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CAMPUS KULMBACH  
LEGAL WORKING PAPERS

Nº 2/20 | 9 September 2020

# The Brussels Effect in Action: Do the EU's Standards Travel Abroad?

A Study on Control Systems for Geographical Indications in the EU and Thailand

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### **Campus Kulmbach Legal Working Papers**

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### **Suggested Citation:**

Verena Preusse, Kai Purnhagen and Liesbeth Dries, 'The Brussels Effect in Action: Do the EU's Standards Travel Abroad? A Study on Control Systems for Geographical Indications in the EU and Thailand', *Campus Kulmbach Legal Working Papers*, No 2/20 (2020).

### **A final version of this paper is forthcoming in:**

*Houston Journal of International Law*

### **Keywords**

Brussels Effect, Geographical Indications, Thailand, Comparative Law, Germany, European Union

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THE BRUSSELS EFFECT IN ACTION: DO THE EU'S  
STANDARDS TRAVEL ABROAD? A STUDY ON CONTROL  
SYSTEMS FOR GEOGRAPHICAL INDICATIONS IN THE EU  
AND THAILAND

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9 September 2020

ABSTRACT

This article examines to what extent EU law influences standards for geographical indications (GI) control beyond the EU's regulatory borders. In light of the concept of the "Brussels Effect" and taking a socio-legal comparative methodological approach, it analyzes and compares how the EU and Thailand regulate and implement GI controls in practice. The analysis of the practical implementation of GI controls is based on one case study from the EU (Germany) and two case studies from Thailand. Ultimately, this article discusses to what extent EU GI regulations shape the regulation and practical implementation of GI controls in Thailand. The findings indicate that Thai producers whose products are registered as GIs in the EU adopt the EU's more stringent standards for control, while fundamental differences between the EU and Thailand prevail on the regulatory level.

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## I INTRODUCTION

In 1994 the World Trade Organization's (WTO) Agreement on Trade Related Aspects of Intellectual Property (hereinafter TRIPS Agreement) established an international minimum standard for the protection of geographical indica-

tions (GI).<sup>1</sup> A GI is a sign, which identifies a good as originating in a particular geographical area, with distinct characteristics in terms of quality, reputation, or any other characteristic that are essentially attributable to its geographical origin.<sup>2</sup> Developing countries have shown an increased interest in GIs due to the various benefits associated with their protection, such as the creation of a monopoly on the brand.<sup>3</sup> Next to establishing national systems for GI protection, some of them are also seeking legal recognition of their GI products abroad, for example in the European Union (EU).<sup>4</sup> Expected benefits are to achieve enhanced access to international markets and the protection from unfair competition.<sup>5</sup>

To achieve and maintain registration, applicants from third countries have to meet the EU's requirements for quality control, even if these are governed differently in the country of origin.<sup>6</sup> Previous literature on the governance of GI controls suggests that the approaches towards control differ between the EU and developing countries.<sup>7</sup> In the EU, Fernández-Barcala et al. compared the supply chains of specific GI products with those of products only bearing a private trademark.<sup>8</sup> They find that the former are characterized by an extra level of public governance. Gangjee critically assessed the certification

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<sup>1</sup> T. Cottier, *The Agreement on Trade-Related Aspects of Intellectual Property Rights*, in *THE WORLD TRADE ORGANIZATION: LEGAL, ECONOMIC AND POLITICAL ANALYSIS VOLUME I* 1061, (P. F. J. Macrory, et al. eds., 2005).

<sup>2</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C. Art. 22 (1)

<sup>3</sup> C. Bramley, *A Review of the Socio-Economic Impact of Geographical Indications: Considerations for the Developing World*, WIPO Worldwide Symposium on Geographical Indications June 22-24 2011, Lima, Peru (2011), available at [http://193.5.93.81/edocs/mdocs/geoind/en/wipo\\_geo\\_lim\\_11/wipo\\_geo\\_lim\\_11\\_9.pdf](http://193.5.93.81/edocs/mdocs/geoind/en/wipo_geo_lim_11/wipo_geo_lim_11_9.pdf).

<sup>4</sup> D. Troskie & E. Biénabe, *Institution Building and Local Industry Dynamics: Lessons from the Rooibos GI Initiative*, in *DEVELOPING GEOGRAPHICAL INDICATIONS IN THE SOUTH. THE SOUTHERN AFRICAN EXPERIENCE* 104-105, (C. Bramley, et al. eds., 2013); C. Heath, *How Would Geographical Indications from Asia Fare in Europe?*, in *GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE. FOCUS ON ASIA PACIFIC* 186, (I. Calboli & N.-L. Wee-Loon eds., 2017).

<sup>5</sup> H. Ilbert & M. Petit, *Are Geographical Indications a Valid Property Right? Global Trends and Challenges*, 27 *DEVELOPMENT POLICY REVIEW*, 518 (2009).

<sup>6</sup> G. E. Evans, *The Comparative Advantages of Geographical Indications and Community Trade Marks for the Marketing of Agricultural Products*, 29 *YEARBOOK OF EUROPEAN LAW* 224, 250-251 (2010).

<sup>7</sup> Delphine Marie-Vivien, *The Role of the State in the Protection of Geographical Indications: From Disengagement in France/Europe to Significant Involvement in India*, 13 *THE JOURNAL OF WORLD INTELLECTUAL PROPERTY* 121 (2010).

<sup>8</sup> Marta Fernández-Barcala, et al., *Contrasting the Governance of Supply Chains with and without Geographical Indications: Complementarity Between Levels*, 22 *SUPPLY CHAIN MANAGEMENT: AN INTERNATIONAL JOURNAL* 305 (2017).

of provenance and authenticity of GIs by public authorities.<sup>9</sup> Marie-Vivien et al. studied the governance of GI controls at the country-level (France) and observe that a shift from public to private governance through third-party certification of GIs has taken place.<sup>10</sup> The authors attribute this shift to the rising “internationalization” and “standardization” of GIs and their increased association with other voluntary (private) food standards.<sup>11</sup>

In developing countries, issues regarding the establishment of GI quality control systems due to insufficient legal frameworks and/or a lack of effective infrastructure for governing GIs have frequently been pointed out.<sup>12</sup> On the one hand, private approaches to governing GI controls could fill this gap and enable developing country producers’ access to the EU GI market despite a lack of public involvement in the governance of controls.<sup>13</sup> Higher standards and stricter control requirements can indeed improve producers’ capabilities to access international markets and hence be a catalyst for trade.<sup>14</sup> On the other hand, producers might have limited access to private certification in the first place<sup>15</sup>, in particular due to high costs of compliance.<sup>16</sup> Both effects (market access and market closure) trigger legal responses in various legal systems.<sup>17</sup> The

<sup>9</sup> D. S. Gangjee, *Proving Provenance? Geographical Indications Certification and its Ambiguities*, 98 *WORLD DEVELOPMENT*, 12 (2017).

<sup>10</sup> Delphine Marie-Vivien, et al., *Are French Geographical Indications Losing their Soul? Analyzing Recent Developments in the Governance of the Link to the Origin in France*, 25 *WORLD DEVELOPMENT* (2017).

<sup>11</sup> *Id.* at. 25, 31.

<sup>12</sup> Sachin Chaturvedi, *India, the European Union and Geographical Indications: Convergence of Interests and Challenges Ahead*, 4 *SOUTH ASIA ECONOMIC JOURNAL* 99, 108 (2003); J. Hughes, *Coffee and Chocolate – Can we Help Developing Country Farmers Through Geographical Indications?*, A Report Prepared for the International Intellectual Property Institute, Washington, D.C.(2009), available at <http://iipi.org/wp-content/uploads/2010/09/Coffee-and-Chocolate-J.-Hughes.pdf>; Y. Pai & T. Singla, ‘Vanity GIs’: *India’s Legislation on Geographical Indications and the Missing Regulatory Framework*, in *GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE. FOCUS ON ASIA-PACIFIC* 344-346, (I. Calboli & N.-L. Wee-Loon eds., 2017); I. Calboli, *Geographical Indications between Trade, Development, Culture, and Marketing: Framing a Fair(er) System of Protection in the Global Economy?*, in *GEOGRAPHICAL INDICATIONS BETWEEN TRADE, DEVELOPMENT, AND CULTURE. FOCUS ON ASIA-PACIFIC* 22, (I. Calboli & N.-L. Wee-Loon eds., 2017).

<sup>13</sup> S. Marette, et al., *Recent International and Regulatory Decisions About Geographical Indications*, 24 *AGRIBUSINESS*, 465-466 (2008).

<sup>14</sup> S. Jaffee & S. Henson, *Standards and Agro-Food Exports from Developing Countries: Rebalancing the Debate* 3 (2004).

<sup>15</sup> Marette, et al., *AGRIBUSINESS*, 466 (2008).

<sup>16</sup> K.E. Maskus, et al., *Do Foreign Product Standards Matter? Impacts on Costs for Developing Country Exporters*, 20 *ASIA-PACIFIC JOURNAL OF ACCOUNTING & ECONOMICS*, 37-57 (2013).

<sup>17</sup> K. Purnhagen, *Mapping Private Regulation - Classification, Market Access and Market Closure Policy and Law’s Response*, 49 *JOURNAL OF WORLD TRADE* (2015).

potential and difficulties for developing countries and their producers arising from compliance with different types of public and private standards from industrialized countries has been widely investigated in the context of agri-food standards.<sup>18</sup> However, it has received less scholarly attention in the context of GIs.

The question arises how GI controls are governed and implemented in practice in developing countries seeking to register their domestic GIs in the EU, hence being required to comply with the EU's control standards for GIs. Marie-Vivien and Vagneron recently analyzed the systems for GI certification and control in place in four countries in South-East Asia (Thailand, Vietnam, Laos and Cambodia) and the options for the further institutionalization and operationalization of these systems.<sup>19</sup> They hypothesize that certification and verification systems in these countries are likely to be shaped by the rules in place in foreign markets such as the EU, which are considered lucrative export markets for GI products.<sup>20</sup>

This article builds on the hypothesis of Marie-Vivien and Vagneron. Focusing on Thailand, we examine to what extent the system of GI controls in Thailand is shaped by EU GI regulations. Going beyond existing literature, we pay particular attention to the link between EU governance of GI controls and that of foreign GIs when the latter are registered as GIs in the EU. Next to analyzing the governance of GI controls on the regulatory level, we examine their practical implementation throughout the supply chains of specific GI products in the EU and in Thailand, for the latter focusing on products which

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<sup>18</sup> E. Biénabe, et al., *Quality-Driven Market Innovations: Social and Equity Considerations* 135-136 (E. Coudel, et al. eds., Wageningen Academic Publishers 2013); J. E. Hobbs, *Public and Private Standards for Food Safety and Quality: International Trade Implications*, 11 *THE ESTEY CENTRE JOURNAL OF INTERNATIONAL LAW AND TRADE POLICY*, 146-147 (2010); Spencer Henson & John Humphrey, *Understanding the Complexities of Private Standards in Global Agri-Food Chains as They Impact Developing Countries*, 46 *THE JOURNAL OF DEVELOPMENT STUDIES* 1628, 1641-1643 (2010); Jaffee & Henson, 1-44. 2004; Maskus, et al., *ASIA - PACIFIC JOURNAL OF ACCOUNTING & ECONOMICS*, 37-57 (2013); F. Cafaggi & P. Iamiceli, *Supply Chains, Contractual Governance and Certification Regimes*, 37 *EUROPEAN JOURNAL OF LAW AND ECONOMICS* 131, 131-173 (2014); Sven M. Anders & Julie A. Caswell, *Standards as Barriers Versus Standards as Catalysts: Assessing the Impact of HACCP Implementation on U.S. Seafood Imports*, 91 *AMERICAN JOURNAL OF AGRICULTURAL ECONOMICS* 310, 310-321 (2009); Julio A. Berdegué, et al., *Central American Supermarkets' Private Standards of Quality and Safety in Procurement of Fresh Fruits and Vegetables*, 30 *FOOD POLICY* 254, 245-246 (2005); Stefano Ponte & Peter Gibbon, *Quality Standards, Conventions and the Governance of Global Value Chains*, 34 *ECONOMY AND SOCIETY* 1, 1-31 (2005); S. Henson, *The Role of Public and Private Standards in Regulating International Food Markets*, 4 *JOURNAL OF INTERNATIONAL AGRICULTURAL TRADE AND DEVELOPMENT* (2007).

<sup>19</sup> D. Marie-Vivien & I. Vagneron, *One Size Fits All Or Tailor-Made? Building Appropriate Certification Systems for Geographical Indications in Southeast Asia*, 3 *WORLD FOOD POLICY*, 105 (2017).

<sup>20</sup> *Id.* at, 108.

are registered as protected designation of origin (PDO) or protected geographical indication (PGI)<sup>21</sup> in the EU.

Thailand is the focus as it is considered a pioneer for GI protection and it is the South-East Asian country which currently has achieved the registration of the largest number of products as PDO/PGI under the European framework.<sup>22</sup> We analyze GIs for agricultural products and foodstuffs as only such products from Thailand have been registered as PDO/PGI in the EU to date.<sup>23</sup>

The research objective is to compare the regulation and practical implementation of GI controls for agricultural products and foodstuffs in the EU and in Thailand. The ultimate aim is to analyze to what extent the regulation and practical implementation of GI controls for agricultural products and foodstuffs in Thailand – for products which are protected as PDO/PGI in the EU – are shaped by EU requirements for GI control. We address the following research questions:

1. How are GI controls for agricultural products and foodstuffs regulated in the EU and in Thailand?
2. How are GI controls for agricultural products and foodstuffs implemented in practice in the EU and in Thailand, in the latter case for products registered as PDO/PGI under EU law?
3. To what extent is the regulation and practical implementation of GI controls for agricultural products and foodstuffs in Thailand shaped by EU GI regulations?

The empirical analysis bases on the concept of the “Brussels Effect”. The concept holds that due to a variety of factors, the EU is able to externalize its stringent standards in internationally contested regulatory fields to other jurisdictions where more lenient standards prevail.<sup>24</sup> Considering the EU’s strive for stricter GI regulation on the international level and Thailand’s increased interest in protecting domestic GIs abroad, this theory provides a useful framework to analyze to what extent the EU’s rules regarding GI controls are externalized to Thailand.

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<sup>21</sup> PDOs and PGIs are defined in Article 5 (1) and (2) of “Regulation 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs”. Essentially, the difference between them derives from the requirements in terms of their link to a particular geographical area, which are stricter for PDOs than for PGIs.

<sup>22</sup> European Commission, *eAmbrosia – The EU Geographical Indications Register*, EC.EUROPA.EU, <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/> (last updated March 27, 2020).

<sup>23</sup> *Id.* at.

<sup>24</sup> see, for example, A. Bradford, *The Brussels Effect*, 107 NORTHWESTERN UNIVERSITY LAW REVIEW, 1-68 (2012).

To answer the research questions, we take a socio-legal comparative approach. We apply the functional method of comparative law and social sciences methods.<sup>25</sup> Next to conducting a functional comparison of the EU and the Thai regulatory systems for GI controls, qualitative semi-structured expert interviews and desk research are carried out. As cases, we have selected two Thai products which are registered as PGIs in the EU. These are the rice variety Khao Hom Thung Kula Ron-Hai (hereinafter referred to as TKR) originating from an area extending over five provinces in the Northeast of Thailand<sup>26</sup> and the coffee product Kafae Doi Chaang originating from the Chiang Rai province. In the EU, the cheese variety Hessischer Handkäse from the German Federal State of Hesse is chosen as a case to study the practical implementation of GI controls in the EU.

The structure of the article is as follows: We first provide background information on the legal frameworks for GI protection in the EU and in Thailand. We then outline the theoretical framework of the research. The research methods, case selection, data collection and data analysis strategies are explained. We analyze and compare the regulation of GI controls in the EU/Germany and in Thailand, as well as its implementation in practice for the specific case studies in Germany and Thailand. Following, we examine to what extent the regulation and practical implementation of GI controls for agricultural products and foodstuffs in Thailand is shaped by EU GI regulations. The article finally summarizes and critically discusses the findings and ends with concluding remarks.

## II THE PROTECTION OF GIS IN THE EU AND IN THAILAND

On the European level, GI regulation emerged in the late twentieth century. In the context of a major reform of the EU Common Agricultural Policy (CAP) in 1992, the focus of the EU's agricultural policy shifted to the increased consideration of quality aspects.<sup>27</sup> Against this background, an EU-wide sui generis system for the protection of geographical indications was established. A sui generis system of GI protection implies that a distinct legal framework for the protection of GIs is created<sup>28</sup>, as opposed to a system in which GIs are regu-

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<sup>25</sup> M. Van Hoecke, *Methodology of Comparative Legal Research*, 12 *LAW AND METHOD*, 16-18 (2015).

<sup>26</sup> The area of origin extends over parts of the provinces Roi Et, Surin, Sisaket, Maharakham, and Yasothon.

<sup>27</sup> M. Gragnani, *The Law of Geographical Indications in the EU*, 7 *JOURNAL OF INTELLECTUAL PROPERTY LAW & PRACTICE* 271, 272 (2012).

<sup>28</sup> B. O'CONNOR, *THE LAW OF GEOGRAPHICAL INDICATIONS* 74-93 (Cameron May Ltd. 2004).

Figure 1: EU PDO and PGI logos



Source: [https://ec.europa.eu/agriculture/quality/schemes\\_en](https://ec.europa.eu/agriculture/quality/schemes_en)

lated through an existing regulatory framework, such as trademark or unfair competition law.<sup>29</sup>

In 1992, “Regulation 2081/1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs” was adopted.<sup>30</sup> Regulation 2081/1992 has since been amended by “Regulation 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs” and by “Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs” which is currently in force.<sup>31</sup>

In March 2020, 1445 agricultural products and foodstuffs from within and 27 from outside the EU were registered as PDO/PGI under the framework of this Regulation.<sup>32</sup> They carry either the EU’s PDO or PGI label, which are depicted in Figure 1 above. Next to agricultural products and foodstuffs, GI

<sup>29</sup> *Id.* at, 68, 70-72.

<sup>30</sup> Council Regulation (EEC) No 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 1992 O.J. (L208/1).

<sup>31</sup> Council Regulation (EC) No 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 2006 O.J. (L 93/12); Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1).

<sup>32</sup> European Commission, *eAmbrosia – The EU Geographical Indications Register*, EC.EUROPA.EU, <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/> (last updated March 27, 2020).

Figure 2: Thai GI logo

Source<sup>41</sup>

protection is in place for alcoholic beverages (i.e. wines<sup>33</sup>, aromatized wines<sup>34</sup> and spirits<sup>35</sup>).

After Thailand's ratification of the WTO's TRIPS Agreement in 1994<sup>36</sup>, the country established a sui generis system for the protection of GIs.<sup>37</sup> In 2003, the "Act on Protection of Geographical Indication B.E. 2546"<sup>38</sup> (hereinafter referred to as Thai GI Act) was adopted, which is the principal legal act regulating GIs in Thailand. Besides agricultural products and foodstuffs, the Thai GI Act covers the protection of handicraft and industrial products.<sup>39</sup> In August 2018, a total number of 115 GIs were registered in Thailand, 99 of which are Thai GIs and 16 are foreign GIs protected in Thailand.<sup>40</sup> Figure 2 depicts the Thai GI logo.

<sup>33</sup> See Council Regulation (EC) No 491/2009 of 25 May 2009 Amending Regulation (EC) No 1234/2007 Establishing a Common Organisation of Agricultural Markets and on Specific Provisions for Certain Agricultural Products (Single CMO Regulation), 2009 O.J. (L 154/1).

<sup>34</sup> See Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the Definition, Description, Presentation, Labelling and the Protection of Geographical Indications of Aromatised Wine Products and Repealing Council Regulation (EEC) No 1601/91, 2014 O.J. (L 84/14).

<sup>35</sup> See Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the Definition, Description, Presentation, Labelling and the Protection of Geographical Indications of Spirit Drinks and Repealing Council Regulation (EEC) No 1576/89, 2008 O.J. (L39/16).

<sup>36</sup> P. Lertdhamtewe, *The Protection of Geographical Indications in Thailand*, 17 THE JOURNAL OF WORLD INTELLECTUAL PROPERTY, 36 (2014).

<sup>37</sup> *Id.* at, 116-120.

<sup>38</sup> (Unofficial) Act on Protection of Geographical Indication B.E.2546(2003) (Thai.), available at <https://www.wipo.int/edocs/lexdocs/laws/en/th/tho23en.pdf>.

<sup>39</sup> *Id.* at. Section 3 para. 3

<sup>40</sup> Department of Intellectual Property, *Geographical Indications Which Were Signed in 2004-2018 (From 28. April 2004 Until 30. August 2018) (in Thai)*(2018), available at <http://www.ipthailand.go.th/th/>.

### III THE BRUSSELS EFFECT AS THEORETICAL FRAMEWORK

The concept of the “Brussels Effect” provides the theoretical framework for our research.<sup>42</sup> It builds on the idea that under certain conditions, the EU is able to externalize its stringent laws and regulations outside its borders to other countries through market mechanisms, resulting in the globalization of its standards.<sup>43</sup> This effect has been discussed in various, often internationally contested, regulatory fields such as emission trading, chemicals, data protection or food safety.<sup>44</sup> We apply this theory to a new context, namely the regulatory field of GIs. Based on the theory we hypothesize that the Thai regulatory system for GI controls and its practical implementation for Thai GI products which are registered as PDO/PGI in the EU are influenced by EU GI control regulations, and that the EU is thereby able to export its standards for GI control to third countries.

We hypothesize the presence of a Brussels Effect since other external factors which could be considered to explain the Thai regulatory approach do not hold in this case. Alternative factors which could explain Thailand’s adoption of EU GI control standards could be its endeavors to comply with the WTO and international trade agreements. Even though Thailand established a system for the protection of GIs due to its obligations under the WTO TRIPS Agreement, WTO law leaves open which kind of system for GI protection a member should implement. Another explanation for the Thai regulatory standards, and another way for the EU to export its standards to third countries than through the Brussels effect, could be Thailand’s endeavors to comply with trade agreements. The EU has indeed concluded a number of trade agreements with third countries which include provisions on GI protection.<sup>45</sup> However, to date and to our knowledge, no trade agreement exists between the EU and

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<sup>42</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 3 (2012).

