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Article

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The role of the Consortia in the Italian wine production system and the impact of EU and national legislation

A Business Article by Carlotta Gori^a, Veronica Alampi Sottini^b

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Abstract

The EU legislation has undergone a radical change in 2008, handling the Italian legislature the necessity to rethink on fundamental aspects of the national legislation. The changes were focused on the procedure of formation and revision of the designations of origin, opening up new and important perspectives for Consortia since, as inter-branch organizations, they can be acknowledged as representatives of the economic activities linked to the production and at least to one of the phases of processing or trade. The Consortium has become responsible for production specification, stock managing, new registration of the vines to a DO, supervision and protection.

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Keywords: EU legislation; Italian legislation; Consortia; Italian production system

1. Introduction

Wine has always been given particular attention by legislators, maybe because of the peculiarity of this product, its unbreakable link with technology, territoriality and culture have always required special regulatory measures able to consider joint production and communication rules.

As an example of this normative approach, it is enough to remember that the whole system of protected designations of origin and geographical indications was born with reference to wine and only later extended on to other food categories.

As evidence of this, it is specifically the wine sector that shows larger number of designations compared to other agro-

food products, counting, in Italy, 476 Designation of Origin (DO) and 129 Geographical Indications (GI).¹

This system was profoundly changed by the reform introduced by the EU legislation in 2008 with EC Regulation 479/2008, which was entirely incorporated in the EC Regulation 1234/2007 (better known as the CMO Regulation) “*Common organization of agricultural markets and on specific provisions for certain agricultural products*” including, of course, wine.

However, it is necessary to point out that the EC Regulation 1308/2013 was published only recently. It acknowledges almost entirely the disposition of the aforementioned regulations and it will be, from now on, the new legal instrument for the Common Market Organization (CMO).

2. The Italian wine production scenario

The Italian wine production system is characterized by a strong fragmentation of both the vine planted area and the

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¹Source: Bacchus—EU database on PDO (Protected Designation of Origin) and PGI (Protected Geographical Indication) products, last update November 15th, 2013.

farms (Table 1). This production structure leads to a ubiquitous viticulture in all of those areas of the peninsula with suitable conditions for that production. As a matter of fact, in Italy there are almost 390 thousands of farms which do have vine planted area, with an average vine area of only 1.7 ha. More in detail, 29% of the vine area is managed by 69% of the farms, which count less than 5 ha. The farms with more than 20 ha are only 7% of the total, but manage 33% of the national vine area.

The number of Italian wine farms, however, has strongly decreased over the past three decades, as well as the land used for viticulture, but it has to be emphasized that in the same period the areas intended for certified products (PDO) showed an increase (Table 2).

The data highlight how the wine sector is very complex and characterized, simplifying, by a marked structural duality: on the one hand, there are thousands of small farms that produce small amounts of wine, often for their own consumption, and, on the other, companies with high levels of professionalism and high productions of wine. Therefore, the wine production system shows a clear differentiation among the farms in terms of production costs, level of vertical integration of the production process, relationship with the market and production philosophies. This leads to a frequent separation of the production process, resulting in a reduction of the value added for the farmers.

As evidence of this, in Italy there is a very high number of wine processing establishments (about 70,000), to which the

task of processing the grapes into wine is assigned (Malorgio et al., 2011). They are divided into three different typologies: farm wine cellars, which convert the grapes produced inside the farm and purchased on the market; industrial wineries, which process wine grapes exclusively purchased on the market; cooperative wine cellars, which process grapes from their members but also grapes purchased on the market. The latter are the most important in terms of wine production, but farm wine cellars are the most numerous even though the smaller ones in terms of size and quantity of wine produced. Besides the wine processing establishments, in Italy there are also numerous bottlers, since, especially for the small farm wine cellars, bottling is a production stage that is often not economically convenient.

Thus, in the national wine sector it is possible to identify a number of specialized operators in each one of the stages of the wine production process (grape production, processing into wine, bottling), and this implies a strong fragmentation of the supply, which, in the final phase, has to establish a relationship with the final market. In this scenario, with the exception of large-scale enterprises that are autonomously able to verticalize the production process and reach the final market, the farms are not able to come together. Therefore, these farms suffer, as they face the market, the role of price takers, with the consequence that they do not reach a fair remuneration for the production inputs invested in the process.

3. The evolution of the EU legislation of the sector: the CE 1234/2007 regulation

The EU disciplinary framework underwent a radical change in 2008, handing the Italian legislator the necessity but also the opportunity to rethink some fundamental aspects at national level.

