

Wine Geographical Indications and Product Specifications: A Case of Prosecco Quality and Characteristics?

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Abstract

Article 22 of the Agreement on Trade-Related Aspects of Intellectual Property Rights defines Geographical Indications (GI). However, GI claims are increasingly contentious. Given the significance of trade barriers which can arise from unjustified GI claims, the article argues that legitimacy of GI claims must turn on whether objective evidence exists to the effect that Article 22(1) criteria are met. This article tests certain elements of the EU ‘Prosecco’ GI claim – that its qualities and characteristics are essentially attributable to the relevant location – against Italian production specifications to determine whether they provide evidentiary justification for the GI claim. This reveals evidence of absence of consistent qualities or characteristics in ‘Prosecco’ wine. The article additionally examines evidence explaining why this is so. The consequence of this conclusion is that the EU ‘Prosecco’ GI claim must rest solely upon the concept of ‘reputation’ for its legitimacy. Moreover, the approach taken by this article can be utilized to test the legitimacy of any GI claim so far as it relates to quality and characteristics.

Keywords

Agreement on Trade-Related Aspects of Intellectual Property Rights – Geographical Indications – Prosecco – wine – Wine Geographical Indications

1 Introduction

The World Trade Organization (WTO) treaty system provides ground rules for international trade. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Article 22¹ defines Geographical Indications (GI). However, GI claims are increasingly contentious. Current debate regarding wine produced from prosecco grapes was sparked in 2009 by the Italian switch in grape variety name 'prosecco' to 'glera',² which facilitated the assertion that 'Prosecco' is a GI, and EU prohibition on its use within the EU market on labelling with that grape variety for any wine which originates outside defined areas in Italy.³

The GI 'Prosecco' claim has effectively raised trade barriers for foreign producers who are precluded from labelling wine by its grape variety name, not only within the EU market, but in markets outside the EU where pursuant to bilateral free trade agreements (FTAs) with trading partners, the EU has obtained further recognition of its GI claims. The EU controversially continues to press for recognition of its 'Prosecco' GI claim within FTAs.⁴

- 1 Agreement on Trade-Related Aspects of Intellectual Property Rights, Marrakesh Agreement Establishing the World Trade Organization (15 April 1994) Annex 1C (TRIPS) art 22.
- 2 Before 2009, the primary grape name was 'Prosecco B'. See for example Italian Vines Register GU No 149 (17 June 1970) 3858; GU No 170 (24 July 2001) Extraordinary Supplement 271–72 in which 'glera' does not appear (as primary or synonym). From 2009 'Glera' was inserted as a synonym on the Italian National Vines Register: GU No 146 (26 June 2009) 92, 94. The latter no longer lists 'Prosecco' (not as primary name nor synonym). Italian National Vines Register <<http://catalogoviti.politicheagricole.it/catalogo.php>> (translation by Lisa Spagnolo).
- 3 Since 2009 'Prosecco' has been a Protected Designation of Origin (PDO) protected by Regulation (EU) 1308/2013 of the European Parliament and of the Council of 17 December 2013 Establishing a Common Organisation of the Markets in Agricultural Products (20 December 2013) OJ L 347/671, arts 100(3), 103(2) and 120, which prohibits within EU markets the use of names associated with PDOs in wine originating from outside the geographical area.
- 4 Often as a 'deal-breaker': Andrea Zappalaglio, 'Getting Article 22(1) TRIPS Right: A Commentary on the Definition of 'Geographical Indication' from a European Union Perspective with a Focus on Wines' (2022) 23(2) JWIT 183. The term 'prosecco' has been internationally recognized by EU FTAs with Armenia, Japan, Moldova, Vietnam and Switzerland. Non-FTA recognition exists in Kazakhstan and Canada: Enrico Bonadio and Magali Contardi, 'The Geographic Indication Prosecco Battle Between Italy and Australia: Some Lessons from the History and Geography of the Most Famous Italian Wine' (2022) 23(2) JWIT 266. China recently announced recognition of the term: Fausta Chiesa, 'Il Prosecco Brinda al riconoscimento del marchio in Cina, Australia Battuta' (*Corriere della sera*, 25 December 2021) (translated by Lisa Spagnolo) <https://www.corriere.it/economia/consumi/21_dicembre_25/prosecco-brinda-riconoscimento-marchio-cina-australia-battuta-7e1f12e6-656b-11ec-8db3-85404dffbe43.shtml> accessed 3 March 2022.