<sup>43</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 3 (2012).

<sup>44</sup> J. Scott, *From Brussels With Love: The Transatlantic Travels of European Law and the Chemistry of Regulatory Attraction*, 57 *THE AMERICAN JOURNAL OF COMPARATIVE LAW*, 897-942 (2009); G. Shaffer, *The Power of EU Collective Action: The Impact of EU Data Privacy Regulation on US Business Practice*, 5 *EUROPEAN LAW JOURNAL*, 419-437 (1999); G. Shaffer, *Globalization and Social Protection: The Impact of EU and International Rules in the Ratcheting Up of U.S. Privacy Standards*, 25 *YALE JOURNAL OF INTERNATIONAL LAW*, 1-88 (2000); Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 1-68 (2012); Yoshiko Naiki, *Assessing Policy Reach: Japan’s Chemical Policy Reform in Response to the EU’S REACH Regulation*, 22 *JOURNAL OF ENVIRONMENTAL LAW* 171(2010); E. Fahey, *The EU Emission Trading Scheme and the Court of Justice: the High Politics of the indirect promotion of global standards*, 13 *GERMAN LAW JOURNAL* (2012).

<sup>45</sup> For example, the EU – Vietnam and EU – Singapore trade agreements. See <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1922>; <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1827>

Thailand through which the EU could have exported its standards for GI protection to Thailand.

A more likely explanation for the application of EU GI control standards by Thailand is hence a concept identified by Anu Bradford as the Brussels Effect. Anu Bradford has identified five conditions which she argues must all be met for such an extra-territorialization effect to occur: Market power, regulatory capacity, the preference for strict rules, a predisposition to regulate inelastic targets and the non-divisibility of standards.<sup>46</sup> She defines market power in terms of the market size of the standard-setting jurisdiction<sup>47</sup> (in this research, the EU) and understands regulatory capacity as „institutional structures that are capable of producing and enforcing regulations effectively“.<sup>48</sup> The preference for strict rules refers to domestic political preferences for stringent regulatory standards<sup>49</sup>, while the pre-disposition to regulate inelastic targets implies that the targets of regulation cannot simply be moved to another jurisdiction (e.g. consumers).<sup>50</sup> Finally, the non-divisibility of standards means that producers in third countries decide to apply the EU's stricter standards not only to their production that is targeting the EU market but to their worldwide production based on considerations of economies of scale.<sup>51</sup> While Bradford implies that for the Brussels Effect to occur these conditions need to be cumulatively met, follow-up research has found that in practice the effect occurs with only some of the criteria being fulfilled.<sup>52</sup>

Applying these conditions to GIs, we assume that the EU has considerable market power. This is due to the size of its internal market and to the high level of protection granted to GIs and the presence of a consumer base increasingly demanding differentiated food products.<sup>53</sup> We consider the EU's requirements for the control of PDOs/PGIs a standard which, despite being voluntary, producers in Thailand have to meet if they wish to gain access to the EU's market for GIs. Since, internationally, the EU has in place the institutionally most developed system for GI registration<sup>54</sup>, we assume that this holds true for the EU's system of GI controls as well. Consequently, we expect that the EU's control standards are higher than those in other jurisdictions. Compared to other, non-GI products, the EU market for GIs is a niche market which as

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<sup>46</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 10-19 (2012).

<sup>47</sup> *Id.* at, 11.

<sup>48</sup> *Id.* at, 10.

<sup>49</sup> *Id.* at, 14.

<sup>50</sup> *Id.* at, 16-17.

<sup>51</sup> *Id.* at, 17.

<sup>52</sup> D. Sinopoli & K. P. Purnhagen, *Reversed Harmonization or Horizontalization of Standards?: Does WTO Law Facilitate or Constrain the Brussels Effect?*, *WISCONSIN INTERNATIONAL LAW JOURNAL*, 92-119 (2016).

<sup>53</sup> E. Dimara & D. Skuras, *Consumer Demand for Informative Labeling of Quality Food and Drink Products: a European Union Case Study*, *22 JOURNAL OF CONSUMER MARKETING*, 96 (2005).

<sup>54</sup> Gangjee, *WORLD DEVELOPMENT*, 13 (2017).

such is small in terms of the volume of products produced and marketed. However, since GI products are not substitutable with other products in the market due to their unique features, the EU's market power for a product registered as GI in the EU can be considered large. Only the products produced according to the product specification can be sold on this market and especially for GIs from third countries, there is little competitive pressure due to the low number of registered products. Importantly, for this study, we define the EU's market power for GIs in the latter sense.

Next, the EU and its member states have the regulatory capacity to effectively establish and enforce GI standards. The EU also has a clear preference for strict rules regarding GI protection.<sup>55</sup> Moreover, because GIs are a consumer good, the regulatory target cannot be moved to another jurisdiction. It is less clear whether GIs from Thailand are non-divisible. It may be that only a small share of the producers' output is determined for the EU market, while the rest of it is sold on the national market or is exported to non-EU foreign markets where more lenient standards for GI control prevail, not making it worthwhile to adopt the EU's standards for their entire production.

According to Bradford, firms wishing to access the EU's market face two options: To either comply with the EU's more stringent standards, or to entirely forgo its market.<sup>56</sup> The theory holds that the implication of compliance can be a *de facto* or a *de jure* Brussels Effect. The *de facto* effect implies that businesses outside of the EU adapt their business practices to the EU's rules and apply them to their entire production.<sup>57</sup> The *de jure* effect means that those firms which have adapted to the EU's standards lobby their national governments to adopt domestic regulatory standards which meet the higher level of EU laws to avoid a competitive disadvantage on the domestic market.<sup>58</sup> The distinction between the *de facto* and *de jure* effects represents the two levels of analysis in this research, namely that of the regulation of GI controls in the EU and in Thailand (*de jure*) and their implementation in practice on the producer level (*de facto*).

The *de facto* and the *de jure* Brussels Effect can eventually lead to a 'trading up' of standards on the global level.<sup>59</sup> As noted before, the implications of rising standards for GI controls for producers in developing countries seem ambiguous as they may result in both, market access and market closure.<sup>60</sup> This suggests that if standards for GI controls are subject to 'trading

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<sup>55</sup> T. Josling, *The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict*, 57 JOURNAL OF AGRICULTURAL ECONOMICS, 343-346 (2006).

<sup>56</sup> Bradford, NORTHWESTERN UNIVERSITY LAW REVIEW, 5 (2012).

<sup>57</sup> *Id.* at, 6.

<sup>58</sup> *Id.* at.

<sup>59</sup> D. VOGEL, TRADING UP: CONSUMER AND ENVIRONMENTAL REGULATION IN A GLOBAL ECONOMY (Harvard University Press. 1995).

<sup>60</sup> Purnhagen, JOURNAL OF WORLD TRADE, (2015).

up', it is questionable whether this development is actually desirable for developing country producers and what the practical implications would be.

According to Bradford there are several limitations which can prevent a Brussels Effect from occurring.<sup>61</sup> These can be internal<sup>62</sup> or external<sup>63</sup> factors. Internal constraints arise when the EU member states fail to agree on common regulatory goals due to internal diversity or conflicts between them.<sup>64</sup> The EU member states dedicate differing levels of efforts to the protection of GIs. However, as the current standards for GI protection and control were agreed upon by all member states in Regulation 1151/2012, internal disparities are unlikely to limit the externalization of the EU's standards as long as Regulation 1151/2012 is in force.

The external factors relate to constraints imposed by market mechanisms, i.e. the rise of alternative markets<sup>65</sup>, efforts by other states to constrain the EU's regulatory activity<sup>66</sup>, as well as the influence of international institutions.<sup>67</sup> Regarding the latter, Bradford specifically discusses the ability of the WTO to challenge the EU's strict regulations.<sup>68</sup> In the context of GIs, the outcome of the WTO GI dispute suggests that the WTO and other member states do have some ability to constrain the EU's regulatory power in the field of GIs.<sup>69</sup>

In 2003, the US and Australia filed a complaint at the WTO to determine whether the EU's methods of GI protection were in line with the TRIPS Agreement.<sup>70</sup> Amongst other things, they alleged that the EU only allowed GIs from third countries to be registered in the EU when the third country had in place inspection arrangements for GIs which were equivalent to those of the EU.<sup>71</sup> The complainants argued that this provision violated the national treatment principle in Article 3 (1) of the TRIPS Agreement.<sup>72</sup> Handler notes that

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<sup>61</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 48-63 (2012).

<sup>62</sup> *Id.* at, 57-63.

<sup>63</sup> *Id.* at, 48-56.

<sup>64</sup> *Id.* at, 57-63.

<sup>65</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 48-49 (2012).

<sup>66</sup> *Id.* at, 49-54.

<sup>67</sup> *Id.* at, 54-56.

<sup>68</sup> *Id.* at.

<sup>69</sup> M. Handler, *The WTO Geographical Indications Dispute*, 69 *THE MODERN LAW REVIEW* (2006).

<sup>70</sup> Panel Report, *European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs. Complaint by Australia*, WT/DS290/R (March 15, 2005); Panel Report, *European Communities - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs. Complaint by the United States*, WT/DS290/R (March 15, 2005).

<sup>71</sup> Council Regulation (EEC) No 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 1992 O.J. (L208/1). Art. 12

<sup>72</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C.

“the complainants’ greater concern with the ‘equivalence [...]’ condition[s] in the Regulation was that they presented a clandestine attempt to impose European standards of GI protection for foodstuffs throughout the world”.<sup>73</sup> As a result of the WTO’s panel ruling, the EU amended its GI Regulation to bring it in line with WTO law.<sup>74</sup> Yet, the EU is still able to impose strict standards on GI producers if these affect producers from within and outside of the EU in the same way.<sup>75</sup> This suggests that the WTO has only limited capability to restrain a potential Brussels Effect in the field of GIs.

Before turning to the research results, we first outline the socio-legal comparative methodological approach towards answering the research questions.

#### IV METHODOLOGY

Our research draws on the functional method of comparative law, the method of qualitative expert interviews as well as desk research. We explain these methods first before outlining the case selection made for the analysis of the case studies used to analyze the implementation of GI controls in the EU and in Thailand. Finally, we explain the data collection and analysis strategies.

##### A *The functional method of comparative law*

The functional method of comparative law focuses on studying legal solutions provided in different jurisdictions to socio-legal problems that are encountered in both jurisdictions in a similar or in the same way.<sup>76</sup> Essentially, functional comparisons study the function that certain norms, rules and legal institutions fulfil in solving a certain problem.<sup>77</sup> Thereby, the assumption is that in different jurisdictions similar problems are approached with similar solutions, although these solutions can be reached in different ways.<sup>78</sup>

<sup>73</sup> Handler, *THE MODERN LAW REVIEW* 78 (2006).

<sup>74</sup> Council Regulation (EC) No 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 2006 O.J. (L 93/12).

<sup>75</sup> Article 3 (1) of the TRIPS Agreement states that „[e]ach Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property“. This implies that producers from third countries may not be treated differently than EU producers, but it does not prevent the EU from setting high standards for control for both EU and third country producers.

<sup>76</sup> R. Michaels, *The Functional Method of Comparative Law*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 369-372, (M. Reimann & R. Zimmermann eds., 2006).

<sup>77</sup> J. Husa, *Functional Method in Comparative Law - Much Ado About Nothing?*, 2 *EPLJ*, 13-15 (2013).

<sup>78</sup> A. E. Öricü, *Methodology of Comparative Law* 443 (J. M. Smits ed., Edward Elgar 2006).

We applied this method because it “is very suited to micro-level projects due to its focus on particular social problems and their solutions”.<sup>79</sup> We chose this approach over other legal methodological approaches such as that of ‘legal culture’, because the latter focuses on broader patterns of social behavior and attitudes in a given society<sup>80</sup>, and less on the specifically targeted social problems which are of interest to this research.

Contributions by several scholars suggest certain elements which should be taken into account when conducting a functional comparison.<sup>81</sup> These are:

- a functional research question (e.g. how is socio-legal problem X solved?);
- defining the unit of analysis (i.e. the legal systems to be compared and the level of comparison (micro, meso, macro)) and the unit of inquiry (i.e. the object of comparison);
- describing the solution for problem X in both jurisdictions (can include acquisition of data through social sciences methods);
- identifying similarities and/or differences between both jurisdictions;
- explaining the similarities and/or differences discovered and formulation of hypotheses;
- a critical evaluation of the research results and embedding them into the broader context.

The elements listed above provide for a guideline that ensure a structured analysis, yet they are not regarded as analytical steps in the strict sense.<sup>82</sup>

The functional method of comparative law in a ‘law-in-context’ or socio-legal research design can be complemented by social science methods.<sup>83</sup> Mark van Hoecke proposes to conduct interviews with relevant stakeholders to “get a full and concrete view of the law as it works in practice”.<sup>84</sup> This approach suits well the objective of our research, as the aim is not only to analyze the laws and regulations regarding GI controls but also to understand how GI controls are implemented in practice in the EU and in Thailand. Therefore, we drew on the method of qualitative semi-structured expert interviews.

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<sup>79</sup> P. Mahy, *The Functional Approach in Comparative Socio-Legal Research: Reflections Based on a Study of Plural Work Regulation in Australia and Indonesia*, 12 *INTERNATIONAL JOURNAL OF LAW IN CONTEXT*, 422 (2016).

<sup>80</sup> D. Nelken, *Using the Concept of Legal Culture*, 29 *AUSTRALIAN JOURNAL OF LEGAL PHILOSOPHY*, 1-3 (2004).

<sup>81</sup> G. Dannemann, *Comparative Law: Study of Similarities or Differences?*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 406-419, (M. Reimann & R. Zimmermann eds., 2006); Örüçü, 445-449. 2006; Husa, *EPLJ*, 15 (2013).

<sup>82</sup> Dannemann, 406-407. 2006.

<sup>83</sup> Mahy, *INTERNATIONAL JOURNAL OF LAW IN CONTEXT*, 423 (2016).

<sup>84</sup> Van Hoecke, *LAW AND METHOD*, 30 (2015).

### B Expert interviews

Expert interviews provide orientation and knowledge about phenomena in an underexplored field of research in a relatively short time.<sup>85</sup> Thereby, the method contributes to the generation, modification and testing of new theories based on empirical observations.<sup>86</sup>

The expert interview can be considered a special form of a semi-structured interview<sup>87</sup>, which is typically conducted using an interview guide.<sup>88</sup> An interview guide reflects a translation of the research problem and theoretical assumptions about the research topic into interview questions, while at the same time it is an instrument of data collection.<sup>89</sup> Since expert interviews focus on extracting practical and technical knowledge from the interviewee, they are generally more structured and the questions more focused than those used for other types of semi-structured interviews.<sup>90</sup>

### C Case study selection

We took a case study approach to answer the research question on how GI controls are implemented in practice in Thailand and in the EU. We chose a case-based approach due to a lack of previous theoretical studies in this field of research. The approach can hence contribute to theory building.<sup>91</sup> In Thailand, we analyzed the control system of TKR and Kafae Doi Chaang. TKR and Kafae Doi Chaang are studied in the EU's ongoing Strength2Food project.<sup>92</sup> We chose both cases for reasons of enhanced data access and existing expert contacts in Thailand. In the EU, we studied the cheese variety Hessischer Handkäse from the German Federal State of Hesse. We focus on a single member state because the individual member states implement EU GI regulations and it was beyond the scope of this research to study their practical implementation at different levels of operation for the entire EU. We focus on Germany and on a product from the Federal State of Hesse due to the language skills of

<sup>85</sup> A. Bogner, et al., *Introduction: Expert Interviews – An Introduction to a New Methodological Debate*, in *INTERVIEWING EXPERTS 2*, (A. Bogner, et al. eds., 2009).

<sup>86</sup> U. FLICK, *QUALITATIVE SOZIALFORSCHUNG. EINE EINFÜHRUNG* 27 (Burghard König ed., Rowohlt Taschenbuch Verlag. 2016); S. LAMNEK & C. KRELL, *QUALITATIVE SOZIALFORSCHUNG* 95-98 (Beltz Verlag 6th ed. 2016).

<sup>87</sup> *Id.* at, 448.

<sup>88</sup> C. Helfferich, *Leitfaden- und Experteninterviews*, in *HANDBUCH METHODEN DER EMPIRISCHEN SOZIALFORSCHUNG* 565-570, (N. Baur & J. Blasius eds., 2015).

<sup>89</sup> R. KAISER, *QUALITATIVE EXPERTENINTERVIEWS. KONZEPTIONELLE GRUNDLAGEN UND PRAKTISCHE DURCHFÜHRUNG* 52 (H.-G. Ehrhart, et al. eds., Springer VS. 2014).

<sup>90</sup> Helfferich, 571-572. 2015.

<sup>91</sup> Kathleen M. Eisenhardt, *Building Theories from Case Study Research*, 14 *THE ACADEMY OF MANAGEMENT REVIEW*, 532-550 (1989).

<sup>92</sup> See <https://www.strength2food.eu/>. This research received funding from the EU's Horizon 2020 research and innovation programme under grant agreement No. 678024.

the researchers and for reasons of data access. Images of Hessischer Handkäse, TKR and Kafae Doi Chaang are presented in Annex A.

#### *D Data collection strategy*

We conducted expert interviews with experts who are involved in the system of GI controls directly or indirectly. We selected the interviewees based on purposive and snowball sampling.<sup>93</sup> In Hesse, Germany, we contacted five stakeholders directly via e-mail and telephone (i.e. the competent authority and processors<sup>94</sup> of Hessischer Handkäse). A face-to-face interview was conducted with one processor and with the competent authority. Moreover, we were able to attend a GI control at the premises of a second processor.

In Thailand, the first contact was made with a researcher from Kasetsart University in Bangkok who is involved the EU's Strength2Food project and who provided the first contact details of possible interviewees. In total, five potential interviewees were contacted via e-mail (representative of the UN FAO Regional Office for Asia and the Pacific, two researchers, a representative from the Department of Intellectual Property (DIP) of the Thai Ministry of Commerce (competent authority) and a representative from a certification body (Bioagricert) active in Thailand). An interview via Skype could be realized with the representative from the UN FAO Regional Office for Asia and the Pacific and a researcher from Kasetsart University (who is involved in the Strength2Food project). We interviewed a representative from the DIP from the Thai Ministry of Commerce via the audio call function of the "Line"-application. A list of all interviewees and the interview guides used for the conversations are as available in Appendix B and Appendix C.

The interviews were conducted in October and November 2018. Each interview lasted thirty minutes to one hour. Interviews with German stakeholders were conducted in German. Experts from Thailand were interviewed in English. We recorded all interview conversations after having received the informed consent of the interviewee(s) and took additional notes by hand during and after the interview conversation. Following, we transcribed the interviews and anonymized the transcriptions. The transcription was done using the transcription rules suggested by Kuckartz<sup>95</sup> and Jefferson<sup>96</sup>. We considered

<sup>93</sup> Martin N Marshall, *Sampling for Qualitative Research*, 13 FAMILY PRACTICE, 523 (1996).

<sup>94</sup> Contact was made with processors only as the product specification stipulates that merely the processing stage of the production of Hessischer Handkäse has to take place within the specified geographical area. See Publication of an Application Pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 2009 O.J. (C 320/47). This will be outlined in more detail in section 6.1.1.

<sup>95</sup> U. KUCKARTZ, QUALITATIVE INHALTSANALYSE. METHODEN, PRAXIS, COMPUTERUNTERSTÜTZUNG 167-168 (Beltz Juventa 3rd ed. 2016).

<sup>96</sup> as cited in id. at.

applying a simple framework for transcription to be sufficient to meet the aim of this research, as the focus is on extracting (factual) knowledge rather than subjective opinions or feelings.

We drew information to answer the research questions from written laws, relevant previous literature and from the internet. Our analysis of the practical implementation of GI controls in Thailand bases on two case study reports prepared for the EU's Strength2Food project. These case study reports provide an in-depth analysis of the TKR<sup>97</sup> and Kafae Doi Chaang<sup>98</sup> cases.

### *E Data analysis strategy*

We used the qualitative data analysis software MAXQDA to categorize and code the primary data collected through the expert interviews.<sup>99</sup> We applied the procedure for a structuring content analysis suggested by Philipp Mayring (see Appendix D for a visualization).<sup>100</sup> The aspects mentioned during the interviews relevant to answer the research questions could be extracted and separated from irrelevant information. We created the categories for analysis based on a deductive (or a-priori) approach.<sup>101</sup> This implies that the analytical categories derive from the research question(s) and theoretical background, and are created independently from the empirical data.<sup>102</sup> We created overall categories, which we then further split into subcategories.<sup>103</sup> All categories and subcategories together build the category system.<sup>104</sup> Each category was clearly defined and delineated to enable the coherent coding of the primary data.<sup>105</sup> Although the deductive approach implies that the categories are generally created before working with the primary data, it is possible to amend the category system at a later stage.<sup>106</sup> The category system created for this research is provided in Appendix E.

<sup>97</sup> O. Napasintuwong, *PGI TKR Hom Mali Rice in Thailand*, in *SUSTAINABILITY OF EUROPEAN FOOD QUALITY SCHEMES. MULTI-PERFORMANCE, STRUCTURE, AND GOVERNANCE OF PDO, PGI, AND ORGANIC AGRI-FOOD SYSTEMS* 87-109, (F. Arfini & V. Bellassen eds., 2019)

<sup>98</sup> A. Lilavanichakul, *PGI Doi Chaang Coffee in Thailand*, in *SUSTAINABILITY OF EUROPEAN FOOD QUALITY SCHEMES. MULTI-PERFORMANCE, STRUCTURE, AND GOVERNANCE OF PDO, PGI, AND ORGANIC AGRI-FOOD SYSTEMS* 287-302, (F. Arfini & V. Bellassen eds., 2019).

