch Whisky Association v. Michael Klotz*, Case C-44/17, Judgment of 7 June 2018, ECLI:EU:C:2018:415.
[37] RUSCONI, CESANA, *Il diritto alimentare*, 689.
[38] *Ibid.*

that trades on the mental association between a sign and the registered designation. Legal doctrine[39] distinguishes three tiers of infringement. Usurpation is the outright appropriation of the name, falsely claiming the qualities of the protected product; imitation involves a plagiaristic reproduction that, although altered, still targets the same commercial niche; evocation, the most elusive category, covers every marketing practice, verbal or figurative, capable of conjuring in the consumer's mind the image of the GI product, thereby exploiting its reputation without authorization[40]. Because evocation operates through suggestion rather than direct appropriation, it poses the greatest enforcement challenge. Italian *Consorzi di tutela* routinely engage in costly litigation to have a court declare a label or marketing device "evocative"[41]; throughout the proceedings the infringing product often remains on the shelf, eroding market share and diluting the distinctiveness of high-reputation designations such as those underpinning the *Made in Italy* brand. The Court of Justice's *Queso Manchego* ruling[42] confirms that evocation can stem from purely graphic cues, live pastoral scenes, literary references, even a Don-Quixote-style figure, whenever those elements create a direct and unequivocal mental link with the protected name. Yet the same judgment raises an unresolved tension: if every cultural or geographic nod is potentially evocative, local producers of conventional goods may be barred from referencing the very territory in which they operate[43]. In regions where multiple products legitimately coexist, only some of them under GI protection, such a broad reading risks over-reach, penalizing truthful speech and inhibiting fair competition.

(c) Any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, on advertising material, in documents or information provided on online interfaces relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin. By encompassing packaging,

[39] GUALTIERI, VACCARI, CATIZZONE, *La protezione delle indicazioni geografiche: la nozione di evocazione,* in *Riv. dir. alim*., 2017, 15, at 16.
[40] *Ibid.*
[41] AMBROSIO, SAIJA, CARRARA, *Prodotti alimentari di qualità*, 86.
[42] Case C-614/17.
[43] BAIRATI, *L'evocazione delle DOP e delle IGP tramite segni figurativi (Corte di giustizia UE, 2 maggio 2019, causa C-614/17),* in *Dir. comm. int.,* 2020, IV, 1125 at 1135.

marketing materials, and even online interfaces, it reflects the Regulation's effort to adapt to contemporary modes of commercial communication and protect origin-linked value beyond the product label itself.

(d) Any other practice liable to mislead the consumer as to the true origin of the product, functions as an open clause, leaving room for the inclusion of deceptive conduct not explicitly listed.

The added value of geographical indications lies in consumer trust[44], trust that is credible only when underpinned by effective verification and control mechanisms. To this end, the regulatory framework places significant emphasis on self-regulation, due diligence, and individual responsibility of producers, but Member States are also required to ensure *ex officio* protection, meaning that national authorities must actively prevent and sanction the misuse, imitation, or evocation of registered names, irrespective of whether the rightful complaint has lodged a formal complaint. This marked a major innovation introduced by the 2012 legislator, strongly advocated by Member States with a robust tradition of PDO and PGI production, such as Italy, which championed the inclusion of *ex officio* protection in response to the well-known "Parmesan" case[45]. What truly distinguished this mechanism, however, was its cross-border dimension: each Member State is now under a legal obligation to actively protect all registered designations marketed within its territory, regardless of whether the geographical indication originates from its jurisdiction or another Member State's.

This obligation is further strengthened under the 2024 Regulation, which requires designated authorities to regularly monitor compliance with product specifications (also in online environments) based on risk analysis and any notifications received, including from producer groups. National authorities must take appropriate administrative and judicial measures to prevent or halt the commercial use of infringing names on their territory, whether for domestic marketing or export to third countries. They are equally required to disable access to domain names that contravene the applicable rules and to facilitate information-

[44] Recital 51, Regulation (EU) 2024/1143.

[45] See *Commission v. Germany*, Case C-132/05, Judgment of 26 February 2008, ECLI:EU:C:2008:117. For a detailed analysis, see §1.2.1 below.

sharing across enforcement bodies such as police, anti-counterfeiting units, customs, intellectual property offices, food law authorities, and market inspectors.

Yet, while the text boldly expands the enforcement toolkit, it remains strikingly silent on practical implementation: how such actions are to be executed, by whom, and through which technical interfaces remains largely undefined. The framework mandates interoperability but does not define the standards or procedural interfaces necessary for such collaboration. Especially in digital marketplaces, where infringing uses can proliferate across borders overnight, these enforcement obligations risk becoming paper guarantees without substantial investment in capacity-building and shared platform.

1.2 Limits of the GI Protection in Practice.

Until now, the exposition of the PDO and PGI legal regime has brought to light its principal merits: stringent registration procedures, detailed product specifications, and enhanced enforcement tools. Yet law, like geography, is marked by boundaries. While some constraints have already emerged in the course of the previous analysis, others require dedicated attention. Chief among them is the territorial limitation inherent in the EU framework: despite their strategic economic role, GIs remain, by design, instruments of Union law and are therefore subject to a geographically restricted enforcement perimeter. This limitation becomes particularly problematic in light of the global dimension of market imitation phenomena, such as Italian Sounding, which generates considerable revenue in countries like China, Japan, and the United States. This structural shortcoming has led to a growing reliance on bilateral agreements and international negotiations, which will be addressed in detail in *§1.2.3*, as a partial remedy to an otherwise fragmented global enforcement landscape.

From a factual standpoint, then, the "Made in Italy" identity thrives on diversity and on a complex, fluid reality composed also of small and micro-scale productions, many of which fall outside the protective scope of existing quality schemes. Although Italy boasts a remarkably high number of registered PDOs and PGIs, this quantitative success does not necessarily translate into widespread or effective use by producers. In practice, the economic and reputational benefits commonly attributed to PDO and PGI registration, such as support for rural

development, increased consumer confidence, and competitive positioning are effectively realized only by a small subset of products, primarily those with consolidated prestige and historical recognition, such as Parmigiano Reggiano, Prosciutto di Parma, Mozzarella di Bufala Campana, and Gorgonzola[46].

Moreover, even for those producers who do undergo the burdensome registration process, protection is far from absolute. This exposure is further aggravated by the phenomenon of *genericide*, which is the gradual loss of distinctiveness of a protected name in foreign markets, whereby designations such as "Parmesan" have become perceived as generic descriptors rather than legally protected terms. This issue, which will be explored in *§1.2.1*, reveals the fragility of geographical indications when confronted with international market dynamics and the absence of uniform global protection.

1.2.1 The Parmesan Precedent: Legal Boundaries and Market Realities of GIs.

In the *Parmesan* case[47], to determine whether "Parmesan" amounted to an unlawful appropriation of the PDO *Parmigiano Reggiano*, the Court of Justice first addressed the scope of protection afforded to composite denominations under EU law, specifically, if safeguarding attach solely to the precise registered form, or if it extend to each element of the name. The European Commission urged the latter interpretation, arguing that every component of a compound designation merits protection unless a Member State expressly opts to exclude specific parts. German authorities, by contrast, contended that the literal translation "Parmesan" had long since become a generic term for any hard, grating cheese. The Court dispensed with Germany's genericity claim, finding the evidence insufficient and reaffirming that "Parmigiano" cannot, as a matter of law, be demoted to a common noun. The Court held that "Parmesan" constitutes an impermissible evocation of *Parmigiano Reggiano*, given the undeniable phonetic, visual, and conceptual affinities between the two terms. In this analysis, we will not revisit the doctrinal contours of "evocation," which have already been examined in §1.1.1. Rather, our focus here

[46] AMBROSIO, SAIJA, CARRARA, *Prodotti alimentari di qualità*, 84.
[47] See Court of Justice of the European Union, Case C-132/05, Commission of the European Communities v Federal Republic of Germany, judgment of 26 February 2008, ECLI:EU:C:2008:117.

is on how such high-profile disputes underscore a deeper vulnerability: the tendency of flagship Italian GIs to become genericized, especially outside the Union. In the United States, supermarket shelves are lined with products labelled as "Parmesan" or "Provolone Romano," while dairy cooperatives routinely report that foreign producers market "Grana" and "Mozzarella" as generic styles, thereby eroding their certified distinctiveness. In the absence of global enforcement mechanisms, even the most iconic names risk falling into the public domain as mere category descriptors.

This weakness extends beyond the cheese sector and is not confined to extraterritorial arenas. A series of recent developments within Italy itself[48] underscores the uneven enforcement of GI protection even within the internal market of the Union. EU GIs are conceptually robust and enjoy sweeping legal safeguards, yet remain practically fragile. Article 26(6) of Regulation (EU) 2024/1143[49] declares that «*Geographical indications registered under this Regulation shall not become generic in the Union»,* but without comprehensive global protection and with domestic remedies largely confined to forward-looking injunctions, the *Made in Italy* brand remains juridically revered yet commercially at risk.

1.2.2 Regional Free Trade Agreements as a Partial Solution.

Despite the increasing sophistication of the EU's internal framework for Geographical Indications, the international protection of PDOs and PGIs remains a structural weakness[50]. This fragility reflects a combination of legal, historical, and geopolitical factors: the absence, in many non-EU countries, of *sui generis* legal regimes comparable to the European model; the hybrid nature of GIs, which operate

[48] Notably, in April 2019, Italy's Carabinieri Anti-Adulteration Unit (RAC) uncovered several instances in which restaurants falsely advertised the use of DOP and IGP ingredients, only to substitute them with lower-quality alternatives. Among the most emblematic examples was the "Focaccia di Recco col Formaggio" IGP, a designation registered in 2015 but frequently misused in commercial practice. Despite its strong territorial linkage and strict production specifications, the name is routinely appropriated by establishments such as pizzerias, bakeries and even television chefs, whose products fail to meet the criteria laid down in the IGP product specification.

[49] Art. 26(6) Regulation (EU) 2024/1143.

[50] On this matter, PASTORINO, *Gli accordi bilaterali in materia di IG e il loro legame con il WTO come chiave di lettura,* in Lucifero (ed.), *La tutela internazionale delle indicazioni geografiche dei prodotti agroalimentari*, 125; Ubertazzi, Muñiz Espada, *Le indicazioni di qualità degli alimenti: diritto internazionale ed europeo,* 43; DI LAURO, Le Denominazioni d'origine protetta (DOP) e le indicazioni geografiche protette (IGP), in *Trattato di diritto alimentare italiano e dell'Unione europea*, Borghi, Canfora, Di Lauro, Russo, 2*, Giappichelli, Torino, 2024, 629.

both as economic indicators and cultural signifiers, making them difficult to classify under conventional intellectual property categories; and the dissemination of traditional geographic names through migration, often leading to entrenched uses in third countries that are entirely detached from their original territorial and cultural meaning.

The TRIPs Agreement serves as the fundamental legal framework for the international protection of GIs, especially when no bilateral or plurilateral agreement exists between the involved parties. As a widely ratified multilateral treaty across various jurisdictions, it establishes minimum standards for protection that cannot be bypassed by more limited agreements. Therefore, bilateral and regional free trade agreements (FTAs) must be interpreted and constructed within the legal boundaries set by TRIPs; they can certainly enhance protection beyond TRIPs but cannot undermine its core provisions.

Currently, the European Union has concluded several FTAs. Among the most significant is the Comprehensive Economic and Trade Agreement (CETA) with Canada[51], which includes a dedicated annex listing protected EU GIs, thereby extending their enforceability across Canadian territory. Similarly, the Economic Partnership Agreement with Japan[52] contains a specific chapter on intellectual property that grants mutual recognition to a wide array of GIs. Comparable commitments are also embedded in FTAs with South Korea[53], Vietnam[54], and, in its modernized form, Mexico[55]. By contrast, the European Union and the United States have never concluded a bilateral FTA: the failure of the Transatlantic Trade and Investment Partnership negotiations largely stemmed from irreconcilable positions on GIs, with the U.S. maintaining that many such names are generic. Likewise, the agreement signed with China in 2020[56], while often cited as a

[51] *Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part*, OJ L 11, 14.1.2017.
[52] *Agreement between the European Union and Japan for an Economic Partnership*, OJ L 330, 27.12.2018.
[53] *Free Trade Agreement between the European Union and the Republic of Korea*, OJ L 127, 14.5.2011.
[54] *Free Trade Agreement between the European Union and the Socialist Republic of Vietnam*, OJ L 186, 12.6.2020.
[55] *Modernized Global Agreement between the European Union and the United Mexican States*, not yet published in the Official Journal (as of June 2025).
[56] *Agreement between the European Union and the Government of the People's Republic of China on cooperation on, and protection of, geographical indications*, OJ L 408, 4.12.2020.

landmark, is not a free trade agreement but rather a standalone bilateral treaty that mutually protects a list of 100 GIs from each side. Regulation (EU) 2024/1143 itself reaffirms and enhances the EU's strategic reliance on them. As clarified in Recital 31, the Union actively negotiates international agreements, including those that enhance the protection of PDO and PGI with its trade partners. To facilitate the provision to the public of information about the names protected by those international agreements, and in particular to ensure the protection and control of the use to which those names are put, those names may be entered in the Union register of GIs[57]. Article 22(6) further consolidates this framework by mandating the Commission to publish and regularly update the list of relevant international agreements as well as the corresponding protected names[58].

Still, these bilateral frameworks, while enhancing international reach, fall short of delivering a fully unified global system. Their effectiveness depends on the willingness of third countries to align with the EU's vision of GIs as *sui generis* rights, and on the political leverage the Union is able to exert in trade negotiations. Thus, even if they remain the most viable path forward, they are better understood as partial solutions, imperfect stopgaps in a landscape still marked by conceptual divergence and legal pluralism.

1.3 The Role of Consortia in Enforcement and Promotion.

At the outset of EU legislation on PDOs and PGIs, the legal status and practical authority of producer groups appeared markedly weakened when compared to the earlier national framework. This was due, in part, to the loss of legal ownership over pre-existing collective geographical marks, and to the fact that individual producers could claim the use of a PDO/PGI without being part of the corresponding consortium[59]. Initially conceived as private aggregations of producers, consortia gradually gained normative relevance alongside the development of the EU quality policy, revealing a gradual consolidation of their

[57] Recital 31, Regulation (EU) 2024/1143, which additionally states that: *Unless specifically identified as designations of origin in such international agreements, the names should be entered in the register as protected geographical indication*.
[58] Art. 22(6) Regulation (EU) 2024/1143.
[59] RUBINO, Il ruolo dei consorzi di tutela nella protezione della qualità, in *Trattato di diritto alimentare italiano e dell'Unione europea*, Borghi, Canfora, Di Lauro, Russo, 2*, Giappichelli, Torino, 2024, 671.

quasi-public role. Regulation (EEC) No 2081/92 merely acknowledged their procedural role in submitting registration applications, without defining their legal nature or organizational functions. In the absence of a comprehensive EU framework, national legislatures were left to formalize their institutional status, their functions, and to distinguish between their promotional and supervisory activities. Italy played a pioneering role in this regard, notably through Article 53 of Law No. 128 of 24 April 1998, as amended by Article 14 of Law No. 526 of 21 December 1999, which formally recognized the institutional role of *consorzi di tutela*, distinguished their functions of quality advocacy from official control, and introduced a structured system of recognition based on representativeness thresholds. A decisive step came with Regulation (EU) No 1151/2012, which for the first time codified the operational scope of producer "groups" entrusting them with both the initiation of registration procedures and a broad set of post-registration duties, including surveillance, consumer outreach, and marketing support.