Given the significance of resulting trade barriers, this article tests certain elements of the EU 'Prosecco' GI claim – that its qualities and characteristics are essentially attributable to the relevant location – against the backdrop of Italian production specifications, to determine whether criteria for GI within Article 22(1) TRIPS are met.

Generally, if product specifications demonstrate consistent qualities and characteristics this would tend to support the legitimacy of the GI claim because it would then be arguable that they are essentially attributable to the relevant geographical area as required by Article 22(1).⁵ However, if product specifications fail to demonstrate consistent qualities or characteristics, then it becomes difficult to maintain that a product's qualities are essentially attributable to a geographical area.

The analysis below takes this approach. It therefore reveals an absence of qualities or characteristics in 'Prosecco' wine that are essentially attributable to the relevant region. It does this through an examination of available objective evidence: by detailed comparison of relevant product specifications which reveals absence of consistent qualities; and examination of evidence which explains this inconsistency. Consequently, this article concludes the EU GI claim must rest solely upon 'reputation' for its legitimacy which, due to space constraints, will be the subject of a separate publication.

Section 2 introduces the legal framework. Section 3 compares production specifications to determine whether they reveal qualities that could be essentially attributable to the relevant geographical location; Section 4 analyses the Section 3 comparisons, then examines additional arguments regarding *terroir* and human skills and presents evidence explaining why qualities and characteristics are inconsistent and not essentially attributable to the geographical area; Section 5 briefly concludes.

2 Background

The TRIPS Agreement establishes a legal framework for GI claims within the WTO system. The legitimacy of GI claims thus hinges on interpretation of their definition in TRIPS Article 22(1).

5 Nonetheless, even if legitimately claimed, technical regulations pursuant to Article 23(1) TRIPS may still breach other WTO obligations: Caroline Henckels, 'The Compatibility of the European Union's Geographical Indications Regulations for Wines with the World Trade Organization Agreement on Technical Barriers to Trade' (2022) 23(2) JWIT 294 f.

2.1 *Policy Underpinnings of Geographic Indication Recognition*

GIs are recognised within TRIPS Article 22(1) as indications identifying place of origin where a 'quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'. Pursuant to TRIPS Article 23(1), WTO members must protect wine GIs by prohibiting their use for wines not originating within relevant geographical areas.

GIs differ from other intellectual property; they are predominantly communal.⁶ They are arguably not 'property' because they belong to 'nobody', unlike trademarks. They are also less well-defined as legal concepts.

Legitimate GIs promote innovation; prevent 'free rides' by external producers;⁷ encourage investment in local and rural development and reputation-building;⁸ preserve cultural heritage;⁹ and signal information on geographical origin, quality or characteristics to consumers.¹⁰ GIs may raise prices for consumers and create higher incomes for suppliers by 'de-commodifying' goods, especially agricultural products.¹¹

However, illegitimate GI claims unjustifiably reduce competition;¹² create artificial non-tariff trade barriers and rent-seeking opportunities;¹³ create

6 See for example Irene Calboli, 'Expanding the Protection of Geographical Indications of Origin Under TRIPS: Old Debate or New Opportunity' (2006) 10 *Marquette Intellectual Property Law Review* 181, 185.