<sup>99</sup> FLICK, 386-421. 2016.

<sup>100</sup> P. MAYRING, *QUALITATIVE INHALTSANALYSE. GRUNDLAGEN UND TECHNIKEN* 98, 104 (Beltz 12th ed. 2015).

<sup>101</sup> *Id.* at, 97-99.

<sup>102</sup> *Id.* at, 97.

<sup>103</sup> *Id.* at.

<sup>104</sup> *Id.* at.

<sup>105</sup> *Id.* at.

<sup>106</sup> *Id.* at, 99.

We extracted the information from the interview transcriptions. We summarized, complemented and triangulated the coded material with the information obtained through laws/regulations, literature, the internet and the Strength2Food case study reports. We summarized the data per analytical category.<sup>107</sup>

## V REGULATION OF GI CONTROLS IN THE EU/GERMANY AND IN THAILAND

In view of answering the first research question, we first analyze and compare the regulation of GI controls in the EU/Germany and in Thailand. As part of the analysis we also took a detailed look at the German regulatory framework for the regulation of GI controls to provide the background necessary to understand the practical implementation of GI controls for the German case study.

### A Regulation of GI controls in the EU/Germany

#### 1 EU

Title V, Chapter I of Regulation 1151/2012 sets out the obligations and principles for the EU's official control system.<sup>108</sup> The implementation of controls is a prerequisite for registering a product's name as PDO/PGI in the EU. The body who will be responsible for carrying out the controls has to be indicated in the application for the registration of a product.<sup>109</sup>

There are two aims of the official controls: First, to verify producers'<sup>110</sup> compliance with the product specification before a product is placed on the market.<sup>111</sup> The costs of these controls may be transferred to the producers which are subject to the control.<sup>112</sup> Second, to prevent the misuse of the protected name in the market place.<sup>113</sup> The scope of protection for registered names prohibits (a) direct or indirect commercial use for products which are not covered by registration, (b) misuse, imitation or evocation, (c) any other false or misleading indication as to the provenance, origin, nature or essential

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<sup>107</sup> *Id.* at, 103.

<sup>108</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1).

<sup>109</sup> *Id.* at. Art. 8 (1) (a)

<sup>110</sup> The term producer will be used hereinafter when referring to all stakeholders of a GI product supply chain who are subject to GI controls. This can be producers, processors, wholesalers/retailers and traders.

<sup>111</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 37

<sup>112</sup> *Id.* at. Art. 37 (1)

<sup>113</sup> *Id.* at. Art. 38

qualities of the product and (d) any other practice liable to mislead the consumer as to the origin of the product.<sup>114</sup>

Regulation 1151/2012 delegates the responsibility of controlling the PDO/PGI system to the EU member states. They shall designate the competent authority or authorities that are responsible for the implementation of inspections to verify compliance with the product specification<sup>115</sup> and the monitoring of the use of registered names in the market.<sup>116</sup> Public authorities carrying out controls must offer adequate guarantees of objectivity and impartiality.<sup>117</sup>

The member state competent authorities are able to delegate control tasks relating to the verification of producers' compliance with the product specification to one or more control bodies<sup>118</sup> operating as product certification bodies.<sup>119</sup> These must be accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65 (general requirements for bodies operating product certification systems; now ISO 17065<sup>120</sup>).<sup>121</sup> The accreditation of the product certification body may be conducted either by a national accreditation body within the EU<sup>122</sup> or by an accreditation body from outside the EU which is a signatory of a multilateral recognition arrangement under the auspices of the International Accreditation Forum (IAF).<sup>123</sup> Marie-Vivien and Vagneron note that "the term "certification body", introduced by the 2006 regulation<sup>124</sup>, marks the inclusion of PDO/PGI in the general standards for product certification".<sup>125</sup>

Article 45 (1) (a) of Regulation 1151/2012 entitles producer groups to contribute to the control tasks by "ensuring that the quality, reputation and

<sup>114</sup> *Id.* at. Art. 13 (1)

<sup>115</sup> *Id.* at. Art. 36 (3) (a)

<sup>116</sup> *Id.* at. Art. 36 (3) (b)

<sup>117</sup> *Id.* at. Art. 36 (2)

<sup>118</sup> Within the meaning of point 5 of Article 2 of Regulation 882/2004, which defines a "control body" as "an independent third party to which the competent authority has delegated certain control tasks".

<sup>119</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 37 (1) (b), Art. 39 (1)

<sup>120</sup> See <https://www.iso.org/standard/26796.html>

<sup>121</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 39 (2)

<sup>122</sup> Operating in accordance with "Regulation 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93".

<sup>123</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 39 (3) (a) and (b)

<sup>124</sup> Referring to "Regulation 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs".

<sup>125</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 110 (2017).

authenticity of their products are guaranteed on the market (...),<sup>126</sup> also comprising carrying out activities related to compliance of a product with the product specification.<sup>127</sup>

Next to carrying out official controls, the member states are responsible for enforcing the rules set out by Regulation 1151/2012 and for taking measures in case breaches are found.<sup>128</sup> Enforcement measures and sanctions are not determined by Regulation 1151/2012, but “Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use” of a PDO/PGI.<sup>129</sup> Member states shall designate the authorities that are responsible for taking these steps according to the procedures in place in each member state.<sup>130</sup>

The member states must report their control activities to the EU as part of their single multi-annual national control plan<sup>131</sup> in accordance with “Regulation 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules”<sup>132</sup>.<sup>133</sup> This report shall include information on aspects such as the results of the audits, cases of non-compliance and enforcement action taken by the member states.<sup>134</sup>

Regarding products from third countries which are registered as PDO/PGI in the EU, Regulation 1151/2012 stipulates that the verification of compliance with the product specification before the product is placed on the market shall be carried out either by one or more public competent authorities designated

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<sup>126</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 45 (1) (a)

<sup>127</sup> *Id.* at. Art. 45 (1) (d)

<sup>128</sup> *Id.* at. Art. 13 (3), Art. 38 para. 2

<sup>129</sup> *Id.* at. Art. 13 (3) para. 1

<sup>130</sup> *Id.* at. Art. 13 (3) para. 2

<sup>131</sup> The EU General Food Law (Regulation 178/2002) requires each EU member state to monitor and check the implementation of food and feed law. To do so, they must prepare a multi-annual national control plan (see Article 41 of Regulation 882/2004). The plan sets out the member states’ objectives regarding the control of compliance with food and feed law and specifies the available instruments and structures to achieve the defined objectives (see [https://www.bvl.bund.de/EN/01\\_Food/\\_01\\_tasks/02OfficialFoodControl/02\\_MANCP/MANCP\\_node.html](https://www.bvl.bund.de/EN/01_Food/_01_tasks/02OfficialFoodControl/02_MANCP/MANCP_node.html)).

<sup>132</sup> see Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on Official Controls Performed to Ensure the Verification of Compliance with Feed and Food Law, Animal Health and Animal Welfare Rules, 2004 O.J. (L 165).

<sup>133</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 40 (1)

<sup>134</sup> *Id.* at. Art. 40 (2); Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on Official Controls Performed to Ensure the Verification of Compliance with Feed and Food Law, Animal Health and Animal Welfare Rules, 2004 O.J. (L 165). Art. 44

by the third country, or by one or more product certification bodies.<sup>135</sup> For control bodies certifying products originating in third countries, Regulation 1151/2012 does not set out requirements as to their accreditation, although the former GI Regulation 510/2006 explicitly required product certification bodies carrying out controls for third country GIs to be accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65 as of May 1<sup>st</sup> 2010.<sup>136</sup> Marie-Vivien and Vagneron argue that since this provision has been dropped in the 2012 Regulation, third countries are in principle left with a range of options as to how to implement GI controls for products which are registered as PDO/PGI in the EU.<sup>137</sup>

## 2 Germany

The Federal Ministry of Justice and Consumer Protection and the Federal Ministry of Food and Agriculture are the competent authorities for GIs for agricultural products and foodstuffs in Germany.<sup>138</sup> The Federal Government is responsible for policy and federal legislation on GIs. The GI control system is decentralized.<sup>139</sup> § 134 (1) German Trademark Act<sup>140</sup> provides that the implementation of the control tasks stipulated in EU Regulation 1151/2012 lies with the competent authorities of the *Länder*.<sup>141</sup> The *Länder* governments can delegate control tasks to private control bodies or include them in the inspections.<sup>142</sup> The control bodies are accredited by the German National Accreditation Body (Deutsche Akkreditierungsstelle GmbH — DAkkS).<sup>143</sup>

§ 134 (2) of the Trade Mark Act entitles the staff of the competent authorities carrying out official controls on producers producing and placing on the market agricultural products and foodstuffs with a GI to:

<sup>135</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 37 (2) (a) and (b)

<sup>136</sup> Council Regulation (EC) No 510/2006 of 20 March 2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 2006 O.J. (L 93/12). Art. 11 (3)

<sup>137</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 112 (2017).

<sup>138</sup> European Union Intellectual Property Office, *Protection and Control of Geographical Indications for Agricultural Products in the EU Member States*, European Union Intellectual Property Office (December 2017), available at <https://publications.europa.eu/en/publication-detail/-/publication/0c120946-6eb3-11e8-9483-01aa75ed71a1/language-en>.

<sup>139</sup> *Id.* at.

<sup>140</sup> *Markengesetz [MarkenG] [Trademark Act]*, Oct. 15 1994, *BGBL*. I S. 3082; 1995 I S. 156; 1996 I S. 682, das zuletzt durch Artikel 1 des Gesetzes vom 11. Dezember 2018 (*BGBL*. I S. 2357) geändert worden ist (Ger.), available at <https://www.gesetze-im-internet.de/markeng/BJNR308210994.html>.

<sup>141</sup> *Id.* at. § 134 (1)

<sup>142</sup> *Id.* at. § 139 (2)

<sup>143</sup> European Union Intellectual Property Office, 68. December 2017.

- Enter and inspect business premises and properties, sales facilities and means of transport<sup>144</sup>;
- Take samples<sup>145</sup>;
- View and inspect business records<sup>146</sup>;
- Request information<sup>147</sup>.

This provision applies to the controls carried out in the market place<sup>148</sup> and for controls on imported and exported GIs.<sup>149</sup> The control costs are according to Article 37 (1) of Regulation 1151/2012 determined by the laws of the *Länder*.<sup>150</sup>

According to the General Administrative Regulation on Framework Controls<sup>151</sup>, the German multi-annual national control plan consists of a framework plan and sixteen plans for each Federal State.<sup>152</sup> Consequently, the competent authorities of the Federal States are responsible for incorporating their control activities on GIs therein.<sup>153</sup> The competent authorities of the *Länder* are also responsible for enforcing GI law and have legal power to take action in case of non-compliance.<sup>154</sup> The Trade Mark Act allows administrative sanctions (a regulatory fine of up to 10 000 euros) to be imposed on producers who refuse compliance with inspectors' requests under §134 of the Trade Mark Act (see bullet points above).<sup>155</sup> The highest responsible *Länder* authorities can apply such fines according to Article 36 (2) of the German Act on Administrative Offences.<sup>156</sup> The unlawful use of a GI in business activities can be punished

<sup>144</sup> Markengesetz [MarkenG] [Trademark Act], Oct. 15 1994, BGBl. I S. 3082; 1995 I S. 156; 1996 I S. 682, das zuletzt durch Artikel 1 des Gesetzes vom 11. Dezember 2018 (BGBl. I S. 2357) geändert worden ist (Ger.). § 134 (2) para. 1

<sup>145</sup> *Id.* at. § 134 (2) para. 2

<sup>146</sup> *Id.* at. § 134 (2) para. 3

<sup>147</sup> *Id.* at. § 134 (2) para. 4

<sup>148</sup> *Id.* at. § 134 (2)

<sup>149</sup> *Id.* at. § 134 (4)

<sup>150</sup> *Id.* at. § 134 (6)

<sup>151</sup> *Allgemeine Verwaltungsvorschrift über Grundsätze zur Durchführung der amtlichen Überwachung der Einhaltung der Vorschriften des Lebensmittelrechts, des Rechts der tierischen Nebenprodukte, des Weinrechts, des Futtermittelrechts und des Tabakrechts [AVV Rahmen-Überwachung – AVV RÜb], June 3 2008. Zuletzt geändert durch Verwaltungsvorschrift vom 15. Februar 2017 (BAnz AT 17.02.2017 B3) (Ger.), available at [http://www.verwaltungsvorschriften-im-internet.de/bsvwbund\\_03062008\\_3158100140002.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_03062008_3158100140002.htm).*

<sup>152</sup> *Id.* at. § 10

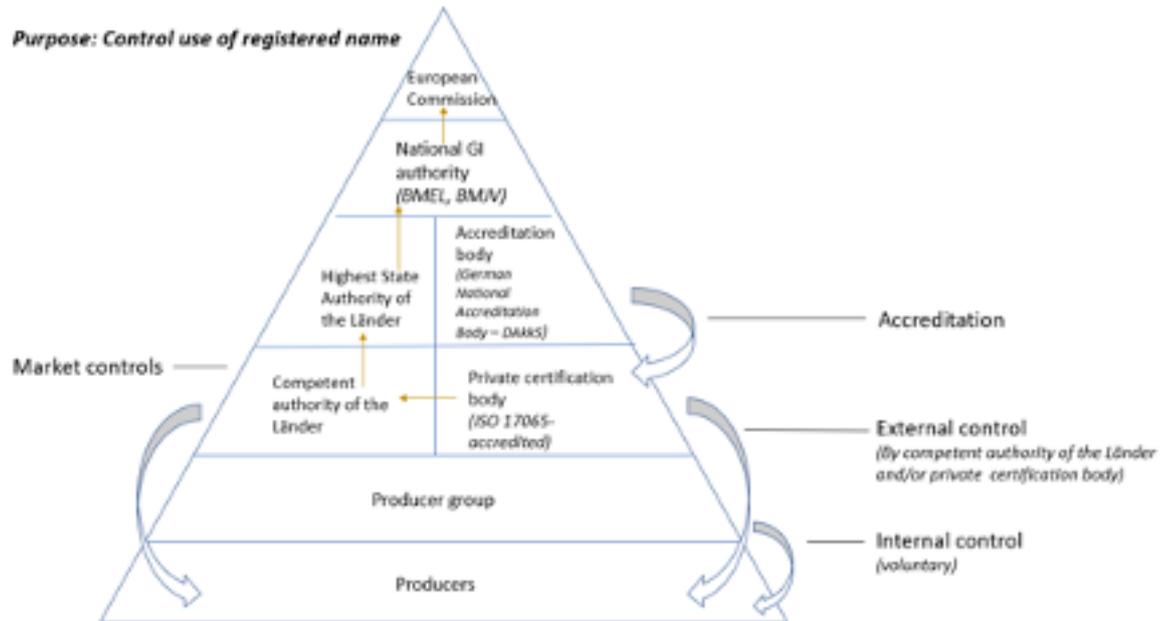
<sup>153</sup> Auditors RP Giessen, personal communication, 24 October 2018.

<sup>154</sup> European Union Intellectual Property Office, 71-72. December 2017.

<sup>155</sup> Markengesetz [MarkenG] [Trademark Act], Oct. 15 1994, BGBl. I S. 3082; 1995 I S. 156; 1996 I S. 682, das zuletzt durch Artikel 1 des Gesetzes vom 11. Dezember 2018 (BGBl. I S. 2357) geändert worden ist (Ger.). § 145 (3)

<sup>156</sup> *Gesetz über Ordnungswidrigkeiten [OWiG] [Act on Regulatory Offences], Feb. 19, 1987 (BGBl. I S. 602), das zuletzt durch Artikel 3 des Gesetzes vom 17. Dezem-*

Figure 3: GI control system in the EU/Germany



Source: Depiction by the authors. The thick blue arrows show the hierarchy between stakeholders regarding GI controls (from top to bottom). The brown arrows indicate the direction of reporting on GI controls (from right to left and bottom to top). “BMEL” stands for Federal Ministry of Food and Agriculture. “BMJV” stands for Federal Ministry of Justice and Consumer Protection.

with up to two years of imprisonment or a criminal fine.<sup>157</sup> Figure 3 summarizes the EU/German GI control system.

### *B Regulation of GI controls in Thailand*

The Thai GI Act requires producers’ compliance with the GI product specification, prohibits the unlawful use of protected names in the market, and specifies the procedures and penalties in case of non-compliance with these rules.<sup>158</sup> Section 27 of the Act deems it unlawful to (1) use a geographical indication to show or mislead other persons as to the true origin of the good after the good has been registered<sup>159</sup> and to (2) “use a geographical indication in any manner

*ber 2018 (BGBl. I S. 2571) geändert worden ist, available at [https://www.gesetze-im-internet.de/owig\\_1968/BJNR004810968.html](https://www.gesetze-im-internet.de/owig_1968/BJNR004810968.html). Art. 36 (2)*

<sup>157</sup> Markengesetz [MarkenG] [Trademark Act], Oct. 15 1994, BGBl. I S. 3082; 1995 I S. 156; 1996 I S. 682, das zuletzt durch Artikel 1 des Gesetzes vom 11. Dezember 2018 (BGBl. I S. 2357) geändert worden ist (Ger.). § 144 (1)

<sup>158</sup> (Unofficial) Act on Protection of Geographical Indication B.E.2546(2003) (Thai.). Sections 25, 26, 27 and 39

<sup>159</sup> *Id.* at. Section 27 (1)

which causes confusion or misunderstanding as to the geographical origin of the goods and the quality, reputation or any other characteristic of the goods so as to cause damage to other traders”.<sup>160</sup> However, the Thai GI Act neither requires controls to be implemented as a prerequisite for registering a product nor after a product has been registered.

GI controls in Thailand are only a requirement for the use of the Thai national GI logo, which is regulated by the “Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008”<sup>161</sup>.<sup>162</sup> Thai producers have to apply for authorization to use the national GI logo at the DIP.<sup>163</sup> The DIP is the competent authority dealing with matters concerning GI application, registration and enforcement under the Thai GI Act.<sup>164</sup> The DIP acts under the auspices of the Thai Ministry of Commerce.<sup>165</sup> The authorization for the use of the national GI logo is valid for a period of two years after which producers have to apply for renewed authorization.<sup>166</sup> To receive authorization to use the GI logo, producers have to implement a system of quality control.<sup>167</sup>

The “Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008” requires users of the GI logo to establish a working manual and control plan.<sup>168</sup> The former is the reference against which the quality of the product will be controlled and indicates standards for production and traceability.<sup>169</sup> The latter determines the responsible actors, identifies crucial points of control, specifies the corresponding methods of inspection and stipulates sanctions.<sup>170</sup> Both the working manual and the control

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<sup>160</sup> *Id.* at. Section 27 (2)

<sup>161</sup> This translation is based on Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 113 (2017). All other translations of Thai laws and other Thai sources which are not available in English were made using Google Translate.

<sup>162</sup> *Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008 (Thai.)*, available at <https://www.ipthailand.go.th/th/>.

<sup>163</sup> *Id.* at. Section 2

<sup>164</sup> Lertdhamtewe, *THE JOURNAL OF WORLD INTELLECTUAL PROPERTY*, 121 (2014).

<sup>165</sup> *Id.* at.

<sup>166</sup> Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008 (Thai.). Section 4

<sup>167</sup> GI Thailand OFFICIAL Channel, *Procedure of Control System and Process of Thai Logo's Permission (in Thai)* (Nov. 21, 2017), available at <https://www.youtube.com/watch?v=nN-Fo7KHXXE>. This video file is published on YouTube in Thai. The interviewee from the DIP Thailand shared an unpublished version with English subtitles which is on file with the authors.

<sup>168</sup> Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008 (Thai.). Section 1

<sup>169</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017.

<sup>170</sup> *Id.* at.

plan must comply with the product specification based on which the GI was registered.<sup>171</sup>

The Thai control system requires producers to implement self-controls based on the working manual and control plan.<sup>172</sup> Furthermore, external controls on producers' compliance with the control manual and control plan have to be implemented at least once a year.<sup>173</sup> The costs of control have to be borne by the producers.<sup>174</sup> External controls can either be carried out by a Provincial Committee or by a certification body.<sup>175</sup> Provincial Committees are public/private control bodies which are composed of individuals from the DIP, local authorities and producers.<sup>176</sup> The Provincial Committee can also delegate control tasks to other public bodies, such as local committees.<sup>177</sup> The inspectors must be knowledgeable and experienced and be able to carry out inspections in a fair manner.<sup>178</sup>

Certification bodies carrying out controls operate on behalf of and under supervision of the DIP.<sup>179</sup> Like in the EU, certification bodies have to be accredited for certifying GIs by an accreditation body.<sup>180</sup> In Thailand, the National Bureau of Agricultural Commodity and Food Standard (ACFS), in cooperation with the Thai Industrial Standards Institute<sup>181</sup> (TISI) (a Department of the Thai Ministry of Industry), accredits control bodies for agricultural commodities and food products under the National Standardization Act B.E. 2551 (2008)<sup>182, 183</sup>. According to Marie-Vivien and Vagneron, the ACFS can currently only accredit certification bodies for GIs based on current Thai standards for GI certification which are not internationally recognized.<sup>184</sup> To become an internationally recognized GI accreditation body based on the ISO 17065 standard, the ACFS has to make a request at the IAF.<sup>185</sup> For the time being, the accreditation of certification bodies based on the ISO 17065 standard is therefore done by non-Thai accreditation bodies.<sup>186</sup>

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<sup>171</sup> *Id.* at.

<sup>172</sup> *Id.* at.

<sup>173</sup> *Id.* at.

<sup>174</sup> *Id.* at.

<sup>175</sup> *Id.* at.

<sup>176</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 115 (2017).

<sup>177</sup> *Id.* at.

<sup>178</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017.

<sup>179</sup> Department of Intellectual Property, Institutional Aspects of Geographical Indications Administration in Thailand 21/10/2015. 2015.

<sup>180</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017.