Now defined in Art.9(1) of Regulation (EU) No 2024/1143 as «*an association, irrespective of its legal form, composed of producers of the same product the name of which is proposed for registration*», the notion tries to reflect an effort to balance subsidiarity with legal flexibility. However, this broad and structurally vague may weaken institutional accountability, especially when their actions produce *erga omnes* effects[60]. Their institutional relevance is structured around four core areas of intervention: (i) promotion and valorization of PDO and PGI products; (ii) market surveillance and legal protection of the designation; (iii) administrative management of the quality scheme; and (iv) broader representation and strategic advocacy for the interests of the denomination[61]. In this sense, the

[60] See LUCIFERO, *I Consorzi di tutela dei vini e le funzioni erga omnes: estensione delle regole e contributi obbligatori*, in Riv. dir. alim., 2019. The *erga omnes* powers attributed to recognized consortia under Italian law allow them to adopt legally binding measures that extend beyond their membership base, covering all operators involved in the relevant production chain. This exceptional competence is conferred only upon consortia that have obtained formal recognition by the Ministry of Agriculture, based on specific representativeness thresholds and governance requirements set out in national implementing decrees. These powers reflect the collective interest nature of the denomination and enable the consortium to safeguard and enforce the quality scheme uniformly, even against producers who are not part of the association but use the protected designation under the official product specification.

[61] *Ibid.,* 675.

regulatory system also grants recognized consortia the authority to bring legal action against acts of unfair competition, counterfeiting, inappropriate use of protected names, and any other illegal activity, including the suppression of abuses and unfair commercial practices. Moreover, Recital 41 and 42 of Regulation 2024/1143 clarify that these groups may be assisted, where appropriate, by local or regional authorities in preparing their application, and should be equipped with the means to effectively identify and promote the specific characteristics of their products. In addition, to justify a privileged role for *recognized producer groups,* the Regulation points to the structural asymmetry within the food supply chain: producers of GI-labelled goods, often SMEs, compete with operators of far greater scale and commercial leverage[62]. In this context, allowing a single representative body to act in the collective interest is not only functional but necessary to preserve fair market access.

However, there's a tangible risk that by tying strengthened protection to group membership, the current framework risks elevating institutional affiliation over individual compliance, casting doubt on its inclusiveness and its capacity to accommodate autonomous forms of excellence. Yet precisely because of this institutional centrality, consortia offer the Made in Italy ecosystem more than mere support: they provide a legally entrenched infrastructure capable of defending authenticity, narrating tradition, and coordinating enforcement both within and beyond the borders of the Union.

2 Trademark Law and the Strategic Use of Certification Mechanisms

The legal protection of the Made in Italy identity cannot rest solely on geographical indications. While PDOs and PGIs offer a structured and origin-dependent regime for agri-food products and wine, they remain sector-specific and bound by strict eligibility criteria. In contrast, trademark law represents a more general and dynamic legal instrument, capable of embracing the full diversity of the Italian productive system. It is particularly within the domains of fashion, design, high-end manufacturing, and artisanal craftsmanship —sectors in which origin conveys not just provenance but also symbolic capital —that trademarks have emerged as the principal vehicle for legal recognition and commercial valorization.

[62] Recital 41 42, Regulation (EU) 2024/1143.

Within the broader category of distinctive signs (such as business names, shop signs, and trademarks), the latter occupies a particularly prominent position. It is the legal tool par excellence through which an entrepreneur may affirm their identity on the market and distinguish their products from those of competing undertakings. To fulfill its essential function of distinctiveness, a registered trademark must consist of a sign capable of characterizing a product and differentiating it from others. In this respect, the trademark operates as a "clientele attractor[63]" concentrating the goodwill, reputation, and consumer expectations that accrue to a specific mark over time.

While this individual logic is central to the functioning of standard trademarks, the law also recognizes other types of signs whose function diverges from that of indicating a single commercial origin. Collective and certification marks, in particular, differ fundamentally from individual trademarks. Rather than indicating the commercial origin of a product or service from a single undertaking, these marks convey broader messages related to product category and quality assurance[64]. Indeed, far from undermining competition, they enhance its functional richness by capturing the full diversity of how goods are produced, certified, and perceived: from the legal recognition of the identity of the smallest enterprise to the ability to clearly distinguish genuinely "Made in Italy" products from those of different territorial origin[65]. A collective mark serves to identify goods or services as originating from members of a specific association or group engaged in a particular type of commercial activity. In contrast, a certification mark functions as an attestation that the goods or services bearing the sign possess certain characteristics or comply with predefined quality standards, irrespective of their commercial origin.

In essence, the legal framework governing distinctive signs fulfils a threefold purpose: it protects the entrepreneur's right to differentiate their goods or

[63] SENA, *Il nuovo diritto dei marchi*, 22.
[64] JACOB, FISHER, CHAVE, *Guidebook to Intellectual Property*, 118.
[65] LIBERTINI, *Marchi collettivi e Marchi di certificazione. Funzioni e problemi della disciplina dei segni distintivi di uso collettivo,* in Riv. Dir. Ind., 2019, 466 at 470. The ability of the trademark system to signal product characteristics across different levels of production contributes, in principle, to a more efficient and transparent functioning of market dynamics, insofar as such differences may be relevant to consumer preferences.

services and to capitalize on the economic value of market recognition; it safeguards the consumer's legitimate interest in not being misled as to the commercial origin or quality of what they purchase; and it serves the broader public interest in ensuring the proper functioning of a fair, transparent, and undistorted competitive market[66].

2.1 The Individual Trademark in the Made in Italy Model: Between Legal Exclusivity and Reputational Inadequacy.

This balance of interest, as previously discussed, is explicitly codified in Article 2569 of the Italian Civil Code, and in Articles 7 and 20 of the Italian Industrial Property Code. The Italian Civil Code does not merely emphasize the principle of distinctiveness, but simultaneously enshrines the corollary right of exclusivity that is intrinsically linked to a registered trademark. Article 2569 expressly provides that: «*Whoever has registered a new trademark in the manner prescribed by law, and which is capable of distinguishing products or services, shall have the right to use it exclusively for the products or services for which it has been registered*». This disposition must be read together with art. 20(1) c.p.i[67], which states that the rights conferred by the registration of an individual trademark primarily consist in the exclusive entitlement to use the sign in the course of trade. As a consequence, the trademark owner is legally empowered to prevent third parties, without prior authorization, from employing identical or confusingly similar signs in economic activity where such use would infringe upon the distinctiveness or reputation of the registered mark. This prerogative extends across three core dimensions, reflecting the legal criteria for determining the existence of a likelihood of confusion[68].

First, the proprietor may oppose the use of a sign that is identical to the registered trademark in connection with goods or services that are likewise identical to those for which the trademark was registered[69]. Second, the owner may prevent the use of identical or similar signs for goods or services that are identical or similar, where such use is liable to generate a likelihood of confusion among the public,

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[66] VANZETTI, DI CATALDO, SPOLIDORO, *Manuale di diritto industriale*, 153.
[67] Art. 20(1), Italian Industrial Property Code (Legislative Decree No. 30/2005), OJ No. 52, 4 March 2005.
[68] FITTANTE, *Brand, Industrial Design e Made in Italy: la tutela giuridica,* 10.
[69] Article 20(1)(a), Italian Industrial Property Code.

including the risk that consumers may associate the two signs[70]. Third, where the registered trademark enjoys a particular degree of reputation or renown, the protection expands even to dissimilar goods or services. In such cases, the trademark holder may prohibit the use of an identical or similar sign if such use, in the absence of due cause, would result in unfair advantage being taken of the distinctive character or reputation of the mark, or if it would cause detriment to its image or value, even where the sign is not used to distinguish products or services[71]. Trademark protection is therefore structured around the so-called *principle of speciality*, which limits the right to specific classes of goods or services, and around the primary legal function of the trademark itself: that of indicating the commercial origin of a product, rather than its geographical provenance.

Despite the strong legal architecture[72], individual trademarks are also subject to a set of limitations that circumscribe their actual effectiveness. Among these are the risks of genericide or vulgarization, whereby a trademark loses its original capacity to identify the product as originating from a specific undertaking and gradually becomes the generic name for the entire category of goods to which it belongs[73]. Further constraints include the possibility of revocation due to lack of genuine use within five years of registration[74], and the exhaustion of rights once the goods have been lawfully placed on the market within the European Economic Area[75]. These constraints are particularly relevant when the trademark is deployed as a strategic tool of brand differentiation in sectors where origin, tradition, and reputation are essential.

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[70] Article 20(1)(b), Italian Industrial Property Code.
[71] Article 20(1)(c), Italian Industrial Property Code.
[72] This contribution does not aim to provide an exhaustive analysis of the individual trademark regime, which, although fundamental within the broader system of intellectual property law, would require a distinct level of detail and technical depth. The discussion here is intentionally limited to certain core features that are relevant to understanding the limits of trademark protection in relation to the *Made in Italy* identity.
[73] Article 13(4), Italian Industrial Property Code. Classic examples include *Aspirin*, or *BIC*, which, through widespread use in everyday language, have ceased to function as indicators of commercial origin.
[74] Article 24(1), Italian Industrial Property Code.
[75] Article 5(1), Italian Industrial Property Code. According to paragraph 2, this limitation on the rights of the trademark owner does not apply where legitimate reasons exist to oppose the further commercialisation of the goods, particularly in cases where the condition of the products has been altered or modified after they have been placed on the market.

Yet, while the individual trademark remains a cornerstone of commercial legal protection, it proves structurally inadequate when the aim is to protect the systemic distinctiveness and reputational depth associated with *Made in Italy* goods. Especially for small and medium-sized enterprises (SMEs), which represent the overwhelming majority of Italian producers, the trademark may secure brand exclusivity, yet it does not encapsulate the broader cultural, territorial, or artisanal values that define Italian excellence. Conversely, the situation differs when examining another type of economic entity, specifically those firms whose trademarks have attained remarkable market recognition and reputational robustness. In the context of high-end and design-intensive industries, the trademark does not merely serve to identify the commercial origin of goods in a manner verifiable as true or false. Rather, it becomes the vehicle of an evocative message, charged with intangible associations and symbolic resonance. This message is not factual, but emotional: it appeals to the aspirational, aesthetic, and social desires of the consumer, conveying a sense of exclusivity, prestige, and lifestyle identification[76]. Nowhere is this dynamic more evident than in the *Made in Italy* paradigm, where trademarks often serve as cultural signifiers that reflect the excellence of Italian design, and heritage of making[77]. Much like the French luxury model, the Italian system has cultivated a globally recognized narrative in which the brand operates as an emotional interface between product and consumer. The trademark thus evolves into an empathic symbol: a mirror in which each consumer perceives the qualities they most desire, be it artisanal mastery, elegance, or social distinction.

We are indeed referring to the field of well-known trademarks[78], which enjoy enhanced protection under both EU law and Italian law. These marks may oppose

[76] GHIDINI, RESCIGNO, *Profili evolutivi del diritto industriale*, 331. On this point, see the discussion on how the emotional and persuasive appeal of a trademark, particularly when it results in consumer loyalty or even a lock-in effect, may translate into a substantial competitive advantage. In certain market conditions, this brand-induced attraction can act as a decisive or contributing factor in establishing a dominant position for the trademark owner, thereby raising potential antitrust concerns

[77] Just think of *Ferrari* in the automotive sector, *Gucci* and *Dolce & Gabbana* in fashion, or *Nutella* (Ferrero) and *Barilla* in the agri-food industry.

[78] Defined for the first time in Article 16(2) of TRIPS: "In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark".

the registration of a later identical or similar sign even where the goods or services are not similar, provided that the later use—absent due cause—takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the earlier mark. It is sufficient that the degree of similarity between the signs is such that the relevant public establishes an association between them, even if there is no likelihood of confusion[79]. The rationale behind granting well-known trademarks an *ultra vires* protection lies in the fact that their persuasive power operates independently of the specific goods to which they are affixed. At this level of recognition, it is the trademark itself, rather than the underlying product, that exerts an autonomous attractive force on consumers[80].

Naturally, such a legal safeguard cannot be regarded as a comprehensive solution for the *Made in Italy* system as a whole. Its scope is confined to a relatively small group of firms whose trademarks meet the threshold of legal renown. Yet, as repeatedly underlined, *Made in Italy* is not a unitary model but a constellation of diverse production identities. Within this framework, it remains significant that at least the high-end segment enjoys an elevated level of legal protection, one that reflects its global exposure and strategic vulnerability. As trademark doctrine has long acknowledged, *the stronger the mark, the broader the protection*, and for Italy's most iconic brands, this principle provides at least one reliable legal anchor.

2.2 Collective Marks for Shared Commercial Identities.

In light of the combined effect of Articles 11 of the Italian Industrial Property Code and Article 74 of Regulation (EU) 2017/1001, collective marks serve the specific legal function of distinguishing goods or services that originate from members of an association or group, while simultaneously guaranteeing particular attributes such as origin, nature, or quality. What makes them distinct from individual trademarks is the inherent, structural dissociation between ownership and use: while the ownership of the sign remains singular and centralized, the right

[79] *Adidas-Salomon AG v Fitnessworld Trading Ltd,* judgment of 23 October 2003 (Case C-408/01), where the Court held that the mere establishment of a connection in the consumer's mind may be enough to trigger protection against dilution or reputational harm.
[80] FITTANTE, *Brand, Industrial Design e Made in Italy: la tutela giuridica,* 18.

to use it is, by definition, distributed across a plurality of users formally unaffiliated with the proprietor[81].

Both Italian and EU legislation provide only a limited positive definition of the legal regime applicable to collective marks, preferring instead to refer back, *mutatis mutandis*, to the general rules applicable to individual registered trademarks. Historically, collective marks have emerged predominantly as geographical collective marks[82]. Even today, the legal framework maintains specific provisions tailored to their unique features, most notably in the treatment of toponyms. Particularly, Article 11(4) of the Industrial Property Code[83] and Article 74(2) of Regulation (EU) 2017/1001[84] permit the registration of geographical names that evoke territorial provenance by relaxing the otherwise strict rules prohibiting the registration of generic or descriptive expressions. Examples that effectively illustrate the legal regime in practice include well-known collective marks such as *Squacquerone di Romagna* (figurative), *Latte Fresco della Valtellina* (figurative), and *Vero Cuoio*, all of which show how toponyms that evoke territorial provenance can be validly registered and protected[85].

Though previously noted, it is worth recalling that trademark law safeguards both private rights and public trust. This consideration is explicitly recognized under Italian law, which mandates that, when assessing the registrability of a collective mark, the Italian Patent and Trademark Office (UIBM) must verify whether the sign could generate "situations of unjustified privilege" among competing enterprises within the same geographical area[86]. It is also empowered to consult relevant stakeholders, including professional categories and public entities, regarding the proposed use of the geographical name.

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[81] BERTANI, COGO, FABBIO, GENOVESE, OTTOLIA, *Lineamenti di diritto industriale: concorrenza e proprietà intellettuale.*

[82] RICOLFI, *Trattato dei Marchi*: *diritto europeo e nazionale*, Giappichelli, Torino, 2015, 1759.

[83] Article 11(4) of the Italian Industrial Property Code explicitly states: "By way of derogation from article 13, paragraph 1, a collective mark may consist of signs or indications which in trade can serve to designate the geographical origin of the products or services…".