The result was a complete revision of the old 164/1992 law and the drafting of a new policy document for wines with a protected designation of origin enclosed in Legislative Decree no. 61/2010, which gives detailed rules for the “*Protection of designations of origin (PDO) and geographical indications (PGI) for wines*”, followed by the application decrees. The decree, after providing the definition for PDO and PGI, regulates the use of the designations and of the indications, regulates the recognition procedure (in which the key element is represented by the preparation of a product specification, the

Table 1
Number of farms and vine hectares for Class of Used Agricultural Area.
Source: Istat, 6° Agricultural Census.

	No. of farms	Hectares
Class of used agricultural area		
0.01–0.99 ha	90,829	26,062.44
1–1.99 ha	75,313	44,607.46
2–2.99 ha	47,673	44,294.61
3–4.99 ha	55,728	76,753.31
5–9.99 ha	57,686	128,299.02
10–19.99 ha	34,474	124,464.01
20–29.99 ha	11,444	59,282.91
30–49.99 ha	8,444	56,294.14
50–99.99 ha	4,926	48,912.31
More than 100 ha	2,364	55,325.97
Total	388,881	664,296.18

Table 2
Number of farms and vine hectares from 1982 to 2010.
Source: Istat, Agricultural Census 1982, 1990, 2000, 2010.

	Census year							
	2010		2000		1990		1982	
	Farms	Vine (ha)	Farms	Vine (ha)	Farms	Vine (ha)	Farms	Vine (ha)
Total vine area	388,881	664,296	791,091	717,334	1,184,861	932,957.04	1,629,260	1,145,097
Vine area for PDO production	124,970	320,859	108,711	233,522	92,590	190,852	105,019	209,794
% of PDO vine on total	32.14	48.30	13.74	32.55	7.81	20.46	6.45	18.32

contents of which are described in detail by the legislature), and introduces a structured system of control and supervision.

In Europe, the process of renovation of the markets and the related rethinking of the legal system has undergone an animated acceleration in recent years within the wider process of renewal of the whole Common Agricultural Policy and of the enlargement to new Member States.

The need for renewal was clearly made explicit in paragraph 5 of the new Regulation 479/2008, where the ineffectiveness of the previous regulation (EC Regulation 1493/99) “in driving the sector towards a competitive and sustainable development” is ratified.

The most innovative element introduced by the new EU Regulation is the establishment of a regime that has returned the procedure of formation and revision of the designations of origin or typical indications to central European decision making, in order to “allow for a transparent and more elaborate framework underpinning the claim to quality by the products concerned (*i.e.* wine)” (paragraph 27).

To outline the legal nature and the role currently carried out by the Consortia, it is impossible to ignore another aspect that was profoundly changed by EU rules. This aspect concerns the whole structure of rules related to the control system on the designation of origin or typical indication productions; such system starts from the fundamental premise established by art. 118 sexdecies reg. EC 1234/2007, according to which “Member States shall designate the competent authority or authorities responsible for controls with the characteristics of impartiality and independence in accordance with the criteria set by EC Regulation 882/2004”.

EC Regulation 882/2004, however, is closely linked to the sanitary and safety profiles of the products. As a matter of fact, art. 1 specifies that the regulation “does not apply to official controls aimed to verify compliance with the rules on the Common Market Organization for agricultural products”.

In light of the above, we can assume that in the absence of an explicit reference made by EC Regulation 1234/2007, the provisions of EC Regulation 882/2004 would be applied to wines, like all other foods, only with reference to the sanitary and safety profiles, but not in terms of compliance with production rules that require far different professionalism and controls.

This trend towards the uniformity of food control systems endorsed by the European Union answers, in many ways, the needs of producers who would otherwise be confronted with a proliferation of requirements. This risk is however not entirely avoided in the Italian implementation.

In Italy, in the early 2000s the Consortia were entrusted to control over QWPSR.² They exerted this role “*erga omnes*”, *i.e.* towards all members of the productive filière, including those producers not associated with the consortia themselves. After some controversy that resulted in legal disputes on initiatives of producers not associates with the Consortia, this experience was validated in court through a series of concordant and favorable judgements of the administrative law

judges and was confirmed in legislation by the Ministerial Decree of March 29th, 2007.