<sup>181</sup> See <https://www.tisi.go.th/home/en>

<sup>182</sup> Accessible in English via [http://www.acfs.go.th/eng/standard\\_act.php](http://www.acfs.go.th/eng/standard_act.php)

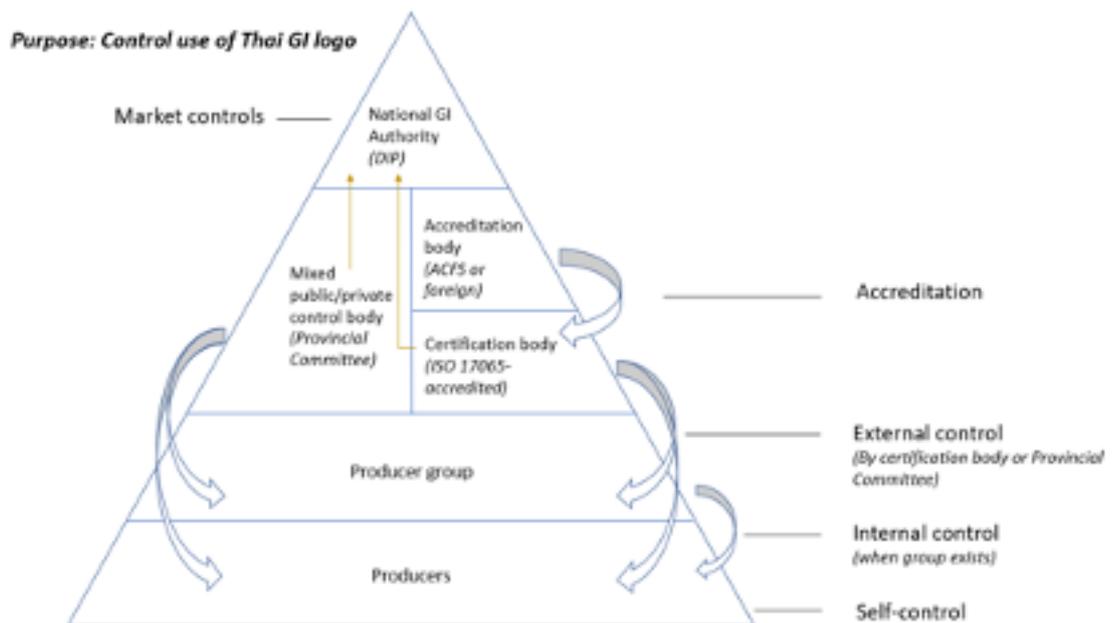
<sup>183</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 114 (2017).

<sup>184</sup> *Id.* at.

<sup>185</sup> *Id.* at.

<sup>186</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018).

Figure 4: GI control system in Thailand



Source: Adapted from<sup>187</sup>

Note: The thick blue arrows show the hierarchy between stakeholders regarding GI controls (from top to bottom). The brown arrows which are placed within the pyramid indicate the direction of reporting on GI controls (from bottom to top).

The results of the external control conducted by a private certification body (certificate of compliance) or by a Provincial Committee (control report) are submitted to the DIP.<sup>188</sup> The DIP is also responsible for enforcing the rules on the use of the Thai GI logo.<sup>189</sup> In case of non-compliance with the requirements, the “Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008” stipulates that the DIP can request the licensee to give a statement or to send documents.<sup>190</sup> The DIP can revoke the license to use the logo from the producer in case of misuse, who then has to suspend the use of the logo.<sup>191</sup> The Thai GI control system is depicted in Figure 4.

### *C Comparison of the EU/German and the Thai regulation of GI controls*

A comparison of EU/German and the Thai GI control systems suggests some fundamental differences at the institutional level and regarding the purpose of implementing GI controls. Yet, the governance and requirements for the implementation of controls are rather similar in both jurisdictions (see Appendix F for a structured comparison).

In both the EU/Germany and in Thailand the GI authority is responsible for the implementation of GI controls and for the enforcement of the relevant laws. In Thailand, the responsible body is the national competent authority. In the EU, this is the competent authority designated by the EU member states. In Germany, the responsible body is the competent authority of the respective *Länder*, and hence there is an extra layer in the hierarchy of public bodies which are part of the control system. This can be attributed to the country’s federal structure and does not present a difference in the regulatory approach as such.

However, an important difference at the institutional level is that in Germany, GIs are the responsibility of the Ministry of Justice and Consumer Protection and the Ministry of Food and Agriculture. Similarly, in most of the German *Länder*, GI controls are the responsibility of the ministries for agriculture and/or consumer protection.<sup>192</sup> In contrast, in Thailand, GI controls are the responsibility of the Intellectual Property Department of the Ministry of Commerce. The different institutional responsibilities can be explained by the history of GI protection in both jurisdictions. In the EU, GIs are embedded within the framework of the CAP and are the main pillar of the EU’s food

<sup>188</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017; Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>189</sup> Department of Intellectual Property Regulation for Thai Geographical Indication Logo Approval B.E. 2008 (Thai.). Section 3

<sup>190</sup> *Id.* at. Section 3

<sup>191</sup> *Id.* at.

<sup>192</sup> European Union Intellectual Property Office, 73-97. December 2017.

quality policy.<sup>193</sup> A regulatory framework for GIs already existed before the adoption of the WTO's TRIPS Agreement.<sup>194</sup> Therefore, the PDO/PGI scheme can be said to belong to the broader body of EU food law and it is linked to other Regulations in the field of food law (e.g. the official controls Regulation 882/2004 and the EU General Food Law (Regulation 178/2002)).<sup>195</sup> Since in the EU, GI protection exists only for agricultural products and foodstuffs, all GI producers are at the same time subject to food safety requirements. The allocation of competencies for the control of GIs with the authorities responsible for the controlling the implementation of food (safety) law can hence facilitate practical implementation.

In Thailand, *sui generis* GI protection only emerged in view of fulfilling the country's obligations under the TRIPS Agreement.<sup>196</sup> As a result, GIs are the responsibility of the Department of Intellectual Property, which has no direct relation to matters of food and agriculture. Since Thailand provides for protection of GIs beyond agricultural products and foodstuffs, GI controls are not as obviously linked to food law in general. For the implementation of controls on GIs for agricultural products and foodstuffs this implies that the national authority's competencies and experience in implementing such controls might be more limited than in the EU.<sup>197</sup>

Next to this difference at the institutional level, the EU/German and the Thai control systems differ regarding their purpose of control. In the EU, GI controls are implemented for the purpose of controlling the use of the protected name. This is intrinsically linked to the use of the EU PDO/PGI logo (see Figure 1), which is mandatory for any producer wishing to use the protected name.<sup>198</sup> Besides, the implementation of controls is a prerequisite for registering a name as PDO/PGI. As opposed to the EU, in Thailand the regulation of controls is not included in the main regulatory act on GIs but in a separate legal act. GI controls only aim at the use of the Thai GI logo and the use of the protected name does not have to be controlled. One interviewee

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<sup>193</sup> Becker, *ESTEY CENTRE JOURNAL OF INTERNATIONAL LAW AND TRADE POLICY*, 112 (2009).

<sup>194</sup> O'CONNOR, 123-162. 2004.

<sup>195</sup> see Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 Laying Down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority and Laying Down Procedures in Matters of Food Safety, 2002 O.J. (L 31/1); Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on Official Controls Performed to Ensure the Verification of Compliance with Feed and Food Law, Animal Health and Animal Welfare Rules, 2004 O.J. (L 165).

<sup>196</sup> Lertdhamtewe, *THE JOURNAL OF WORLD INTELLECTUAL PROPERTY*, 114 (2014).

<sup>197</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018).

<sup>198</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 12 (3)

explained that on the one hand “in Thailand [...] it is understood, because the model of legislation was obviously Europe, that control is an important factor to recognize GIs”. However, on the other hand, “it was not recognized as a primary factor for the registration of GIs [...]”.<sup>199</sup> As a result, the system of GI control emerged separately from the GI registration system. Arguably, this does not only present a loophole in the Thai legislation but might also present difficulties for the protection of GIs in foreign markets such as the EU.<sup>200</sup>

Despite this, the governance structures for GI controls are similar. The implementation of controls is supervised by the competent authorities in both the EU/Germany and in Thailand. Likewise, the verification of compliance with the product specification can be done either by public or by private control bodies. Private certification bodies have to be accredited according to international standards in the EU and in Thailand. In the EU, public control is carried out by the competent authority and in Thailand public control is conducted by Provincial Committees, which are supervised by the competent authority.

However, there seems to be some confusion about the role of the Provincial Committees in the Thai control system. Different data sources classify them as either an internal control body<sup>201</sup> or as an external control body<sup>202</sup>. One interviewee stated that passing the control by a Provincial Committee is considered equal to having passed control by a control body.<sup>203</sup> However, she explained that Provincial Committee controls in Thailand are sometimes called internal controls because the Provincial Committee and the producers together control the compliance with the control manual and control plan at the Provincial level.<sup>204</sup> On the one hand, this suggests that the designation of Provincial Committees as an internal control body can refer to the level on which they operate, i.e. within the Thai provinces and not the national level. On the other hand, the Provincial Committees can take the function of an internal control body in the absence of a producer group<sup>205</sup>, as producer groups do not play a central role in the organization of GI systems in Thailand.<sup>206</sup> Pro-

<sup>199</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018).

<sup>200</sup> *Id.* at.

<sup>201</sup> Department of Intellectual Property, Institutional Aspects of Geographical Indications Administration in Thailand 21/10/2015. 2015.

<sup>202</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 115 (2017).

<sup>203</sup> Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>204</sup> *Id.* at.

<sup>205</sup> *Id.* at.

<sup>206</sup> M. Canavari, et al., *Geographical Indications: Outlook on the European and Thai Systems and Overview of EU Gatekeepers Perceptions Towards GI Fruit and Coffee Products Proceeding from Thailand*, Dipartimento di Economia e Ingegneria agrarie, Alma Mater Studiorum - University of Bologna, Bologna, Italy - Bioagrigo-op srl, Casalecchio di Reno (BO), Italy - Thai-Italian Chamber of Commerce(2010), available at [https://www.feedingknowledge.net/home?p\\_p\\_id=1\\_WAR\\_feeding\\_knowledgeportlet&p\\_p\\_lifecycle=2&p\\_p\\_state=popup&p\\_p\\_mode=view&p\\_p\\_cacheability=cacheLevelPage&\\_1\\_WAR\\_feeding\\_knowled](https://www.feedingknowledge.net/home?p_p_id=1_WAR_feeding_knowledgeportlet&p_p_lifecycle=2&p_p_state=popup&p_p_mode=view&p_p_cacheability=cacheLevelPage&_1_WAR_feeding_knowled)

ducers are involved in the Provincial Committees.<sup>207</sup> They are hence not fully independent and therefore appear to be an internal rather than external control entity. Notably, if Provincial Committees are considered an internal control body, no external control would be mandatory for the use of the Thai GI logo. All in all, it seems questionable whether the Thai Provincial Committees are comparable to what is considered a competent authority in the EU.

The comparison of the two regulatory approaches reveals that GI controls on the market are the responsibility of the competent authority in both the EU/Germany and in Thailand. However, the results of the interviews indicate that in Thailand the market controls are not systematically implemented.<sup>208</sup> In contrast, the systematic implementation of GI controls to verify producers' compliance with the GI product specification is a condition for Thai GIs which are registered as PDO/PGI in the EU due to the provisions of EU law. Following, we analyze and compare the practical implementation of GI controls in the EU/Germany and in Thailand.

## VI PRACTICAL IMPLEMENTATION OF GI CONTROLS IN THE EU/GERMANY AND IN THAILAND

We next analyze the practical implementation of GI controls for the three case studies Hessischer Handkäse (Germany), TKR and Kafae Doi Chaang (both registered as GI in Thailand and as PGI in the EU). For each product, we provide some information about the product and its supply chain first. Following, we examine the governance of controls and the specific control measures implemented. In the analysis we distinguish between self-controls (carried out by individual producers), internal controls (carried out by GI producer groups) and external controls (carried out by an independent control body).<sup>209</sup> Finally, we compare the practical implementation of controls for the three case studies.

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<sup>207</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 115 (2017).

<sup>208</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018); Interview with a Strength2Food project researcher (Nov. 5, 2018).

<sup>209</sup> E. Vandecandelaere, et al., *Linking People, Places and Products. A Guide for Promoting Quality Linked to Geographical Origin and Sustainable Geographical Indications*, 2nd, FAO and SInER-GI(2009-2010), available at <http://www.fao.org/docrep/013/i1760e/i1760e00.pdf>.

## A *Hessischer Handkäse*

### 1 Characteristics and supply chain

Hessischer Handkäse describes small cheeses which were originally formed by hand and so became palm-sized.<sup>210</sup> The production of Hessischer Handkäse in Hesse has been first documented in 1813.<sup>211</sup> It has since developed as a specialty and cultural asset in the region.<sup>212</sup> Hessischer Handkäse is a sour milk cheese which is primarily made from sour milk quark, exclusively made of cow's milk, produced only by acidification (without rennet).<sup>213</sup> It can take the form of a smeared acid curd cheese (yellow cheese) or a smeared acid curd cheese (yellow cheese) with lactic mold formation (home-made).<sup>214</sup> Each cheese weighs between 20 g and 125 g.<sup>215</sup> Further ingredients are ripening salt, table salt (possibly iodinated), caraway, depending on the recipe, possibly casein and the pure cultures (red smear cultures).<sup>216</sup> The production of the cheese has to take place within the Federal State of Hesse (see Figure 5).<sup>217</sup> This comprises the blending and grinding of the individual batches of sour milk quark, the mixing with the other ingredients, the forming of the cheese blocks, ripening and packaging.<sup>218</sup> Hessischer Handkäse was registered as a PGI in the EU in 2010.<sup>219</sup>

The supply chain of Hessischer Handkäse comprises the producers of the milk and the sour milk quark, the cheese dairies and several distribution channels. The supply chain is depicted in Figure 6. Only the processing of the cheese by the cheese dairies has to take place within the specified geographical area (P1 in Figure 6). Currently, only a single producer in Hesse produces sour milk quark and hence the cheese dairies source most of the sour milk quark from outside of Hesse.<sup>220</sup> In total, four cheese dairies which produce Hessischer Handkäse are PGI certified.<sup>221</sup> They supply their produce to various distribution channels such as supermarkets, farmer's markets and gastronomy.

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<sup>210</sup> Publication of an Application Pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 2009 O.J. (C 320/47) 47.

<sup>211</sup> *Id.* at, 49.

<sup>212</sup> *Id.* at, 49-50.

<sup>213</sup> *Id.* at, 47-48.

<sup>214</sup> *Id.* at., 47.

<sup>215</sup> *Id.* at., 47.

<sup>216</sup> *Id.* at.

<sup>217</sup> *Id.* at, 49.

<sup>218</sup> *Id.* at.

<sup>219</sup> Commission Regulation (EU) No 784/2010 of 3 September 2010 Entering a Name in the Register of Protected Designations of Origin and Protected Geographical Indications (Hessischer Handkäse or Hessischer Handkäs (PGI)), 2010 O.J. (L 234/5).

<sup>220</sup> Interview with a processor of Hessischer Handkäse (Oct. 19, 2018).

<sup>221</sup> Landesvereinigung Milch Hessen, *Molkereien & Käseereien in Hessen*(n.d.), available at [https://www.milchhessen.de/mediaarchiv/grab\\_pic.php?id=25600](https://www.milchhessen.de/mediaarchiv/grab_pic.php?id=25600).

Figure 5: Production area of Hessischer Handkäse



Source: <https://de.wikipedia.org/wiki/Hessen>

omy, mainly within the boundaries of Hesse where the cheese is mostly consumed.<sup>222</sup>

## 2 Governance of controls and control measures

Processors of Hessischer Handkäse implement self-controls and are subject to external controls. The self-controls focus on traceability, the quality of the raw material and the quality of the final product. Therefore, the processors meticulously write traceability records and production plans. Moreover, they control the microbiological and chemical properties of the cheese several times a year either in their own laboratories or through external laboratories, depending on the size and the capacity of the business.<sup>223</sup> One processor pointed out that these self-control measures are not implemented to ensure compliance with the GI product specification, but that they are carried out anyway to meet the requirements of food law.<sup>224</sup> The implementation of self-controls is nevertheless a requirement for processors to pass the external GI control.<sup>225</sup>

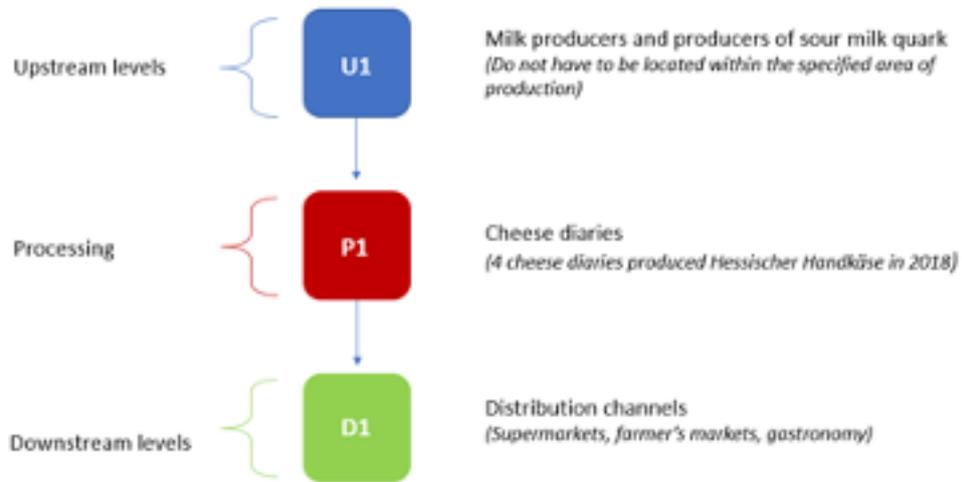
<sup>222</sup> Interview with a processor of Hessischer Handkäse (Oct. 19, 2018).

<sup>223</sup> *Id.* at.

<sup>224</sup> Interview with a processor of Hessischer Handkäse (Oct. 19, 2018).

<sup>225</sup> Regierungspräsidium Giessen, Allgemeine Betriebsprüfung (2017) (on file with authors).

Figure 6: Supply chain of PGI certified Hessischer Handkäse



Source: Depiction by the authors.

External controls are carried out by the regional council Giessen (Regierungspräsidium Giessen, hereinafter referred to as RP Giessen), which is the competent authority responsible for implementing official controls on producers and in the market in Hesse.<sup>226</sup> The RP Giessen is accountable to the Hessian Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection (Hessisches Ministerium für Umwelt, Klimaschutz, Landwirtschaft und Verbraucherschutz, hereinafter referred to as HMUKLV), the highest authority of the Land Hesse for GIs.<sup>227</sup> The HMUKLV in turn is responsible to report to the Federal Ministry of Food and Agriculture (BMEL), which then reports to the EU.<sup>228</sup> Two inspectors from the RP Giessen carry out all control tasks. Mutual assistance can be provided by other authorities, such as those dealing with food safety matters.<sup>229</sup> The auditors of the RP Giessen are subject to internal supervision and are furthermore supervised by the HMUKLV and by the Hessian audit office.<sup>230</sup> Moreover, the implementation of the PGI/PDO controls is audited by the EU.<sup>231</sup>

<sup>226</sup> European Union Intellectual Property Office, 84. December 2017.

<sup>227</sup> *Id.* at.

<sup>228</sup> Interview with two auditors of the RP Giessen (Oct. 24, 2018).

<sup>229</sup> *Id.* at.

<sup>230</sup> *Id.* at.

<sup>231</sup> *Id.* at.; Article 45 (1) of Regulation 882/2004 requires that the implementation of official controls in the member states shall be controlled by experts from the European Commission on a regular basis.

The official controls on the processors of Hessischer Handkäse take place annually and are announced.<sup>232</sup> Every processor is controlled once a year at their production premises.<sup>233</sup> The auditors carry out the controls based on a checklist they created based on the requirements of the product specification.<sup>234</sup> The checklist for Hessischer Handkäse checks processors' compliance with the product specification, traceability, storage, labelling and quality assurance.<sup>235</sup> The auditor visually inspects the condition of the production premises, taking into account aspects such as hygiene, machinery/equipment and the processor's production capability. Moreover, the appearance, consistency, taste, odor and packaging of the cheese according to the specification as well as the correct labelling are inspected. To control traceability, records such as delivery notes, production plans, sales notes, and the documentation of the produced quantities are inspected. As noted above, another requirement of the external control is that the processor has carried out self-controls. Processors also have to have passed an external food safety inspection (quality assurance system such as HACCP or IFS<sup>236</sup>) to be able to pass the GI control. Finally, if needed, auditors are able to take samples of the product and have them analyzed by a laboratory designated by the RP Giessen<sup>237 238</sup>.

If the control reveals processors' infringement of any of the requirements listed in the checklist, these will be indicated thereon and have to be eliminated by the processor by a certain date set by the auditor.<sup>239</sup> The action required and the time span given to ameliorate non-compliance depends on the severity of the violation (minor infringement or major infringement).<sup>240</sup> In accordance with Regulation 1151/2012, the costs of the official control have to be borne by the processors.<sup>241</sup> These amount to up to 250 euros per control and are calculated based on time.<sup>242</sup> The auditors of the RP Giessen summarize the results of the controls in a control report, which is passed on to the HMUKLV upon request.<sup>243</sup>

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<sup>232</sup> Interview with a processor of Hessischer Handkäse (Oct. 19, 2018).

<sup>233</sup> Interview with two auditors of the RP Giessen (Oct. 24, 2018).

<sup>234</sup> *Id.* at.

<sup>235</sup> Regierungspräsidium Giessen, Allgemeine Betriebsprüfung (2017) (on file with authors).

<sup>236</sup> HACCP stands for "Hazard Analysis and Critical Control Points". IFS stands for "International Food Standard".

<sup>237</sup> According to Article 12 (1) of Regulation 882/2004, the competent authority shall designate laboratories that carry out the analysis of samples taken during official controls.