[84] Article 74(2) of Regulation (EU) 2017/1001: "By way of derogation from Article 7(1)(c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute EU collective marks within the meaning of paragraph 1…".

[85] All collective trademarks for which registration was applied for in Italy are listed in full in the official database of the Italian Patent and Trademark Office (UIBM), available at: https://www.uibm.gov.it/bancadati/c_trademark/index/. It should be noted, however, that the data are updated only until 2019.

[86] Art. 11(4) of the Italian Industrial Property Code.

Under EU law, registration may be sought not only by public legal persons but also by associations of manufacturers, producers, service providers, or traders, provided that these associations constitute a legally autonomous entity[87]. In this sense, Italian law accommodates a wide range of legal forms for this purpose, including consortia, EEIGs, cooperative companies, and both recognized and unrecognized associations. The undertakings authorized to use the mark must maintain a formal affiliation with the proprietor, thereby creating a participation-based relationship between user and owner. Subject to compliance with the conditions outlined in the regulations governing use, the proprietor generally retains full discretion in selecting the users of the collective mark. However, this discretion is constrained by the so-called "open-door principle", codified in Articles 11(4) of the Italian Industrial Property Code and 75(2) of the Regulation (EU) 2017/1001. According to this principle, the use of geographical collective marks cannot be denied to businesses located in the geographical area evoked by the toponym, provided they meet the substantive conditions specified in the relevant use regulations.

The functional discontinuity between individual and collective trademarks is now firmly acknowledged. Unlike individual marks, which are primarily associated with brand origin, collective marks perform a function of quality assurance. To ensure this, the application for registration must be accompanied by a detailed set of regulations governing use. They give rise to binding obligations between the proprietor and the authorized users, compelling the latter to use the mark in strict compliance with the prescribed standards. Such standards may concern methods of production, geographical origin, the types of raw materials employed, or adherence to predefined levels of quality for goods or services[88].

Indeed, failure by the proprietor to implement the controls stipulated in the regulations governing use constitutes a ground for revocation of the collective

[87] Art.74(1) of Regulation (EU) 2017/1001.

[88] Art. 157(1-bis) of the Italian Industrial Property Code sets out the required contents of the use regulation, including: “the name of the applicant; the purpose of the trade association or the legal person governed by public law; the representatives; admission requirements; the representation of the collective mark; the subjects entitled to use it; the conditions of use and related sanctions; the goods or services covered, including any limitations due to rules on designations of origin or geographical indications; and, where applicable, the required authorizations”.

mark. The foregoing rules demonstrate that collective marks constitute a tailored safeguard for Italian reputation goods. The protection granted by geographical collective marks is tailored not because it confers absolute exclusivity, but precisely because it strikes a careful balance: it safeguards the territorial distinctiveness and reputation of Italian goods, while preventing the geographical name from being transformed into a private monopoly.

As a matter of fact, under Article 11(4) of the Italian Industrial Property Code and Article 74(2) of Regulation (EU) No. 2017/1001, collective marks allow geographical names to obtain trademark protection without infringing the absolute grounds prohibiting descriptive signs. However, when such a collective mark coincides with a geographical indication, the scope of exclusivity is inherently limited. Under the EU regime on GIs, if a producer manufactures Barolo Wine within the designated area concerned and strictly complies with the product specification established by the consortium, denying the right to lawfully use that name solely on the basis of lacking formal membership in the association holding the mark would be incompatible with the principles of fairness and accessibility. It's not by chance that legal doctrine[89] linked the function of collective marks more to the rationale of unfair competition law rather than to the exclusivity-based logic underpinning individual trademark protection.

This framework acquires particular salience in an environment where counterfeiting is highly used, and it deceives the relevant public not only as to entrepreneurial origin but, necessarily, as to the qualitative attributes of the goods[90]. The proprietor of a collective mark is therefore the primary party entitled to bring infringement proceedings; however, should the proprietor remain inactive after having been duly put on notice, standing extends to the authorized users themselves, who may either intervene in proceedings already instituted or initiate separate actions to recover the damages occasioned to their individual market positions[91].

[89] PEUKERT, *The Competitive Significance of Collective Trademarks*, in J. Rosén (ed.), *Individualism and Collectiveness in Intellectual Property Law*, 252.
[90] BERTANI, COGO, FABBIO, GENOVESE, OTTOLIA, *Lineamenti di diritto industriale: concorrenza e proprietà intellettuale,* 320.
[91] Article 122-bis of the Italian Intellectual Property Code.

2.3 Certification Marks in the Trademark System: At the Intersection of Quality and Neutrality.

Introduced into the Italian legal system[92] with Article 11-bis of the Italian Industrial Property Code[93], in compliance with Article 83(1) of Regulation (EU) 2017/1001[94], certification marks represent a distinct trademark category, albeit still falling within the broader *genus* of collective marks, whose normative architecture is shaped around neutrality and credibility. The "recognized difference" is that, unlike collective marks, they are not linked to any form of associative structure among producers but are instead granted to third parties, such as public bodies, private entities, or even individuals who do not themselves engage in the production or commercialization of the goods or services they certify[95]. The rationale is straightforward: if the certifier holds a commercial interest in the certified goods or services, the resulting conflict of interest inevitably compromises the impartiality and credibility that the certification mark is intended to guarantee. Moreover, while the neutrality requirement imposed on certifiers is essential to safeguard credibility, it simultaneously excludes producer consortia, arguably the actors with the most embedded territorial knowledge and institutional expertise, from holding certification marks.

This raises a fundamental question: how can the legal system reconcile the need for impartiality with the regulatory and epistemic functions already entrusted to *consorzi di tutela* under EU and national law? In highly context-sensitive sectors such as agri-food, this rigid separation between verification and participation may

[92] The reform introduced by Legislative Decree No. 15/2019, implementing Directive (EU) 2015/2436, partially amended the regulation of collective marks and, for the first time in the national legal system, introduced certification marks.

[93] Art. 11(1) of Italian Intellectual Property Code refers to them as: "Natural or legal persons, including institutions, authorities and bodies accredited pursuant to current legislation on certification, to guarantee the origin, nature or quality of certain products or services, may obtain registration for specific trademarks as certification marks, provided that they do not carry out an activity involving the supply of products or services of the type certified".

[94] Art. 83(1) of Regulation (EU) 2017/1001 contains the EU definition: "An EU certification mark shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified".

[95] See Article 83(2) of Regulation (EU) 2017/1001 and, similarly, Article 11-bis(2) of the Italian Industrial Property Code.

ultimately weaken, rather than strengthen, the effectiveness of certification schemes. This institutional detachment is not merely formal: it is the legal condition that enables the mark to act as an objective guarantee of conformity. While collective marks reflect the identity of a group, certification marks reflect the identity of a standard: they do not signal "who" made the product, but rather that the product meets certain requirements, be they qualitative, technical, or geographic. This configuration implies a reversal of logic: the certification mark functions not as an indicator of business origin, but as a legal instrument of regulatory attestation, shifting the axis of trademark law from the producer to the verifier[96].

However, before addressing the substantive discipline (which broadly mirrors the regime applicable to collective marks), it is necessary to briefly reflect on the notion of "geographical reference," given that the Italian legal framework expressly derogates from the European Union regime. While Article 11-bis(4) of the Italian Industrial Property Code explicitly allows certification marks to be used to certify the geographical origin of products or services[97], such use is expressly prohibited under the EU certification mark system[98]. Pursuant to Article 83(1) of Regulation (EU) 2017/1001, geographical origin is excluded from the list of certifiable characteristics, and this exclusion extends not only to the function performed by the mark but also to the contents of its regulations of use. This recent legal instrument is particularly compelling in an era where consumer attention has qualitatively evolved, privileging regulatory transparency and origin accountability[99]. Within the *Made in Italy* framework, this shift reflects a growing

[96] LIBERTINI, *Marchi collettivi e Marchi di certificazione,* in Riv. Dir. Ind., 2019, 466 at 472. The key structural difference lies in the nature of the information conveyed: collective marks reflect an active agreement of cooperation among multiple undertakings, thus signaling to the market a dynamic and evolving governance over the use of the sign. By contrast, certification marks transmit a static and externally defined assurance of conformity, managed by an independent entity with no direct interest in the production or commercialization of the goods concerned.

[97] The United States (§ 1054, Lanham Act), like other common law jurisdictions, also allows certification marks to designate geographical origin, aligning with the more flexible Italian approach and contrasting with the EU regime, which expressly excludes such use to preserve the distinct function of geographical indications.

[98] Following the opinion of RUSCONI, CESANA, *Il diritto alimentare*, 710, the questionable compatibility between national provisions and the normative requirements set out at the European level, presumably justified by the need of the *Sistema Paese* to protect national excellence by safeguarding product origin, will undoubtedly be the subject of debate and further examination in the coming months.

[99] ALBERTINI, *Novità in tema di disciplina dei marchi: le disposizioni sostanziali del D. Lgs. 15 del 20.02.2019*, in IlCaso.it, 2019, 19.

demand for legal tools capable of formalizing, in normatively verifiable terms, the systemic coherence between production, territory, and supply chain. To safeguard against distortions, however, the Italian Patent and Trademark Office retains discretion to reject applications for certification marks that would result in unjustified privileges or hinder the development of other comparable initiatives within a given territory[100]. In such cases, the Office may also require consultation with relevant public authorities, professional organizations, or interested stakeholders[101].

Substantively, certification marks are subject to a specific procedural regime[102]. Within two months of filing the application with the EUIPO, the applicant must submit the regulations of use, which must detail the characteristics to be certified, the conditions governing the use of the mark, the sanctions for misuse, and the supervisory or testing methods to be implemented by the certifying body. Moreover, certification marks can be transferred, but only if the new holder complies with the original framework[103]; otherwise, the mark may be invalidated. As for enforcement, reference should be made to the considerations previously outlined with respect to collective marks.

In this context, collective and certification marks as defined under the Italian Industrial Property Code cannot, at present, offer an effective alternative to the EU system of PDOs and PGIs, at least in the agri-food sector. Their voluntary nature, limited market penetration, and the absence of a fully harmonized enforcement mechanism at EU level contribute to their marginal role. The coexistence of distinct regimes often results in legal uncertainty and reputational overlap, ultimately weakening the strategic function these signs are expected to perform in protecting the economic and cultural capital associated with origin-based goods.

2.3.1 Overlaps and Conflicts between Trademarks and Geographical Indications.

[100] Article 11-bis(4) of Italian Industrial Property Code.
[101] *Ibid.*
[102] Which otherwise mirrors the regime applicable to collective marks, with the notable exception that certification marks may be transferred, whereas collective marks, due to their associative nature, are non-transferable.
[103] Art. 89 Regulation (EU) 2017/1001.

The disagreement between GIs and collective or certification marks stems from a conceptual incompatibility between two divergent legal rationales. Trademark law is based on the concept of private exclusivity, which grants the owner of a unique sign the exclusive right to use, license, and enforce that sign. Geographical indicators, on the other hand, are based on communal rights and function as open-access systems tied to conformity with a publicly overseen specification rather than individual authorship. This discrepancy causes unavoidable friction when a geographical word serves as both a source identification under trademark law and a public benefit under GI regulations. Despite this structural divergence, geographical indications are expressly governed by the Italian Intellectual Property Code, specifically under Articles 29 and 30[104]. While their inclusion within the broader framework of intellectual property suggests a formal alignment with proprietary rights, this classification remains doctrinally contested[105].

As previously noted in §2.2 and 2.3, with regard to the compatibility of geographical names with trademark registration, collective marks, by way of derogation from Article 13 of the Italian Intellectual Property Code, may consist of signs or indications that, in commercial practice, serve to designate the geographical origin of goods. In such cases, any undertaking whose products or services originate from the designated area is entitled to use the mark[106]. At the same time, registration of the collective mark does not confer upon its holder the right to prohibit third parties from using the same geographical name in trade. As for certification marks, the restriction under Article 13 does not apply at all, and such marks may lawfully

[104] The normative significance and legal construction of these provisions are further addressed in §3.2 below.
[105] As observed by VANZETTI, CATALDO, DI SPOLIDORO, *Manuale di diritto industriale*, 374, such a qualification becomes questionable when no single rightholder exists. The right to use and enforce the designation is instead diffusely held by those entitled to employ the GI, shifting over time as producers enter or exit the relevant geographical area. This structure could, in theory, extend legal standing even to individuals who are merely domiciled in or own land within the protected zone, including those with no direct involvement in the sector, thereby undermining the conceptual coherence of a unitary property right.
[106] Provided that the relevant requirements are met, the Italian Patent and Trademark Office (UIBM) retains the discretion to refuse registration, by means of a reasoned decision, where the proposed mark may give rise to unjustified privileges or prejudice the development of comparable initiatives within the region.

indicate the geographical origin of goods or services[107]. This brief recall of the applicable legal framework is not intended as repetition, but rather as a necessary clarification of the current positive law. Even with these formal provisions in place, persistent tensions continue to emerge, both in interpretation and enforcement. One emblematic example is the *Aceto Balsamico di Modena* case[108], where the Italian Supreme Court rejected the registration of a collective mark that sought to cover both the term "Aceto Balsamico di Modena" and related expressions such as "Condimenti all'Aceto Balsamico di Modena". Although the Consortium had filed the mark intending to distinguish products in Class 30 of the Nice Classification[109], the Court found that such terms could not be monopolized through trademark law, as their protection was already secured under the EU's PGI regime. The Court held that it is not the trademark but the territorial and qualitative specificity of the GI, rooted in the product specification and its geographical origin, that confers legal protection. Indeed, collective marks cannot be used to claim exclusive rights over terms that fall within the shared patrimony protected by GI law. Implicit in the Court's reasoning is the idea that the registration of a name as a PDO or PGI constitutes, in and of itself, a sufficient legal barrier against the misappropriation of the designation by third parties, as well as an adequate safeguard against consumer deception regarding the true origin of the goods[110].

It should also be considered that private trademarks which incorporate, contain, or even merely evoke a registered geographical indication may gain an undue competitive advantage by appropriating the reputational capital inherently

[107] In such cases, the UIBM is also entitled to seek the opinion of public authorities, relevant professional associations, or competent bodies where the proposed marks may result in unjustified privileges or cause harm to similar initiatives within the region.
[108] Italian Supreme Court, Judgment No. 12848 of 14 May 2019.
[109] The Nice Classification, established by the 1957 Nice Agreement and ratified by Italy through Law No. 1178 of 24 November 1959, organizes goods and services into numbered classes for the purposes of trademark registration. Class 30 includes a wide range of food products such as coffee, tea, cocoa, rice, pasta, bakery items, honey, spices, and notably vinegar and condiments. In the *Aceto Balsamico di Modena* case, the Italian Patent and Trademark Office (UIBM) had expressly requested the applicant to reformulate the product description in accordance with the Nice Classification, 10th edition, specifically suggesting alignment with the "vinegar" category within Class 30.
[110] MANCINI, *Registrazione del marchio collettivo «Aceto Balsamico di Modena». La Cassazione esclude la facoltà del Consorzio di tutela di rimodulare l'elenco dei prodotti e servizi oggetto della classificazione internazionale di Nizza*, in *Diritto e giurisprudenza agraria, alimentare e dell'ambiente*, No. 3, 2020,11.

associated with the GI, despite having no rightful claim to it. This is especially problematic given that geographical indications, by their very nature, tend to embody a form of historical notoriety, often rooted in centuries-old local traditions and preserved across generations. When a GI enters the global market, it rarely does so anonymously; it typically carries with it a deep-seated cultural identity and a communicative power capable of asserting a kind of historical primacy that no private sign can legitimately emulate[111].

