



THE WINE & LAW PROGRAM

(Director: Th. Georgopoulos)

University of Reims Law School

WINE LAW IN CONTEXT

WORKING PAPER 2/2015

Nicolas Tinelli

CHERCHEUR/CONSULTANT

**The role of inter-professional organisations in the modification of the Italian
wine product specifications**

THE WINE & LAW PROGRAM, University of Reims, France
The Wine Law in Context Working Papers Series can be found at
www.wine-law.org

All rights reserved.
No part of this paper may
be reproduced in any form
without permission of the author

Publications in the Series should be cited as:
AUTHOR, TITLE, THE WINE LAW IN CONTEXT WORKING PAPER N°/YEAR

The Wine & Law Program is based on the idea that Wine Law can and should be apprehended and analyzed through a historic, geographic, economic and even political context. While asserting the constraints of legal methodology, research in wine law should enhance interactions among humanities, social sciences and even natural sciences in order to successfully respond to the different needs of a demanding and culturally interesting sector (winegrowers, distributors, policy-makers, administration, and civil society)

The role of inter-professional organisations in the modification of the Italian wine product specifications.

Introduction.

The scope of this paper is to present two recent Italian court cases with respect to one of the most interesting aspect of the system of wines with a designation of origin: the process of modification of a wine product specification and, in particular, the role played by the Italian wine inter-professional organisations, “*Consorti di tutela*” (“Consortia”).

I will firstly provide an overview of the European and Italian legal framework concerning the administrative process leading to the approval or amendment of a product specification.

Secondly, I will introduce two interesting recent case studies focused on the amendment of two important Italian PDO wines, such as “Barolo” and “Asti”, by pointing out the role of the Consortia within the procedure of the product specification’s modification.

Finally, by describing the development of the Court decisions, I will also develop some concept of the Italian legislation on protected designations, such as the difference between an “additional geographical indication” and a “sub-area” of a specific PDO.

1. Legal framework on the inter-professional organisations and product specifications.

Before entering into the details of the two case studies, I will provide a general overview of the European Union and Italian legislation concerning the procedure to apply to or amend a product specification and the role of the main inter-professional body operating in the Italian wine sector.

As a preliminary step, it shall be clarified what a product specification means and which are the main characteristics.

In the framework of the European Union rules on designations of origin and geographical indications in the wine sector, article 94 of Regulation (EU) n.1308/2013 requires that applications for protection of names as PDOs or PGIs shall include a technical file containing a **product specification**. The product specification – *cahier des charges* in French and *disciplinare di produzione* in Italian – shall enable interested parties to verify the relevant conditions of production relating to the designation of origin or geographical indication.

A product specification shall at least consist of a) the name to be protected; b) a description of the wine; c) the specific oenological practises allowed for the wine making process of that product; d) the demarcation of the geographical area; e) the maximum yield per hectare; f) an indication of the wine grape variety; g) the quality and characteristics of the product; i) the name and address of the authorities or bodies verifying compliance with the provisions of the product specification and their specific tasks.

Therefore, a product specification, especially referred to most renowned PDO wines, such as “Barolo” or “Asti”, provides the consumer with a very detailed description of the demarcation of the geographical area of origin of the grapes and territory where the operators carry out the wine making process.

Moreover, Regulation (EU) n. 1308/2013 specifies the individuals entitle to apply to the protection of a specific wine PDO/PGI or to propose an amendment of the product specification.

In particular, article 95 states that any interested group of producers, or in exceptional and duly justifiable cases a single producer, may apply for the protection of a designation of origin or geographical indication. Other interested parties may participate in the application. Of course, producers may apply for protection only for wines that they produce.

As for the amendments to the product specification, article 105 clarifies that any interested group of producers may apply for approval of an amendment, in particular to take account of developments in scientific and technical knowledge or to demarcate the geographical area.

a. National procedure to apply for, or to amend, a product specification in Italy.

Prior to any application for protection being scrutinised by the European Commission, EU law has set a **preliminary national procedure** in the State where the designation of origin, or geographical indication, originates. From this stand, Member States lay down national rules to detailing the national administrative procedure aiming at ensuring that the applications for protection fulfil the requirements fixed by the EU law.

For this purpose, the Italian Ministry of Agriculture adopted decree of 7 November 2012, concerning the presentation and evaluation of the applications for the protections of PDOs and PGIs wine names and modification of the product specifications.

The rules on the process leading to a product specification approval were previously foreseen by Law 164/1992.

For the administrative process assessing a proposal of amendment is applied *mutatis mutandis* the same procedure assessing an application to the protection of a PDO/PGI.

i. Who is entitled to apply to the protection of PDO/PGI or to the modification of a product specification?

Among the potential applicants, the Ministry decree includes the inter-professional bodies managing and promoting Italian PDO and PGI wines, i.e. *Consorti di Tutela* (Consortia of Protection) as defined by the Italian national law on protected designations of origin and protected geographical indications, *Decreto Legislativo 61/2010*.

According to article 17 of the decree, the Ministry of Agriculture may recognise a “Consortium of Protection” (*Consortio di tutela*) in the wine sector, for each PDO or PGI. Members of the Consortium are all the operators included within the denomination’s control system.

These bodies, according to the Ministry decree 16 December 2010 concerning the constitution and recognition of Consortia for the protection of PDO and PGI wines, shall include both producers, wine makers and bottlers. The representativeness of the Consortium members relies on their production capacity within the PDO/PGI and in each segment of the wine *filière* (viticulture, wine making and bottling). Three are the conditions laid down by the Italian law, for the recognition of a Consortium:

- Its membership shall be based on at least 35% of the growers and 51% of the total and certified production of the vineyards enrolled in the vineyard catalogue of that specific PDO or PGI during the last two years.
- The body shall have a statute fulfilling the conditions fixed by the Ministry of Agriculture and its membership shall be open, without any form of discrimination, of growers, wine makers and bottlers.
- The organisation shall have own resources to undertake its tasks.