7 Dev Gangjee, 'Quibbling Siblings: Conflicts Between Trademarks and Geographical Indications' (2007) 82 *Chicago-Kent Law Review* 1253, 1258; Bonadio and Contardi (n 4) 260–65.

8 Gangjee (n 7).

9 Bonadio and Contardi (n 4) 260, 291; but see Justin Hughes, 'Coffee and Chocolate – Can We Help Developing Country Farmers Through Geographical Indications?' (Report prepared for the International Intellectual Property Institute, Washington, DC, 2009) 9 (suggesting that some GIs might undermine traditional knowledge and traditional cultural expressions as they create market pressure to alter traditional practices); Irene Calboli, 'Geographical Indications Between Trade, Development, Culture, and Marketing: Framing a Fair(er) System of Protection in the Global Economy?' in Irene Calboli and Wee Loon Ng-Loy (eds), *Geographical Indications at the Crossroads of Trade, Development, and Culture: Focus on Asia-Pacific* (2017) 3, 22.

10 Bonadio and Contardi (n 4) 261; Zappalaglio (n 4) 188, 204; Calboli (n 6) 186. But see Irene Calboli, 'In Territorio Veritas: Bringing Geographical Coherence in the Definition of Geographical Indications of Origin Under TRIPS' (2014) 6 *WIPO Journal* 57 (generally for some criticisms of that view in the context of Article 22(1) of TRIPS).

11 Hughes (n 9) 8.

12 See for example Zappalaglio (n 4) 196 f.

13 Bonadio and Contardi (n 4) 262 (discussing claims of 'monopolising descriptive terms').

unjustified additional costs for foreign producers who trade in such markets;¹⁴ may raise prices for consumers, increase consumer search costs and mislead consumers regarding ingredients in foreign goods.¹⁵ Illegitimate GI claims can be used as FTA bargaining chips, and potentially permeate unjustified trade barriers in many markets through FTA demands.

Protective measures concerning genuine GI claims achieve GI policy aims, but protection for GI claims which do not clearly satisfy Article 22(1) criteria obviously endanger broader anti-protectionist norms of the WTO system. It is therefore important to test whether GI claims meet Article 22(1) criteria.

2.2 *Interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights Article 22(1)*

TRIPS Article 22(1) requires an origin link. Consequently 'only the products that feature a qualitative, reputational or other link to their area of production qualify for protection' within the GI framework.¹⁶ Unfortunately, absence of case law clarifying criteria within Article 22(1)¹⁷ amplifies the potential for illegitimate GI claims.

Zappalaglio's definitions of 'quality' and 'essentially attributable' are adopted here.¹⁸ Quality refers to the 'features' or 'distinctive characteristics' of the product.¹⁹ The historical evolution between drafts moved from 'attributable' to a tentative 'attributable [exclusively or essentially]' to the final 'essentially attributable'.²⁰ Thus, the Article 22(1) bar is not as high as 'exclusively' attributable to location and nothing else.²¹ However, the word 'essentially' cannot be ignored. As Zappalaglio states, the qualifying word 'essential' means 'in essence', 'in its essential parts' or 'for the most part'.²² Thus it demands qualities which are 'for the most part', or predominantly, attributable to the geographic location. In other words, 'essential attribution' demands a substantive causal link between qualities and place.

On any reasonable interpretation Article 22(1) requires more than mere assertion of causation. A causal link must be established by objectively

14 Foreign producers must relabel wine for the regulated market and incur costs to inform consumers of ingredients: Henckels (n 5) 302, 306 f.

15 *ibid* 307, 308 f.

16 Zappalaglio (n 4) 192–94, 198–200 (noting the 'other characteristic' criterion is 'more elusive' and therefore it is 'extremely difficult to find a GI specification based on it').

17 Henckels (n 5) 295; Zappalaglio (n 4) 185–88.

18 Zappalaglio (n 4) 181.

19 *ibid* 200.

20 *ibid* 210.

21 *ibid* 207 ff.