<sup>238</sup> Regierungspräsidium Giessen, Allgemeine Betriebsprüfung (2017) (on file with authors); Interview with two auditors of the RP Giessen (Oct. 24, 2018).

<sup>239</sup> Regierungspräsidium Giessen, Allgemeine Betriebsprüfung (2017) (on file with authors).

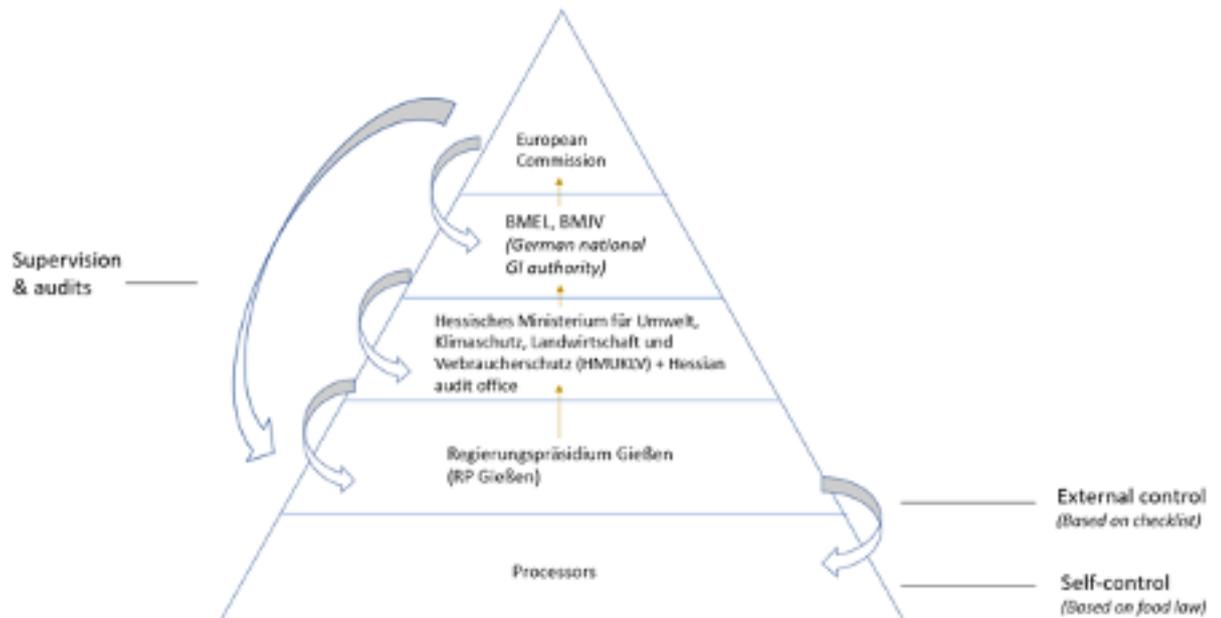
<sup>240</sup> Interview with two auditors of the RP Giessen (Oct. 24, 2018).

<sup>241</sup> *Id.* at.

<sup>242</sup> *Id.* at.

<sup>243</sup> *Id.* at.

Figure 7: Governance of PGI controls for Hessischer Handkäse



Source: Depiction by the authors. Note: The thick blue arrows show the hierarchy between stakeholders regarding GI controls (from top to bottom). The brown arrows indicate the direction of reporting on GI controls (from bottom to top).

## B Kao Hom Mali Thung Kula Rong-Hai

### 1 Characteristics and supply chain

The name Kao Hom Mali Thung Kula Rong-Hai (TKR) derives from the Thai term for Jasmine rice, Kao Hom Mali, and a story about the journey of the ethnic group of the Kula.<sup>244</sup> Under the Thai Agricultural Standard for Thai Hom Mali rice, two rice varieties can be considered Hom Mali rice: Khao Dawk Mali 105 (KDML 105) and RD 15.<sup>245</sup> RD 15 is a mutant of KDML 105.<sup>246</sup> After a seed exchange program in 1979 encouraged farmers to replace their seeds with good quality seeds such as KDML 105, KDML 105 became widespread in the Northeast of Thailand.<sup>247</sup> TKR was registered as a GI in Thailand in 2006 and as PGI in the EU in 2013.<sup>248</sup>

<sup>244</sup> Napisintuwong, 88. 2019.

<sup>245</sup> National Bureau of Agricultural Commodity and Food Standards, *Thai Agricultural Standard TAS 4000-2003. Thai Hom Mali Rice(2003)*, available at [http://www.acfs.go.th/standard/download/eng/Thai\\_Hom\\_Mali.pdf](http://www.acfs.go.th/standard/download/eng/Thai_Hom_Mali.pdf).

<sup>246</sup> Napisintuwong, 87. 2019.

<sup>247</sup> *Id.* at. 88

<sup>248</sup> *Announcement for the Amendment of the Geographical Indication Registration Thung Kula Rong Hai Jasmine Rice, 2012 (in Thai)*, available at <http://www.ipthailand.go.th>; Commission Implementing Regulation (EU) No 120/2013 of 11 February 2013 entering a name in the

Figure 8: Production area of TKR



Source<sup>255</sup>. The thick lines indicate the boundaries of the five provinces. The shaded areas indicate the Thung Kula Rong-Hai area.

The area where TKR is grown extends over five provinces in the North-east of Thailand (the Roi Et, Surin, Sisaket, Maharakham, and Yasothon provinces; see Figure 8).<sup>249</sup> The know-how of the local people in rice cultivation and the geomorphological conditions of the area (i.e. nature of the soil, water quality, hours of sunshine, narrow temperature range, cool dry weather in the harvesting season) determine the qualities of the rice.<sup>250</sup> TKR is a light-sensitive paddy rice, which can be brown or white (milled rice).<sup>251</sup> The rice seeds must be of Khao Dawk Mali 105 and Kor Khor or RD 15 breeds, which must be obtained from the Thai Rice Department (RD) or from certified rice-grain producers.<sup>252</sup> TKR is grown in the rainy season and harvested after the rainy season has ended.<sup>253</sup> The production cycle of TKR (sowing, cultivation, harvesting, milling, packaging and labelling) has to take place within the specified area.<sup>254</sup>

register of protected designations of origin and protected geographical indications (Khao Hom Mali Thung Kula Rong-Hai) (PGI), 2013 O.J. (L 41/3).

<sup>249</sup> Publication of an Application Pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 2010 O.J. (C 169/7).

<sup>250</sup> *Id.* at, 10-11.

<sup>251</sup> *Id.* at, 7.

<sup>252</sup> *Id.* at, 8.

<sup>253</sup> *Id.* at, 10.

<sup>254</sup> *Id.* at, 9.

Most of the farmers in the Thung Kula Rong-Hai area produce Hom Mali rice, but only a few of them are GI certified and produce TKR.<sup>256</sup> In 2008, only around 1.3 percent (1131 households) of the total number of households producing Hom Mali rice was GI certified.<sup>257</sup> According to Orachos Napisintuwong<sup>258</sup>, the Thai Geographical Indication Rice Standard<sup>259</sup> stipulates that GI certified rice farmers also have to meet either the Thai organic standard or Thai Good Agricultural Practice Standards (ThaiGAP)<sup>260</sup>. Most farmers who produce TKR are members of a farmers group or an agricultural cooperative where they sell their paddy to.<sup>261</sup> Three out of forty-six agricultural cooperatives in the area are GI certified TKR collectors and one of them is also a GI certified TKR processor.<sup>262</sup> Three of the nine farmers' organizations are also millers (processors) and wholesalers/retailers.<sup>263</sup> Next to the farmers' organizations engaging in processing/milling, there are five other processors/millers that are also wholesalers/retailers.<sup>264</sup> One of them is an agricultural cooperative.<sup>265</sup> Moreover, two agricultural cooperatives act as middlemen that transfer paddy from certified GI farmers to certified GI millers.<sup>266</sup> The millers/processors sell the rice to wholesalers/retailers or directly to the domestic and international markets.<sup>267</sup> TKR is mainly determined for export markets, the main export destination being the EU.<sup>268</sup> Figure 9 summarizes the GI certified TKR value chain.

<sup>256</sup> Napisintuwong, 92. 2019.

<sup>257</sup> C. Ngokkuen & U. Grote, *Geographical Indication for Jasmine Rice: Applying a Logit Model to Predict Adoption Behavior of Thai Farm Households*, 51 QUARTERLY JOURNAL OF INTERNATIONAL AGRICULTURE 157, 158 (2012).

<sup>258</sup> Napisintuwong, *The Roles of Agricultural Cooperatives in Certification and Production of Geographical Indication (GI) Rice in Thailand* 4. 2017.

<sup>259</sup> Thai Standard for Geographical Indication Rice TAS 4005-2014 (28 Nov 2014), see [http://www.acfs.go.th/eng/commodity\\_standard.php?pageid=6](http://www.acfs.go.th/eng/commodity_standard.php?pageid=6) (no English translation available).

<sup>260</sup> National Bureau of Agricultural Commodity and Food Standard, *Unofficial Translation Thai Agricultural Standard TAS 4406-2014. Good Agricultural Practices for Rice Seed* (2014), available at <http://www.acfs.go.th/standard/download/eng/GAP%2oFOR%2oRICE%2oSEED.pdf>.

<sup>261</sup> Napisintuwong, 95. 2019.

<sup>262</sup> Napisintuwong, *The Roles of Agricultural Cooperatives in Certification and Production of Geographical Indication (GI) Rice in Thailand* 5. 2017.

<sup>263</sup> Napisintuwong, 94-95. 2019.

<sup>264</sup> *Id.* at.

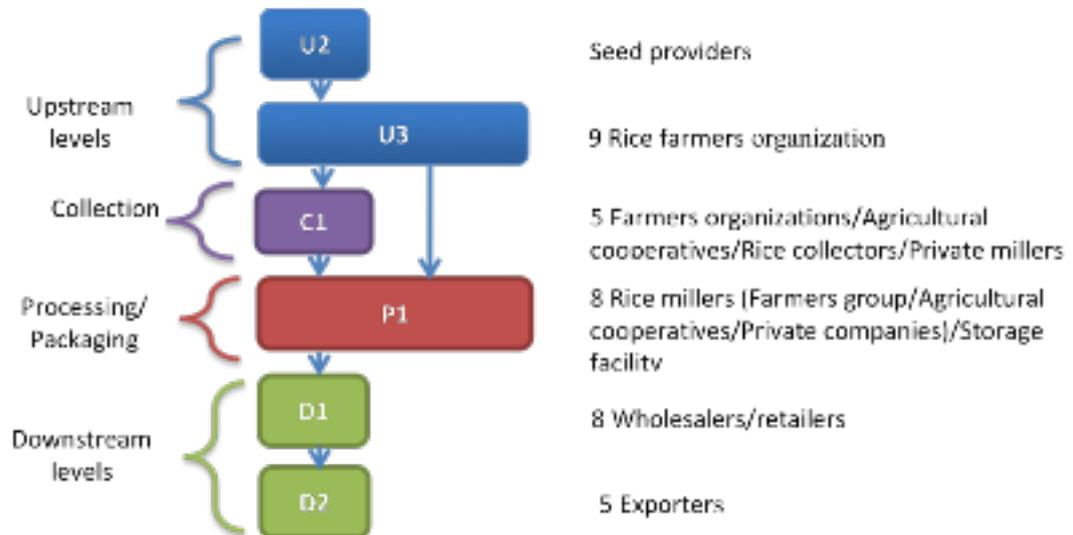
<sup>265</sup> *Id.* at.

<sup>266</sup> *Id.* at.

<sup>267</sup> *Id.* at.

<sup>268</sup> Ngokkuen & Grote, QUARTERLY JOURNAL OF INTERNATIONAL AGRICULTURE, 158 (2012).

Figure 9: Supply chain of GI/PGI certified TKR



Source: Orachos Napasintuwong<sup>269</sup>.

## 2 Governance of controls and control measures

For TKR, self-controls, internal controls and external controls are implemented. Self-controls are carried out by farmers, processors (collectors/millers) and wholesalers/retailers/exporters based on the requirements set out in the GI working manual.<sup>270</sup> The method of control for farmers is mainly the writing of records (e.g. purchase of rice seeds, farm management, planting, harvesting, output quantities, storage and transportation).<sup>271</sup> The processors (collectors/millers) test and record the quality of the rice (i.e. moisture content, adulteration of weed rice, percentage of head rice) received from the farmers according to the working manual upon every purchased batch.<sup>272</sup> Furthermore, they implement traceability measures (e.g. recording receipts, delivery papers).<sup>273</sup> The wholesalers/retailers/exporters randomly inspect the quality of the milled white or brown rice based on the working manual, the ACFS Good Agricultural Practice for Rice Seed standard<sup>274</sup> and other relevant baseline doc-

<sup>270</sup> *Id.* at. 98-100.

<sup>271</sup> O. Napasintuwong, Khao Hom Mali Thung Kula Rong-Hai (Work in progress for the EU's Strength2Food Project). Unpublished manuscript (on file with authors). 2018.

<sup>272</sup> *Id.* at.

<sup>273</sup> *Id.* at.

<sup>274</sup> The TKR product specification (section 5.3.) relates the quality of TKR to compliance with good agricultural practices, but does not specifically require compliance. However, the geographical indication rice standards of the National Bureau of Agricultural Commodity and Food Standard require that GI rice products must either be certified organic or certified

uments.<sup>275</sup> They furthermore record and check the quantities purchased and sold.<sup>276</sup> The implementation of self-controls is a prerequisite for internal controls.<sup>277</sup>

The internal control is carried out by the farmers' organizations based on the GI working manual and other relevant references such as the Good Agricultural Practice for Rice Seed standard<sup>278</sup>.<sup>279</sup> It covers all stages of the value chain (growing, collecting, processing, wholesaling).<sup>280</sup> The controls focus on stakeholders' compliance with the working manual (e.g. inspection of planting area, storage location, quality of paddy, packaging, labelling) as well as traceability (e.g. inspection of procurement activities and transportation records, inspection of output quantity).<sup>281</sup> The frequency of the controls depends on the target of the control and ranges from once a year to several times per year.<sup>282</sup>

The external control for TKR is carried out by the Italian ISO 17065-accredited certification body Bioagricert.<sup>283</sup> Bioagricert is accredited by the Italian accreditation body ACCREDIA.<sup>284</sup> No Provincial Committee is involved in the control of TKR, as the production area of TKR spreads over five different Thai provinces.<sup>285</sup> Control by a certification body is a requirement for the registration of TKR as PGI in the EU.<sup>286</sup> External controls are carried out once per year on the farmers' organizations and on 10 percent of farmers, collectors/processors and exporters/sellers.<sup>287</sup> The focus of the controls is on compliance with the parameters set out in the working manual (e.g. planting area, type of seed, land/soil, quality of the paddy, collecting, processing, packaging, labelling, storage and transportation) and traceability (e.g. records and documents).<sup>288</sup> The method of inspection is both a visual inspection of the produc-

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with the ThaiGAP id. at; National Bureau of Agricultural Commodity and Food Standard. 2014..

<sup>275</sup> Napasintuwong, Khao Hom Mali Thung Kula Rong-Hai. 2018.

<sup>276</sup> *Id.* at.

<sup>277</sup> *Id.* at.

<sup>278</sup> National Bureau of Agricultural Commodity and Food Standard. 2014.

<sup>279</sup> Napasintuwong, Khao Hom Mali Thung Kula Rong-Hai. 2018.

<sup>280</sup> *Id.* at.

<sup>281</sup> *Id.* at.

<sup>282</sup> *Id.* at.

<sup>283</sup> European Commission, Agriculture and Rural Development, DOOR.

<sup>284</sup> Bioagricert, *Certification. Geographical Indications*(2015), available at <https://www.bioagricert.org/en/certification/product-quality/geographical-indications.html> (last visited Jan. 21, 2019).

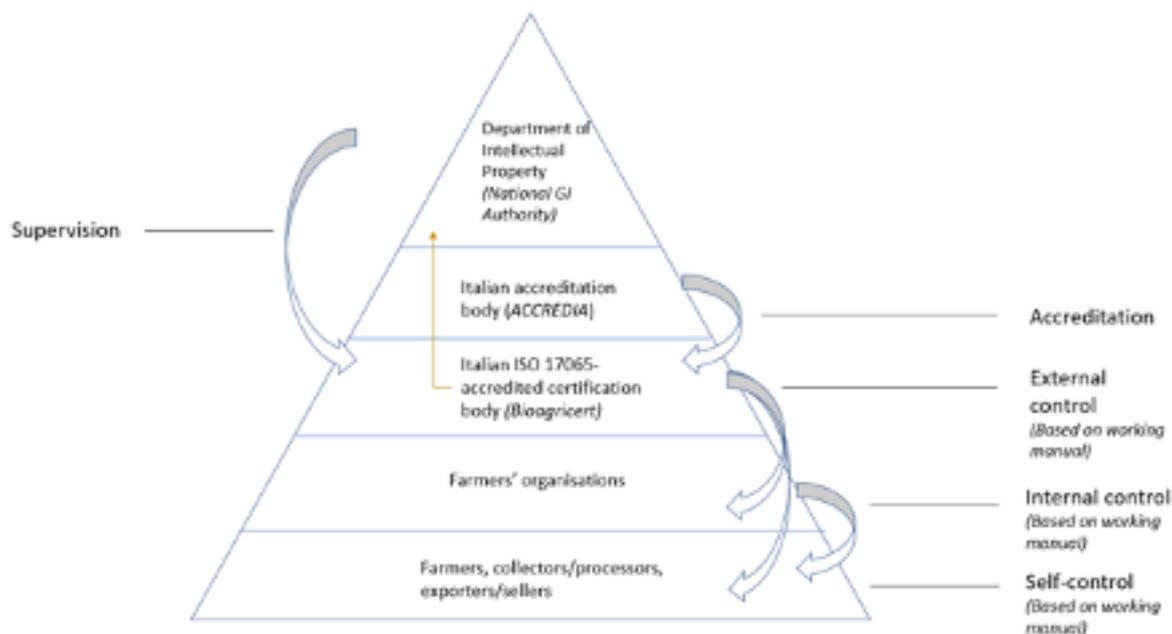
<sup>285</sup> Interview with a representative of the DIP Thailand, (Nov. 21, 2018).

<sup>286</sup> Napasintuwong, 99. 2019; Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, 2012 O.J. (L343/1). Art. 37 (2) (a) (b)

<sup>287</sup> Napasintuwong, Khao Hom Mali Thung Kula Rong-Hai. 2018.

<sup>288</sup> *Id.* at.; Interview with a representative of the DIP Thailand (Nov. 21, 2018)

Figure 10: Governance of GI/PGI controls for TKR



Source: Depiction by the authors. Note: The thick blue arrows show the hierarchy between stakeholders regarding GI controls (from top to bottom). The brown arrow indicates the direction of reporting on GI controls (from bottom to top).

tion site/fields and an inspection of documents.<sup>289</sup> According to information by Orachos Napasintuwong<sup>290</sup> and two Thai interviewees<sup>291</sup>, the costs of certification by a certification body can amount to 1000<sup>292</sup>-8000 euros per year. In the past few years, the DIP or the RD almost entirely subsidized the costs of private certification.<sup>293</sup> The results of the external inspection are reported to the DIP.<sup>294</sup>

<sup>289</sup> Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>290</sup> Napasintuwong, 92. 2019.

<sup>291</sup> Interview with a Strength2Food project researcher (Nov. 5, 2018); Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>292</sup> Napasintuwong 2019 notes that these were the annual certification fees for a processor in 2017, excluding the fees for certification of products and the use of the certification body's certification seal. These extra costs, according to the author, ranged between 0.3-1 percent, depending on the turnover of the certified exported products.

<sup>293</sup> Napasintuwong, 94. 2019.

<sup>294</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017.

## C *Kafae Doi Chaang*

### 1 Characteristics and supply chain

The production area of Kafae Doi Chaang was initially used for illegal opium cultivation.<sup>295</sup> The Thai / UN Crop Replacement and Community Development Project encouraged the cultivation of substitutive crops such as arabica coffee to improve the livelihood of the local communities.<sup>296</sup> In 2003, the Doi Chaang Coffee Original Co. was founded.<sup>297</sup> In 2006, the company established a strategic partnership with Canadian businessmen in view of exploiting the potential to sell Kafae Doi Chaang on international markets.<sup>298</sup> Kafae Doi Chaang is mainly determined for export markets<sup>299</sup>, such as the US, Canada, the United Kingdom, South Korea and most of the ASEAN countries.<sup>300</sup>

Kafae Doi Chaang refers to the Arabica varieties Caturra, Catimor and Catuai.<sup>301</sup> The coffee trees are located within the area of the Doi Chaang and Ban Mai Pattana villages, in the Tambon Wawee, Mae Suai district of the Chiangrai province (see Figure 11).<sup>302</sup> The coffee is grown on the slopes of the Doi Chaang mountain at an altitude of 1100-1700 meters above sea level.<sup>303</sup> The total production area is about 3040 ha.<sup>304</sup> The coffee variety refers to both green beans and roasted coffee, which both have to meet specific quality requirements.<sup>305</sup> The raw material (seeds) must come from reliable sources such as the Chiangrai University, the Department of Agriculture, or can be selected from healthy coffee plants.<sup>306</sup> Kafae Doi Chaang is cultivated either using conventional or organic methods.<sup>307</sup>

<sup>295</sup> P. Angkasith, *Coffee Production Status and Potential of Organic Arabica Coffee in Thailand*, Paper presented at the First Asian Regional Round-table on Sustainable, Organic and Speciality Coffee Production, Processing and Marketing 26-28 Feb. 2001, Chiang Mai, Thailand(2001), available at <http://www.journal.au.edu/au techno/2002/jan2002/article3.pdf>.

<sup>296</sup> *Id.* at.

<sup>297</sup> Doi Chaang Coffee, *Legend of Doi Chaang Coffee*(2019), available at <https://doichaangcoffee.co.th/en/about-us/the-legend/> (last visited Jan. 19, 2019).