Although the membership of the Consortium lies on voluntary basis, Consortia may operate on behalf of all the operators included in the PDO/PGI if they represent at least 40% of growers and 66% of the total wine production of the last 2 wine campaigns.

These bodies – Consortia *erga omnes* – shall be considered as an inter-branch organisation as defined by article 125o of Regulation (EC) n. 1234/2007. Both the Consortia of the case study introduced in this essay – *Consortio di Tutela Barolo* and *Consortio dell’Asti* DOCG – are today recognised as *erga omnes* bodies.

Finally, Consortia are entitled to submit proposals of product specification’s amendment.

ii. The administrative procedure.

According to article 4 of the decree, Consortia shall address the application for protection or the proposal of amendment of a product specification to the competent Regional authority. The relevant documentation¹ shall be enclosed including, *inter alia*, the statute of the body, the decision of the General Assembly stating the willingness of the members to apply to a protection of the PDO at stake, as well as the resolution of the General Assembly proving the representativeness of the members voting in favour of the application/amendment.

The General Assembly is the main decision body of the Consortium. It adopts decisions with the absolute majority of the participants. The representativeness of the General Assembly of a Consortium is satisfied with a participation of members representing at least 50%+1 of the votes allocated to the members allowed to participate in the General Assembly.

The application or proposal of amendment shall be submitted to the Regional authority's scrutiny: the Region shall verify on the legitimacy of the body proposing the application, the exhaustiveness of the relevant documentation and the conformity of the product specification with the EU law. Expired the regional examination, the application is transmitted to the Ministry of Agriculture that, by 45 days, has to evaluate whether the documentation is exhaustive and check its conformity with the EU law.

Suite to this step, the Ministry of Agriculture shall call to a public hearing, attended by Regional authorities, proposing bodies (Consortium), relevant national and regional producer's organisations, aimed at discussing the proposal and collecting all the relevant opinions before the formal adoption of the text. As for the **proposal of amendment** of a product specification, the public hearing shall occur only when the modification concerns the **delimitation of the area of grapes' production**.

Following the public hearing, as last step before the publication of the proposal of product specification or amendment, the proposal is submitted to the "*Comitato nazionale vini DOP ed IGP*" (National Committee for PDO and PGI wines) for its opinion.

The National Committee, according to article 16 of the national decree 61/2010, is a body of the Ministry of Agriculture and its task is to propose and give opinion with respect to the policy of PDO and PGI wines.

It is composed by officials of the Ministry of Agriculture, members of the Regional authorities, one member of the Chamber of commerce and industry, one member of the national federation of oenologists, one member of the national federation of the Consortia, three members of the producers organisations, two members of the cooperative federations, two members of trade and industry associations.

The National Committee gives opinion and finalizes the proposal of the product specification or the amendment. Therefore, the Ministry of Agriculture publishes the proposal on the Official Journal of the Italian Republic, in such a way that any interested party may assess the proposal and, eventually, submit any opinion and remark.

As described, the process of proposal or amendment of a product specification is characterised by several steps and several interested parties, both institutions and private stakeholders, are within involved. In particular, different evaluations are undertaken by the public authorities, both regional and national, to check and balance whether the applicants meet the requirements of the EU law.

Nevertheless, at the same time, major interest for the purpose of this essay lies on the decision making process within the proposing body itself, i.e. the Consortium, undertaken before the submission of the product specification project (or amendment) to the administration.

¹ Statute of the body, decision of the general assembly, resolution of the general assembly, the product specification, the draft single document in conformity with art. 118 c of Regulation 1234/2007, technical file, historical report, cartography of the area at stake.

From this point view, while a form of aggregation of the different operators involved in the wine *filière* represents an efficient instrument to set up common rules on the management of a denomination, at the same time, these bodies may become a battlefield between different interests at stake. In particular, one of the most sensitive issue for a denomination is exactly the identification of the area suitable for the winemaking, or the area of the grapes production.

The discussion between the different voices represented within a Consortium may become an even tougher struggle when it comes to the modification (i.e. enlargement) of an area particularly renowned and prestigious, as happened with the hill of Cannubi or with the PDO “Asti”.

CANNUBI

I. Barolo and the additional geographical specifications.

The first case² refers to the amendment of the product specification of one of the most renowned Italian PDO, “Barolo” and, in particular, article 8 listing the additional geographical specifications that may appear on the label besides the name of the designation “Barolo” and “Barolo Riserva”.

Barolo wine comes from the village in the Langa, bearing the same name, a few kilometres south of Alba. It is currently produced in the territory of eleven municipalities, all situated on the Langa hills shaped by centuries of vine cultivation and dominated by medieval castles – including Barolo’s own.

The other municipalities included in the Barolo production area are La Morra, Monforte, Serralunga d’Alba, Castiglio Falletto, Novello, Grinzane Cavour, Verduno, Diano d’Alba, Cherasco and Roddi.

Authorisation to cultivate Nebbiolo grapes for Barolo cover only a portion of the territory of each of those municipalities, to the exception of Barolo. Thanks to Count Camillo Benso of Cavour (who was also Italy’s first Prime Minister) and to the intuition of Giulia Colbert Falletti, the last Marquess of Barolo, Barolo wine began to be produced around halfway through the 19th century. This wine, particularly rich and harmonious, became the Savoy Family’s best ambassador, representing Piedmont in all the royal courts of Europe.