The most problematic aspect, however, concerns the temporal logic underpinning the coexistence regime[112]. The principle *prior in tempore, potior in iure*, translated in Anglo-American trademark doctrine as *first in time, first in right*, continues to serve as a decisive criterion in determining which right prevails in cases of overlap. And indeed, Regulation (EU) 2024/1143 promptly recalls this in Recital 38[113], which explicitly reaffirms the relevance of temporal priority in resolving conflicts between trademarks and earlier protected geographical indications. In line with that rationale, Article 31 of the Regulation, titled "Relationship between geographical indications and trademarks"[114] now formalizes a comprehensive legal framework. It provides that any trademark application whose use would contravene the rights conferred by a GI must be rejected if filed after the date on which the GI application was submitted to the Commission. Trademarks registered in breach of this rule must be declared invalid by EUIPO or national

[111] GANGJEE, *Quibbling Siblings: Conflicts Between Trademarks and Geographical Indications*, 82 Chi.-Kent L. Rev. 1253, at 1261 (2007).

[112] It is the WIPO itself that, already in 2000, recognized the complexity of these conflicts. As stated in WIPO, STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS**,** *Possible Solutions for Conflicts Between Trademarks and Geographical Indications*, SCT/5/3, Geneva, September 11–15, 2000, para. 66: « *Whether or not priority is given to a trademark over an appellation of origin or a registered geographical indication claiming rights in the same sign depends on a number of factors. It may make a difference whether the trademark in question was registered or used in good faith before the geographical indication was protected, or whether the trademark in question has been used for a long period of time and has acquired reputation and renown. In applying those factors, decisions concerning the relationship between trademarks and appellations of origin or registered geographical indications are made on a case by case basis*».

[113] Recital 38, Regulation (EU) 2024/1143: "The scope of the protection granted under this Regulation should be clarified, in particular with regard to those limitations on registration of new trademarks set out in Directive (EU) 2015/2436 of the European Parliament and of the Council and in Regulation (EU) 2017/1001 of the European Parliament and of the Council that conflict with the registration of geographical indications. Such clarification is also necessary with regard to the holders of prior intellectual property rights, in particular those concerning trademarks and homonymous names registered as geographical indications."

[114] Article 31, Regulation (EU) 2024/1143.

authorities, depending on the level of registration. Conversely, coexistence is permitted where the trademark was applied for, registered, or used in good faith prior to the GI application, provided that no other ground for invalidity or revocation exists under Directive (EU) 2015/2436 or Regulation (EU) 2017/1001. In such cases, both the trademark and the geographical indication may continue to coexist on the market. Furthermore, the Regulation expressly allows collective and certification marks to be used on product labels together with GIs, thereby accommodating certain forms of coordinated use without prejudice to consumer protection rules.

Still, it is worth emphasizing that Regulation (EU) 2024/1143 is a newly adopted instrument. While it represents a commendable step toward legal certainty, the extent to which it will effectively resolve existing frictions remains to be seen in practice[115]. A first and telling test arrived with the recent General Court's judgment of 25 June 2025 in *T-239/23, Comité Champagne & INAO v EUIPO* ("Nero Champagne")[116]. The case concerned the attempted registration of the trademark "Nero Champagne" by an unauthorized operator, despite the goods being limited to those conforming to the Champagne PDO specification. The EUIPO had initially allowed registration, presuming that such conformity excluded reputational harm. The Court, however, firmly rejected this presumption as absolute. It held that even where the product specification is respected, the use of a GI within a private trademark may still result in undue exploitation of the GI's renown or mislead consumers. In the case at hand, the term "nero" (meaning "black" in Italian), when combined with "Champagne," was found liable to mislead the public by suggesting the existence of a "black champagne", a category not

[115] As noted by VERONESI, *Possibili sviluppi nella prassi EUIPO sui conflitti fra marchi e Indicazioni Geografiche anteriori*, in *Rivista dell'Ordine dei Consulenti in Proprietà Industriale*, No.2, 2023, 29 at 32. (a shift appears to be emerging in EUIPO case law on the interplay between trademarks and geographical indications. Several recent decisions of the Boards of Appeal have been suspended pending the outcome of *Case T-239/23*, brought by the *Comité interprofessionnel du vin de Champagne* and INAO against the EUIPO decision of 17 February 2023 concerning the conflict between the PGI *CHAMPAGNE* and the trademark application *NERO CHAMPAGNE* filed by Nero Lifestyle. These include: (a) *ADICCION TEQUILA (fig.) / TEQUILA* (Case R2272/2022-4, decision of 9 August 2023); (b) *AMARTE TEQUILA 100% AGAVE (fig.) / TEQUILA* (Case R2248/2022-4, decision of 7 August 2023); (c) *MARQUÉS DE LA MANCHA / LA MANCHA DENOMINACIÓN DE ORIGEN (fig.)* and others (Case R1761/2022-5, decision of 15 June 2023).

[116] Comité Interprofessionnel du Vin de Champagne and INAO v EUIPO, Case T-239/23, Judgment of 25 June 2025, ECLI:EU:T:2025:638.

recognised under the Champagne PDO, which only permits white or rosé wines. Furthermore, the Court accepted the applicants' argument that "nero" could be interpreted as referencing Italian grape varieties or colors, thereby distorting consumer perception and appropriating the GI's evocative power. This ruling sets a powerful precedent. It reinforces the principle that GIs benefit from an intrinsic reputational shield and signals a more assertive judicial stance on preventing the dilution or misappropriation of designations of origin, even under conditions of formal compliance.

From all that has been said thus far, it follows that collective and certification marks, as governed by the EU trademark regime, cannot currently provide a credible alternative to the *sui generis* protection afforded by the PDO and PGI system, particularly in the agri-food sector. This inadequacy is especially evident in the Italian context, where the regulatory architecture of GIs is more than just a technical apparatus but a cultural infrastructure, deeply rooted in the constitutional value of territorial pluralism and the reputational economy of the *Made in Italy* brand. Nevertheless, trademark law should not be dismissed as normatively irrelevant. When carefully applied, collective and certification marks can function as an ancillary tool. They offer supplementary protection in cross-sectoral contexts and support brand strategies for Italian producers navigating global markets. However, their roles must remain complementary, not competitive. The hierarchy of norms and values leaves little doubt as to which legal instrument best serves the competitive asset of origin under the *Made in Italy* model.

2.4 Certification Schemes and Voluntary Labelling.

The progressive clarification of the legal distinctions between individual, collective, and certification marks has enhanced our understanding of how intellectual property can serve to protect origin-linked value. Yet, within the *Made in Italy* context, the diversity of production structures and commercial strategies often escapes the formal boundaries of these categories. As a result, many producers turn to voluntary labelling and privately managed certification schemes which, though operating in a normative grey zone, nonetheless play a pivotal role in shaping consumer expectations, communicating quality standards, and asserting territorial authenticity in the marketplace. This phenomenon is not unique to origin-

based markets, but mirrors developments observed in financial and quality-driven markets, where similar certification mechanisms, such as credit ratings or audit reviews, have gained prominence with the expansion of shareholder capitalism and mass consumption[117]. As noted in legal doctrine, such schemes often emerge from contractual arrangements whereby the certifying entity, typically a specialized third party, acts as an "intermediary of trust", offering the producer reputational assurance in exchange for compliance with voluntary standards[118]. These agreements give rise to what has been described as "private certainty", a legally relevant expectation grounded not in legislation but in the contractual bond between enterprise and certifier[119].

By contrast, technical certifications eschew origin in favour of functional and procedural conformity. The CE marking, mandated by Directive 2014/35/UE on low-voltage equipment—attests that essential safety requirements have been met; ISO 9001:2015, ISO 22000:2018 and ISO 50001:2018 furnish frameworks for quality management, food-safety and energy-management systems respectively; and the UNI Mark, governed by the Regulation on the use of the UNI brand under Legislative Decree No 15/2019, certifies compliance with voluntary UNI standards through independent verification by an ACCREDIA-accredited body[3]. Although these technical marks lack any provenance dimension, they confer market trust by demonstrating conformity with recognized benchmarks, thereby complementing origin-based labels in reinforcing the competitive stature of Italian products.

[117] BENEDETTI, *Profili di rilevanza giuridica delle certificazioni volontarie ambientali*, in *Rivista quadrimestrale di diritto dell'ambiente*, n.1-2, 2012, 6.
[118] SAIJA, *Standards e contratti di certificazione*, in *Rivi. Dir. alim.*, 2013, 47 at 51.
[119] Ibid., referring to BENEDETTI, *Certezza pubblica e "certezze" private. Poteri pubblici e certificazioni di mercato.* Certainty may be either public or private. The former derives from an act endowed with particular authority, as it emanates from a public body. The latter, by contrast, lacks such institutional origin but nonetheless enjoys widespread commercial recognition, to the point that scholars speak of voluntary market-based certifications, governed by contractual arrangements.

3 Public and Private Enforcement: Institutions and Limitations

3.1 AGCM and the Fight Against Misleading Practices and Italian Sounding.

The choice to entrust the Italian Competition Authority (AGCM) with the public enforcement of rules against unfair commercial practices finds its roots in Article 11 of Directive 2005/29/EC[120] (from now on the Directive), which left Member States free to decide whether to rely on judicial protection, administrative enforcement, or a combination of both. Given the predominantly public law orientation of the EU regulatory framework, Italy opted for an administrative model of enforcement[121]. Upon transposing the Directive, Legislative Decree No. 146/2007 completely redrafted Articles 18 to 27 of the Consumer Code, with Article 27(2)[122] designating the AGCM as the competent authority responsible for ensuring compliance with the prohibition of unfair commercial practices, as well as for overseeing misleading and unlawful comparative advertising, areas it was already entrusted with before the Directive.

The decision to concentrate responsibilities in both consumer protection and competition law within a single public authority reflects a model already adopted in several other jurisdictions[123]. This institutional convergence is rooted in the growing recognition of the complementarity between the two domains—though not without criticism[124]. The prevailing view, however, supports the idea that the protection of competition and the protection of consumers are inextricably linked. Over time, this relationship has been increasingly

[120] Article 11(1), Directive 2005/29/EC: "…It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints…".
[121] SPEZIALE, *Le pratiche commerciali scorrette nell'evoluzione della normativa e del mercato*, 228.
[122] Article 27(2) of Legislative Decree No. 206 of 6 September 2005 (Italian Consumer Code): "The Authority, acting on its own initiative or upon request by any party or organization having a legitimate interest, shall prohibit the continuation of unfair commercial practices and eliminate their effects".
[123] In the United States, for instance, these competences are exercised by the Federal Trade Commission (FTC), and in Australia by the Australian Competition and Consumer Commission (ACCC).
[124] VANZETTI, DI CATALDO, SPOLIDORO, *Manuale di diritto industriale*, 659. The authors claim that such an overlapping of responsibilities risks diluting the Authority's focus and diverting attention from its core institutional mandate.

conceptualized in terms of functional interdependence[125]: the interest safeguarded by the prohibition of unfair commercial practices, the interest in making market choices free from misleading or aggressive conduct, constitutes a necessary condition for the proper functioning of the market[126]. In this context, the exercise of consumer choice acts not only as a mechanism of individual autonomy but also as a regulatory force, disciplining the behavior of market players and stimulating the entry of new competitors.

Transporting this framework into our analysis, the AGCM occupies a central institutional position not only in sanctioning unfair commercial practices, but also, as a natural consequence, in safeguarding the reputational integrity of the *Made in Italy* designation. The phenomenon of Italian Sounding can go far beyond mere counterfeiting and frequently encompasses a spectrum of conduct ranging from vague *evocatio* to the outright misappropriation of cultural signifiers (through colors, words or expression), all strategically deployed to capitalize on what "being an Italian product" means to market goods that lack any authentic territorial nexus. Crucially, the harm caused by this phenomenon is not limited to the erosion of market share for iconic Italian products. It reflects a broader distortion of consumer culture, whereby the invocation of Italian identity becomes a marketing device. This manipulation often escapes a binary assessment of misleading versus non-misleading conduct, especially since many consumers recognize that the *evocation* often operates on a symbolic level[127].

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[125] DENOZZA, in AMATO, DENOZZA, SCHWEITZER, NICITA, STALLIBRASS, *Tutela della concorrenza e tutela dei consumatori. Due fini confliggenti?*, in *Mercato Concorrenza Regole,* No.2, 2009, 389. They are often described as serving the same overarching aim, namely increasing consumer welfare. Consumer protection ensures that choices are made in fair and transparent conditions, competition law preserves the conditions in which such choices remain meaningful. They do not merely coexist but rather represent two facets of the same normative ideal: the sovereignty of the consumer and, by extension, a broader vision of economic justice.

[126] Recital 8 of Directive 2005/29/EC: "This Directive directly protects consumer economic interests from unfair business-to-consumer commercial practices. Thereby, it also indirectly protects legitimate businesses from their competitors who do not play by the rules in this Directive and thus guarantees fair competition in fields coordinated by it".

[127] BAIRATI, *Narratives of Quality in European Food Governance and Beyond*, in 14 FIU L. Rev. 458–477, 464 and 476 (2021) (Symposium: *Made in Italy* – Florida International University College of Law, Miami, Florida, 2020). The author points out that, however, this awareness from consumers does not neutralize the harm. On the contrary, it fosters a cultural environment in which the connection between food and territory is perceived as manipulable and ornamental, weakening the communicative strength of legitimate GIs and the broader Made in Italy designation. Such marketing tactics often form part of a deliberate commercial strategy aimed at idealizing the past and projecting

In regulatory terms, as previously discussed, it is Article 27 of the Italian Consumer Code that establishes the administrative procedure for addressing unfair business practices. Under this provision, the AGCM is entrusted with the power to impose sanctions, adopt interim (precautionary) measures, carry out investigations, issue injunctions, and take binding decisions. Once the preliminary inquiry has concluded and a violation has been established, the Authority is empowered to prohibit the dissemination of the unlawful practice, order the publication of an extract of the final decision or a corrective statement, and impose an administrative pecuniary sanction[128].

It is important to underline, however, that even in the presence of an infringement, the Authority may exercise a form of "moral suasion". In such cases, it may accept the formal commitments undertaken by the trader and close the proceedings without establishing the infringement, provided that these commitments are deemed adequate to remedy the potential harm[129]. Should the trader fail to implement the commitments or subsequently withdraw from them, the Authority reserves the right to reject them and resume the infringement assessment procedure.

Although this study has primarily focused on the agri-food sector, undoubtedly the domain in which the phenomenon of Italian Sounding most frequently materializes, it is crucial to remember that the evocative force of Italian origin extends well beyond foodstuffs. For consumers, "Italy" often signals excellence in diverse areas, including the automotive industry. A striking example of this broader dynamic is offered by a recent AGCM decision[130], in which an

a nostalgic image of a more genuine, slower-paced lifestyle, one that stands in stark contrast to the acceleration and impersonality of modern technological society. This narrative relies on the notion that Italian tradition inherently assures authenticity, naturalness, and a deeper connection to the product's origins.

[128] Article 27(8) of Legislative Decree No. 206 of 6 September 2005 (Italian Consumer Code): "Where the Authority considers a commercial practice to be unfair, it shall prohibit its dissemination, if not yet made known to the public, or its continuation, if the practice has already begun. In the same decision, the Authority may order at the trader's expense, the publication of the decision itself, even in summary form, or the issuance of a corrective statement, so as to prevent the unfair commercial practice from continuing to produce effects".