<sup>298</sup> *Id.* at.

<sup>299</sup> U. Noppakoonwong, et al., *Research and Development of Arabica Coffee in Thailand. Conference Paper (April 2015)* at [https://www.researchgate.net/publication/280740360\\_Research\\_and\\_Development\\_of\\_Arabica\\_Coffee\\_in\\_Thailand](https://www.researchgate.net/publication/280740360_Research_and_Development_of_Arabica_Coffee_in_Thailand).

<sup>300</sup> Lilavanichakul, 287. 2019.

<sup>301</sup> Publication of an Application Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on Quality Schemes for Agricultural Products and Foodstuffs, 2014 O.J. (C 49/8) 8.

<sup>302</sup> *Id.* at.

<sup>303</sup> *Id.* at.

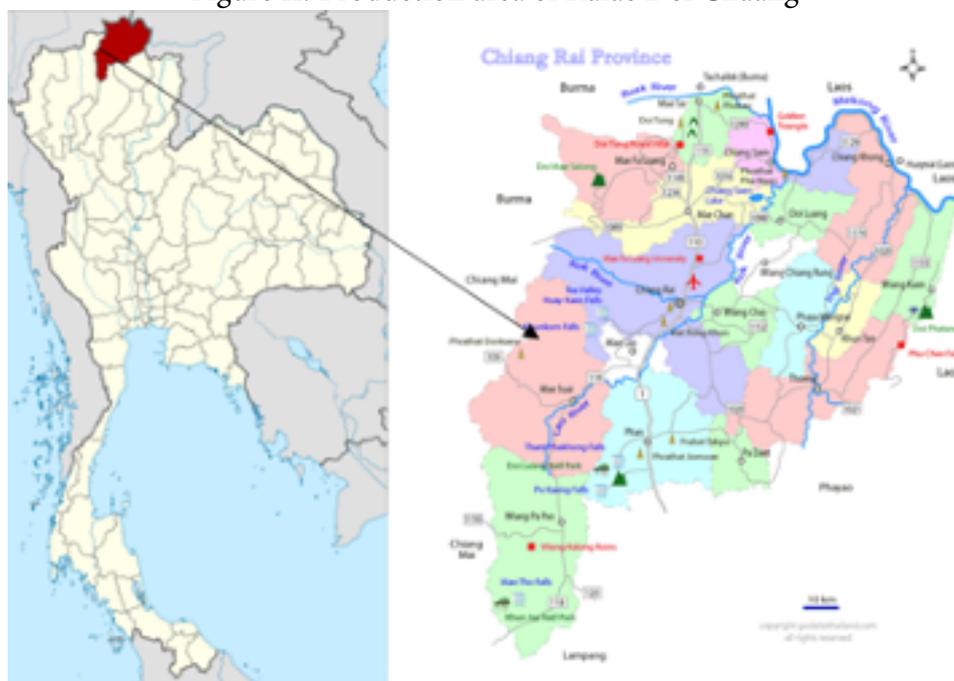
<sup>304</sup> Lilavanichakul, 291. 2019.

<sup>305</sup> Publication of an Application Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on Quality Schemes for Agricultural Products and Foodstuffs, 2014 O.J. (C 49/8) 11.

<sup>306</sup> *Id.* at. 9.

<sup>307</sup> *Id.* at. 11.

Figure 11: Production area of Kafae Doi Chaang



Source: Depiction by the authors.<sup>308</sup>

The coffee beans have a red to yellow color, depending on the variety.<sup>309</sup> The coffee cherries blossom in February and the harvest takes place between November and March.<sup>310</sup> The specific quality of Kafae Doi Chaang derives from geographical and geoclimatic factors (e.g. steep slope gradients, sandy loom soil, natural shade, high altitude) and human know-how (e.g. cultivation, harvesting and processing methods).<sup>311</sup> The harvesting of the coffee beans as well as the processing (wet-method processing, extraction, drying, hulling and sorting) have to take place within the specified geographical area.<sup>312</sup> The roasting of the coffee beans does not necessarily take place within this area.<sup>313</sup> Kafae Doi Chaang was registered as a GI in Thailand in 2007<sup>314</sup> and as a PGI in the EU in 2015.<sup>315</sup>

<sup>309</sup> Publication of an Application Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on Quality Schemes for Agricultural Products and Foodstuffs, 2014 O.J. (C 49/8) 9.

<sup>310</sup> *Id.* at.

<sup>311</sup> *Id.* at. 10-11.

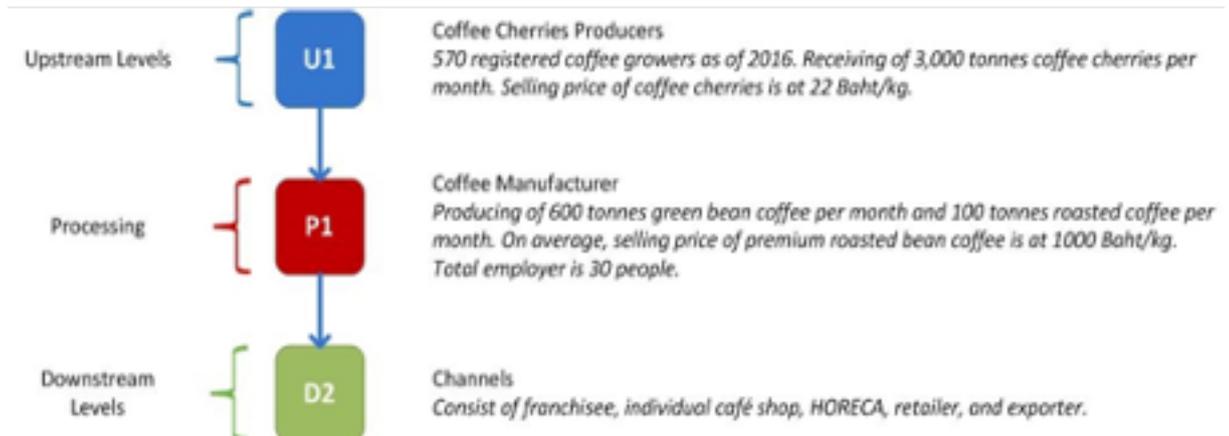
<sup>312</sup> *Id.* at. 9.

<sup>313</sup> *Id.* at. 10.

<sup>314</sup> Canavari, et al., 51. 2010.

<sup>315</sup> Commission Implementing Regulation (EU) 2015/1135 of 9 July 2015 Entering a Name in the Register of Protected Designations of Origin and Protected Geographical Indications ((Kafae Doi Chaang) (PGI)), 2015 O.J. (L 185/5).

Figure 12: Supply chain of GI/PGI certified Kafe Doi Chaang



Source: Apichaya Lilavanichakul<sup>320</sup>.

The supply chain of Kafe Doi Chaang is depicted in Figure 12. It comprises coffee growers, manufacturers and various distribution channels. There were 570 coffee growers registered at the Doi Chang coffee company (manufacturer/processor) in 2016, coming from five different villages in the Doi Chaang area.<sup>316</sup> They directly deliver the coffee beans to the manufacturer for processing and roasting, which is done at the Doi Chaang plant.<sup>317</sup> The manufacturer delivers the green and roasted beans to a distributor, who is located in Bangkok and distributes the coffee beans to the domestic and international markets.<sup>318</sup> The Doi Chaang coffee company moreover distributes the coffee beans directly to franchisees, individual cafés/restaurants/hotels, retailers, exporters and through e-commerce.<sup>319</sup>

## 2 Governance of controls and control measures

The control system for Kafe Doi Chaang comprises self-control, internal control by a Provincial Committee and external control by a private certification body. The self-control is applied at the coffee growers' and the manufacturer's level.<sup>321</sup> As is the case for TKR, self-control implies that the farmers and processors control whether the coffee beans meet the requirements set out in the working manual.<sup>322</sup> The processor further controls the quality of the coffee

<sup>316</sup> Lilavanichakul, 291, 293. 2019.

<sup>317</sup> *Id.* at. 293.

<sup>318</sup> *Id.* at..

<sup>319</sup> *Id.* at. 293-294.

<sup>321</sup> *Id.* at. 296.

<sup>322</sup> *Id.* at. 297.

beans upon receipt by the coffee growers.<sup>323</sup> One interviewee suggested that in the case of Kafae Doi Chang, the system of self-controls is also one where “friends monitor friends”.<sup>324</sup> Accordingly, the coffee grower community selects a head of the group who is responsible to take care of the self-controls within the group.<sup>325</sup> This, next to checking compliance with the working manual, means that:

“[f]or example, they will help the growers in terms of, okay, if you do not have the seeds, I will provide you the seeds, or if you need fertilizer, we can share fertilizer or we can share some external labor [...] they help each other. And they make sure that the quality of the – they check the method how to grow the coffee. So, pretty much, in general, the product will come with the same quality.”<sup>326</sup>

Unlike in the TKR case, there are no farmers’ organizations which carry out internal controls. Instead, the Provincial Committee carries out internal controls on the coffee growers and on the manufacturer based on the working manual and the control plan.<sup>327</sup> Provincial Committee controls are carried out using quality inspection forms created by the producers when setting up the control manual.<sup>328</sup>

The task of the Provincial Committee is to check the running of the self-controls of the coffee growers (regarding seeding, planting, farm management and harvesting) and of the manufacturers (regarding collecting, quality control and processing).<sup>329</sup> The Provincial Committee also controls the product’s traceability.<sup>330</sup> In case the control establishes non-compliance on behalf of the producers, the Provincial Committee issues a warning.<sup>331</sup> The frequency of inspections by the Provincial Committee is at least every two years and their results are reported to the DIP.<sup>332</sup> According to one interviewee, the controls by a Provincial Committee “will cost only the gas”, and hence only the expenses incurred due to travelling to the producers’ premises.<sup>333</sup>

Like TKR, Kafae Doi Chang is subject to external control by the ISO 17065-accredited certification body Bioagricert.<sup>334</sup> The control is carried out

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<sup>323</sup> Interview with a Strength2Food project researcher (Nov. 5, 2018).

<sup>324</sup> *Id.* at.

<sup>325</sup> *Id.* at.

<sup>326</sup> *Id.* at.

<sup>327</sup> Lilavanichakul, 296-297. 2019.; Interview with a representative from the DIP Thailand (Nov. 21, 2018); Interview with a Strength2Food project researcher (Nov. 5, 2018).

<sup>328</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017.

<sup>329</sup> Lilavanichakul, 297. 2019.

<sup>330</sup> Interview with a representative from the DIP Thailand (Nov. 21, 2018).

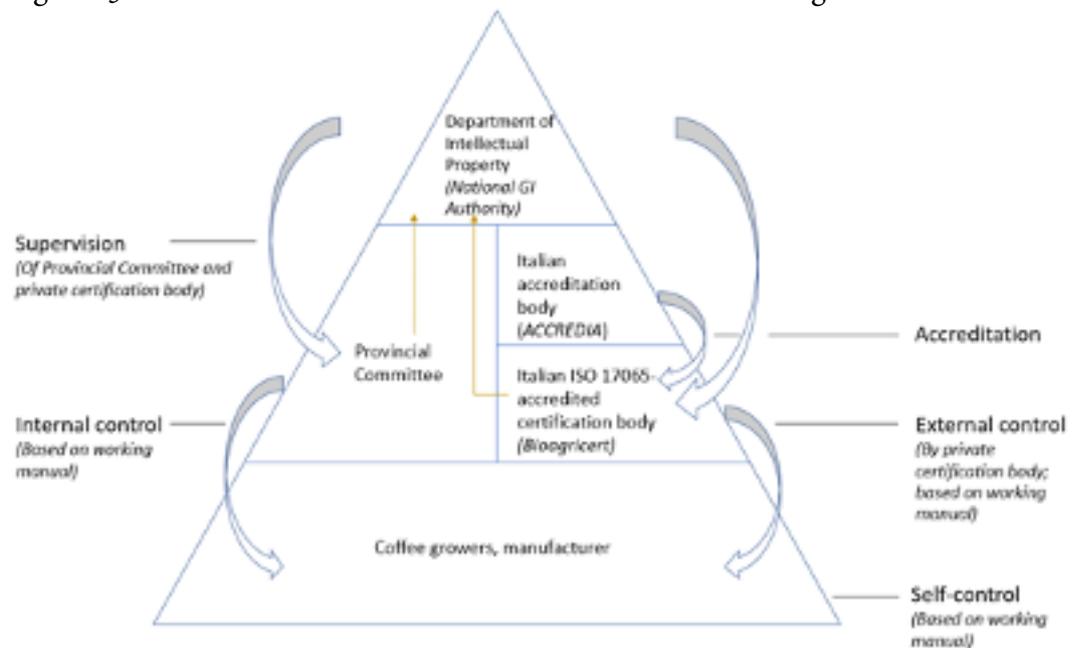
<sup>331</sup> *Id.* at.

<sup>332</sup> *Id.* at.

<sup>333</sup> *Id.* at.

<sup>334</sup> E-Mail from Strength2Food project researcher to Verena Preusse (Nov. 17, 2018, 2:04 pm UTC) (on file with the authors).

Figure 13: Governance of GI/PGI controls for Kafae Doi Chaang



Source: Depiction by the authors. Note: The thick blue arrows show the hierarchy between stakeholders regarding GI controls (from top to bottom). The brown arrows which are placed within the pyramid indicate the direction of reporting on GI controls (from bottom to top).

once a year on a random selection of coffee growers and on the manufacturer.<sup>335</sup> The certification body checks the producers'/manufacturers' compliance with the working manual, the running of the self-controls and that of the controls carried out by the Provincial Committee.<sup>336</sup> Controls are done using check-lists.<sup>337</sup> The auditors do field inspections, check the physical and chemical properties of the coffee beans and the packaging and labelling based on the requirements of the specification.<sup>338</sup> Although the results do not specifically indicate that traceability is controlled, it seems likely that it nevertheless is a part of the external control as it is conducted by the same certification body that controls TKR. As noted before, the costs of private certification can range from 1000-8000<sup>339</sup> euros.<sup>340</sup> When producers have passed the external control, the certification body hands in a certificate of compliance to the DIP.<sup>341</sup>

<sup>335</sup> Interview with a Strength2Food project researcher (Nov. 5, 2018).

<sup>336</sup> Lilavanichakul, 297. 2019.

<sup>337</sup> Interview with a Strength2Food project researcher (Nov. 5, 2018).

<sup>338</sup> *Id.* at.; Interview with a representative from the DIP Thailand (Nov. 21, 2018).

<sup>339</sup> Napasintuwong, 92. 2019.; Interview with a Strength2Food project researcher (Nov. 5, 2018); Interview with a representative from the DIP Thailand (Nov. 21, 2018).

<sup>340</sup> According to Canavari et al. 2010, the costs of private certification are covered by private resources/funds.

<sup>341</sup> GI Thailand OFFICIAL Channel. Nov. 21, 2017.

*D Comparison of the governance and control measures of GI controls in the EU/Germany and in Thailand*

A comparison of the three case studies demonstrates that for each product, GI controls follow a unique mode of governance (see Appendix G for a structured comparison). At the same time, the results suggest that the control measures which are implemented are similar for all three cases.

In the case of Hessischer Handkäse, the interviewees suggested that self-controls are not specifically carried out to establish compliance with the GI product specification, but more generally to fulfil the requirements of food law. According to the EU's General Food Law<sup>342</sup>, the responsibility to ensure food safety lies with the food producers, processors and distributors<sup>343</sup> who also have to establish product traceability<sup>344</sup> and undergo external inspections.<sup>345</sup> The results of the controls implemented in the context of food safety are then taken into account by the external GI control. One producer summarized: "They [...] take it as a basis and say: You have got this control mechanism anyway. So that's fine"<sup>346</sup>.<sup>347</sup> This shows that for Hessischer Handkäse, GI controls are closely linked to the requirements of EU food law. This may be facilitated by the small number of ingredients and the relatively simple production process of Hessischer Handkäse which possibly renders the implementation of comprehensive self-controls based on the product specification unnecessary.

In contrast, producers of TKR and Kafae Doi Chaang carry out self-controls based on the GI working manual and control plan. Consequently, self-controls are targeted at the specific requirements for GIs. The results indicate that, unlike in the EU/Germany, compliance with food law is not a requirement for passing GI controls in Thailand. One interviewee stated:

"I do not think there are any relations between GI and food safety. I think GI is related to the quality of the product, like the uniqueness of the product. But even that it is GI, it can make you sick"<sup>348</sup>

This suggests that in Thailand no direct link is made between GIs and food safety regulations. One reason for this probably lies in the attribution of responsibilities for GI control and food safety issues to separate ministries and

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<sup>342</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 Laying Down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority and Laying Down Procedures in Matters of Food Safety, 2002 O.J. (L 31/1).

<sup>343</sup> *Id.* at. Art. 17 (1)

<sup>344</sup> *Id.* at. Art. 18

<sup>345</sup> *Id.* at. Art. 17 (2)

<sup>346</sup> Translation by the author. The original quote in German reads as follows: "Die stützen sich [...] darauf und sagen: Ihr habt eh diesen Kontrollmechanismus. Und von daher gesehen ist das in Ordnung."

<sup>347</sup> Interview with a processor of Hessischer Handkäse, (Oct. 19, 2018).

<sup>348</sup> Interview with a Strength2Food project researcher (Nov. 17, 2018).

a lack of inter-ministerial cooperation.<sup>349</sup> Nevertheless, Canavari et al. found that food safety is an important factor influencing European gatekeepers' decision whether or not to purchase GI food products from Thailand.<sup>350</sup> This suggests that Thai producers seeking to export their products to the EU might have to implement stricter food safety measures than producers selling on the local market. Besides, TKR and Kafae Doi Chaang are both certified with other standards (i.e. ThaiGAP, (EU and US) organic standards) for which producers might implement food safety measures beyond what is required for GIs.<sup>351</sup> One interviewee indicated that when Thai GI products are certified with ThaiGAP the external GI control inspects the records which producers are required to write therefore, which suggests similarities to the findings for Hessischer Handkäse.<sup>352</sup>

In the case of Kafae Doi Chaang self-controls also imply a community aspect, as the coffee growers mutually assist each other in establishing compliance with the GI product specification. This was not reported for the case of TKR, although the results are not conclusive in this regard. No such mutual assistance exists between producers of Hessischer Handkäse.<sup>353</sup> This difference might be attributable to various factors such as the general level of development of the case study region, farm/firm size, specifics of the products' production process, habits within the community of producers or cultural aspects.

In view of internal controls, the comparison demonstrates that producer groups are involved in the GI controls only in the case of TKR. The entire TKR value chain is controlled by the TKR producer groups based on the GI working manual. Next to contributing to aspects of quality control, Orachos Napasintuwong found that for TKR agricultural cooperatives generally play an important role in connecting small-scale farmers to high quality product markets<sup>354</sup>, although the presence of producer groups is generally not common in Thailand.<sup>355</sup> In the case of Kafae Doi Chaang and Hessischer Handkäse there is no producer group which carries out internal controls. In the German context, it was however noted that this is different for other German PGI/PDO products where producer groups take an active role in the controls.<sup>356</sup> The absence of internal controls in the Hessian case furthermore reflects their voluntary na-

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<sup>349</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018).

<sup>350</sup> Canavari, et al., 80. 2010.

<sup>351</sup> Napasintuwong, The Roles of Agricultural Cooperatives in Certification and Production of Geographical Indication (GI) Rice in Thailand 6. 2017; Doi Chaang Coffee, *Global Recognitions*(2019), available at <https://doichaangcoffee.co.th/en/about-us/certification/> (last visited Jan. 19, 2019).

<sup>352</sup> Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>353</sup> Interview with a processor of Hessischer Handkäse (Oct. 19, 2018).

<sup>354</sup> Napasintuwong, The Roles of Agricultural Cooperatives in Certification and Production of Geographical Indication (GI) Rice in Thailand 1-11. 2017.

<sup>355</sup> Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>356</sup> Interview with two auditors of the RP Giessen (Oct. 24, 2018).

ture as stipulated in Regulation 1151/2012. Interestingly, due to the absence of a producer group in the case of Kafee Doi Chaang internal controls are carried out by the public/private Provincial Committee.

Finally, the producers of all three products investigated are subject to external control. While for Hessischer Handkäse a system of public external control is implemented, external control for TKR and Kafee Doi Chaang is carried out by a private ISO 17065-accredited certification body. Despite this public/private dichotomy, the control measures implemented appear to be similar for all cases, focusing on compliance with the product specification, traceability and quality assurance. The results indicate that in none of the two Thai cases the Provincial Committee takes on the role of an external control body. The implementation of public external controls instead of private controls in the Hessian case may be due to the limited number of Hessian PDOs/PGIs which renders the delegation of control tasks to certification bodies unnecessary in terms of the workload faced by the inspectors.<sup>357</sup> Besides, there are no approved certification bodies in Hesse as opposed to other German *Länder*.<sup>358</sup> The finding for Hesse is nevertheless interesting as it does not mirror the shift from public to private governance of GI controls which Marie-Vivien et al. described for France.<sup>359</sup>

## VII THE INFLUENCE OF EU GI REGULATIONS ON THE REGULATION AND PRACTICAL IMPLEMENTATION OF GI CONTROLS IN THAILAND

Based on the research findings for research questions one and two and in view of the assumptions of the theory of extra-territorialization of EU law, we next discuss to what extent EU GI regulations shape the regulation of GI controls in Thailand and their practical implementation for the two Thai case studies.

The analysis of the GI controls implemented for TKR and Kafee Doi Chaang tentatively suggest the presence of a de facto extra-territorialization effect. The analysis of TKR has shown that no Provincial Committee is available that could carry out the external control and private certification is required here to use the Thai GI logo.<sup>360</sup> Hence, the results are inconclusive in the case of TKR. However, the Kafee Doi Chaang case study has shown that controls are carried out by a Provincial Committee and by an ISO 17065-accredited certification body, although controls by a Provincial Committee would suffice to be able to use the Thai GI logo. It hence seems that the standards of control for this GI product are higher than what is required according to Thai laws. In fact, one interviewee noted that the Doi Chaang coffee company is the only company in the area of production which is able to pass the control

<sup>357</sup> Interview with two auditors of the RP Giessen (Oct. 24, 2018).