One of the last and most important pieces of research on Barolo, has been the collection of the ‘cru list’ or Additional Geographical Definitions and its inclusion in the Disciplinary regulations in 2009. The same type of list had already been compiled for the PDO “Barbaresco” a couple of years earlier.

The idea behind this list is not to evaluate the quality of each cru but rather to provide the consumer with a instrument to understand the names of localities mentioned on wine labels. Obviously, major problems and various territorial disputes had to be overcome in order to arrive at the definitive version.

The Italian law on the regulation of PDO and PGI names in the wine sector, the legislative decree 61 of 2010³, states that the product specifications may include a list of additional geographical specifications corresponding to existing districts or towns, located within the area of a PDO production, as long as the wine labelled with the respective specification is produced separately. Product specifications that include one or more “sub-zone” are not allowed to also foresee additional geographical specifications.

In Piedmont, the type of soil as well as the “position” of the vineyards, i.e. their exposure, has always been a sign of distinctiveness. For different historical/political and geographical reasons, this distinctiveness has never led to a proper classification of the single specific vineyards/parcels, following the model of the Burgundy’s “cru”.

² Decision of the Tribunale Amministrativo Regionale (TAR) Lazio N.5033/2012, of 04/06/2012

³ DECRETO LEGISLATIVO 8 aprile 2010, n. 61 “Tutela delle denominazioni di origine e delle indicazioni geografiche dei vini”.

Nevertheless, during the years, the name of certain territories has notably increased in value. These names are characterized by the knowledge and expertise used both in the vineyard and in the winery and, not least, by the producer's ability to 'make a name' for himself.

These 'Additional Geographical Definitions' have long been present on the best labels but the lack of a system to prevent exploitation of their usage led the Minister of Agriculture to request that the exact position of these zones – with measurements of boundaries and number of hectares involved – be defined. In this way, production from these named areas would be traceable via the Harvest Declaration.

The case study at stake concerns specifically the use of the geographical specification "Cannubi" – one of the most prestigious "*cru*" situated within the demarcated area of the famous PDO wine "Barolo", in the district of Cuneo.

II. The dispute.

Subject of the claim submitted by eight grape growers located in the area of the "Cannubi" hill, was the cancellation of the decree of 30 September 2010, approved by the Italian Ministry of Agriculture, amending the product specification of "Barolo" wines.

The amendment referred, in particular, to the section that allowed the product denomination of origin "Barolo" may be followed by the additional specifications "Cannubi Boschis **or Cannubi**", "Cannubi Muscatel **or Cannubi**", "Cannubi San Lorenzo **or Cannubi**" and "Cannubi Valletta **or Cannubi**".

In other words, the decision of the Ministry of Agriculture ensured the possibility to allow the use of the specification "**Cannubi**" *tout court* for wines, produced from Nebbiolo grapes, coming from the "Cannubi" hill (43 ha), defined by a decision adopted by the Town Council of Barolo in November 2008.

The administrative procedure of the Barolo wine specification's modification – originally approved in 1980 – begun in 2007, when the Consortium of Barolo⁴ requested the local authorities of the towns included in the territory of the PDO, to identify the toponyms and corresponding areas of the additional geographical specifications located in the "Barolo" area.

These additional geographical specifications (*menzioni geografiche aggiuntive*), that may be used together with PDO names "Barolo" and "Barolo Riserva", are today listed by article 8 of the relevant product specification.

The municipality of Barolo, through a written note of the 10th of November 2008, transmitted to the Consortium an exhaustive list of the additional geographical indications, including "Cannubi", "Cannubi Boschis", "Cannubi Muscatel", "Cannubi San Lorenzo" and "Cannubi Valletta". Finally, on the 20th of December 2008, the Town Council of Barolo approved the project of reviewing, identifying and delimiting these geographical indications.

The Ministry decree approved on the 30th of December 2010, amended the "Barolo" product specification, by adding the new additional geographical indications as "Cannubi Boschis **or Cannubi**", "Cannubi Muscatel **or Cannubi**", "Cannubi San Lorenzo **or Cannubi**" and "Cannubi Valletta **or Cannubi**".

According to the plaintiffs, the Ministry, by adopting such a decree, breached both the national and European Union law on wine protected designation of origin and protected geographical indication⁵, and challenged the following main arguments.

First, the main objective of the European Union and national legislation on PDO/PGIs is to avoid any risk of confusion among the consumers as to the true origin of the wine. The protection is ensured by the

⁴ The voluntary inter-professional association of wine makers and/or grape growers that protects and guarantees the protected designation of origin Barolo, Barbaresco, Alba Langhe and Roero. The Consortium acquired the formal recognition by the Ministry of Agriculture according to Law number 164 of 1992.

⁵ D.lgs. n. 61/2010 as well as its predecessor d.lgs. 164/1992 and Regulation (EC) n. 1234/2007.

recognition of a protected designation of origin whose quality and characteristics are essentially or exclusively due to a particular geographical environment which is inherent to natural and human factors.

The Ministry decree, according to the plaintiff, would have breached this principle since it is not justified the “extension” of the geographical indication “Cannubi” also to those areas that, according to the plaintiff, shall not be considered as “Cannubi” *tout court*. The town Council of Barolo, the plaintiff claimed, had actually identified different areas other than the “original Cannubi” hill – “Boschis”, “Muscatel”, “San Lorenzo” and “Valletta” – totally different with each other, and that shall be considered different from the part of the hill named “Cannubi” *tout court*.

Secondly, the Ministry decree, by ignoring the decision of the Town Council of Barolo, would create confusion among the denominations allocated to the different places, mislead consumers and engender risks of serious damage for the producers and for the quality of the products at stake.