22 *ibid* 210 f, 215.

verifiable evidence that demonstrates that it is the place which has predominantly led to the product's quality, reputation or other characteristics. This conforms with WTO norms precluding excessive protection. Mere 'attribution' by assertion alone is insufficient. A reasonable interpretation of Article 22(1) requires more; evidence should demonstrate that environmental factors and human elements of the place 'determine the distinctive characteristics of a product'.²³ Thus, to be a legitimate GI based on qualities under Article 22(1) there must be evidence that: (1) a product has distinctive qualities; and (2) those qualities arise because of the place itself. On this basis the 'Prosecco' GI claim will be tested below.

3 Quality and Character: Comparison of Prosecco Specifications

This article seeks to test the EU 'Prosecco' GI claim only in relation to the quality or character of 'Prosecco' wine; for reasons of space, discussion of reputation is delayed to a future forum. In this Section, specifications for 'Prosecco' are compared to test whether a strong evidentiary basis exists for this foundation of the GI claim.

Product specifications comprise objective evidence of the qualities of a product. If these are essentially attributable to the geographical area – that is, predominantly caused by location – a distinctive commonality in qualities of 'Prosecco' wine should be evident on the face of product specifications themselves. The following analysis reveals that this is far from so through a comparison of product specifications relevant to the 'Prosecco' GI claim.

To satisfy the test within Article 22(1) TRIPS, comparison of product specifications should reveal a high degree of consistency: throughout the entire geographical location; and over time. If the wine lacks largely consistent or distinctive qualities, then its qualities cannot be 'essentially attributed' to the geographical area. Consistency is a necessary factor in proving qualities are distinctive and causally connected to the place. Consistency cannot prove causality; but lack of consistency strongly suggests its absence.

The EU GI claim²⁴ depends on Italian production specifications within regulations of 'controlled designation of origin' (DOC) and 'controlled and

²³ *ibid* 200.

²⁴ See *supra* n 3. Thus, Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 Supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as Regards Applications for Protection of Designations of Origin, Geographical Indications and Traditional Terms in the Wine Sector, the Objection Procedure, Restrictions of Use, Amendments to Product Specifications, Cancellation of Protection,

guaranteed designation of origin' (DOCG). The following (collectively 'relevant specifications') will be compared:

- 2019 DOCG 'Colli Asolani – Prosecco' or 'Asolo – Prosecco' (DOCG Asolo or Asolo);²⁵
- 2019 DOCG 'Conegliano Valdobbiadene – Prosecco' (DOCG Conegliano Valdobbiadene or Conegliano Valdobbiadene);²⁶
- 2020 DOC Prosecco (DOC).²⁷

Each addresses wine categories of *spumante* (sparkling), *frizzante* (semi-sparkling) and rarer *tranquillo* (still).²⁸ The DOCG Conegliano Valdobbiadene had a 2009 incarnation,²⁹ as did the DOCG Asolo.³⁰ Before elevation to DOCG in 2009, both existed as DOCs.³¹

Prior to 2009, Prosecco wine could be produced pursuant to Table Wines with Geographical Indication denominations (Prosecco IGTs).³² However, in 2009 the former smaller DOCs (Asolo and Conegliano Valdobbiadene) were converted to DOCGs, and Prosecco IGT areas became part of the new expanded DOC (2009 DOC expansion, expanded DOC zone), the size of which eclipsed the former small DOCs.³³ The current 2020 DOC permits variations 'Prosecco DOC Trieste' and 'Prosecco DOC Treviso' if all operations occur within those provinces.³⁴

While current production specifications are the primary focus, comparisons will also be made to 2009 product specifications to test whether specifications have changed over time. The following compares relevant specifications

and Labelling and Presentation (11 January 2019) L 9/2 links to the Italian Ministry of Agricultural, Food and Forestry Policies (Ministry) product specifications webpage.