Both in the motivations of the subsequent ministerial decrees and in the decisions of the administrative law judges, the entrustment to Consortia of these control responsibilities, even towards producers not registered to the Consortia, were deemed legitimate. However, the above mentioned EU rule, entrusting the control to third parties designated by the public authority, has placed the whole issue within an administrative and institutional responsibility framework that belongs to public offices.

Therefore, the most recent Italian experience was oriented in such direction with the result that the current holders of the control activities are bodies appointed by the Ministry of Agriculture, Food and Forestry, in particular by the Central Fraud Repression Office.

4. The Italian experience and application: the legislative decree n. 61/2010

For Consortia, however, new and important perspectives have opened up.

EU legislation has finally provided the definition of inter-branch organization that was later made into law in Italy and assigned for the first time to the Consortia.

As a matter of fact, the recent Reg. 1308/2013 (abrogating but at the same time reproducing to a large extent Regulation 1234/2007) stated that Inter-branch organizations can be acknowledged as representatives of the economic activities linked to the production and at least to one of the phases of processing or trade. Consortia are in fact currently represented by categories of growers, winemakers and bottlers.

These organizations, according to the European regulation, can take actions to improve the knowledge and transparency of the productions and the markets, predict the productive potentials, record prices, coordinate the release of products in the market also through research and market studies, explore potential export markets, implement actions in the defense and promotion of protected designations of origin, geographical indications, quality labels, organic products.

In light of the above, the response of the Italian legislature and consequently of the Italian Consortia was significant, insomuch that today 72 Consortia are fully carrying out their activity on the guidelines defined by European Union and implemented by national legislation.

The wine Consortium, as an Inter-professional organization, is responsible for the Designation, the rules (production specification) that are the basis of its identity and its evolution and adaptation to consumer's tastes. The Consortium is responsible for the managing of the production in respect to the market (also providing, in agreement with the competent Region, restrictive yield measures), for the stock managing (blocage/déblocage), for the new registration of the vines to a DO at the Land Registry. Lastly, it is responsible for increasing the value of the product and for protecting the Designation.

Here below, a didactic indication, but hopefully functional, of the activities of the consortium is provided.

²QWPSR=Quality Wine Produced in a Specific Region.

5. The current functions of the Consortia

The legislative decree n. 61/2010 art. 17 states that the Consortium pursues specific objectives and for this purpose may perform a number of activities that the decree indicates in detail and that it is possible to enclose, for simplification and interpretation, in the concepts, also highlighted in the decree itself, of promotion and valorization, protection and care of the interest of the Designation, of supervisory authority.

As an example, in order to contribute to a correct and unambiguous interpretation of the legislation, the valorization function include:

- stipulation of agreements and arrangements with public and/or private bodies; participation in exhibitions, conferences, workshops, events in Italy and abroad;
- collaboration with public and private bodies, organizations and associations, institutes and schools to promote and implement initiatives for the dissemination of information, food education and responsible consumption of the protected products, including the organization of training, professional and didactic courses;
- activities of presentation, promotion and tasting of the specific Designation within exhibitions and events dedicated to the promotion of agro-food products of the region to which they belong to;
- logistical and organizational support for events dedicated to the promotion and valorization of the specific Designation;
- management of public and private structures for the valorization and promotion of wines with protected designation, participation to admission calls;
- valorization activities and actions, as promoting and managing body, of the rural district and of the cultural, wine and food tours provided by regional, national and EU laws and regulations.

The function of protection and care of the interests of the designation relates to:

- 1) the completion of all activities associated to the application of the national, EU and international legislations concerning products with a designation under their jurisdiction, including the advisory, proactive, operational and cooperative tasks with the central and peripheral control Authorities, with the competent control bodies and with the competent Region as well as with all the other parties/Public and private bodies competent for wine;
- 2) the execution of each activity of proposal, protection and general management with regard to rules and regulation at regional/national/EU level concerning the wine products from the same territory and bearing a designation of origin under their jurisdiction, the vineyards, the protection of the territory with respect, also at the urban level, to the areas of particular value intended for a possible development of new vineyards;
- 3) the adaptation of the production rules;

- 4) the submission of applications for new PDOs (e.g. transition from a CDO to a CGDO³);
- 5) the carrying out of all activities related to general economic trend evaluation for the different productions with a designation of origin of competence and the consequent activation of any initiative in the management of the same designation, in collaboration with the Public Administration and using the data obtained from the control activities of the Bodies in charge.