[129] Pursuant to Article 27(7) of the Italian Consumer Code, except in cases of manifest unfairness or serious infringement, the Authority may obtain from the responsible trader a formal commitment to cease the unlawful practice, either by terminating its dissemination or by modifying it in such a way as to remove the elements of illegality.

[130] See Italian Competition Authority (AGCM), *Decision of 11 June 2024*.

Italian car manufacturer was fined three million euros for promoting vehicles produced in China as if they were genuinely Made in Italy. The Authority found that the company had adopted a consistent communication strategy revolving around territorial imagery, suggestive slogans, and symbolic references aimed at reinforcing the Italian character of its vehicles. However, investigations revealed that the cars were imported in a "complete and running" state from China, and only minor finishing operations, representing a marginal share of the production costs, were carried out in Italy. The authority concluded that the promotional materials misleadingly conflated finishing activities with full-scale manufacturing, thereby inducing consumers to believe in the Italian origin of the vehicles.

However, the actual effectiveness of AGCM's intervention in cases of Italian sounding remains structurally limited. This is primarily due to the inherently discretionary nature of its enforcement activity, which is shaped by policy priorities that may shift over time and redirect institutional focus toward other regulatory areas[131]. Consequently, the repression of misleading evocations of Italianness may represent only a subsidiary outcome within the Authority's broader market surveillance mandate. Moreover, the administrative sanctioning regime provided under the Consumer Code lacks the systemic deterrent effect typically associated with antitrust enforcement tools, thereby diminishing its capacity to dissuade future violations.

3.2 The Italian Industrial Property Code and the Enforcement of Origin: A Closer Look at Articles 29 and 30.

Beyond the enforcement powers conferred upon the Italian Competition Authority, the legal protection of territorial designations finds a normative foundation also in the Italian Industrial Property Code. Articles 29[132] and 30[133]

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[131] GAMBARO, MISSANELLI, *La tutela dei prodotti agroalimentari tra disciplina italiana ed europea: pratiche commerciali sleali e concorrenza estera*, in *Dir. agroalim.*, 2019, 167 at 190.

[132] Article 29, Italian Industrial Property Code: "Geographical indications and designations of origin that identify a country, region or locality are protected when they are adopted to designate a product originating from it and whose qualities, reputation or characteristics are due exclusively or essentially to the environment geographical origin, including natural, human and traditional factors".

[133] Article 30, Italian Industrial Property Code: Without prejudice to the regulation of unfair competition, without prejudice to the international conventions on the matter and without prejudice to trademark rights previously acquired in good faith, it is prohibited, when it is likely to deceive the public or when it involves undue exploitation of the reputation of the protected name, the use of geographical indications and designations of origin, as well as the use of any means in the

serve as a complementary yet autonomous safeguard mechanism, specifically aimed at shielding geographical names from deceptive practices and reputational misappropriation. Unlike administrative enforcement under the Consumer Code, which primarily addresses the relational dimension between trader and consumer, these provisions assert the intrinsic value of the geographical name itself as a legally protected asset.

While Article 29 defines the object of the protection, it's Article 30 titled "Protection" that warrants closer analysis, given its evident connection with Article 2598 of the Italian Civil Code. The provision prohibits the following types of conduct: (a) Any deceptive use of a geographical name likely to mislead the public, especially by creating a false impression regarding the origin of the product, capable of distorting the consumer's purchasing decision; (b) The evocation or imitation of signs or terms that suggest a false equivalence between the designated product and a geographically protected original one, thereby inducing consumers to attribute to the former the qualities of the latter; (c) The unjustified exploitation of reputation[134]: Introduced by Legislative Decree No. 131/2010, this provision prohibits the use of a geographical indication that unfairly exploits the reputation of a protected name, even absent deception. In all cases, the prohibition of parasitic exploitation sets the substantive boundary of legal protection, reflecting the growing convergence between the regulatory frameworks governing designations of origin and trademarks[135].

Articles 29 and 30 of the Italian Industrial Property Code, by recognizing geographical indications as industrial property rights under Article 2(4), grant access to the robust enforcement mechanisms provided by Articles 124 to 126 of the Code In cases where infringement is judicially established, courts may grant a

designation or presentation of a product which indicate or suggest that the product itself comes from a location other than the true place of origin, or that the product presents the qualities that are typical of products that come from a location designated by a geographical indication".

[134] Introduced by Legislative Decree No. 131/2010, this is the very exploitation conceptually analogous to the form of unfair competition codified in Article 2598(2) of the Italian Civil Code.

[135] GALLI, *Tutela e valorizzazione dei prodotti italiani in prospettiva globale attraverso la proprietà intellettuale*, in *Riv. dir. ind.,* 2024, 340 at 343. This alignment is evident not only in the domain of enforcement but also in the underlying normative rationale, particularly the centrality of the principle of non-deceptiveness. While historically foundational for geographical indications, this principle has now become the linchpin of modern trademark law as well. The result is the emergence of a shared legal grammar, a «*common law of commercial signs».*

broad range of injunctions. These include prohibiting the manufacture, marketing, or use of infringing goods, ordering their withdrawal from the market, and, where appropriate, their destruction at the expense of the infringer. Moreover, courts are empowered to impose penalty payments for each violation or delay in complying with an injunction. Then, to enhance deterrence and restore reputational harm, the judiciary may also order the publication of the decision in one or more newspapers, considering the seriousness of the violation. However, many scholars[136] argue that even if traditionally Articles 29 and 30 of the Italian Industrial Property Code were interpreted broadly, encompassing not only registered geographical indications but also unregistered ones where a factual connection between the product and its origin could be established, subsequent judicial interpretations have progressively curtailed their scope, thus reducing their actual effectiveness.

3.3 The Complementary Role of Unfair Competition Law in the Protection of Geographical Indications.

A close examination of the opening clause of Article 30 of the Italian Industrial Property Code reveals that it expressly preserves the applicability of unfair competition law. Accordingly, it is widely accepted that an action for the protection of a registered geographical designation under the Industrial Property Code may be brought cumulatively with an action for unfair competition. In such cases, the conduct falls within the scope of the so-called *illecito concorrenziale,* which may only be invoked where a competitive relationship exists between the parties. This competitive nexus requires two conditions to be met: the legal qualification of both parties as undertakings, and the presence of market substitutability, meaning that the goods or services offered by the parties must be capable, at least potentially, of satisfying the same or similar needs within overlapping geographical markets.

[136] GAMBARO, MISSANELLI, *La tutela dei prodotti agroalimentari tra disciplina italiana ed europea: pratiche commerciali sleali e concorrenza estera*, in *Dir. agroalim.*, 2019, 173. From the case law cited in the aarticle, particularly the *Salame Felino* case and the *Matusalem* judgment delivered by the Milan Court of Appeal, it emerges that Articles 29 and 30 of the Italian Industrial Property Code do not apply to violations involving qualified but unregistered designations of origin and geographical indications. CATERINO, *La prova dell'origine geografica dei prodotti e delle denominazioni e indicazioni geografiche*, in CASSANO, FRANCESCHELLI, TASSONE (eds.), *Prova e tutele nel diritto d'autore e nel diritto industriale,* 424.

In particular, the prohibition against misappropriation of qualities set out in Article 2598(2) of the Italian Civil Code, as already previously noted, has been interpreted as a means of protecting simple geographical indications that is, signs too generic or lacking a sufficient "milieu géographique" to qualify for the more robust protection offered by Articles 29 and 30 of the Italian Industrial Property Code. This interpretation extends to expressions such as “Made in Italy” or symbols evocative of national provenance, including logos, names, or stylistic choices designed to suggest an origin falsely[137].

As to procedural enforcement, protection is typically sought through injunctive relief under Article 700 of the Italian Code of Civil Procedure. In this context, it is important to note that the prohibition of an act of unfair competition does not require proof of intent or negligence on the part of the defendant, nor evidence of actual harm. It suffices that the act is objectively capable of causing prejudice to the competing business. However, where a claim for damages is pursued, judicial findings of fault or intent, as well as proof of the damage suffered, remain necessary prerequisites[138].

3.4 Litigation Limits and the Need for Procedural Coordination.

Thus, the Italian system for protecting territorial designations is supported by three distinct pillars: administrative intervention by the AGCM, civil remedies under the Industrial Property Code, and actions in unfair competition, yet the overall edifice is hardly monolithic. Each tool advances a specific policy objective, but their operative coordination remains uneven and, at times, mutually dilutive.

Taken together, these asymmetric avenues create an enforcement patchwork that is more reactive than systemic. Symbolic invocations of Italian provenance, whether on a wheel of cheese or the dashboard of an imported automobile, may slip through the cracks when administrative attention wanes, when the Industrial Property Code proves doctrinally unavailable, or when no competitive link can be shown. A more coherent regulatory design, one that systematically aligns administrative vigilance with accessible civil remedies, a purposive application of unfair competition law and market-based legal strategies appears essential if Italy

[137] RUSCONI, CESANA, *Il Diritto Alimentare,* 1119.
[138] Article 2600, Italian Civil Code.

is to safeguard the economic and cultural equity embedded in its territorial denominations. What is at stake is not merely the protection of specific designations, but the normative integrity of a model—Made in Italy—that combines legal origin, economic value, and cultural meaning into a unified reputational asset.

Chapter III

RETHINKING THE LEGAL PROTECTION OF MADE IN ITALY: TOWARDS A SUI GENERIS SYSTEM OF TERRITORIAL IDENTITY

1. Regulation (EU) No. 2023/2411: The New Non-Food GI Baseline.

It has been shown that *Made in Italy* is more than a country-of-origin claim. It is a reputational container that compresses aesthetic, cultural, and economic value into a single commercial cue. Yet the legal instruments now available treat that cue only in fragments. Customs rules on non-preferential origin tolerate delocalized production provided that the last substantial transformation occurs in Italy, Italian consumer statutes address only the most blatant deceptions, trademark law protects private goodwill rather than collective reputation, and the geographical-indication regime remains largely confined to agri-food and wine. Each patch is rational in isolation, but together they leave three systemic vulnerabilities: inconsistent territorial thresholds, uneven public enforcement, and inadequate leverage for small and medium enterprises that form the backbone of Italian districts. The Union has begun to recognize some of these gaps.

If wine is the ultimate Geographical Indication (GI) product, then terroir is the prototypical representation of the relationship between a thing and its place of origin[1]. It serves as a legal and intellectual symbol for the causal relationship between a specific place and the distinctive attributes of the final product. But origin, in the legal sense, is no longer carved solely by the land: it is shaped, remembered, and transmitted by human hands. Over time, the understanding of *terroir* has evolved into a fusion of nature and culture[2], where craftsmanship,

[1] GANJEE, *Trade Mark and Allied Rights*, in DREYFUSS, PILA (eds.), *The Oxford Handbook of Intellectual Property Law*, 551 (2017).

[2] GANGJEE, *GIs Beyond Wine: Time to Rethink the Link?*, 48 *IIC* 129–133 (2017). The author notices a clear shift toward a more inclusive and reputation-based approach to geographical indications. This is illustrated, first, by the adoption of the Geneva Act of the Lisbon Agreement (2015), aimed at expanding membership and accommodating a wider range of products, including crafts and textiles. Second, the EU's ongoing efforts to establish a sui generis GI system for non-agricultural goods reveal a certain institutional complacency, as existing frameworks for agri-food products are assumed to be easily adaptable. Third, internal EU statistics show a rising preference for PGI registrations, reflecting the growing relevance of reputation, rather than intrinsic product characteristics, as the basis for protection.

tradition, and collective memory become as legally relevant as the slopes of a vineyard. This broader, more dynamic conception of the link between product and territory has not remained confined to doctrine: it has recently been codified into positive law. With the adoption of Regulation (EU) No. 2023/2411, the European Union has formally extended GI protection beyond agricultural products to include craft and industrial goods, making a decisive shift in the Union's approach to territorial identity and legal recognition of *savoir-faire*.

What has emerged from the analysis is that the PDO/PGI system has proven to be the most structured and effective legal model for protecting origin-based value. Its strength lies not only in its clear territorial requirements but also in its system of public control, collective ownership, and reputational enforcement. By extending GI protection to non-food sectors, Regulation (EU) No. 2023/2411 offers a unique opportunity to transpose this model to other dimensions of the *Made in Italy.*

1.1 Substantive and Institutional Architecture of Regulation (EU) No. 2023/2411.

Regulation (EU) No. 2023/2411, adopted on 18th October 2023, draws on the EU's experience with agricultural GIs while adapting the legal framework to the specificities of craft and industrial products through a set of targeted innovations[3]. Indeed, this legislative shift is not merely corrective; rather, it's transformative. It responds to a fragmented and incomplete legal landscape[4], where some Member States offered limited protection and others none, leaving artisans and SMEs exposed to legal uncertainty and market barriers, and for preventing infringements of intellectual property rights, thus creating legal certainty for all

[3] Ahead of the adoption of Regulation (EU) No. 2023/2411, the Commission issued an Impact Assessment Report accompanying the legislative proposal of 13 April 2022. Three regulatory models were considered for protecting craft and industrial geographical indications. The first involved a reform of EU trademark law; the second, an extension of the existing PDO/PGI schemes to non-agricultural products. Ultimately, however, the Commission rejected both in favour of a third, more ambitious route: the creation of an autonomous, *sui generis* legal regime specifically designed to address the unique features of non-food GIs.

[4] It is also important to underline that the Regulation responds to the European Union's international commitments. In 2019, the EU acceded to the Geneva Act of the Lisbon Agreement, which expressly provides for the protection of geographical indications not only for agricultural goods, but also for non-food products, including craft and industrial items.

stakeholders, including in electronic commerce[5]. These aims show that the Regulation is not merely about protecting reputation; it also seeks to embed legal identity within the productive traditions of local communities. Indeed, Article 2(1)(f) expressly requires that the «*local economic development that contributes to the protection of know-how and of common heritage*» be taken into consideration[6]. The scope is delimited in Article 3, which makes clear that agricultural products, wines, and spirit drinks fall outside its reach, thereby preserving the autonomy of the sector-specific regimes already established under EU law[7]. Instead, the Regulation applies to goods that are: «*entirely or partially produced by hand, or with the aid of manual or digital tools, or by mechanical means, whenever the manual contribution is an important component of the finished product or produced in a standardised way, including serial production and by using machines*»[8]. This definition is broad enough to include both traditional crafts and certain industrial outputs, provided that the product's identity and quality are substantially derived from its place of origin.

In order to qualify for protection under Regulation (EU) No. 2023/2411, a craft or industrial product must satisfy a set of cumulative conditions that define the legal threshold for geographical indication status. Pursuant to Article 6(1), three criteria must be met: (a) the product must originate in a specific place, region or country; (b) it must possess a given quality, reputation or other characteristic essentially attributable to that geographical origin; and (c) at least one stage of production must occur within the defined geographical area[9].