III. The decision of the Administrative Tribunal of Lazio.

The Administrative Tribunal of Lazio⁶ (*Tribunale Amministrativo Regionale – TAR*) agreed with the arguments presented by the plaintiffs, by arguing that the decision of the Ministry of Agriculture conflicted with the position expressed by the Town Council of Barolo and created confusion among the specifications allocated to the different areas of the “Cannubi” hill.

The reasoning of the Court moved firstly from the attempt to clarify whether there was a substantial distinction between the Barolo wine produced in the area “Cannubi” *tout court* and the one produced from grapes grown in the same hill, but originating from the additional geographical indications (“Boschis”, “Muscatel”, “San Lorenzo” or “Valletta”). If these areas were similar with each other, there would be no reason, according to the Court, to prevent the use of the indication “Cannubi” *tout court* to the additional geographical indications.

Nevertheless, the Court solved the dispute by affirming that the five areas of production of Barolo located on the Cannubi hill, and identified by the Town Council of Barolo, have to be considered as different “subzones” (the court itself seemed unable to properly identify the *menzioni geografiche aggiuntive*, *i.e.*, additional geographical specifications, as different from the *sottozone*, *i.e.*, sub-zones, which are regulated in a different way). In particular, the subzone of Cannubi *tout court*, continued the Court, has an own historical identity that is commonly accepted in the Barolo area due to its peculiar characteristics.

In other words, the Court sustained the assumption of the plaintiffs and the municipality of Barolo that the hill “Cannubi” included different sub-areas that differ – mainly due to unknown “*historical reasons*” – from the central part of the hill, which should be the only area to be named “Cannubi” *tout court*. Unfortunately, no historical nor legal reason was supporting such a position.

Therefore, the Court concluded that the arguments presented by the plaintiffs regarding the diversity between the different areas of the Cannubi were effectively proved and, for this reason, it declared as not valid the administrative procedure and pointed out the consequent breach of the national and European law on the amendment of a product specification.

IV. The decision of the State Council.

In reality, the Court built its conclusion on a wrong interpretation of the Italian law on protected designation of origin and, in particular, the definitions and distinction between the two concepts of “additional geographical specifications” and the “sub-zones”, by overlapping the two definitions. However, the Ministry Decree 61/2010 has foreseen for them a different definition.

⁶ The Italian *Tribunali Amministrativi Regionali* have competence on the plaint submitted by privates against the acts of the public administration harming a legitimate interest. Private may appeal their decisions before the *Consiglio di Stato* (State Council).

First, according to paragraph 2, article 4 of the Ministry Decree 61/2010, sub-zones should not simply be listed in the product specification as additional toponyms, but they need also to be more strictly regulated.

This was certainly not the case for the 181 areas included within the Barolo product specification.

Secondly, the role of the additional geographical specifications is to more precisely indicate a specific area of production without foreseeing a stricter discipline within the product specification. Actually, even the provision of one or more “subzones” aims at more precisely identify the origin of the wine production area although, differently from the additional geographical indications, these shall be more strictly regulated by the product specification. This stricter regulation ensures the production of wines having unique peculiarities.

Finally, one should consider that the task of the Town Council of Barolo was to draft a list of areas in the territory of the municipality, rather than defining new sub-zones of the Barolo denomination.

These last two arguments have been sustained by the State Council (*Consiglio di Stato*), in the framework of the ruling of appeal, on the 3rd of October 2013⁷.

According to the State Council, the Ministry of Agriculture did not breach any national or European legislation during the process of adoption of the Decree 30th December 2010.

On the contrary, the amendment of the product specification granting the use of “Cannubi” *tout court* to the entire Cannubi hill ensured on the one side, the need for the producers located on the Cannubi hill to better identify their wine through the use of the additional geographical specification “Cannubi” and, on the other, would not make compulsory the use of the other specifications.

However, for the purpose of this essay, it is necessary to underline another element of the reasoning of the TAR. As mentioned, the TAR argued that the procedure leading to the amendment of the product specification was not justified since the arguments of the Town Council of Barolo were not taken into account by the Ministry of Agriculture when adopted the Decree. In fact, it was the role itself of the Town Council that was misunderstood by the TAR.

In order to examine the role played by the Town Council in the whole administrative process, it is necessary to make a step back.

As we saw, on December 2008, the Town Council of Barolo approved the project of reviewing, identification and delimitation of the geographical indications, by including also the four additional area of the Cannubi hill. However, the proposal of the Town Council did not include for each additional geographical specifications of Cannubi – “Cannubi Boschis”, “Cannubi Muscatel”, “Cannubi San Lorenzo” e “Cannubi Valletta” – the possibility to be followed by the specification “Cannubi” *tout court*.

The Consortium had initially approved the additional geographical specifications listed by the Town of Barolo, without entering into details. Nonetheless, following a stricter investigation required by one Consortium-member, supported by evidence that the wine made out of grapes from the Cannubi hill was always identified as “Cannubi” *tout court*, the product specification was finally amended in order to include the specification “Cannubi” *tout court* for the entire hill of Cannubi.

In particular, on the 23rd of February 2009, at the members meeting of the Barolo⁸ Consortium, one of the producers challenged the list drafted by the Town Council by showing bottles bottled in 1904 by its winery, which was always using the specification “Cannubi” *tout court*, rather than “Cannubi” followed by an additional specification.

⁷ State Council Decision of the 3rd of October 2013

⁸ Consorzio di Tutela Barolo Barbaresco Alba Langhe e Roero.

Not only evidence was submitted to the Consortium that the name “Cannubi” *tout court* appeared in harvest declarations since 1884, but one of the suggested specifications, “Muscatel”, was clearly confusingly similar with the name of the grape variety “Moscato” (or of the grape variety “Muscadelle”, in the Burgundy area). Taken this position into account, the Consortium approved the text with 89 votes in favour and 4 votes opposed.