In this regard, it has to be highlighted that the Italian legislation on wine Consortia contains several elements of greater flexibility than the rest of the Italian agro-food sector, and facilitations for their efficiency via collaborations with institutions (MIPAAF, ICQRF, IPZS⁴, Regions) and with official services such as SIAN⁵ or control structures.

- 6) the carrying out, according to the directives of the MIPAAF, of legal/administrative activities to ensure the safeguarding of the protected designation from plagiarism, unfair competition, usurpation and other illegal national and international actions. The Consortium can also constitute a civil party in criminal proceedings and it can encourage any civil, criminal and administrative actions considered appropriate for the safeguarding of the designation.

In the absence of an effective system of international protection for Geographical Indications, recognized as intellectual property rights by the recent ACTA agreements but without any procedural rule of guarantee, the Consortium can directly register in Third countries its Designation as a collective brand.

Lastly, the supervisory function is achieved through the collaboration with the Central Fraud Repression Office, mainly in the phase of product marketing. The supervision consists in “verifying that the protected products meet the requirements of the production rules and in the supervision on similar products obtained and/or marketed within the European Union that, with false information on the origin, type, nature and specific qualities of the products themselves, can cause confusion among consumers and damage to the productions with a DO” (DM July, 21st, 2011).

The results of this activity are important. To quote the latest reports: common Prosecco wine in Germany, Wine “*Prisecco*” and “*Consecco*” in the same country, in imitation of the “Italian sounding” wine with the word “*Secco*”, a term allowed by the law in force, but used without respect of the rules and with a clearly transgressive intention, in imitation of the Italian CDO; and again *Chianti Classic California*, wines with brands like “*Foscana*” or “*Canti*” proposed in Great Britain.

³CDO=Controlled Designation of Origin; CGDO=Controlled and Guaranteed Designation of Origin.

⁴MIPAAF: Ministry of Agriculture, Food and Forestry; ICQRF: Central Inspectorate Department for the Protection of the Quality and Prevention of Fraud on Agro-food Products; IPZS: Institute of Printing and Mint State.

⁵SIAN: National Agricultural Information System.

These activities can be implemented by: (1) setting up laboratories, validated by Public Bodies, for the official release of the tests and of the chemical and physical analyses of the protected products able to meet and guarantee a qualified service to all producers in accordance with the national and the EU rules; (2) establishing the Boards of Taste, to verify, through chemical, physical and organoleptic analysis, that the sample products collected in the supervisory activity on trade comply with the specification; (3) using agents employed by the Consortium itself or in agreement with other Consortia for the supervisory activities and for the collection of PD wine samples, mainly in the trade phase.

6. The “erga omnes” authorization

Article 17 of Legislative Decree n. 61/02010 also specifies that a Consortium with a certain level of representativeness can perform the above mentioned functions only with respect to its members, while a Consortium demonstrating a higher level of representativeness (at least 40% of the wine growers and at least 66% of the PD wine production) can get the further ministerial authorization to carry out such extended functions towards all subjects included in the control system, even to the ones that are not members of the Consortium (“**erga omnes” authorization**).

Basically, the Legislator adopted the principle according to which the “action of Consortia” with a high level of representativeness is intended to “reach” all those whose products belong to a Designation without limiting the scope, effectiveness and usability only to members. This has created a “Copernican revolution” and a very significant legal recognition.

The regulatory text (Article 17 paragraph 4a, b, c, d), then, indicates in a more detailed and explanatory way some particular possible activities for those Consortia that have received the “erga omnes” authorization. These activities are to be clearly attributed to the already discussed concept of protection of the designation, i.e. the activities related to the implementation of supply management policies, or to the organization and coordination of the stakeholders in the PD production or marketing phase, or to judicial or administrative autonomous actions for the protection of the designation.

Particular attention is also given by art. 17, paragraph 4, to the already mentioned supervisory activity that can be exerted by this category of Consortia with an “erga omnes” authorization. The rule, in fact, provides detailed instructions for the preparation of a “supervision program”, which must also be signed by the competent Fraud Repression Offices. The programs aim at verifying the compliance of the certified products to the production specifications and at the supervision on similar products that can cause confusion in the consumer.

Lastly, it is evident that all the Consortia, whether they hold an “erga omnes” authorization or not, are entitled to carry out those functions that can be defined of “service to the members”. These services can be consulting and assistance activities related to technical, administrative, legal, agricultural, commercial (...) aspects that are only accessible to

Table 3
Contributions from erga omnes activities and from the internal activities addressed only to the members.