<sup>358</sup> European Union Intellectual Property Office, 84. December 2017.

<sup>359</sup> Marie-Vivien, et al., *WORLD DEVELOPMENT*, 25-34 (2017).

<sup>360</sup> Interview with a representative of the DIP Thailand (Nov. 21, 2018).

by an ISO 17065-accredited certification body and, therefore, only coffee produced by this company can carry the EU PGI logo.<sup>361</sup> In principle, Regulation 1151/2012 allows for two control options, i.e. private certification or control by a designated competent authority. The fact that in the case of Kafae Doi Chaang private certification is adopted in addition to control by a Provincial Committee possibly means that the Thai Provincial Committees do not fulfil the EU's requirements for public control.

Information obtained through the expert interviews beyond the level of the case studies suggests that the control system implemented for Thai products which are registered as PGI/PDO in the EU generally differs from that implemented on Thai GI producers wishing to use the Thai GI logo. One interviewee noted that Thai GIs which are registered as PDO/PGI in the EU must always pass external control by a certification body under the ISO 17065 standard.<sup>362</sup> The interviewee noted that “when we register GI in the European Union, we allow only – because we are different and we understand that – we allow only Thai producers who can pass the control system by external control to be able to use the EU logo on your package”.<sup>363</sup> In contrast, the interviewee indicated that local GIs which are not registered in the EU are only controlled by a Provincial Committee and not by private certification bodies due to the substantially higher costs of private certification.<sup>364</sup> Similarly, Marie-Vivien and Vagneron suggest that private certification is no control option which Thai producers would easily adopt, because “[...] certification requires an entirely different attitude by the farmers, as they not only need to do things differently, but must also be able to prove that they actually do so. Experience in the four countries [Thailand, Vietnam, Cambodia and Laos] shows that it is often difficult for farmers and local communities to cope with the detailed technical requirements and to understand the need to “write what they do and do what they write” on a regular basis, as is often requested. This is likely to be the case for GI products that need to be traced from the farm to the fork. It may also be difficult for farmers to understand and follow the application process without external support (e.g., from an NGO) and in the absence of properly trained extension officers”.<sup>365</sup>

Hence, as Canavari et al. argue, “[t]he main reason that has motivated GI associations to require for external certification relies on their willingness to apply for registration in Europe”.<sup>366</sup> This seems to support the assumption of the Brussels Effect theory that producers adopt the higher standards of EU GI control to access the EU market, although these standards would not be required on the domestic market. One interviewee even suggested that Thai

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<sup>361</sup> *Id.* at.

<sup>362</sup> *Id.* at.

<sup>363</sup> *Id.* at.

<sup>364</sup> *Id.* at.

<sup>365</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 121 (2017).

<sup>366</sup> Canavari, et al., 54. 2010.

producers who have adopted external control by a private certification body apply these standards not only to the foreign market but also to the local market.<sup>367</sup> Against the initial expectation, the EU's standards of GI control might hence even be non-divisible and all five of the conditions for Brussels Effect identified by Anu Bradford would be met.<sup>368</sup>

According to the Brussels Effect theory, the presence of a *de facto* Brussels Effect is followed by a *de jure* Brussels Effect. The theory holds that firms who have adopted the EU's more stringent standards for their entire production lobby their national government to change domestic regulations in order to avoid a competitive disadvantage on the domestic market where more lenient standards prevail.<sup>369</sup> The analysis of the EU/German and the Thai GI control systems has shown that fundamental differences between the regulatory approaches towards GI control exist in terms of the institutional responsibilities and the purpose of implementing GI controls. The results further suggest that the regulatory standards for GI control in Thailand are currently more lenient than those stipulated in EU/German law, as controls are not implemented on all GIs. Furthermore, considering the unclear role of the Provincial Committee as either an internal or external control body, the standards for external control appear to be less stringent in Thailand than in the EU. All in all, the findings hence do not support the presence of a *de jure* Brussels Effect. The absence of a *de jure* Brussels Effect is an interesting finding considering that the EU and Thailand principally share the same philosophy concerning GI protection. It could thus be expected that Thailand is striving for standards of control similar to those of the EU. There are several possible reasons for the absence of a *de jure* Brussels Effect.

Firstly, only four Thai GIs are currently registered as PDO/PGI in the EU. Consequently, relative to the total number of Thai GI producers, a very limited number of producers have adopted the EU's standards for GI control. This goes with limited power to lobby the Thai government to change national laws on GI controls. Secondly, GIs are becoming popular and are increasingly institutionalized across the whole of Asia. One interviewee noted that "GI right now is moving across Asia. So, producers are not only considering anymore to sell and to be protected in [the] Western market but also to be protected in [the] Asian market".<sup>370</sup> The emergence of alternative markets for GIs with possibly more lenient standards for control than those of the EU might deprive the EU's market of some attractiveness for Thai producers. Thirdly, it is likely that GIs are not very well-known among the majority of Thai producers which is why they are probably not striving for higher standards for GI protection

<sup>367</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018).

<sup>368</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 10-19 (2012).

<sup>369</sup> *Id.* at, 6.

<sup>370</sup> Interview with a representative of the UN FAO Regional Office for Asia and the Pacific (Oct. 18, 2018).

and GI control. Finally, it seems plausible that since GIs are a relatively new regulatory field in Thailand, current differences in the regulatory approach to GI controls stem from a lack of experience with how GIs should be controlled when the regulatory framework for GIs was first drafted, a lack of institutional capacity and experience in implementing controls, or the fact that the Thai control system is not fully developed yet.

In view of the Brussels Effect theory, the Thai approach to GI protection and control furthermore renders it necessary to reconsider the assumption that a *de jure* Brussels Effect is motivated by firms from “below”. Contrary to this assumption, the further regulation and institutionalization of GI controls in Thailand may be of greater interest for the Thai government than for the GI producers themselves. In countries with a relatively short history of GI protection, the role of the state in implementing GIs is typically more pronounced than in the EU where GI systems are often run by producer associations.<sup>371</sup>

In fact, the Thai government (Ministry of Commerce) is the main driver of the further development and implementation of a GI control system, and there has been an exchange with stakeholders from European countries (e.g. France) in the course of its development.<sup>372</sup> Consequently, it seems that efforts to achieve a convergence of laws might ultimately be driven “top-down” by the government and not “bottom-up” by GI producers who have registered their products in the EU. Bradford argues that some developing country governments welcome the extra-territorialization of EU law because it “presents [them] with an opportunity to outsource their regulatory pursuits to a more resourceful agency”.<sup>373</sup> For the regulation of GI controls in Thailand it further seems possible that the Thai government actively encourages this effect because it hopes that internationally recognized standards for GI controls might ultimately benefit the development of the national economy.

## VIII CONCLUSIONS AND LIMITATIONS

Developing countries which promote the protection of GIs increasingly also seek the registration of their domestic GI products abroad. The EU is considered a lucrative export market for GI products due to its high standards of protection. However, to achieve and maintain GI registration in the EU, foreign producers have to meet the requirements for GI control stipulated in EU

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<sup>371</sup> T. Kizos, et al., *The Governance of Geographical Indications: Experiences of Practical Implementation of Selected Case Studies in Austria, Italy, Greece and Japan*, 119 *BRITISH FOOD JOURNAL*, 2875 (2017); B. Pick, et al., *The Use of Geographical Indications in Vietnam: A Promising Tool for Socioeconomic Development?*, in *GEOGRAPHICAL INDICATIONS AT THE CROSSROADS OF TRADE, DEVELOPMENT, AND CULTURE. FOCUS ON ASIA-PACIFIC* 306, (I. Calboli & N.-L. Wee-Loon eds., 2017); Canavari, et al., 34-35. 2010.

<sup>372</sup> Interview with a representative of the DIP Thailand (Nov. 21, 2018).

<sup>373</sup> Bradford, *NORTHWESTERN UNIVERSITY LAW REVIEW*, 53 (2012).

law. This raises the question to what extent EU legal requirements influence GI control systems in third countries.

Focusing on Thailand and on GIs for agricultural products and foodstuffs, this article has examined three research questions: First, how are GI controls for agricultural products and foodstuffs regulated in the EU and in Thailand? Second, how are GI controls for agricultural products and foodstuffs implemented in practice in the EU and in Thailand, for the latter case for products which are registered as PDO/PGI under EU law? Third, to what extent is the regulation and practical implementation of GI controls for agricultural products and foodstuffs in Thailand shaped by EU GI regulations? We examined these questions in light of the concept of the Brussels Effect and took an interdisciplinary socio-legal comparative methodological approach, applying the functional method of comparative law, expert interviews and desk research. The analysis was further based on three case studies of products from the EU/Germany (i.e. Hessischer Handkäse) and Thailand (i.e. Khao Hom Mali Thung Kula Rong-Hai (TKR) and Kafae Doi Chaang) which are registered as PGI in the EU.

Our findings suggest that the EU and the Thai regulation of GI controls is strikingly different in several respects. While in the EU, GI controls are institutionally embedded within the broader framework of food quality policy and food law, in Thailand GI controls are the responsibility of the Ministry of Commerce's Department of Intellectual Property. In the EU, GI controls are a necessary requirement for the registration of a product as PDO/PGI and are implemented to verify the rightful use of both the registered name and the EU PDO/PGI symbols. They are hence a crucial element of EU GI regulations. In Thailand, GI controls are no requirement for the registration of a name and are merely required for the use of the Thai GI logo. Consequently, not all registered GIs are subject to control. Thus, the Thai standards for control are arguably more lenient than the EU's. The findings do not seem support the presence of a de-jure Brussels Effect.

The analysis of the German and the Thai case studies has shown that the GI control governance structures are different in each case (i.e. public and/or private controls), but that all are based on the different control options stipulated in the applicable laws. The control measures taken are similar in all cases. A double layer of external control implemented in the case of Kafae Doi Chaang as well as findings beyond the level of the case studies suggests that Thai GIs which are registered as PDO/PGI in the EU adopt control by a foreign private certification body even if a local public control body is available. Consequently, it appears that Thai producers who wish to receive GI registration in the EU comply with the EU's higher standards for control to gain access to the EU's market. The findings therefore tentatively indicate the presence of a de facto Brussels Effect.

Our findings support the hypothesis by Marie-Vivien and Vagneron that EU GI regulations influence national GI control systems in South-East

Asian countries which are seeking to export their products to the EU, but that they are also influenced by costs and the financial and human resources available on the institutional and the producer levels.<sup>374</sup> Despite various differences on the regulatory level, the set-up of the Thai GI control system suggests similarities with the EU's which enable Thai producers to meet the control standards stipulated in EU law (i.e. private certification). At the same time, the control system includes a control option (i.e. by a Provincial Committee) which is arguably more suited to local circumstances than private certification. The findings of our research further suggest that in practice, the chosen control options differ between GIs sold only on the national market and those which are registered and sold as PDO/PGI in the EU. Although Marie-Vivien and Vagneron advocate the implementation of "tailor-made" instead of "one-size-fits-all" control systems for these countries<sup>375</sup>, it is questionable whether such "tailor-made" control systems meet international standards for GI control. This can put their value for countries striving to protect and sell their GIs on foreign markets into question. Furthermore, the need for Thai GI producers who registered their products as PDO/PGI in the EU to resort to control by private certification bodies may point to the absence of a public control mechanism which meets the EU's standards for public control. This is line with the argument made by Justin Hughes who emphasizes that developing country governments often lack the capacity or the will to effectively enforce GI laws.<sup>376</sup>

In light of the outcome of the WTO dispute, in which the US and Australia challenged the strict requirements which the EU's GI control system placed on producers from third countries, the question remains whether the amendments subsequently made by the EU really make it easier for foreign producers to achieve GI registration in the EU. In this regard, the findings suggest that in practice the EU's provisions do not allow for easy access of third country GIs, especially from developing countries. Despite the existence of a public control mechanism, Thai producers are left with private certification as the only viable control option. This requires financial, technical and human resources which producers from developing countries may not be able to raise. Besides, it requires that certification bodies which are qualified to meet the EU's standards for certification are present in the country of origin in the first place and are affordable for GI producers.<sup>377</sup> The analysis has shown that this issue raised by Marette et al. materialized in Thailand, where no ISO 17065-accredited certification body exists and certification therefore has to be carried out by foreign certification bodies.

Our research is subject to several limitations. Limitations regarding the functional method of comparative law arise from the fact that a cross-cultural comparison of two different regulatory systems was conducted. The EU is

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<sup>374</sup> Marie-Vivien & Vagneron, *WORLD FOOD POLICY*, 121 (2017).

<sup>375</sup> *Id.* at, 105.

<sup>376</sup> Hughes, 131-134. 2009.

<sup>377</sup> Marette, et al., *AGRIBUSINESS*, 466 (2008).

a multi-level regulatory system, while Thailand is a constitutional monarchy, which implies that the structures of the legal systems compared are different.<sup>378</sup> Besides, each judicial system is influenced by its unique political, social, cultural and historical setting, which requires full comprehension and in-depth knowledge about it on part of the researcher to reach valid conclusions.<sup>379</sup> Similarly, pitfalls related to working with legal texts and documents in a language unknown to the researchers were encountered.<sup>380</sup>

Shortcomings in relation to conducting expert interviews arose from the fact that the German and Thai experts which were interviewed are involved in the respective GI control systems to a different extent. The main reasons for this distinction were the limited possibilities of data access and language barriers which arose for the Thai cases.

Moreover, we did not make the selection of the case studies based on theoretical considerations but on reasons of data access and data availability. Since the products are all different product types with inherently different characteristics and production procedures, their level of comparability concerning quality control measures is limited. The findings for the case of Hessischer Handkäse in Germany are furthermore not representative for the whole of Germany, let alone the entire EU. Related, this research faces shortcomings due to its qualitative nature and the case study approach taken. Despite the triangulation of different research methods, the results attained through a limited number of expert interviews and small-N case study research is valid and generalizable only to a limited extent.<sup>381</sup> The research findings are rather speculative in nature and the research approach taken and the results obtained do not allow to prove any causal connections between the investigated variables.<sup>382</sup>

Future qualitative research should hence extend the analysis to a larger number of cases of Thai GIs which are registered as PDO/PGI in the EU. Ideally, to enhance the validity of the results, the relationship between EU GI control regulations and the behavior of Thai producers should be examined using quantitative methods. The impact of the adoption of the EU's GI control system on producers in developing countries like Thailand should be quantified to understand which costs and benefits producers from third countries face when adopting the EU's control standards, and which incentives are needed to achieve that more producers from developing countries apply for GI registration in the EU.

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<sup>378</sup> Van Hoecke, *LAW AND METHOD*, 10 (2015).

<sup>379</sup> Örüçü, 450. 2006.

<sup>380</sup> *Id.* at.

<sup>381</sup> LAMNEK & KRELL, 690. 2016.

<sup>382</sup> Mahy, *INTERNATIONAL JOURNAL OF LAW IN CONTEXT*, 430-431 (2016).

## IX APPENDICES

*Appendix A: Pictures of PGI certified Hessischer Handkäse, TKR and Kafae Doi Chaang*



*Hessischer Handkäse*

Source: Photograph by the authors.



*Kao Hom Mali Thung Kula Rong-Hai (TKR)*  
Source: Orachos Napisintuwong <sup>383</sup>

<sup>383</sup> Napisintuwong, Khao Hom Mali Thung Kula Rong-Hai. 2018.



*Kafe Doi Chaang*

Source: <https://doichaangcoffee.co.th/en/products/coffee-bean/>

*Appendix B: List of interviewees*

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<b>Interviewee</b>	<b>Date of the interview</b>
Representative of UN FAO Regional Office for Asia and the Pacific (Interview partner (IP) 1)	18. October 2018
Processor Hessischer Handkäse (IP 2 and 3)	19. October 2018
Auditors RP Giessen (IP 4 and 5)	24. October 2018
Researcher Strength2Food project (IP 6)	5. November 2018
Representative DIP Thailand (IP 7)	21. November 2018

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*Appendix C: Interview guides*

I. Interview guide Regierungspräsidium Giessen (in German)

**Fragen zum System der amtlichen Kontrolle geschützter Herkunftsbezeichnungen in Hessen – Regierungspräsidium Giessen**

Akteure und Zuständigkeiten

- 1) Welche **Rolle** hat das Regierungspräsidium Giessen in Bezug auf die amtliche Kontrolle geschützter Herkunftsbezeichnungen in Hessen?
- 2) Welche **anderen Akteure** sind an Kontrollen geschützter Herkunftsbezeichnungen in Hessen beteiligt und welche **Aufgaben** übernehmen diese?

Ablauf und Inhalt amtlicher Kontrollen

*Hier wäre es gut vorstellbar, Frage 3 und 4 am Beispiel des Hessischen Handkäs' zu erläutern*

- 3) Wie wird bei der **Überprüfung der Einhaltung der Produktspezifikation** vor Inverkehrbringen des Erzeugnisses (Inspektion) vorgegangen?
  - a. **Wie häufig** und **wann** wird eine Kontrolle durchgeführt? (Angekündigt, unangekündigt?)
  - b. **Wie lange** dauert die Kontrolle?
  - c. **Wer** führt die Kontrolle durch?
  - d. **Wer** wird im Zuge der Kontrolle kontrolliert?
  - e. Wie sieht das **Kontrollkonzept** für die Kontrolle der Einhaltung der Produktspezifikation für den Hessischen Handkäs' aus?
  - f. **Welche Aspekte** genau werden bei der Kontrolle der Einhaltung der Produktspezifikation kontrolliert? **Wie** werden diese Aspekte kontrolliert (Methoden)? **Von wem** werden die jeweiligen Aspekte kontrolliert? **Wann** werden die jeweiligen Aspekte kontrolliert? Sind **kritische Punkte** bzgl. jeder Vorgabe festgelegt, an denen die Kontrolle stattfinden soll?
    - i. Einhaltung der Vorgaben der Produktspezifikation, z.B. zu Herstellung der Rohmaterialien und Verarbeitungsprozesse
    - ii. Rückverfolgbarkeit der Herkunft der Zutaten
    - iii. Endprodukt, z.B. Labelling, Verpackung, Geschmack
  - g. In welchem Verhältnis steht die Kontrolle zur Einhaltung der Produktspezifikation mit der Überprüfung der **Einhaltung anderer Standards**? (Wie wird in diesem Fall die Kontrolle für die Einhaltung der Produktspezifikation der g.g.A. durchgeführt? Separate Kontrollen, gleiche Leute, separate Dokumentation und Berichterstattung?)

- h. Gibt es Aspekte, im Hinblick derer sich die Überprüfung der Einhaltung der Produktspezifikation als **schwierig gestaltet**? Wie gehen Sie damit um?
- 4) Wie wird bei den Kontrollen vorgegangen, die nach **Inverkehrbringen des Erzeugnisses** auf dem Markt durchgeführt werden (amtliche Kontrolle auf dem Markt)?
- a. **Wie häufig** und **wann** und wird eine Kontrolle durchgeführt? (Angekündigt, unangekündigt)
  - b. **Wie lange** dauert die Kontrolle?
  - c. **Wer** führt die Kontrolle durch?
  - d. **Wer** wird im Zuge der Kontrolle kontrolliert?
    - i. Supermärkte, Restaurants, Spezialitätengeschäfte, Bauernmärkte etc.
  - e. **Welche Aspekte** genau werden bei der Kontrolle nach Inverkehrbringen auf den Markt kontrolliert? **Wie** werden diese Aspekte kontrolliert (Methoden: Dokumente, Laboranalyse etcl.)? **Von wem** werden die jeweiligen Aspekte kontrolliert? **Wann** werden die jeweiligen Aspekte kontrolliert? Sind **kritische Punkte** bzgl. jeder Vorgabe festgelegt, an denen die Kontrolle stattfinden soll?
    - i. Einhaltung der Vorgaben der Produktspezifikation
    - ii. Rückverfolgbarkeit des Produktes und korrekte Dokumentation durch Marktteilnehmer
    - iii. Endprodukt, z.B. Labelling, Verpackung, Aussehen, Geschmack, Lebensmittelsicherheit
  - f. In welchem Verhältnis steht die Kontrolle nach Inverkehrbringen des Erzeugnisses mit der Überprüfung der **Einhaltung anderer Standards**? (Wie wird in diesem Fall die Kontrolle für die g.g.A. durchgeführt? Separate Kontrollen, gleiche Leute, separate Dokumentation und Berichterstattung?)
  - g. Gibt es Aspekte, im Hinblick derer sich die Überprüfung als **schwierig gestaltet**? Wie gehen Sie damit um?
- 5) Gibt es **Unterschiede** zwischen den verschiedenen hessischen Produkten mit geschützter Herkunftsbezeichnung im Hinblick auf die angewendeten Kontrollverfahren?
- a. Gibt es Unterschiede zwischen den Kontroll- und Überwachungsmechanismen, die für **geschützte geographische Angaben** bzw. für **geschützte Ursprungsbezeichnungen** angewendet werden?

Dokumentation und Berichterstattung

- 6) Wie werden die Ergebnisse der Inspektionen und der amtlichen Kontrollen auf dem Markt **dokumentiert**?
- 7) Wie und bei wem wird **Bericht** darüber **erstattet**?
  - a. Welche Rolle spielen dabei regionale Behörden, Behörden des Landes Hessen, nationale Behörden oder EU Behörden?
  - b. Wie werden die Ergebnisse in den mehrjährigen nationalen Kontrollplan integriert?

Durchsetzungsmaßnahmen

- 8) Welche Maßnahmen werden ergriffen, wenn bei der **Inspektion der Einhaltung der Produktspezifikation** Verstöße aufgedeckt werden?
- 9) Wie wird vorgegangen, wenn der **missbräuchliche Gebrauch eines geschützten Namens auf dem Markt** aufgedeckt wird?