Finally, the national committee of PDO and PGI wines adopted the motion presented by the Consortium on 7 July 2010.

Based on this decision, the Ministry of Agriculture adopted the Decree of 30 September 2010. It is useful to recall that the opinions and the proposal of this body, according to article 16 of the national decree 61/2010, are not binding for the Ministry of Agriculture. Nevertheless, they are taken into account when it comes to the proposal of a new product specification or an amendment of it.

V. Conclusion: the modification of a product specification.

At the end of the analysis of the two Court rulings concerning the amendment of Barolo’s product specification, the following conclusions may be presented.

The first element is the reputation and the prestige of a PDO wine. In other words, the way a wine is labelled – with the name of a PDO, or a brand, a territory, a Country – has the power to influence its success, in terms of image and market sales.

In this peculiar case, the task of the Consortium was not to establish which were, within the Barolo territory, the most prestigious parcels in terms of quality (as it is the case today in the Burgundy’s cru classification), but simply to clarify which part of the territory of Barolo may be associated with a specific additional geographical name.

From this point of view, the name concerned – Cannubi – was already associated with a certain prestige and distinctiveness. Nevertheless, before the product specification amendment proposed by the Consortium in 2009, this distinctiveness had never been codified within the product specification.

For this reason, the main intent of the Consortium was to ensure that all Barolo’s – and Cannubi’s – producers could play in a plain level field, where the reputation of their wines would be due to their specific provenance. In other words, the Consortium interest was to prevent that certain producers would have been continuing to identify or to call their Barolo as Cannubi, without a product specification that clearly stated where the territory of Cannubi started and ended.

Therefore, the purpose of the Consortium proposal was not to define the additional geographical specifications as a way to regulate more strictly the production of the wines originating from that area, rather to draw a clear and exhaustive mapping of the “Barolo geography”.

This is the reason why the Consortium charged the Town Council of Barolo: the mission concerned a simple listing of geographical names. Following this step, the proposal of the Town Council of Barolo had to be submitted to the Consortium approval.

As seen, one of the Consortium member was providing evidence that its winery made use of the mention “Cannubi” *tout court* since 1904. From this stand, the Town Council proposal to split the Cannubi hill into four different areas would have been detrimental to such winery.

Therefore, from one hand, the Town Council’s mission was to better identify the names of districts, areas, small villages; from the other hand, as the State Council confirmed, the product specification amendment did not create any obligation for the producers to use the additional geographical mentions, replacing the specifications “Cannubi” *tout court*.

The main mistake of the decision of the Administrative Tribunal of Lazio was to assume, against evidence, that the Cannubi hill was made of different sub-areas, having different peculiarities.

In fact, according to the product specification, no differences are expected to be seen among the “Barolo” wines produced in the Cannubi hill. While it could be assumed that each parcel of a specific “*terroir*” may generate wines bearing somehow different organoleptic characteristics, from a mere legal point of view, two wines coming from the same territory are different only if their production is regulated by the product specification in a different way.

The State Council clarified this point and drew a clear distinction between the two definitions of “additional geographical specifications” and “sub-zones”.

The second element that seems worth to underline for the purpose of this essay refers to the decision of the Administrative Tribunal of Lazio.

As seen, the Court agreed with the arguments presented by the plaintiffs, in particular with regard to the role of the Town Council of Barolo. In reality, as previously mentioned, in the framework of the process of amendment of the “Barolo” product specification, the Consortium had only entrusted the local municipalities to define the delimitation of the geographical indications. Based on this work, the members of the Consortium were then expected to decide and formulate an appropriate proposal of product specification amendment.

In other words, the Administrative Tribunal of Lazio ignored the decision by the members of the meeting of the Consortium, as in conflict with the proposal presented by the Town Council of Barolo, which was by no means necessary nor provided for by any piece of legislation.

In addition, in order to justify this position, the Court gave a wrong interpretation of article 4 of the Ministry Decree 61/2010 with respect to the two definitions of “subzones” and “additional geographical specifications” aiming at proving a (non-existent) substantial difference amongst the areas of Cannubi hill.

Nevertheless, following the appeal presented by the company and the Ministry of Agriculture, the State Council argued that the amendment of the product specification of Barolo did not represent any risk of usurpation or confusion among consumers, since the additional four geographical area of the Cannubi hill shall be considered being part of “Cannubi”. In particular, the possibility, for producers, to use either the specification “Cannubi” *tout court* or “Cannubi Muscatel” aimed at avoiding any risk of confusion between the district “Muscatel” and the grape variety “Moscato”.

Finally, the State Council concluded that the Ministry of Agriculture did not breach any national provision on the procedure for amending a product specification. From this point of view, the Administrative Tribunal of Lazio claimed that the decision adopted by the Ministry of Agriculture did not take into account the opinion of the Town Council of Barolo and of some producers (the plaintiffs).

However, this approach seems not coherent with the EU and Italian legislation on product specification amendment. The proposal of product specification amendment shall be submitted by the Consortium, the sole body entitled to represent the different voices of the wine filière.

2. ASTI

The second case concerns the review of the product specification of another important wine with a protected designation of origin from Piedmont, “Asti” or “Moscato d’Asti”. In particular, the dispute refers to the amendment of article 3 of the product specification, the area of grapes production.

For this case too, the decision of the Consortium, with respect to the enlargement of the area, engendered a tough dispute between the parties that the Court – in this case the State Council – was not able to solve completely.

The Court had to decide whether the proposal of the product specification amendment, adopted by the Consortium, was undertaken in conformity with the EU and national law.

a. The background of the dispute.

