



International Wine Law Association  
Association International des Juristes  
du Droit de la Vigne et du Vin

The impact of  
the new CMO regulations on labelling  
and the consequences  
in the Italian market

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Commission Regulation (EC) n. 607/2009 of 14 July 2009, laying down certain detailed rules for the implementation of Council Regulation (EC) n. 479/2008 as regards protected denomination of origins and geographical indications, traditional terms, labelling and presentation of certain wine sector products

1. Characteristics of the geographical area and their influence on the final product
2. Production in the demarcated area
3. Packaging restricted to a defined geographical area

## Characteristics of the geographical area and their influence on the final product

Applications for protection shall include a technical file containing a product specification and a single document summarising the product specification.

The product specification shall enable interested parties to verify the relevant conditions of production of the designation of origin or geographical indication.

It shall consist, among others, of the name to be protected; a description of the wine(s); where applicable, the specific oenological practices used to make the wine(s) as well as the relevant restrictions on making the wine(s); the demarcation of the geographical area concerned; the maximum yields per hectare.

## Production in the demarcated area

Provisions should be made concerning the condition relating to the production in the demarcated area

Indeed, a limited number of derogations exists in the Community

## Production in the demarcated area

Production covers all the operations involved, from the harvesting of the grapes to the completion of the wine-making process, with the exception of any post-production processes

Provisions should be made concerning the condition relating to the production in the demarcated area.

Indeed, a limited number of derogations exists in the Community

## Production in the demarcated area

COUNCIL REGULATION (EC) No 479/2008 of 29 April 2008  
on the common organisation of the market in wine

According to article 34, a requirement for  
both a designation of origin and a  
geographical indication

is that production takes place in the  
corresponding geographical area

# Production in the demarcated area

COMMISSION REGULATION (EC) No 607/2009 of 14 July 2009  
laying down certain detailed rules for the implementation of Council  
Regulation (EC) No 479/2008 as regards protected designations of  
origin and geographical indications, traditional terms, labelling and  
presentation of certain wine sector products

a product with a protected designation of origin or geographical indication may be made into wine either:

- (a) in an area in the immediate proximity of the demarcated area concerned; or
- (b) in an area located within the same administrative unit or within a neighbouring administrative unit, in conformity with national rules; or
- (c) in the case of a trans-border designation of origin or geographical indication, or where an agreement on control measures exists between two or more Member States or between one or more Member State(s) and one or more third country(-ies), a product with a protected designation of origin or geographical indication may be made into wine in an area situated in the immediate proximity of the demarcated area in question.

# Production in the demarcated area

COMMISSION REGULATION (EC) No 607/2009 of 14 July 2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products

a product may be made into

sparkling wine or semi-sparkling wine

with a protected designation of origin beyond the immediate proximity of the demarcated area in question if this practice was in use prior to 1 March 1986



# Production in the demarcated area

Decree of 17 July 2009

Designation of origin of the wines «Prosecco», Designation of origin of the wines «Conegliano Valdobbiadene - Prosecco» and Designation of origin of the wines «Colli Asolani - Prosecco» or «Asolo - Prosecco» for respective sub-areas and approval of product specifications

a product may be made into Prosecco sparkling wine or Prosecco semi-sparkling wine in a bottling undertaking situated in the immediate proximity of the demarcated area concerned, if this practice was in use prior to five years prior to entering into force of this product specification; or

a product may be made into Prosecco sparkling wine or Prosecco semi-sparkling wine in a bottling undertaking situated in area beyond the immediate proximity of the demarcated area concerned, if this practice was in use prior to 1 March 1986.

## Production in the demarcated area

Out of 80 M bottles of Prosecco,  
20 M have been traditionally bottled in Piedmont

Piedmont has a long tradition for making sparkling and semi-sparkling wines (Asti) and restricting production of sparkling and semi-sparkling Prosecco to the demarcated areas of Veneto and Friuli Venezia Giulia would have been detrimental for a number of bottlers

## Packaging restricted to a defined geographical area

Restricting the packaging of a wine with a designation of origin or a geographical indication, or operations connected with its presentation, to a defined geographical area constitutes a restriction on the

free movement of goods and freedom to provide services.

In the light of the case-law of the Court of Justice, such restrictions may be imposed only if they are necessary, proportionate and suitable to protecting the reputation of the designation of origin or geographical indication.

Any restriction should be duly justified from the point of view of the free movement of goods and the freedom to provide services.

# Packaging restricted to a defined geographical area

COMMISSION REGULATION (EC) No 607/2009 of 14 July 2009

§ 8: If a product specification indicates that packaging of the product must take place

within the demarcated geographical area or

in an area in the immediate proximity of the demarcated area in question,

in accordance with a requirement referred to in Article 35(2)(h) of Regulation (EC) No 479/2008, justification for this requirement shall be given in respect of the product concerned

# Packaging restrictions: the case law of the Court of Justice

ECJ, 9 June 1992, Case C-47/90

Établissements Delhaize Frères et Compagnie Le Lion SA  
v Promalvin SA and AGE Bodegas Unidas SA.