25 2019 DOCG Colli Asolani – Prosecco or Asolo – Prosecco (GU No 171 of 2019) (DOCG Asolo or 2019 DOCG Asolo or Asolo).

26 2019 DOCG Conegliano Valdobbiadene – Prosecco (GU No 185 of 2019) (DOCG Conegliano Valdobbiadene or 2019 DOCG Conegliano Valdobbiadene or Conegliano Valdobbiadene).

27 2020 DOC Prosecco (GU No 200 of 2020) (DOC or 2020 DOC).

28 In some instances, specifications anticipate bottle-fermented wine: see *infra* Section 3.5.

29 2009 DOCG Conegliano Valdobbiadene – Prosecco (GU No 173 of 2009) (2009 DOCG Conegliano Valdobbiadene).

30 2009 DOCG Colli Asolani – Prosecco or Asolo – Prosecco (GU No 173 of 2009) (2009 DOCG Asolo).

31 As DOC Montello and Colli Asolani.

32 IGT Colli Trevigiani (GU No 297 of 1995); IGT delle Venezie (GU No 297 of 1995); IGT Marca Trevigiana (GU No 297 of 1995); IGT Veneto (GU No 297 of 1995); IGT Alto Livenza (GU No 160 of 2008).

33 2009 DOC Prosecco (GU No 173 of 2009) (2009 DOC).

34 Consortium DOC Prosecco (DOC Consortium) <www.prosecco.wine/en/territory> accessed 3 March 2022.

for grape base (Section 3.1), grape production zones (Section 3.2), viticulture (Section 3.3), vinification (Section 3.4), and characteristics (Section 3.5).

3.1 *Ampelographic Specifications*

First, grape nomenclature requires clarification. Before 2009, the former DOCs (now DOCGs) all referred to 'prosecco' grapes.³⁵ Pre-2009 Prosecco IGTs also referred to 'prosecco' vines.³⁶ However, since 2009 the DOCGs and DOC have only referred to 'glera' grapes, with some exceptions.³⁷ Comparison of relevant specifications reveals previously standardized ampelographic specifications now diverge due to the 2020 introduction of DOC *spumante* (sparkling) rosé.

3.1.1 'Glera' ('Prosecco') Grape Input

Each relevant specification requires a minimum of 85% 'glera' grapes.³⁸ This minimum input has long been standardized across all wine categories.³⁹ However, since 2020 the new 'sparkling rosé' has created divergence by imposing a cap on 'glera' input; a maximum of 90%.⁴⁰ No other specification has imposed such a cap.

3.1.2 Supplemental Grape Input

With one exception, all specifications provide the option to supplement with 'non-glera' grapes by up to 15% from listed grape varieties.⁴¹ In 2009 this held true for every wine category.⁴² However, for the first time, DOC 'sparkling rosé' precludes any choice by confining inputs to two mandatory varieties: 'glera'; and pinot nero. The new category must comprise 10–15% of the latter.⁴³

35 See supra n 2.

36 See for example IGT Veneto (n 32) arts 2, 4.

37 Reference to 'prosecco' vine: 2019 DOCG Conegliano Valdobbiadene (n 26) art 9.

38 2019 DOCG Asolo (n 25) art 2(1); *ibid* art 2(1); 2020 DOC (n 27) arts 2(1) and 5(6).

39 2009 DOCG Asolo (n 30) arts 2(1) and 5(8); 2009 DOCG Conegliano Valdobbiadene (n 29) arts 2(1) and 5(3); 2009 DOC (n 33) art 2(1).

40 2020 DOC (n 27) arts 2(1) and 5(6).

41 A maximum 15% of listed grape varieties. Contrast 'sparkling rosé' which must contain between 10% to 15% of pinot nero (vinified as red wine): 2020 DOC (n 27) arts 2(1), 2(3) and 5(7). Both 2019 DOCG Asolo (n 25) arts 2(1), 2(2), 5(8) and 2019 DOCG Conegliano Valdobbiadene (n 26) arts 2(1), 2(2), 5(3) permit up to 15% of listed grape varieties, including for traditional practices.