Contributions from erga omnes activities
Contribution from promotion/enhancement activity
€ .../ton of produced grape
€ .../hl of produced wine
€ .../hl of bottled wine
Contribution from protection and supervision activity
€ .../ton of produced grape
€ .../hl of produced wine
€ .../hl of bottled wine
Contributions from internal activity addressed only to the members
Services to the members
€ .../ton of produced grape
€ .../hl of produced wine
€ .../hl of bottled wine

members and, consequently, financially supported only by them.

7. The current Consortia's contribution system

The costs resulting from the carrying out of the functions of the Consortia with an “erga omnes” authorization, excluding the services exclusively destined to their members, are distributed among all the subjects included in the control system, whether they are associated to the Consortium or not, on the basis of the PD product quantity (grapes, denounced wine, bottled wine) undergoing the control system in the wine harvest year that immediately precedes the year in which the costs are allocated.

The Consortium approves the expenditure estimate for carrying out of the functions described above, separating the costs related to the services to the members from those related to “erga omnes” activities such as enhancement/promotion, protection/supervision, consumer information and general care of the interests of the designation.

The determination of the amount of the contribution is made by taking into account the production data of each grower/winemaker/bottler resulting from the SIAN or notified by the control structure (Table 3).

It is also possible to determine different contributions depending on the different planned activities (promotion, enhancement, protection, supervision) or on the single categories of members.

The contributions deriving from the carrying out of the functions and of the erga omnes activities, and their relative use, should be reported in the balance sheet in separate accounts.

The Consortium has autonomy in adapting the contributions to the single protected Designations according to their real value, their specific characteristics, their internal size and the different classification of the CDOs, CGDOs and TGIs.⁶

⁶TGI: Typical Geographic Indication.

8. Conclusions

The analysis of the Italian wine production system shows that the structure of the sector is far from being competitive if compared to the ones of other wine producing countries, especially in the New World. The small size of the farms, their limited volumes and the difficulties they might encounter in the verticalization of the production process negatively affect the sector. The wine production system consists of very dissimilar farms typologies in terms of entrepreneurship, size, environmental conditions and relationships with the market.

As evidence of this, value chain analysis of the wine sector (Porter, 1985, Malorgio et al., 2011, Pomarici and Boccia, 2006) highlights that the distribution of the value added among the various players in the different stages of production is not homogeneous, since the costs that each phase must support are very diversified and mainly related to farm size (economies of scale) and to product typologies. In the national wine sector, however, the producers show the greatest weakness in terms of bargaining power because of both the size of their farms and the perishable nature of the product. In this context, for those farms that produce CDO and CGDO wines, Consortia can be useful associational structures able to enhance the market performance of their products and improve the remuneration of the inputs.

From a regulatory point of view, after a series of changes at EU level, the wine sector has taken a very important step thanks to the legislative decree n. 61/2010, as it meets the explicit structural requirements that characterize the Italian production system. The decree officially recognizes the role of the Consortia, now taking on promotion and protection functions, thanks to the contributions that all the users of a Designation are required to pay. This leads to a significant and encouraging trend towards aggregation that will bring significant benefits to the promotion of “Made in Italy” wines, supplying the opportunity to compete on the global market also to those farms that would not have the chance to take part in competitive development strategies that are increasingly linked to the farm's capacity of verticalizing the entire production process. A first important result of the decree

has been to include in the Consortia some farms that were left out and this has meant a greater concentration and common aims, both essential elements in terms of promotion of the designations. As a matter of fact, Designations are collective assets and it is possible to compare them to collective brands, since they are not granted to an individual, as it happens for individual brands, but to bodies or associations that are guarantors of the origin and the quality of the product.

In addition to that, since the Consortia deals with PDOs, a number of elements necessarily linked to the region of origin can be conveyed, enabling the consumer to distinguish a product over others with different geographic origins. PDOs and PGIs represent a strength for the national wine sector, because they are able to characterize the product in a unique way linking it not only to a geographic district but also with the tradition and the history of a specific territory.

However, the coexistence of so many diverse wine farms belonging to a same PDO but with dissimilar marketing strategies and production costs leads to final products often characterized by significantly different prices (and often even positioned in different quality segments), thus generating confusion on the side of the consumer. Consortia are not allowed to fix a minimum or a maximum price for a PDO wine, as the antitrust authority prohibits this. As a good alternative, though, the Consortium could implement policies on price orientation for all the PDO users and, through inter-branch agreements, it could develop projects for an efficient matching of supply and demand.

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