Kosten

- 10) **Welche** Kosten entstehen bei Inspektionen und amtlichen Kontrollen auf dem Markt? **Wer** trägt diese Kosten?
  - a. Indirekte Kosten: z.B. Zeit zum Ausfüllen von Dokumenten, Anwesenheit bei Inspektionen
  - b. Direkte Kosten: z.B. Kosten der Kontrolle, technische Kosten (z.B. chemische Analysen)

Kontrolle der zuständigen Behörde

- 11) Unterliegen die Kontrolltätigkeiten des Regierungspräsidiums auch internen oder externen Kontrollen?

## II. Interview guide DIP Thailand (in English)

**Interview questions on the control system for geographical indications – Department of Intellectual Property Thailand**  
Development

- 1) How did the system of GI controls in Thailand **evolve**?
  - a. To what extent is/has the development of the GI control system in Thailand been influenced by systems of GI controls in place in **other countries**?

Actors and Responsibilities

- 2) Which **role** does the Department of Intellectual Property have regarding the control of geographical indications in Thailand?
- 3) Which **other actors** play a role in the control system and which **responsibilities** do they have?

#### Implementation of GI controls

- 4) How is the compliance of the GI product with the **product specification** ensured?
- 5) How is the rightful use of the protected name controlled after a product has been placed **on the market**?
- 6) To what extent does the implementation of controls differ for different products?
  - a. How are controls carried out for products which are registered as **protected designation of origin** (PDO) or **protected geographical indications** (PGI) in the European Union (EU)?

#### *Applicable to questions 4, 5 and 6:*

- b. How **frequently** and **when** are controls conducted (announced, unannounced)?
- c. How **long** does a control take?
- d. **Who** is being controlled?
- e. Which **aspects** exactly are being controlled? **How** are they controlled (methods)? **Who** controls the different aspects? **When** are the different aspects controlled? Are **critical points** defined which the controls focus on?
  - i. Compliance with product specification, e.g. concerning production of raw materials or processing
  - ii. Traceability
  - iii. Final product, e.g. labelling, packaging, taste

#### Documentation and Reporting

- 7) How are the results of the control of compliance with the product specification and controls after the product has been placed on the market **documented**?
- 8) How and to whom are they **reported**?

#### Enforcement and sanctions

- 9) What happens if **non-compliance** is revealed during a control of compliance with the product specification or a control after the product has been placed on the market?

Costs

- 10) What are the **costs** associated with the control of compliance with the product specification and controls after the product has been placed on the market?

III. Interview guide experts on Thai GI control system (in English)

**Interview questions experts Thailand**

Introduction

- 1) To what extent is your project engaging with the topic of GI controls in Thailand?

Development of the GI control system

- 2) How did the system of GI controls in Thailand **evolve**?
- a. Since **when** was a system of GI controls established in Thailand?
  - b. **Why** did a system of GI controls develop in Thailand although controls are not legally required by the Thai GI Act?
  - c. **Which** actors influence(d) the establishment of the control system?
  - d. To what extent is/has the development of GI controls in Thailand been influenced by systems of GI controls in place in **other countries**? E.g. the EU system for GI controls?

Organisation of the GI control system

- 3) Which **actors** are part of the control system for GIs in Thailand at the moment? Which **responsibilities** do these actors have?
- a. GI Commission
  - b. Department of Intellectual Property Rights
  - c. Accreditation Bodies (National Accreditation Council)
  - d. Competent authorities (Provincial Committee)
  - e. Control Bodies
  - f. Producer groups

## g. Producers

- 4) To what extent are the actors involved in the controls **supervised** and **controlled** themselves? How are they controlled?

Implementation of GI controls

- 5) How are GI controls in Thailand **implemented** at the moment?
- a. How is **compliance of a GI product with the product specification** ensured?
  - b. How is the rightful use of the protected name controlled **after a product has been placed on the market**?
  - c. How **frequently** are controls conducted?
  - d. How are control results **documented** and **reported**? To whom?
  - e. What **enforcement mechanisms** are in place? Which **sanctions** for non-compliance exist?
  - f. What are the **costs** associated with controls? Who bears the costs?
- 6) To what extent does the prospect of accessing **international markets** influence the implementation of GI controls by producers?
- 7) What is the relation between GI controls and **food safety controls** in Thailand?

Prevailing issues of GI controls

- 8) What are prevailing **issues** in the regulation, governance and implementation of GI controls in Thailand?
- 9) To what extent are issues related to the **compliance with international standards regarding external controls**?

## IV. Interview guide producers Hessischer Handkäse (in German)

Leitfragen für Interviews mit Produzenten des Hessischen Handkäs' Einführung

- 1) Was macht den Hessischen Handkäs' aus Ihrer Sicht zu einem besonderen Produkt und warum hat Ihr Betrieb/ haben Sie sich dazu entschieden, Ihr Produkt unter den Bestimmungen des Siegels „geschützte geografische Angabe“ zu produzieren?

Akteure der Kontrollen

- 1) Von **wem** wird in Ihrem Betrieb kontrolliert, ob der von Ihnen hergestellte Hessische Handkäs‘ den Vorgaben der Produktspezifikation entspricht? Was für **Aufgaben** übernehmen die Akteure jeweils?

Ablauf und Inhalt der Kontrolle

*Je nach Antwort auf Frage 2) bezieht sich die folgende Frage 3) auf Selbstkontrollen, interne Kontrollen durch Produzentenverbände und externe Kontrollen, die zur Verifizierung der Einhaltung der Produktspezifikation durchgeführt werden.*

- 2) Wie ist der **Ablauf** und **Inhalt** der Kontrolle zur Einhaltung der Produktspezifikation für den Hessischen Handkäs‘?
- a. Wie **häufig** und **wann** wird eine Kontrolle durchgeführt? (Angekündigt, unangekündigt?)
  - b. Wie **lange** dauert die Kontrolle?
  - c. **Wer** wird im Zuge der Kontrolle kontrolliert?
  - d. Wie sieht das **Kontrollkonzept** für die Kontrolle der Einhaltung der Produktspezifikation für den Hessischen Handkäs‘ aus?
  - e. **Welche Aspekte** genau werden bei der Kontrolle der Einhaltung der Produktspezifikation kontrolliert? **Wie** werden diese Aspekte kontrolliert (Methoden)? **Von wem** werden die jeweiligen Aspekte kontrolliert? **Wann** werden die jeweiligen Aspekte kontrolliert? Sind **kritische Punkte** bzgl. jeder Vorgabe festgelegt, an denen die Kontrolle stattfinden soll?
    - i. Einhaltung der Vorgaben der Produktspezifikation, z.B. zu Herstellung der Rohmaterialien und Verarbeitungsprozesse
    - ii. Rückverfolgbarkeit der Herkunft der Zutaten
    - iii. Endprodukt, z.B. Labelling, Verpackung, Geschmack
- 3) In welchem Verhältnis steht die Kontrolle zur Einhaltung der Produktspezifikation mit der Überprüfung der **Einhaltung anderer Standards**?
- a. Wie wird in diesem Fall die Kontrolle für die Einhaltung der Produktspezifikation der g.g.A. durchgeführt? Separate Kontrollen, gleiche Leute, separate Dokumentation und Berichterstattung?
- 4) Gibt es Aspekte, im Hinblick derer sich die Überprüfung der Einhaltung der Produktspezifikation als **schwierig gestaltet**?

Dokumentation und Berichterstattung

- 5) Wie werden die Ergebnisse der Kontrolle **dokumentiert**?
- 6) Wem und wie wird über die Ergebnisse der Kontrolle **Bericht erstattet**?

Verstöße

- 7) Was würde passieren, wenn bei der Kontrolle die **Nicht-Einhaltung der Vorgaben** der Produktspezifikation entdeckt würde?

Kosten

- 8) **Welche** Kosten entstehen bei der Kontrolle und **wer** trägt diese Kosten?
- a. Indirekte Kosten: z.B. Zeit zum Ausfüllen von Dokumenten, Anwesenheit bei Inspektionen
  - b. Direkte Kosten: z.B. Kosten der Zertifizierung, technische Kosten (z.B. chemische Analysen)

## V. Interview guide expert Doi Chaang coffee (in English)

**Interview questions for experts Thailand – Doi Chaang coffee case**Introduction

- 1) How did the system of GI controls in Thailand **evolve**?
  - a. To what extent is/has the development of the GI control system in Thailand been influenced by systems of GI controls in place in **other countries**?
- 2) How is the system of GI control organised in Thailand?
  - a. How is compliance of a GI product with the **product specification** ensured?
  - b. How is the rightful use of the protected name controlled after a product has been placed **on the market**?
  - c. What **enforcement mechanisms** are in place? Which **sanctions** for non-compliance exist?

*Questions 3 to 11 refer to the case of Doi Chaang coffee.*

Implementation of GI controls for Doi Chaang coffee

- 3) How are **self-controls** by Doi Chaang coffee growers carried out?
- 4) How are **internal controls** of the Doi Chaang coffee growers and the Kafe Doi Chaang Company by the GI Committee at Provincial Level carried out?

How are **external controls** of the Doi Chaang coffee growers and the Kafe Doi Chaang Company by the control body carried out?

*Applicable to questions 3, 4 and 5:*

- a. How **frequently** and **when** are controls conducted (announced, unannounced)?

- b. How **long** does a control take?
- c. **Who** is being controlled?
- d. How does the **control plan** look like for Doi Chaang coffee?
- e. Which **aspects** exactly are being controlled? **How** are they controlled (methods)? **Who** controls the different aspects? **When** are the different aspects controlled? Are **critical points** defined which the controls focus on?
  - i. Compliance with product specification, e.g. concerning production of raw materials or processing
  - ii. Traceability
  - iii. Final product, e.g. labelling, packaging, taste
- 5) To what extent are self-, internal and external controls related to controls of **other standards**?
- 6) Are there aspects which are **difficult to control**? Which?

Documentation and reporting for Doi Chaang coffee

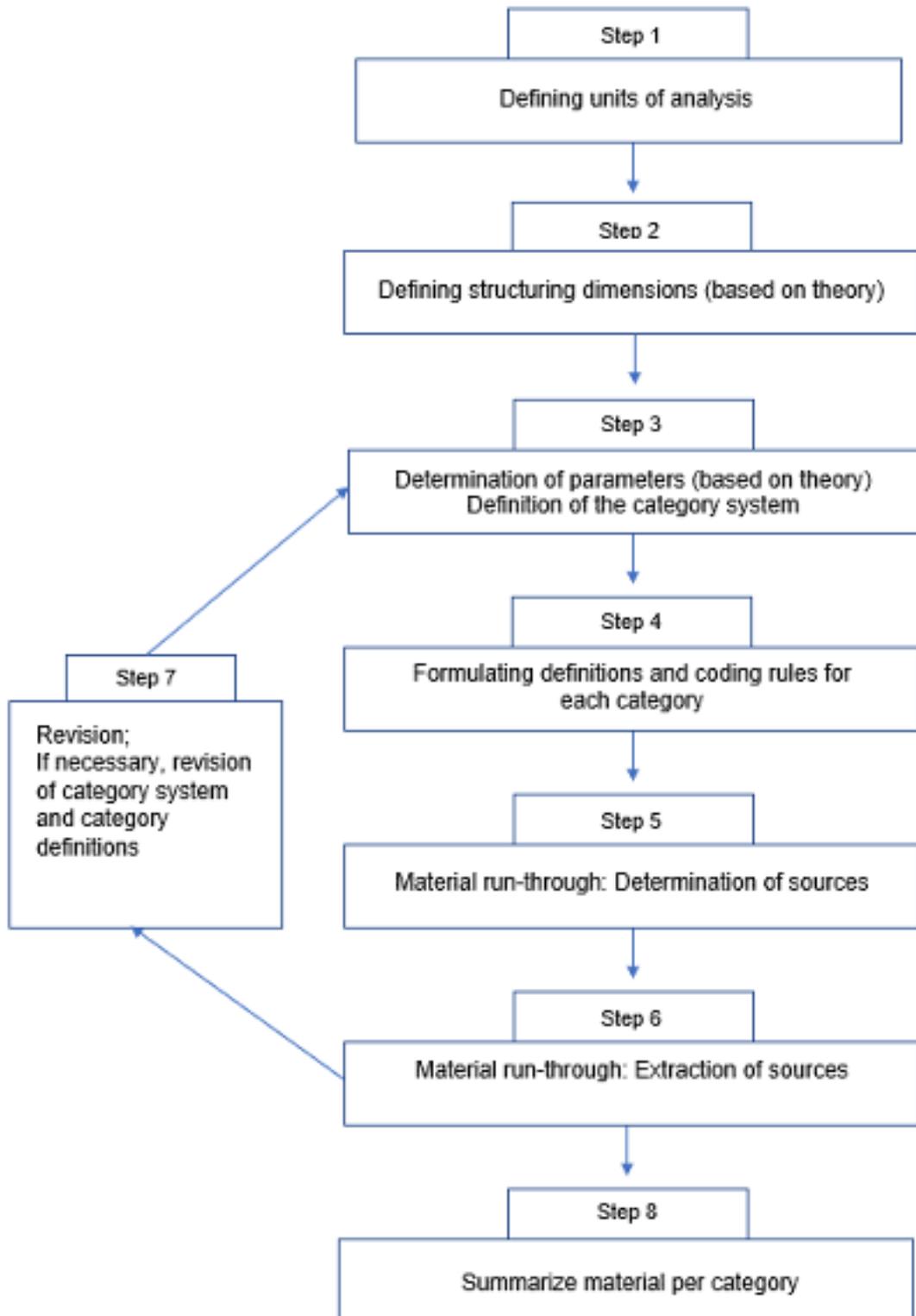
- 7) How are the results of self-, internal and external controls **documented** in the case of Doi Chaang coffee?
- 8) Whom and how are the results of self-, internal and external controls **reported** to in the case of Doi Chaang coffee?

Enforcement and sanctions for Doi Chaang coffee

- 9) What happens when **non-compliance** is revealed during a self-, internal or external control?

Costs

- 10) What are the **costs** associated with self-, internal and external controls of Doi Chaang coffee? **Who** bears the costs?
  - a. Indirect costs: Time needed to fill out documents, presence at inspections etc.
  - b. Direct costs: costs of control, technical costs (e.g. chemical analysis)

*Appendix D: Steps of a structured content analysis adapted from Mayring<sup>384</sup>*

<sup>384</sup> MAYRING, 98, 104. 2015.

*Appendix E: Category system for a deductive/structuring content analysis based on Mayring.<sup>385</sup>*

Category	Sub-category	Sub-sub-category	Definition	Delineation
Control system Germany	Development		Statements relating to the history of the development of the control system and its current/future development	
	Regulation		Statements referring to laws and regulations	Includes statements on relevant laws and regulations other than GI law
	Governance		Statements referring to the actors which are part of the control system and their responsibilities	Refers to actors generally (on the federal level), not the case study
	Control types		Statements referring to different ways/channels through which the quality of GIs is controlled	Refers to control types generally (on the federal level), not the case study; Includes general statements regarding controls after the product has been placed on the market
	Control procedure		Statements referring to how the controls are carried out.	Refers to control procedure in general, not the case study

<sup>385</sup> *Id.* at, 97-99.

Category	Sub-category	Sub-sub-category	Definition	Delineation
	Issues		Statements relating to problems of the control system	Does not refer to problems associated with the controls for specific case studies
Control system Thailand	Development		Statements related to the history of the development of the control system and its current/future development	Includes statements regarding the extent to which the development of the control system is influenced by external factors and/or actors
	Regulation		Statements referring to laws and regulations	Includes statements on relevant laws and regulations other than GI law
	Governance		Statements referring to the actors which are part of the control system and their responsibilities	Refers to actors generally, not the case study
	Control types		Statements referring to different ways/channels through which the quality of GIs is controlled	Refers to control types generally, not the case study; Includes general statements regarding controls after the product has been placed on the market; Includes statements referring to how Thai products which are registered as GIs in the EU are controlled

Category	Sub-category	Sub-sub-category	Definition	Delineation
	Control procedure		Statements referring to how the controls are carried out.	Refers to control procedure in general, not the case study
	Issues		Statements relating to problems of the control system in general	Does not refer to problems associated with the controls for specific case studies
Case study control Germany	Self-control	Actors	Refers to control activities which are carried out by members of the product's value chain themselves	Includes self-controls on food safety issues (which are required for GI certification)
		Procedure		
		Documentation and reporting		
		Enforcement and sanctions		
		Costs		
		Difficulties		
	Internal control	Actors	Refers to control activities carried out by GI producer organizations or other local bodies	
		Procedure		
		Documentation and reporting		
		Enforcement and sanctions		
		Costs		

Category	Sub-category	Sub-sub-category	Definition	Delineation
		Difficulties		
	External control	Actors	Refers to control activities carried out by public and/or private third parties	Does not refer to external controls on food safety
		Procedure		
		Documentation and reporting		
		Enforcement and sanctions		
		Costs		
		Difficulties		
		Accreditation/Control		
	Other standards		Statements related to the relationship between GI controls and the control of compliance of the product with other standards	Includes external controls of food safety (such as HACCP or IFS)
Case study control Thailand	Self-control	Actors	Refers to control activities which are carried out by members of the product's value chain themselves	
		Procedure		
		Documentation and reporting		
		Enforcement and sanctions		
		Costs		
		Difficulties		

Category	Sub-category	Sub-sub-category	Definition	Delineation
	Internal control	Actors	Refers to the control activities carried out by GI producer organizations or other local bodies	
		Procedure		
		Documentation and reporting		
		Enforcement and sanctions		
		Costs		
		Difficulties		
	External control	Actors	Refers to control activities carried out by public and/or private third parties	
		Procedure		
		Documentation and reporting		
		Enforcement and sanctions		
		Costs		
		Difficulties		
		Accreditation/Control		
	Other standards		Statements related to the relationship between GI controls and the control of compliance of the product with other standards	Includes statements specifically related to controls for PDO/PGI

*Appendix F: Comparison of regulation of GI controls in the EU/Germany and in Thailand*

	<b>EU/Germany</b>	<b>Thailand</b>
Regulatory Acts	<ul style="list-style-type: none"> <li>• Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs</li> <li>• Germany: German Trademark Act</li> <li>• Regulation 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules</li> <li>• Regulation 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety</li> </ul>	<ul style="list-style-type: none"> <li>• DIP Regulation for Thai Geographical Indication Logo Approval B.E. 2008</li> <li>• Act on Protection of Geographical Indication B.E.2546 (2003)</li> </ul>
Purpose of controls	<ul style="list-style-type: none"> <li>• Control use of name and EU GI logo</li> </ul>	<ul style="list-style-type: none"> <li>• Control use of Thai GI logo</li> </ul>

	EU/Germany	Thailand
Objective of controls	<ul style="list-style-type: none"> <li>• Verifying compliance with product specification</li> <li>• Prevent misuse of protected name in the market place</li> </ul>	<ul style="list-style-type: none"> <li>• Verifying compliance with product specification</li> <li>• Prevent misuse of Thai GI logo in the market place</li> </ul>
Responsible authority	<ul style="list-style-type: none"> <li>• Designated competent authority of the member states</li> <li>• Germany: Federal Ministry of Justice (BMJV), in collaboration with Federal Ministry of Food and Agriculture (BMEL) &amp; Authorities of the German <i>Länder</i></li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Commerce, Department of Intellectual Property (DIP)</li> </ul>
Control body	<ul style="list-style-type: none"> <li>• Designated competent authority of the member states</li> <li>• Germany: competent authority of the <i>Länder</i></li> </ul> <p>and/or</p> <ul style="list-style-type: none"> <li>• Private certification body (ISO 17065-accredited)</li> </ul>	<ul style="list-style-type: none"> <li>• Provincial Committee/ local committees</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>• Private certification body (ISO 17065-accredited)</li> </ul>

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	<b>EU/Germany</b>	<b>Thailand</b>
Reporting	<ul style="list-style-type: none"><li>• Report to EU (National multi-annual control plan)</li><li>• Germany: Report to GI authority of <i>Länder</i> and national GI authority</li></ul>	<ul style="list-style-type: none"><li>• Report to Ministry of Commerce, Department of Intellectual Property (DIP)</li></ul>
Enforcement/sanctions	<ul style="list-style-type: none"><li>• Designated authority in member state</li><li>• Germany: Competent authority of the <i>Länder</i></li></ul>	<ul style="list-style-type: none"><li>• Ministry of Commerce, Department of Intellectual Property (DIP)</li></ul>
Costs	<ul style="list-style-type: none"><li>• Borne by producers</li></ul>	<ul style="list-style-type: none"><li>• Borne by producers</li></ul>

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*Appendix G: Comparison of governance of GI controls for the German and Thai case studies*

	<b>Hessischer Handkäse</b>	<b>TKR</b>	<b>Kafee Doi Chaang</b>
Self-control	Based on food law	Based on GI working manual	Based on GI working manual <ul style="list-style-type: none"> <li>• Mutual assistance and monitoring between coffee growers</li> </ul>
Internal control	None	Farmers' organizations <ul style="list-style-type: none"> <li>• Focus on compliance with working manual and traceability</li> </ul>	Public control by Provincial Committee <ul style="list-style-type: none"> <li>• Focus on compliance with working manual, running of self-controls and traceability</li> </ul>

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	<b>Hessischer Handkäse</b>	<b>TKR</b>	<b>Kafee Doi Chaang</b>
External control	<p>Public control by the competent authority (RP Giessen)</p> <ul style="list-style-type: none"> <li>• Focus on compliance with product specification, traceability, quality assurance and running of self-controls</li> </ul>	<p>Private control by ISO 17065-accredited certification body (Bioagricert)</p> <ul style="list-style-type: none"> <li>• Focus on compliance with working manual, traceability, running of self-controls and internal controls</li> </ul>	<p>Private control by ISO 17065-accredited certification body (Bioagricert)</p> <ul style="list-style-type: none"> <li>• Focus on compliance with working manual, (traceability), running of self-controls, running of Provincial Committee controls</li> </ul>

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