“Asti” is one of the most known and exported Italian wine, especially to the United States, the United Kingdom, Russia and Germany and its reputation continues to grow. Due to its international prestige, the Italian legislator has always been implementing instruments to protect its name: “Asti” was one of the first Italian wines with a PDO to gather the designation “*Denominazione di Origine Protetta e Garantita*” (DOCG), the highest specification of the Italian pyramid of the denomination of origin system⁹. Currently, this PDO covers 52 towns between the provinces of Alessandria, Asti and Cuneo. However, the **city of Asti** is not included.

The history of “Asti” DOCG is unique in the Italian panorama of the designations of origin. Since the approval of the first product specification in 1967, the **municipality of Asti** has never been included within the production area of the PDO. This situation has been challenging by some interested party, especially since the last eight years: the exclusion of the municipality of “Asti” from the production area of the PDO that bears its name would seem illogical, unreasonable and even contrary to the law.

According to this position, the current Italian law on PDO and PGI wines – Decreto Legislativo 61/2010 – has clearly foreseen that the product specification of a PDO wine **shall necessarily include** the area/the territory that gives the name of that specific PDO.

Vice versa, the PDO **may** also include the neighbouring territories, as long as these own the same quality characteristics. In other words, according to such rule, there cannot exist a PDO “Asti” without the territory of Asti, as it cannot be any “Brunello di Montalcino” wine without the territory of Montalcino, or “Barolo” without the territory of Barolo.

The Italian Ministry of Agriculture decided to tackle with the paradox situation by adopting, for the first time, a Ministry decree (5th May 2008) allowing the enlargement of the area of production of the denomination “Asti” to the **municipality of Asti**. Nevertheless, the State Council annulled the decree¹⁰ for a fault during the administrative procedure.

The decree of 5th May 2008 represented the first episode of a long and debated dispute – still ongoing – between two main opposite parties.

On one hand, one of the largest wineries in Piedmont (186 hectares) located in the municipality of Asti and supporting the inclusion of the town “Asti” within the product specification.

On the other hand, a number of grape growers of Moscato d’Asti, mainly grouped in two producers’ federations, supported by other producers associations as well as local authorities representing the

⁹ The Italian law on wines with a PDO and PGI – National Decree 61/2010 – foresees that the specification DOCG may granted only to those wines, recognised as PDO from at least 10 years, of particular quality and value.

¹⁰ Consiglio di Stato, sentenza n.2425/2010.

municipalities already included in the “Asti” DOCG territory. These stakeholders have always been showing a reluctant approach towards any sort of enlargement of the grapes production area.

b. The dispute and the decision of the Administrative Tribunal.

On 21st of November 2011, the Ministry of Agriculture approved the new product specification of “Asti” DOCG without including the municipality of Asti within the area of grape production.

The decision was challenged by one big winery (hereinafter “the winery”), owning a large vine holding (160 hectares of vineyards) within the area concerned (specifically in the district of Portacomaro near Asti), before the Administrative Tribunal of Lazio (TAR). Following the complaint, the Tribunal decided¹¹ to suspend the Decree at stake.

Due to this decision, the Ministry of Agriculture decided to re-open the administrative procedure of the product specification amendment. By adopting the Decree of 16 May 2012, it modified again article 3 of the text concerned and allowed the enlargement of the area of grapes’ production, by including the territory of Asti as well as the municipality of Portacomaro.

The adoption of the decree by the Ministry of Agriculture followed the proposal of amendment submitted by the Consortium of Asti on the 28th of April 2010. In particular, at that time, the General Assembly of the Consortium decided – by majority of votes – to include a portion of the municipality of Asti, within the production area of the PDO “Asti”, specifically including **all “favourable areas” (“zone vocate” in Italian) of this territory, suitable for the production of the Moscato grape variety.**

According to the law, two experts supported the proposal of amendment and identified the “favourable areas” of the municipality of Asti that the Consortium agreed to insert in the product specification. The prompt delimitation of these areas (the list of the areas included, boundaries and parcels), according to the decision of Consortium, had to be established by the “representative bodies of the wine *filière*”.

Following the Ministry decision, four grape growers’ federations – *Produttori Moscato d’Asti Associati*, *Associazione Comuni del Moscato*, *Associazione Muscatellum* and *Coldiretti Piemonte* – opposed the decree, by submitting the following arguments.

According to the parties, the Ministry of Agriculture misinterpreted the proposal of amendment issued by the General Assembly of the Consortium, adopted on the 28th of April 2010. In reality, that proposal aimed at including **exclusively** the parcel of the Agriculture High School Penna, located in the city of Asti. In other words, the proposal of the General Assembly should not be considered as an application to amend the product specification.

The Regional Administrative Tribunal of Lazio, through four different rulings¹², reconstructed the whole process leading to the resolution of the General Assembly issued on 28th April 2010.

First, the Court explained that the Consortium did not establish any enlargement of the production area to all the territories of Asti (included the area of Portacomaro). In reality, its objective was to delegate the definition of the “favourable area” to the “representative bodies of the wine *filière*”. Hence, the “favourable area” had still to be defined in a future step, by other third parties belonging to the representatives of the wine *filière*.

Secondly, it assumed that the “representative body” was the “*Commissione Paritetica per il Moscato*”, i.e., the *Parithetical Commission for Moscato Grapes*, a body, created by the local government, whose components represent the grape-growers, the industry and the wineries, aimed at setting the price of the

¹¹ Ruling n.955 of 15 March 2012

¹² Rulings 1774, 1775, 1776, 1777 of 2013.

grapes each year, which opposed any enlargement of the Asti area of production, by the exception of the Agriculture High School Penna.