This framework reflects a deliberate alignment with the PGI standard, which is more flexible than the PDO model applied in the agricultural sector. While this choice may enhance accessibility, particularly for small and medium-sized enterprises operating in multi-territorial supply chains, it also dilutes the territorial anchoring that typically legitimizes the grant of a GI right. In practice, the requirement that only one production step occur within the designated area risks opening the system to forms of strategic delocalization, whereby the symbolic value

[5] Recital 6, Regulation (EU) 2023/2441.
[6] Article 2(1)(f), Regulation (EU) 2023/2441.
[7] Article 3, Regulation (EU) 2023/2441.
[8] Article 4 No.1 (a)(b), Regulation (EU) 2023/2441.
[9] Article 6(1)(a)(b)(c), Regulation (EU) 2023/2441

of place is preserved in legal terms, while the material production process is largely outsourced[10]. From a doctrinal standpoint, this raises questions about the integrity of the GI as a tool of origin-based protection, and it also appears in tension with the Regulation's stated objective of fostering local economic development and preserving know-how and heritage. However, even if not explicitly conceived as a mechanism for SMEs promotion, the Regulation's approach to eligible applicants reflects a broader commitment to inclusivity, particularly in favor of small producers lacking the organizational capacity to form formal group. As a rule, the Union measure stipulates that the applicant for a GI shall be a producer group. As an exception[11], a single producer may also act as applicant, provided that two cumulative conditions are met: (a) such person is the only producer which wants to submit the application for registration; and (b) the geographical area is defined by a particular part of the territory without reference to property boundaries and has characteristics that differ appreciably from those of neighbouring geographical areas, or the characteristics of the product are different from those produced in the neighbouring geographical areas[12].

A major institutional innovation is designating the European Union Intellectual Property Office (EUIPO) as the main authority responsible for handling applications, oppositions, amendments, cancellations, and the Union register[13]. This structure departs from the decentralized model used for agricultural GIs, striking a balance between supranational consistency and national enforcement. In this setup, to support this framework, the Regulation establishes a dedicated Geographical Indications Division and creates a Geographical Indications Advisory Board, composed of representatives from all Member States and the Commission, mandated to provide expert opinions on critical issues such as product quality,

[10] It is noteworthy that, during the legislative process, the European Parliament proposed to strengthen the territorial nexus by replacing the requirement that "at least one of the production steps" take place within the defined geographical area with a stricter formulation referring to "the main production step". Nevertheless, the proposal was not incorporated into the final version of the Regulation.

[11] For comparison, see Regulation (EU) 2024/1143 on geographical indication protection for wine, spirit drinks and agricultural products, and quality schemes for agricultural products, Art. 9(3)(c), which also permits single-producer applications, but does not include the explicit exclusion of private property boundaries, which reflects the stricter spatial neutrality standard adopted in Regulation 2023/2411.

[12] Article 8(2)(a)(b), Regulation (EU) 2023/2441.

[13] Articles 9, 22-25, 29, 31, 32, 37, Regulation (EU) 2023/2441.

reputation, genericness, the link with origin, and potential conflicts with trademarks or homonym[14]. From a structural standpoint, the registration and opposition process under Regulation (EU) 2023/2411 mirrors the two-tiered model established for PDOs and PGIs, comprising a first phase at the national level followed by a supranational review before the EUIPO[15]. In terms of legal protection, the Regulation introduces a series of substantive developments that significantly strengthen and clarify the enforceability. Notably, it expressly prohibits any false or misleading indication, including those disseminated through online platforms or websites, thereby extending the reach of GI protection into the digital marketplace, where reputational value is particularly susceptible to misappropriation[16]. Furthermore, the Regulation provides a refined and legally codified definition of evocation, grounding it in the cognitive perception of the average European consumer. Evocation is deemed to occur whenever a sufficiently direct and unambiguous mental association is created with the registered geographical indication, even in the absence of literal or phonetic similarity[17].

While the Regulation's institutional and procedural architecture is already in place, its substantive provisions will only become fully applicable as of 1 December 2025. This temporal deferral reflects the Union's intent to ensure regulatory preparation and administrative alignment across Member States through a "normative incubation phase", particularly given the novelty and technical complexity of extending GI protection beyond the agri-food domain. During this interval, producer groups and national authorities confront a dual obligation: first, to anticipate the Regulation's future precedence over any conflicting national measures; and second, to calibrate existing quality-mark schemes and consumer-protection rules so that they will converge rather than collide on the date of full applicability.

Yet the deeper doctrinal question is how this period of deferred enforceability will reshape expectations about territorial entitlement and collective reputation, particularly in jurisdictions where industrial culture and regional

[14] Article 34, Regulation (EU) 2023/2441.
[15] For a comparative analysis with the agri-food regime, reference is made to Chapter II, §1.1.2.
[16] Article 40(1), Regulation (EU) 2023/2441.
[17] Article 40(2), Regulation (EU) 2023/2441.

identity have long been regulated through a mosaic of norms. Italy is paradigmatic in this respect: the country's rich district model and its dense web of consortia could either leverage the forthcoming EU framework to consolidate reputational capital or find themselves re-negotiating long-settled allocations of regulatory competences. The following section turns to that question.

1.2 Implications for the Legal Protection of Made in Italy.

Although Law No. 206 of 27 December 2023 is not to be understood as an implementation of the relevant EU regulations, which are directly applicable and do not require national transposition, the legislative intent it reflects is closely aligned with the Union's objectives[18]. Under Article 42, titled "*Recognition of typical industrial and craft products*" of the Law, Italy recognizes the value of typical craft and industrial products traditionally linked to local production methods rooted within a specific geographical area; moreover, it promotes their protection as significant elements of the overall national cultural heritage and ensures that consumers have reliable information on typical craft and industrial production. Last, but not least, it supports craftsmen and producers in preserving production traditions and reputations linked to their places of origin[19]. In view of the definition of a uniform protection system at European level for GIs in craft and industrial products, the Italian Regions are given the possibility to provide an official recognition for typical craft and industrial productions already subject to forms of recognition or protection or for which the reputation and quality are strongly linked to the local territory. The results must be transmitted to the Ministry of Enterprise and Made in Italy (MIMIT), in order to define, with a specific decree, a uniformly valid and applicable protection regime for the recognition and protection, at national level, of these typical products.

To enhance the value of typical handicraft and industrial products and favor their protection processes, Article 43 introduces a bottom-up procedural mechanism: producer associations operating within a defined geographical area may adopt a product specification and submit a formal expression of interest to the relevant Region, thereby initiating the process of recognition for typical industrial

[18] On the general structure and policy aims of this statute, see *supra* Chapter I, § 2 .2 .3.
[19] Article 42, Law No. 206/2023.

and handicraft products[20]. This participatory architecture is further reinforced by Article 45, which identifies the minimum content required for such specifications[21]. The specifications must be formally filed with the chambers of commerce, industry, handicrafts, and agriculture competent for the relevant territory. Finally, Article 47 encourages the certification of production steps through blockchain-based traceability systems[22], thereby improving transparency and anti-counterfeiting guarantees.

Thus, Regulation (EU) No. 2023/2411 and its convergence with Law No. 206/2023 offer a unique window of opportunity for recalibrating the legal infrastructure supporting *Made in Italy* crafted goods. In a country where industrial culture and craftsmanship are deeply territorialized, the new framework promises not only to fill long-standing protection gaps but to operationalize territorial identity as a source of enforceable legal value, just as other forms of origin, such as agri-food designations under the PDO and PGI regimes, have already have. One of the most tangible advantages lies in the creation of a preparatory national layer of recognition, whereby regional authorities can validate the reputation, product specifications and geographical links of locally rooted goods. This national validation, far from being redundant, may significantly streamline the supranational application process under Regulation 2023/2411, particularly for iconic goods such as *Murano glass* or *Burano lace*, whose reputational capital is already well established but has so far lacked harmonized legal anchoring across EU jurisdictions. Equally important is the enhanced enforcement architecture that arises once dual protection—national and European—is in place. In such cases, right-holders gain access to a twofold system of remedies: traditional Italian administrative and civil law instruments on one side, and the EU Regulation's direct

[20] Article 43, Law No. 206/2023.

[21] Article 45, Law No. 206/2023 sets out the minimum content required for the *disciplinare di produzione*, including: (a) the name of the product, which may consist of the geographical name of the production area or the commonly used commercial designation within that area; (b) a description of the product and the raw materials employed; (c) the delimitation of the geographical production area; (d) evidence demonstrating that the product originates from that area; (e) a description of the production process, including any traditional or specific local methods; (f) the particulars establishing the link between the product's quality, reputation, or other characteristic and its geographical origin; and (g) any specific rules governing labelling.

[22] On the relevance of blockchain-based traceability as a remedy against counterfeiting, see supra §2.2.3.

prohibitions against evocation, online deception, and domain name misuse on the other[23]. Moreover, by expressly empowering producer associations, rather than only individual enterprises, to initiate recognition procedures, the domestic law reflects and amplifies the collective entitlement model underpinning the EU framework[24].

In parallel, the formal recognition of typical industrial and handicraft products opens new pathways for territorial valorization strategies, allowing certified production systems to be integrated into broader cultural and tourism infrastructures, such as thematic routes or heritage branding campaigns. This potential for reputational spillovers extends beyond economic returns: it reinforces intergenerational transmission of artisanal knowledge, supports local employment, and fosters legal consciousness around origin-linked goods. Finally, Article 47's mandate for blockchain-based traceability systems embeds technological sophistication into the legal framework, transforming origin from a static label into a dynamic data infrastructure. This approach not only strengthens anti-counterfeiting protections in digital commerce but also aligns *Made in Italy* production with ESG standards increasingly demanded in high-end global markets[25].

2. Enforcing Origin in the Marketplace through Selective Distribution and Dual Pricing.

Following the establishment of a more comprehensive and coherent legal framework for territorial identity through Regulation (EU) 2023/2411, Italian producers now face a complementary challenge: translating legal exclusivity into controlled market presence. The legal protection of origin is only the first half of the story; the other half lies in the extraction and defence of value on the market, where competition rules and controlled distribution models become decisive. The

[23] This dual arsenal is particularly relevant in sectors prone to reputational dilution, as seen with *Carrara marble*, whose designation is frequently co-opted to market geologically unrelated and qualitatively inferior stone.

[24] This is a decisive normative shift for manufacturing districts like Biella (fine wool textiles), Scandicci (luxury leather goods), or Valenza (goldsmithing), where brand identity is inherently distributed and cannot be atomized into single holders of exclusive rights.

[25] ARONZON, *Blockchain and Geographical Indications: A Natural Fit?*, King's Coll. London L. Sch. Graduate Student Rsch. Paper 2018/19-02, 2019.

protection of intangible assets like geographical origin cannot remain confined to registration mechanisms; it must be accompanied by strategies that preserve the communicative and reputational function of distinctive signs[26].

2.1 Selective Distribution: Structure, Criteria, and Competitive Justifications.

Selective distribution is not merely a commercial choice; it constitutes a recognized framework within EU Competition Law that enables suppliers to safeguard the integrity, reputation, and market positioning of their products within the internal market. Generally, a selective distribution system is a strategic model widely employed in high-end industries, particularly in the luxury and fashion sectors, where brands seek to maintain control over the commercial positioning of their products[27]. This method allows manufacturers to select distributors and retailers based on specific qualitative criteria, ensuring that only those meeting predefined standards can market their goods. In doing so, the product is commercialized exclusively within an environment that reflects and reinforces its intrinsic value.

The system is defined as «*A distribution system in which the supplier undertakes to sell the goods or services covered by the contract, directly or indirectly, only to distributors who agree not to sell such goods or services to unauthorized resellers in the territory reserved for this system*»[28]. In the context of *Made in Italy*, selective distribution serves as a crucial complement to formal IP tools such as PDOs, PGIs, and trademarks, by offering a contractual mechanism to uphold product exclusivity and preserve brand identity in practice. Through the

[26] MONTAGNANI, *Lo sfruttamento economico delle opere dell'ingegno: dal copyright managment al managment dei sistemi di distribuzione*, in GHIDINI (ed.), *Intellectual asset managment: gestire e valorizzare i beni immateriali*, 102.
[27] On this matter, ABATE, *Fashion Law and Sustainability*, 27.
[28] Article 1(1)(g) VBER 2022, which maintains the definition that was already established in 2010, includes both quantitative and qualitative selective distribution systems, meaning those that set criteria either by limiting the number of distributors (quantitative) or by establishing specific substantive requirements (qualitative). On this matter, see ROHRßEN, *VBER 2022: EU Competition Law for Vertical Agreements - Digital, Dual, Exclusive and Selective Distribution plus Franchising* where it is well explained how, among the micro changes compared to the VBER 2010, suppliers can now extend active and passive sales restrictions throughout the entire distribution chain, not just to the distributor's customers, thus distinguishing selective from exclusive distribution systems. Furthermore, they can impose different criteria for online and offline sales, as long as these criteria do not hinder the effective use of the internet. For example, suppliers may require online after-sales support or secure payment systems.

imposition of qualitative criteria, relating to point-of-sale location, customer service standards, and retail positioning, Italian manufacturers – particularly SMEs in the high-end and artisanal sectors –, can prevent market dilution, combat unauthorized reselling, mitigate the risk of price erosion, and ensure that the consumer experience remains consistent with the cultural and reputational value protected by EU origin and trademark law. Both national and EU jurisprudence and case law recognize the legitimacy of these networks, affirming that restricting the sales channels does not constitute a limitation of clientele but rather a lawful method of product resale, subject to appropriate safeguards. However, such a distribution model inevitably raises concerns regarding its compatibility with the fundamental principles of the free market and the free movement of goods, particularly in light of the potential restrictive effects of these agreements, which fall under the definition of vertical agreements within European competition law.

2.1.1 The Criteria for Retailer Selection.

In practice, suppliers establish a set of rules to govern which retailers may join their network. These criteria typically fall along a spectrum, ranging from purely qualitative requirements to more demanding commercial obligations or even quantitative limitations on the number of authorized outlets. This subparagraph undertakes a comprehensive examination of the three principal models of selection commonly adopted within selective distribution networks: (i) purely qualitative selection criteria, (ii) enhanced qualitative selection criteria, and (iii) quantitative selection criteria[29].

Under *purely qualitative selection*, admission to the distribution network is conditioned upon objective, non-discriminatory conditions concerning the retailer's professionalism, store presentation, and staff expertise. For Italian artisanal and luxury brands, such requirements ensure that the product is commercialized within environments capable of conveying its cultural and material value, thereby

[29] See, in particular, the *Metro* ruling (Case 26/76) for the original "qualitative vs. quantitative" distinction. No single EU legal instrument expressly names the three categories— "purely qualitative," "enhanced qualitative," and "quantitative." Their evolution traces back to case law and the Commission's vertical restraints policy, notably the 2000 Guidelines (OJ C 291) and the 2010 Guidelines (OJ C 130). Legal scholarship and Commission commentary later introduced the notion of "*qualified qualitative*," denoting systems where the supplier imposes additional commercial obligations on top of basic quality-based criteria.

shielding the "Made in Italy" label from commodification. A particularly illustrative example is offered by the Murano glassmaking tradition, celebrated for its intricate blowing techniques, vivid chromatic compositions, and ornamental uniqueness. Were such products to be distributed through retail outlets incapable of reflecting their artisanal genesis and symbolic heritage, the consumer could reasonably misperceive them as industrially replicated goods.

Enhanced qualitative selection builds on this foundation by introducing additional commercial obligations, such as minimum purchase thresholds, full-range assortment, or mandatory brand promotions that ensure not only compliance but active investment in the brand narrative. This layered approach aligns with the marketing strategies of heritage-driven Italian producers, as it secures a coherent and immersive consumer experience across points of sale[30]. Consequently, the network grows more selectively, comprising only those retailers willing (and financially capable[31]) of upholding the product's premium perception and cultural distinctiveness[32].