National rules applicable to wine of designated origin which make the use of the name of the region of production conditional upon bottling in that region and limit the quantity of wine that may be exported in bulk but otherwise permit sales of wine in bulk within the region of production constitute measures having equivalent effect to a quantitative restriction on exports which are prohibited by Article 34 of the EEC Treaty since they have the effect

of specifically restricting patterns of exports of wine in bulk and, in particular,

of procuring a special advantage for bottling undertakings situated in the region of production.

# Packaging restrictions: the case law of the Court of Justice

Such rules cannot be justified on the basis of Article 18 of Regulation No 823/87, which, for wines of that kind, allows the Member States, taking into account fair and traditional practices, to lay down any additional or more stringent conditions of movement than those laid down in that regulation, since that article cannot be interpreted as authorizing the Member States to impose conditions contrary to the Treaty rules on the movement of goods.

The requirement of bottling in the region of production can be justified on grounds of the protection of industrial and commercial property within the meaning of Article 36 of the Treaty only if it is needed in order to ensure that the registered designation of origin fulfils its specific function of guaranteeing that the product bearing it comes from a particular geographical area and displays certain particular characteristics.

However, that is not the case where bottling in the region of production is not an operation which endows the wine with particular characteristics and is not essential in order to preserve specific characteristics acquired by that wine.

# Packaging restrictions: the case law of the Court of Justice

ECJ 16 May 2000, Case C-388/95  
Kingdom of Belgium v Kingdom of Spain

The Court confirms that such national rules constitute a measure having an effect equivalent to quantitative restrictions on exports within the meaning of Article 34 of the Treaty (now, after amendment, Article 29 EC), since they have the effect of establishing a difference of treatment between trade within a Member State and its export trade.

The Court confirms further that said rules cannot be rendered lawful by Article 18 of Regulation No 823/87, since that article cannot be interpreted as authorising the Member States to derogate from the Treaty rules on the free movement of goods.

## Packaging restrictions: the case law of the Court of Justice

By contrast, the Court says further that

such requirement, whose aim is to preserve the considerable reputation of the wine bearing the designation of origin by strengthening control over its particular characteristics and its quality, is justified as

a measure protecting the designation of origin which may be used by all the wine producers in that region and is of decisive importance to them, and it must be regarded as being in conformity with Community law despite its restrictive effects on trade, since it constitutes

a necessary and proportionate means of attaining the objective pursued in that there are no less restrictive alternative measures capable of attaining it.



# Packaging restrictions: the case law of the Court of Justice

According to the decision,

- It is undisputed that the bottling of wine is an important operation which, if not carried out in accordance with strict requirements, may seriously impair the quality of the product.
- Bottling normally entails, before filling, a series of complex oenological operations (filtering, clarifying, cooling, and so on) which, if not carried out in accordance with the prescribed rules of the trade, may adversely affect the quality and alter the characteristics of the wine.
- Nor is it contested that bulk transport of wine may seriously impair its quality if not undertaken under optimum conditions. If the conditions of transport are not perfect, the wine will be exposed to oxidation reduction, which will increase with distance and may impair the quality of the product. It will also be subject to the risk of variations in temperature.

## Packaging restrictions: the case law of Italian Courts

T.A.R. (Administrative Regional Court) of Lazio, II Division,  
1 March 1999, n. 763

Confederazione Italiana della Vite e del Vino  
v. Consorzio tutela D.O.C. Frascati

It is unlawful the Ministry Decree making the use of the name of the region of production "Frascati" conditional upon bottling in that region,

failing technical prescriptions, oenological studies, ground surveys whose aim is assessing beyond any doubt that such rule is a necessary and proportionate means of attaining the objective pursued in that

there are no less restrictive alternative measures capable of attaining it

# Packaging restrictions: the Italian law

The law n. 164, of 10 February 1992  
laying down new rules on designation of origin of wines

§ 10, 1., i), Restricting the packaging of a wine with a designation of origin to a defined geographical area may be imposed by the product specification (Disciplinare di produzione)

# Packaging restrictions: the Italian law

The Ministry of Agriculture Decree of 31 July 2003, laying down certain detailed rules for the restriction of the packaging of a wine with a designation of origin to a defined geographical area

In case the product specification of a wine with a designation of origin, at the time of entering into force of the decree, is imposing restriction of the packaging of such wine to a defined geographical area, said specification will remain in force, while its *practical application* will remain unchanged

In case a new product specification of a wine with a designation of origin enter into force, restriction of its packaging to a defined geographical area may be imposed, under the condition it is applied for by no less than 66% of the wine growers and bottlers in the demarcated geographical area

# Packaging restrictions: the Italian law

Under both acts, practical application of the rule was,

bottling undertakings situated outside the region of production of wines with a designation of origin, at the time of entering into force of the decree, continued bottling, while

according to section 4 of the Decree, bottling undertakings situated outside the region of production of wines with a designation of origin may in any time apply for authorisation, provided that they have been bottling said wine for two years, within the previous eight years.

## Packaging restrictions: the Italian law

There has recently been lots of discussion in Italy, about whether the use of the name of the region of production may be, or may not be, made conditional upon bottling in that region

The “Frascati” case is once more debated and a lawsuit opposing a bottling undertaking to the Consorzio is being discussed in Rome

The law n. 164, of 1992 is being redrafted - among many other items - to make sure the Ministry of Agriculture will have a final word on the issue

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