Third, it took into account a following resolution of the **Board** of the Consortium of Asti, adopted in June 2010: the proposal of amendment of the product specification's article 3, according to the Board, only referred to the area corresponding to the Agriculture High School Penna.

For these reasons, the Tribunal concluded that the enlargement of the production area of the PDO "Asti" referred only to the vineyards located in the Agriculture High School Penna and the Ministry Decree of 16th May 2012 would have spuriously included other areas not specifically mentioned in the proposal of the Consortium.

The winery and the Ministry of Agriculture appealed the decision before the State Council.

The second part of the essay will be focused on the final ruling of the Court¹³.

Firstly, it is essential to start from the beginning of the administrative procedure that led to the adoption of the proposal of amendment by the General Assembly of the Consortium of Asti that, as seen, it can be considered as the only decision-making body entitled to adopt any proposal of modification of a product specification.

c. The procedure leading to the adoption of the Consortium proposal

At the time when the Consortium transmitted the proposal to the Ministry of Agriculture – 28th of April 2010 – decree 61/2010 was not yet into force. However, the precedent legal basis – law 164/1992 – foresaw a very similar procedure.

In particular, article 2, paragraph 1 stated that the application to recognise a specific PDO, or to amend a product specification, should be submitted by the relevant Consortia of Protection.

In addition, according to article 10, paragraph 4, letter a), an expert opinion (in French "*expertise*"), drafted by qualified experts, should be enclosed to the relevant application. The opinion should be based on experimental data elaborated in the last five years and should prove the objectivity and validity of the application.

The central point of the case is to clarify whether the Consortium effectively proposed the product specification amendment, in particular article 3, and included the area where the vineyards of the company were located. As the Court reminded, the Italian law on PDO and PGI wines – Decreto Legislativo 61/2010, article 17 – established that only Consortia are legitimated to initiate the procedure.

i. The position of the winery.

The winery's approach differed from the interpretation of the Administrative Tribunal of Lazio. According to the winery, by referring to the enlargement of the production area to the "favourable areas", the Consortium objective was to include the area of "Portacomaro" within the production area of "Asti".

In particular, the proposal of the General Assembly of the Consortium of Asti aimed at including other specific areas of the Asti municipality – included the one where the company's holding was located – and not only the area corresponding to the Agriculture High School Penna, located in Asti. The new areas would have been identified by two opinions, the so-called "Corino opinion" of 8 May 2007 and the so-called "Scienza opinion", complying with the rules laid down in the Law 164 of 1992.

In other words, the ruling of the Administrative Tribunal had wrongly interpreted the will of the Consortium, by assuming that the request of the product specification amendment concerned only the area of the Agriculture High School Penna.

¹³ Ruling 28 of novembre 2013.

On the contrary, the decision of the Consortium aimed at enlarging the production area to all the “favourable area” (“*zone vocate*”) of the municipality of Asti, included the district of Portacomaro. The assumption of the company was supported by the following arguments.

Firstly, on 28th April, the General Assembly of the Consortium had to deliver a proposal of enlargement of the production area. In accordance with the law, the proposal issued by the General Assembly resolution was supported by two expert opinions (“Corino” and “Scienza”). None of these two studies referred to the parcel of the Agriculture High School Penna.

Secondly, contrary to the conclusion issued by the Administrative Tribunal of Lazio, the decision adopted by the General Assembly of the Consortium of Asti aimed at enlarging the grapes’ production area to the municipality of Asti and not at postponing or delegating the decision to a third party (“representative bodies of the wine *filière*”, such as the *Parithetical Commission for Moscato Grapes*, in which no power to support any side was vested, as much as no such power was vested in the Town Council of Barolo in the previously discussed *Barolo* case).

In that sense, a non-decision by the General Assembly would have caused a systematic annulment of the resolution. From this point of view, the proposals of a product specification amendment cannot be delegated to a third party, but shall exclusively come from producers’ association, such as Consortia that adopt proposals – according to Article 10 of the decree 61 of 2010 – with the qualified majority.

d. The will of the Consortium: the ruling of the Court.

As mentioned, the central point of this second case study lies on the assessment of the Consortium decision on the proposal of product specification amendment. Was the body effectively in favour of an amendment including the enlargement of the grapes’ production area to the municipality of Asti?

The State Council analysed the whole procedure leading to the adoption of the decision of the General Assembly.

i. The lack of a proper technical analysis.

First, according to the Court, the proposal of amendment of the product specification was not supported by a proper expert opinion, in the meaning of the law 164 of 1992.

The opinion presented by Professor Corino of 8th May 2007, in the court's view, was lacking proper identification of the areas which would deserve entering into the “favourable areas” (“*zone vocate*”) while at the same time avoiding mentioning the area of Portacomaro, where the winery is located.

On the contrary, the court ruled that the opinion was describing in most general terms the Asti territory suitable for the production of the grape variety “Moscato Bianco”, by splitting the area in different production sites: South, West, and Northeast.

In other words, the opinion was but a preliminary study, thus not fulfilling the criteria identified by the law.

ii. The positions of the Board and the President of the Consortium.

Following the adoption of the General Assembly position on the 28th of April 2010, two opposite interested parties tried to interpret or to modify the initial position of the Consortium, in order to clarify whether this body was in favour of any enlargement of the production area in the meaning suggested by the company or by the growers.

The first party was the Board of the Consortium.

After two months from the adoption of the proposal by the General Assembly, on the 28th of June 2010, the Board approved a resolution specifying that the proposal of amendment of article 3 of the product

specification only referred to the area corresponding to the High School Penna. A new opinion – “Eberle” – regarding the parcels of the area concerned was enclosed to the amended proposal.