42 2009 DOCG Asolo v (n 30) arts 2(1) and 5(8); 2009 DOCG Conegliano Valdobbiadene (n 29) arts 2 and 5(1). See similarly 2009 DOC (n 33) art 2(1).

43 See supra n 41.

3.2 *Grape Production Zone Specifications*

DOCGs carefully outline distinctly limited production zones for grapes. Conegliano Valdobbiadene prescribes 'hilltop territories' within precisely limited production zones,⁴⁴ and sub-zones for 'Superiore di Cartizze' and sparkling 'Rive'.⁴⁵ Asolo also carefully describes 'hilly' production zones.⁴⁶ Both also delimit production zones for supplemental grapes.⁴⁷

The 2020 DOC also outlines production zones for 'glera' and supplemental grapes.⁴⁸

3.3 *Viticultural Specifications*

Specified farming methods and techniques are compared below to discern similarities and differences.

3.3.1 Terrain

The DOCGs specify 'only well-exposed' terrain.⁴⁹ The DOC also specifies 'well-exposed' terrain but similarities end there.⁵⁰ Importantly, only the DOCGs specify terrain must be 'hilly' for vineyard registration and exclude 'valley floor[s]' or any terrain 'exposed to northern winds'.⁵¹

By comparison, DOC terrain rules are broad and inclusive. The DOC does not demand 'hilly' land. It excludes only 'peaty' soil and land affected by 'high water content with rising groundwater levels'.⁵² While it adds environmental conditions 'must be those traditional to the zone, and ... able to confer on the grapes their specific quality characteristics' this qualification is circular at best

44 2019 DOCG Conegliano Valdobbiadene (n 26) art 3(1)(a) production zones specified by map, altitude and 'alluvial terrace' boundaries within specified municipalities.

45 'Superiore di Cartizze' production is restricted to map references within San Pietro di Barbozza. See permitted 'Rive' municipalities: *ibid* art 3(1)(b), Annex A. For brevity, 'Superiore' is omitted for all DOCG wines other than the former.

46 2019 DOCG Asolo (n 25) art 3(1)(a) permits grape production within specified municipalities.

47 Many DOCG production zones overlap: 2019 DOCG Conegliano Valdobbiadene (n 26) arts 3(1)(c) and 5(3); 2019 DOCG Asolo (n 25) art 3(1)(b).

48 2020 DOC (n 27) arts 2(1) and 3(1) (which specify 'grapes' must be grown within certain provinces. Note Articles 2(2) and (3) control production zones for products (derived from supplemental grapes) used in traditional practices for sparkling and sparkling rosé, but not semi-sparkling wine).

49 2019 DOCG Asolo (n 25) art 4(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(1).

50 2020 DOC (n 27) art 4(2).

51 2019 DOCG Asolo (n 25) art 4(2); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(1) (additionally excluding 'lower plains').

52 2020 DOC (n 27) art 4(2).

and adds nothing.⁵³ Veneto and Friuli-Venezia Giulia Regions (Regional governments) are empowered to restrict land included within vineyard registers but this power need not be exercised (indeed the Consortium must propose it) nor are criteria for determinations specified.⁵⁴

DOCGs carefully limit vineyards to hilly non-north facing terrain, but the DOC does not do likewise. Incontrovertibly the DOC includes flat, mountainous, coastal and hilly areas. In Article 9 the 2020 DOC further discusses *terroir*. However, as elaborated below, the latter cannot be considered a true product specification and will therefore be analysed separately in Section 4.2.