Finally, *quantitative selection* restricts the number of authorized resellers in each territory through mechanisms such as territorial exclusivity, numerical caps, or minimum-distance requirements. These measures, when grounded in legitimate objectives and carefully calibrated under EU competition law, preserve the aura of rarity that is essential to luxury branding. Ferrari's global dealership strategy exemplifies this: a deliberate limitation on network size supports high resale values and sustains brand positioning.

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[30] An emblematic instance may be drawn from of an iconic Italian footwear brand (e.g., Salvatore Ferragamo) that, in addition to mandating a refined store layout and specialized sales-staff training, may require its retail partners to stock the full seasonal collection, participate in curated promotional activities, and maintain dedicated brand displays. When such a brand grants access to La Rinascente, an Italian historic high-end department store, these heightened obligations serve to ensure a uniform consumer experience. From carrying an extensive range of premium leather footwear to hosting in-store demonstrations highlighting the brand's heritage, these measures go beyond baseline quality standards and exemplify a "qualified qualitative" selection model. Consequently, La Rinascente is not merely meeting an entry-level threshold but is also bound to fulfill supplementary commitments that preserve exclusivity and the perceived value inherent in "Made in Italy".

[31] ROHRßEN, *VBER 2022,* 113. It is evident that a direct consequence of selective distribution is the significant financial burden imposed on authorized retailers; compliance with the prescribed criteria inevitably results in increased operational costs.

[32] As pointed out by BORTOLOTTI, *Contratti di distribuzione,* 740.

2.1.2 Justifying Selective Distribution: The Role of Article 101(3) TFEU and Vertical Block Exemption Regulations (VBER).

Although selective distribution systems may fall within the scope of the prohibition set out in Article 101(1) TFEU, they can still be considered lawful under Article 101(3) TFEU, provided that four cumulative conditions are met: (i) the agreement contributes to improving production or distribution or promotes technical or economic progress; (ii) consumers receive a fair share of the resulting benefit; (iii) the restrictions are indispensable to achieving these objectives; and (iv) competition is not eliminated in a substantial part of the relevant market[33]. Following the abolition of the prior notification regime by Regulation (EC) 1/2003, undertakings must now conduct a self-assessment to determine whether their agreements qualify for exemption[34].

Beyond individual self-assessment under Article 101(3) TFEU, undertakings may rely on block exemption regulations[35], which provide a presumption of legality for entire categories of vertical agreements that meet certain predefined criteria. These include, most notably, a 30% market share threshold and the absence of so-called "hardcore restrictions". This threshold is particularly relevant in the context of Made in Italy, where small and medium-sized enterprises dominate production and operate within highly fragmented markets. Precisely because their market shares typically remain well below this limit, SMEs are often structurally enabled to adopt selective distribution without triggering significant antitrust scrutiny. Block exemptions are enacted through secondary legislation and function as a safe harbour, insulating compliant agreements not only from EU scrutiny but also from challenges under national competition rules.

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[33] Article 101(3) Treaty on the Functioning of the European Union.

[34] See WIJCKMANS in *Vertical agreements in EC Competition Law,* 22, where it's outlined that the rationale of block exemption regulations has changed from that very moment, now becoming the most important tool for companies and their advisors to perform a self-assessment. On this matter, it must also be cited the European Commission's *White Paper on Modernisation of the rules implementing articles 85 and 86 of the EC Treaty*, 1999. The main idea is that the modernization process, by abolishing the Commission's monopoly over granting exemptions from the prohibition of restrictive agreements, has imposed greater responsibility on undertakings, national competition authorities, and national courts. Under this directly applicable exception system, the legislative framework takes on particular importance: the rules must be sufficiently reliable and consistent so that businesses can accurately determine whether their restrictive practices are lawful.

[35] The evolution of this framework began with Regulation 2790/1999, which for the first time offered a general exemption mechanism applicable to selective distribution.

2.2 Dual Pricing under the 2022 Vertical Block Exemption Regulation (VBER): a "new legal perspective".

While selective distribution remains a key mechanism for controlling access and preserving brand integrity, it is no longer sufficient to neutralize the distortions introduced by the digital marketplace. The widespread diffusion of e-commerce, algorithmic pricing, and cross-border online marketplaces has progressively blurred traditional market boundaries, increased unfair commercial practices, such as unauthorized resale, reputational free-riding, and algorithmic price erosion. The result is an intensification of competition, which in turn has exposed the limitations of the pre-digital regulatory framework.

However, it is impossible to understand its role without first addressing the fundamental distinction between active and passive sales, which constitutes a cornerstone of EU competition law. Dual pricing does not exist in a vacuum; rather, it thrives in the grey zones of cross-border trade, serving as a tool that companies use to control how products move across borders. Notwithstanding that, EU regulators closely monitor this technique to ensure that firms do not undermine market integration[36]. Passive sales are sales made in response to unsolicited requests from individual customers, including the delivery of products to customers, without the sales procedure having been initiated through the active solicitation of specific customers, customer groups, or territories[37]. Active sales, on the other hand, encompass all forms of sales that do not qualify as passive sales. This includes actively and specifically reaching out to customers through visits,

[36] On the definition of market integration, see IBÁÑEZ COLOMO, *Article 101 and Market integration,* in 12 *J. Competition L. &* Econ. 749-779, 754 (2016) and MONTI, *Market definition as a cornerstone of EU Competition policy,* speech delivered at the Helsinki Fair Centre*,* 11 October 2001. Market integration, as enshrined in the very fabric of EU competition law, is not merely an economic aspiration but a structural necessity, ensuring that the European Union functions as a cohesive and unified commercial space. The fundamental objective of the EEC Treaty was not merely economic cooperation but the full integration of Member States' economies, dismantling the artificial barriers that once fragmented national markets. At the heart of this vision lies the creation of a system of undistorted competition, not as an isolated goal but as an instrument to achieve market unification. In this sense, Articles 101 and 102 TFEU serve as the legal cornerstone of this integrationist mandate, functioning not as ends but as the means through which economic cohesion is enforced. It is this foundational principle that sets the EU competition law framework apart, both analytically and substantively, from other antitrust regimes worldwide. What might be deemed legitimate, or even pro-competitive, in different jurisdictions is often *prima facie* prohibited under EU law, where competition rules operate with an overarching imperative: to eliminate distortions that obstruct the free movement of goods and services.

[37] Definition provided by the Guidelines on Vertical Restraints.

letters, emails, phone calls, or other means of direct communication, as well as targeted advertising and promotional activities, both offline and online[38]. Under the current VBER regime, the legal characterization of online sales further reinforces this distinction. Online transactions are, in principle, classified as passive sales, meaning that any dual pricing practice disadvantaging e-commerce may amount to an unlawful restriction on passive sales. Pursuant to Article 4(b)(i) VBER, while suppliers retain the ability to impose certain limitations on active sales, any attempt to restrict passive sales remains strictly prohibited. While any restriction on passive sales is a hardcore restriction under Article 101(1) TFEU, as it serves to artificially partition the internal market, certain limitations on active sales may, under specific circumstances, be considered compatible with competition law. Hence, passive sales are considered an essential safeguard for market integration, ensuring that distributors and consumers retain the ability to engage in cross-border trade without undue interference, while restrictions on active sales remain subject to a case-by-case assessment, balancing legitimate commercial justifications against their potential anti-competitive effects.

Before the adoption of Regulation (EU) No. 2022/720 and its accompanying Guidelines, EU competition law offered limited guidance on how vertical restraints applied to online distribution, leaving suppliers and competition authorities without a coherent legal standard[39]. It is thus appropriate to proceed with a definition of dual pricing in the context of EU competition law. It is the practice whereby a supplier applies different wholesale prices to the same distributor, imposing a higher price for products designated for online sales compared to those intended for offline distribution[40]. Although dual pricing was historically classified as a hardcore

[38] *Ibid.*

[39] HOLZWARTH, CHRISTODOULOU, VISCHI, *Online Sales Restrictions and Platform Agreements under the New EU Antitrust Regime for Vertical Restraint*s, 14 J. of Eur. Competition L. & Prac, 382 at 385 (2023). The authors emphasize that the underlying reasons for this shift, are to be found in the evaluation of the previous regime. Indeed, a key factor characterizing both the 2010 VBER and the 2010 VGL was the increasing digitalization of markets, which fueled the rise of e-commerce and the emergence of online platforms as key market players. The Commission's E-commerce Sector Inquiry highlighted that the growth of online sales enhanced price transparency and competition, enabling businesses to expand their reach with lower investment costs. Similarly, the Evaluation Support Study found that this transformation reshaped consumer behavior, revealing a growing preference for omni-channel shopping, where consumers seamlessly transition between online and offline retail channels.

[40] WHISH, BAILEY, *Competition Law,* 754.

restriction due to its potential to fragment markets and restrict passive sales, it is not *per se* unlawful. Under specific conditions, it may now[41] generate efficiency gains that render it compatible with Article 101(3) TFEU, provided that the legal criteria for exemption are satisfied in full.

2.2.1 Legal Justifications and Competitive Risks.

Law is often shaped by its exceptions, defining the boundaries of a rule by recognizing when it does not apply. It is thus appropriate to consider them first. Competition law is not solely concerned with prohibiting restraints; it also seeks to foster efficiency, innovation, and consumer welfare, and indeed, a central justification for dual pricing lies in its ability to remedy the economic imbalance generated by free-riding dynamics[42]. Offline retailers, especially in selective networks, often make substantial investments in pre-sale services, brand storytelling, and physical infrastructure that reinforce a product's positioning and perceived value (e.g. the atmospheric lighting and narrative installations of Murano glass galleries that evoke centuries of lagoon artistry; the bespoke fitting rituals for handmade leather sandals in Amalfi and Positano, often accompanied by tales of generational savoir-faire; or the vibrant ceramic showrooms of Vietri sul Mare, where each piece is framed as both object of use and living testimony of Mediterranean iconography). In contrast, online sellers may exploit these reputational externalities without contributing to their creation, thereby eroding the incentives for sustained investment in brand equity. As expressly acknowledged in Art. 2(1) paragraph 16(b) of the 2022 Guidelines, vertical restraints may serve to limit such parasitic behaviors, especially where the product is «*technically complex, new, of high value, or where the reputation of the goods or services is an important determinant of their demand*»[43].

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[41] The 2022 Vertical Guidelines (VGL) marked a notable departure in the legal treatment of dual pricing, explicitly recognizing in paragraph 209 that the practice may now benefit from the block exemption. Under the previous VBER, it was indeed classified as a hardcore restriction, reflecting the broader interpretation of passive sales.

[42] GHEZZI, OLIVIERI, *Diritto Antritust*, 199.

[43] EC, *Guidelines on Vertical restraints* 2022, Article 2(1) para 16(b). WHISH, BAILEY, *Competition law*, 704. OECD, *Implications of E-commerce for Competition Policy - Note by the European Union*, 2018, 7. As noted by the OECD, dual pricing is often viewed by stakeholders as a potentially efficient tool to address free-riding, particularly in distribution networks where retailers contribute unevenly to brand development and consumer outreach.

Then, dual pricing may be justified where it serves to protect a supplier's brand from the disruptive effects of unauthorized resale, grey-market imports, and counterfeit goods. The CJEU itself has further clarified that the preservation of a luxury image may constitute a legitimate objective under Article 101(1) TFEU. In *Pierre Fabre*, the Court recognized that restrictions aimed at maintaining a prestigious image might, in principle, be justified if pursued through proportionate means[44]. This approach was more explicitly endorsed in *Coty Germany*, where the Court upheld the compatibility of a selective distribution system designed to preserve the luxury aura of branded products, provided the system was based on objective, uniform, and non-discriminatory criteria and did not go beyond what was necessary to achieve the brand-protection objective[45]. While Pierre Fabre and *Coty* concerned restrictions on sales platforms or distributors rather than pricing itself, the underlying logic could be transferable: where dual pricing is used to support the integrity of a lawful selective distribution system, by discouraging leakage into unauthorized channels or protecting investments made by high- compliance distributors, it may fall within the realm of permissible vertical restraints. In such cases, we would not be faced with a restriction of competition within the meaning of Article 101(1), but rather with a mechanism for aligning pricing incentives with the enforcement of qualitative standards that serve both the brand's coherence and consumer expectations.

However, without the possibility to differentiate wholesale pricing in line with retail formats and brand-building investments, suppliers risk being forced into uniformity, disregarding the diversity of distribution roles across channels[46]. This not only undermines the viability of brand-enhancing offline environments typical of the Made in Italy model but also fosters a race to the bottom, where price competition displaces service quality, territorial identity, and long-term consumer trust.

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[44] Case C-439/09 *Pierre Fabre Dermo-Cosmétique.*

[45] Case C-230/16 *Coty Germany GmbH v Parfümerie Akzente GmbH.*

[46] A uniform wholesale price, while seemingly neutral, may incentivize suppliers to raise prices to preserve margins, leading to the exclusion of costlier (yet valuable) retail formats. For a detailed economic analysis, see JIANHU, YOUPING, *The Welfare Effects of Input Price Discrimination Revisited*, 95 Int'l J. Indus. Org. (2024). HAUCAP, DERTWINKEL-KALT, WEY, *Procompetitive Dual Pricing and the Limits of Competition Law*, 41 Eur. J.L. & Econ. 537 (2016).

Nonetheless, these functional justifications are not absolute. The 2022 VBER (Regulation 2022/720) and accompanying Guidelines impose strict legal boundaries to prevent the instrumentalization of dual pricing for anticompetitive purposes. Article 4(e) explicitly prohibits pricing strategies that, in effect, restrict the buyer's ability to use the internet as a sales channel. This includes practices that render online distribution financially unviable or that covertly cap e-commerce supply through discriminatory wholesale terms. In such scenarios, what may appear formally as price differentiation could amount, in substance, to an indirect restriction "by object" under Article 101(1) TFEU[47]. In particular, the Guidelines identify two concrete scenarios in which dual pricing becomes unlawful: first, where the wholesale price differential makes online sales economically unsustainable, and second, where it is used to limit the quantity of products made available to the buyer for online resale. Both cases are considered to have the object of restricting competition[48] and, if present, would qualify as hardcore restrictions under Article 4(e) of Regulation 2022/720.

2.3 When Structure Becomes Protection: The Case for a Normative Turn.

Despite their progressive refinement within the framework of EU competition law, selective distribution and dual pricing remain conceptually tethered to the logics of economic efficiency and antitrust compatibility. What continues to elude current legal treatment is a systematic understanding of these instruments as structurally relevant tools of private enforcement, particularly in the defence of origin-linked value chains. This omission becomes particularly apparent when one considers the differential capacity of market actors to operationalize such tools. In sectors traditionally associated with luxury, where trademark notoriety affords a broader margin for legal control, selective distribution networks are readily formalized, and dual pricing finds a natural justification in the preservation of high-end brand image. Yet, as observed in Chapter II, such legal instruments are

[47] Art. 101(1) Treaty on the Functioning of the European Union.

[48] They would also undermine the objectives of the Digital Markets Act (DMA), which emphasizes the importance of economic analysis in promoting fair competition within digital markets, as noted by FLETCHER, CRÉMER, HEIDHUES & OTHERS, *The Effective Use of Economics in the EU Digital Markets Act*, 2 J. Competition L. & Econ. (2024). The authors argue that contestable markets are essential to ensuring long-term benefits for both consumers and business users, and that in the absence of such contestability—whether due to structural barriers or exclusionary conduct—entrenched positions risk being unfairly leveraged or extended.

far less accessible to the dense fabric of small and medium-sized enterprises that form the backbone of the *Made in Italy* system. Often rooted in local districts, family-owned businesses, as custodians of complex artisanal know-how, produce goods whose market value depends intrinsically on territorial identity, yet whose defensive infrastructure remains insufficiently codified. The implementation of distribution architectures capable of satisfying the legal standards of objectivity, transparency, and proportionality, as required under EU law, entails significant economic and organizational burdens. For small-scale producers, the establishment of a selective distribution network or a differentiated pricing structure is not only legally complex, but also financially onerous.