Nevertheless, after three months, in October 2010, the Consortium decided to withdraw this new proposal. In any case, a decision of the Board of the Consortium could not prevail on the adoption of the General Assembly that, as mentioned, is the decision body of the Consortium.

In other words, the ruling of the Administrative Tribunal of Lazio was based on the wrong assumption that the decision of the Consortium was the one expressed by the Board of the Council (although it was afterwards withdrawn), rather than the resolution of the General Assembly.

The second party was the President of the Consortium.

Through a specific note to the Ministry of Agriculture – occurred on the 22nd October 2010 – he first explained that the initial resolution of the General Assembly of the 28th of April 2010, was still valid (after the withdrawal of the Board’s resolution).

At the same time, he claimed that the General Assembly of the Consortium supported the inclusion of the Asti territory within the product specification, on the basis of a new opinion drafted by professor Corino in 2010 that, this time, identified the delimitation of the “favourable areas”. Enclosed to the amended proposal, a list of all the areas concerned, included Portacomaro, was forwarded to the administration.

However, also this second attempt to clarify the initial decision of the Consortium did not correspond to the initial position expressed by the Consortium. According to the State Council, the “new article” 3, suggested by the President, could not be taken into account as a useful element for the scope of the ruling, since the General Assembly did not formally evaluate such a text at the time when the first resolution was adopted.

In conclusion, the initial proposal of the 28th April 2010 did not explicitly foresee the enlargement of the production area to a specific and defined area, the district of Portacomaro, nor the High School Penna. Hence, according to the Court, the Consortium empowered the “representative bodies of the wine *filière*” to identify all the territories/districts included in the “favourable area” of the Asti municipality.

Taken this into account, the Court concluded that the resolution of the General Assembly of 28 April 2010 had not be considered as a proposal of a product specification amendment (as foreseen by article 10, paragraph 3 of law 164/1992), since its content was not clear, nor exhaustive and did not include any identification of the “favourable areas”.

The 2010 opinion by Professor Corino, could not be taken into consideration since it was drafted **after** the adoption of the General Assembly decision.

In other words, the Court stressed that the President of the Consortium, by forwarding a new proposal including a list of the defining territories of the new production area, amended the meaning of the initial decision adopted by the General Assembly. This decision did not identify the “favourable areas” of Asti suitable for the production of Moscato grapes, but rather it seemed to postpone this identification in the future by involving the operators of the *wine filière*.

For these reasons, the conclusion of the State Council with respect to the appeal raised by the company could be herewith summarised.

First, the Administrative Tribunal of Lazio misinterpreted the decision of the General Assembly of the Consortium. The enlargement of the production area was not referred to the High School Penna.

There is no element within the proposal of amendment, adopted by the Consortium, that would associate the “favourable areas” with the parcels of the High School Penna.

In addition, the following resolution adopted by the Board of the Consortium – supported by the opinion “Erberle” – that encouraged this approach, was implemented only after the General Assembly decision.

Furthermore, the position of the Board – withdrawn after two months – could not even be interpreted as the consequence of a “decision of the representative bodies of the wine *filière*”. The identification of the High School Penna as “favourable area” was effectively promoted by the Board under the proposal of the *Comissione Paritetica*.

However, the decision of the *Comissione Paritetica* could not be taken into account as the position of the wine *filière*, since such body has no standing in this context.

To conclude, the Court stated - wrongly - that the position of the Consortium was not clear, thus preventing a proper process of amendment of the product specification.

Conclusion.

From a mere political point of view, the most relevant issue of the case is the different interpretation of a proposal adopted by a decision-making body, such as a Consortium.

As mentioned, the amendment of a product specification may sometimes become a battlefield between opposite interests. If the parties are not able to turn their opposite positions into a compromise, it is very unlikely that the decision-making body (the Consortium) will be able to adopt a clear and effective decision. From this stand, the decision undertaken by the Consortium was not clear from the beginning.

The vague wording included in the proposal adopted by the Consortium – extending the grape production area to **all “favourable areas” of the territory of Asti, suitable for the production of the Moscato grape variety** – engendered a very long and complex legal struggle, still ongoing (the winery has recently appealed at the Supreme Court against the decision of the State Council).

A preliminary agreement or compromise between the two opposite parties – even in the framework of the Consortium – would have probably prevented the raising of the dispute.

The Court – the State Council – concluded that the proposal of product specification amendment was far to be exhaustive and clear. This is the main reason why the will of the Consortium, expressed by the adoption of the initial proposal, has been subject to different interpretations by the stakeholders involved in the procedure.

The second element to be underlined is, again, the will of the Consortium. The Administrative Tribunal of Lazio, by assuming that the “favourable area” of the Asti territory suitable for the production of Moscato grapes, had to be defined by the “*Comissione Paritetica per il Moscato*”, had actually ignored the will of the Consortium.

As the State Council argued, no third body can replace the role of the Consortium, the sole decision-making body entitled to propose an amendment to the product specification.

As initially seen, the administrative procedure to review a product specification is regulated by the EU and national law and the Consortia only are vested with the power to propose an amendment of the product specification. The Administrative Tribunal seemed to ignore this principle.

In conclusion, the compliance with the rules on the administrative procedure leading to a review of a product specification shall always be supported by a clear and unequivocal political compromise among the Consortium members.

Bibliography

- Decision of the Tribunale Amministrativo Regionale (TAR) Lazio N.5033/2012, of 04/06/2012.
- Italian State Council Decision of the 3rd of October 2013.
- Italian State Council Decision n.2425/2010.
- Decision of the Administrative Tribunal of Lazio n.955 of 15 March 2012
- Decisions of the Administrative Tribunal of Lazio n.1774, 1775, 1776, 1777 of 2013.
- Italian State Council Decision of 28 of November 2013.