Italian jurisprudence offers instructive insight into this asymmetry. The decision in *Sisley v Amazon*[49], rendered by the District Court of Milan, reaffirmed the enforceability of a rigorously structured selective distribution network against an unauthorized platform reseller, drawing on the principles articulated in *Coty Germany* and clarifying the digital transposability of lawful vertical restraints. The court acknowledged that associative placement alongside unrelated or low-end goods undermines the symbolic aura and consumer perception of luxury products, a degradation incompatible with the standards embedded in the authorized network.

Conversely, in *Chantecler v Gens Aurea*[50], the Italian Supreme Court declined to extend such protection to a jewellery brand whose selective distribution claims were unsupported by formalized contractual obligations or demonstrable application[51]. The ruling underscores a pivotal threshold: prestige, in isolation, does not suffice; only a concretely implemented, transparently managed, and legally

[49] District Court of Milan, Commercial Law Chamber, order of 3 July 2019, Case No 50977/2018, *Sisley Italia et al v Amazon Europe Core et al* (Sisley v Amazon).
[50] Italian Supreme Court, Order No. 7378 of 14 March 2023, *Chantecler S.p.A. v Gens Aurea S.p.A.*
[51] The dispute concerned the interplay between selective distribution systems and trademark exhaustion under EU and Italian law. Chantecler alleged unauthorized resale by Gens Aurea, invoking trademark infringement and breach of a selective distribution network to justify preventing further commercialization. However, the Italian Supreme Court rejected these claims, clarifying the rigorous evidentiary standards required to benefit from exceptions to trademark exhaustion under Article 5(2) of the Italian Industrial Property Code, aligned with Article 7 of Directive 2008/95/EC. Specifically, the Court found the absence of contractual criteria clearly establishing reseller standards and evidenced that many purportedly authorized resellers did not meet stated qualitative benchmarks. Consequently, the Court concluded Chantecler lacked a genuine selective distribution system and thus could not oppose further resale based on trademark rights.

consistent network can justify derogations from the exhaustion principle. Structure, not narrative, anchors legal protection.

Together, these cases reveal both the potential and the limits of current doctrine. Selective distribution and dual pricing, though formally accepted, lack the normative anchoring that would allow them to function as systemic instruments of origin protection for the broader *Made in Italy* model. Without a coherent legal framework that recognizes their specific function in reputation-driven, territorially embedded production systems, enforcement remains uneven: strong where prestige substitutes for law, fragile where excellence lacks institutional voice.

The legal infrastructure must evolve accordingly. Selective distribution and dual pricing should no longer be conceived merely as competition-sensitive arrangements, but as market instruments of systemic relevance for the enforcement of territorial value chains. Especially for origin-based enterprises lacking trademark notoriety, these tools represent the only operational channel through which legal exclusivity can be preserved and projected onto the market.
Still, the limits of a purely private enforcement model are evident. What is needed is a regulatory turning point: a *sui generis* legal regime that recognizes "Made in" designations as more than factual labels, as legally protected markers of cultural economy and competitive distinctiveness within the internal market. The following paragraph advances such a proposal. Yet, it does so without relinquishing what this section has demonstrated: that distribution is not a neutral terrain, but a legal frontier where origin may be not only declared, but also defended.

3. Towards a New Legal Architecture: Principles, Proposals, and Limits.

3.1 Made in Italy as an Autonomous Legal Asset.

As the legal analysis draws to a close, a paradox emerges with renewed clarity: *Made in Italy* is among the most powerful commercial signifiers in the global marketplace, yet—in hard-law terms—it does not exist.

Under Article 60 of the Union Customs Code, it is treated as a mere indication of non-preferential origin, neither registrable as a trademark nor protected as a geographical indication. This legal invisibility clashes with market reality. *Made in Italy* functions as a meta-brand: a shorthand for artisanal skill, aesthetic refinement and technological ingenuity across the so-called "4 A" pillars.

Its breadth is precisely what gives it resonance. Unlike a PDO or PGI tied to a single product, the label operates as a container of reputational capital capable of lifting entire sectors in the collective imagination. That semantic amplitude, however, also explains why conventional IP categories have failed to capture it. Forcing the sign into trademark or GI doctrine would either strip it of its cross-sector scope or trigger the Treaty's anti-protectionist alarms[52].

However, the result is a protection gap. Small and medium enterprises, family companies, and industrial clusters cannot invoke *Made in Italy* as an enforceable right; yet imitators routinely appropriate its halo through "Italian-sounding" branding. The label's economic value is thus highly appropriable but barely defendable, creating negative externalities that EU consumer law and unfair competition tools only partially address.

Thus, Made in Italy is a «*parola-valigia*»[53] (a suit-case word) that encompasses a wide variety of items, industries, and even qualities, and its very characteristic can be considered both a weakness, inviting misappropriation, and a strength, allowing the label to convey far more than a PDO or PGI ever could. In today's marketplace, consumers acquire ideas about identity, lifestyle and provenance before they even acquire *objects*. Elevating Made in Italy to an autonomous legal asset, therefore, would furnish both undertakings and consumers with a single, legally recognizable indicator encapsulating the guarantee of Italian excellence across the four emblematic "A-sectors".

3.2 Outlining a Sui Generis Regime for Made in Italy.

3.2.1 Legal nature and objectives.

Despite its reputational significance, the "Made in" indication remains legally fragile, merely descriptive, fragmented in enforcement, and inadequately protected across Europe. To overcome this structural gap, the establishment of an EU Public Trademark for "Made in" designations (from now on PT-Mi) emerges as both a legal necessity and a strategic imperative. The PT-Mi would be introduced

[52] CERRATO, *I segni indicativi del "made in",* in AIDA, 2016, 25.
[53] DELLAPIANA, *Design e l'invenzione del Made in Italy*. 2.

through a directly applicable EU Regulation under Article 118 TFEU[54], conferring uniform protection and recognition within the internal market. Such a *sui generis* trademark would stand distinct from existing IP tools, bridging the legal void between collective trademarks, certification marks, and geographical indications, and addressing specifically the cross-sectoral and reputational dimensions of origin claims.

The PT-Mi would have three fundamental objectives: (i) securing a verifiable and substantial territorial link between the product and its place of origin (ii) ensuring uniform qualitative production standards, and (iii) guaranteeing truthful and non-deceptive consumer information across the internal market. Accordingly, the PT-Mi must be designed not merely to certify production standards, but to legally recognize origin as an asset of public interest. The viability of it as an effective legal instrument depends on clearly defined criteria, blending territorial authenticity, qualitative integrity, and reputational substantiation. Firstly, products seeking PT-Mi registration must demonstrate a robust territorial link, with at least two substantive, value-adding phases (e.g., design, principal manufacturing, or critical finishing operations) taking place within the declared territory. This approach consciously avoids tokenistic "screwdriver" assembly, following a stricter standard akin to Switzerland's "Swissness" rules, which notably demand that key production stages and a majority of the production costs occur domestically[55]. Secondly, applicants would submit a detailed Technical Specification describing materials, processes, traceability measures (such as blockchain or equivalent technologies), and quality controls[56]. Thirdly, the PT-Mi would require concrete reputational evidence linking the product to its territory,

[54] Article 118(1), Treaty on the Functioning of the European Union: "In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements".

[55] The "Swissness" legislation, adopted by the Swiss Parliament on 21 June 2013 and in force since 1 January 2017, revised the rules on use of the designation "Swiss Made" and the national emblem. For industrial goods, at least 60% of production costs (including R&D) must be incurred in Switzerland, and the stage conferring the product's essential characteristics must also take place domestically.

[56] Such requirements reflect Regulation (EU) 2023/2411 on geographical indications for craft and industrial products, thus ensuring full auditability and transparency in production.

such as consumer recognition surveys, historical references, or cultural associations. Lastly, recognizing the structural vulnerability of small and medium-sized enterprises, especially prevalent in the Italian context, a simplified application procedure with reduced EUIPO fees for SMEs (defined as enterprises with fewer than 250 employees or annual turnover below €50 million) would be implemented.

3.2.2 Between Public Enforcement and Oversight Mechanisms.

The PT-Mi would be administered by a dedicated Division within the European Union Intellectual Property Office (EUIPO), leveraging its institutional experience with trademarks, designs, and geographical indications. This Division would manage registrations, oppositions, amendments, and cancellations, ensuring harmonized decision-making. In addition, an EU-level Audit Unit, established jointly by the EUIPO and the European Commission, would perform regular, risk-based inspections and audits of PT-Mi users, thereby strengthening market surveillance and precluding protectionist abuses at national level. Finally, a Stakeholder Forum comprising representatives of Member States, consumer organizations, and SMEs would provide annual policy guidance, recommending adjustments and updates to eligibility criteria and specifications in response to market and technological changes.

Registration of a PT-Mi would confer upon producers the exclusive right to affix the official EU emblem alongside the "Made in X" wording. Crucially, PT-Mi holders would have access to robust enforcement tools: national IP courts could grant pan-EU injunctions against infringing practices; customs authorities across the Union could intervene *ex officio* under Regulation (EU) 608/2013 to seize counterfeit or deceptively labelled goods at borders.

To guarantee that PT-Mi policing does not fall into the same enforcement *lacunae* already observed for misleading origin claims, the Regulation should oblige every Member State to nominate a specialized "origin-authority" distinct from the general competition one. Bodies such as Italy's *Autorità Garante della Concorrenza e del Mercato* (AGCM), though highly effective against cartel conduct, have limited bandwidth and investigative tools for tracing territorial-origin fraud in complex supply chains. By assigning that task to the Ministry of Enterprises and Made in Italy (MIMIT), or to a newly constituted unit working in

tandem with customs and market-surveillance inspectors, each State would (i) assist SMEs during the PT-Mi application phase, (ii) carry out on-site audits to verify compliance with the technical specification, and (iii) act as a national liaison with EUIPO for rapid injunctions and cross-border evidence gathering. Moreover, to effectively counteract the increasing online proliferation of misleading origin claims, any deceptive use, imitation, or evocation of the PT-Mi emblem in domain names, online advertising, or product listings would constitute infringement, following a logic parallel to that codified in Article 40 of Regulation (EU) 2023/2411.

3.2.3 Compatibility with EU Law and the Internal Market.

A Union-wide Public Trademark for "Made in" designations (PT-Mi) would undoubtedly fill the enforcement gap outlined in the preceding analysis; nevertheless, its implementation must be consistent with the “constitutional” framework of EU economic law. A thorough conflict check identifies at least four areas of potential legal tension.

First, the principle of free movement of goods as under Articles 34–37 TFEU. A PT-Mi confers an *ex ante* marketing advantage on products originating within a defined territory. If not carefully delimited, that advantage could translate into an indirect restriction on imports of non-qualifying goods. Article 36-style justifications (i.e. consumer protection, intellectual-property safeguarding, preservation of cultural heritage) are available, but only if the measure is (i) genuinely non-discriminatory, (ii) objectively verifiable, and (iii) the least trade-restrictive means. Consequently: the territorial link must hinge on *qualitative* production standards, and not on the mere place of final assembly; an EU-level audit procedure (entrusted to EUIPO or the Commission) must ensure uniform application and prevent Member States from using the label for protectionist ends; exhaustion rules must continue to permit parallel trade of genuine PT-Mi goods once put on the EU market.

Second, harmonized trademark law presents a further layer of complexity. Regulation 2017/1001 precludes registration of signs that are purely descriptive or generic[57], yet expressly allows collective and certification marks. A PT-Mi would

[57] Article 7(1)(c), Regulation (EU) 2017/1001.

operate as a *lex specialis* beside those instruments and is defensible under Art 118 TFEU only if an impact assessment demonstrates that existing IP tools (collective marks, non-food GIs, and unfair-competition actions) leave a persistent enforcement gap, particularly for SMEs. It must also coexist with earlier rights: individual or collective marks already containing "Made in X" wording would need opposition or opt-in conversion mechanisms, coupled with a transitional "grand-fathering" period to decide whether to convert, rebrand, or phase out their marks. After the deadline, only PT-Mi-compliant uses or converted marks would remain lawful.

A third fault-line concerns overlap with Regulation 2023/2411 on non-food GIs. Whereas that regime protects discrete product names, the PT-Mi would serve as a cross-sector umbrella. To avoid double protection, the PT-Mi should function strictly as a quality-assurance emblem, conferring no exclusive rights over the words "Made in X" themselves and enforcement should target deceptive uses, not legitimate parallel imports of GI-labelled goods.

Finally, competition law cannot be sidelined. Because the PT-Mi conditions market differentiation on territorial origin, it could facilitate collective foreclosure if misgoverned. Admission criteria must therefore remain objective, transparent, and proportionate; the public body administering the scheme must grant non-discriminatory access to any undertaking that meets the specification; and any form of price-fixing or supply coordination under the PT-Mi umbrella must be categorically prohibited to satisfy Article 101 TFEU and prevent anti-competitive conduct.

Seen through the lens of this work, the introduction of a Union-wide Public Trademark for "Made in" designations is not a speculative reform, but the normative solution that most coherently integrates the economic, legal, and cultural coordinates analysed across all chapters. At the beginning it was demonstrated how the Made in Italy label crystallizes a distinct legal value, rooted in territorial identity, artisanal knowledge, and reputational capital, yet deprived of formal legal status. Then, it was exposed the inadequacy of current legal instruments in capturing origin as a holistic market asset. While EU qualified geographical indications, trademark law, consumer protection offer valuable safeguards, they are

intrinsically designed to protect individual products, not the overarching denomination. Each protected designation—be it a PDO, PGI, or certification mark—may contribute to the construction of the Made in Italy narrative, but none can, by its very nature, encompass the full semiotic and economic scope of the national-origin label. Precisely this fragmentation reveals the legal void the PT-Mi aims to fill. Most importantly, it would redefine the incentives behind territorial relocation: in order to access the reputational benefits of a "Made in" label, firms would be legally bound to maintain meaningful production within the relevant geographical area, under strict and transparent specifications.

In conclusion, the time has come for the European Union to move beyond a fragmented and reactive approach to origin. "Made In" should be recognized for what it truly is: not merely a factual label, but a legal vector of economic interest, cultural memory, and territorial legitimacy. What emerges is not a nostalgic return to protectionism, but a forward-looking act of market integration. A Union-wide Public Trademark for *Made in* designations would not disrupt the internal market; it would complete it. It would provide the missing legal architecture through which excellence without notoriety and tradition without institutional power may assert and defend their rightful place in the competitive landscape. Just as the European Union has created *sui generis* protections for data, biodiversity, and artisanal food traditions, it must now do the same for industrial and cultural authenticity. The Public Trademark would not duplicate existing instruments such as PDOs, PGIs or certification marks. Rather, it would complement them, functioning as a transversal legal infrastructure that unifies excellence, traceability, and territorial legitimacy under a single, enforceable sign. In a digital economy where narratives travel faster than goods and where misleading evocations can displace genuine production, Europe cannot afford to treat origin as a mere factual attribute. It must treat it, finally, as a matter of law.

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