3.3.2 Training Method and Pruning

Permitted training techniques differ. Either simple or double espalier training is allowed by the DOC,⁵⁵ but only simple for Asolo.⁵⁶ Previously, Conegliano Valdobbiadene also permitted either simple or double espalier,⁵⁷ but now allows only simple espalier.⁵⁸

Conegliano Valdobbiadene prohibits 'expanded' cultivation methods: including, since 2009, specific bans on 'raggi' training,⁵⁹ and now also 'free Cordon' and 'curtain planting'.⁶⁰ The DOC also bans expansive techniques including 'pergola' or 'raggi'.⁶¹ However, Asolo still declines to prohibit expanded techniques. Additionally, Regional government may permit different farming methods for DOCGs.⁶²

DOC and Conegliano Valdobbiadene somewhat vaguely specify pruning systems 'generally used'⁶³ or pruning 'in a traditional manner'.⁶⁴ Asolo, however, remains silent on pruning.

53 *ibid* art 4(1). The provision also appears in DOCGs but is unproblematic due to delimited production zones.

54 *ibid* art 4(4).

55 *ibid* art 4(3) (simple or single).

56 2019 DOCG Asolo (n 25) art 4(2).

57 2009 DOCG Conegliano Valdobbiadene (n 29) art 4(3).

58 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(3).

59 *ibid* art 4(3). 'Raggi' refers to training vines overhead on wires like wheel spokes.

60 *ibid* (prospectively).

61 Although preserving existing plantings under bud load conditions: 2020 DOC (n 27) art 4(3).

62 2019 DOCG Asolo (n 25) art 4(2); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(3).

63 2020 DOC (n 27) art 4(3).

64 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(4).

3.3.3 Forcing, Irrigation and Plant Density

All relevant specifications prohibit 'forcing practices' and permit only 'emergency' irrigation.⁶⁵ However, each relevant specification requires different minimum plant density, ranging from most dense (Asolo 3,000 per hectare) to least dense (DOC 2,300 per hectare).⁶⁶

3.3.4 Harvest Yield and Alcohol Strength by Grape Volume

Minimum natural alcohol strengths by volume of grapes range between 9% and 9.5%.⁶⁷ Some variance is accounted for by wine category: for example, all demand 9.5% vol. for still wine. However, this cannot explain divergent minimum grape alcohol strengths for sparkling⁶⁸ and semi-sparkling.⁶⁹ Indeed, Asolo provides a standard 9.5% for all categories, whereas other specifications vary by style.

Maximum grape yields per hectare differ. DOCGs permit 12 tonnes (Asolo) and 13.5 tonnes (Conegliano Valdobbiadene),⁷⁰ far less than the 18 tonnes allowed by the DOC.⁷¹

Moreover, yields and uses of excess are malleable. Understandably, a 20% allowance increase is permitted.⁷² Conversely, yield limits can be decreased by Regional governments.⁷³ The 'functioning of the wine market' is a relevant

65 2020 DOC (n 27) art 4(5); 2019 DOCG Asolo (n 25) art 4(3); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(5). Critical of forcing prohibitions: Maurizio Gily, "Any Forcing Practice is Prohibited": Does This Sentence Make Sense? (*Mille Vigne*, 2018) <www.millevigne.it/articoli-rivista/e-vietata-ogni-pratica-di-forzatura-ha-senso-questa-frase/> accessed 3 March 2022.

66 2019 DOCG Asolo (n 25) art 4(2); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(2) (2,500 plants per hectare); 2020 DOC (n 27) art 4(3).

67 2020 DOC (n 27) art 4(6) and 5(4) (still 9.5%, all other categories 9%); 2019 DOCG Asolo (n 25) art 4(4) (9.5%); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(7) (9.5%, sparkling and semi-sparkling 9%, sparkling 'Rive' 9.5%, 'Superiore di Cartizze' 9.5%). See also minimum total alcoholic strength (rather than 'natural' alcoholic strength before enrichment): Delegated Regulation (EU) 2019/934 of 12 March 2019 Supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council (7 June 2019) OJ L 148/42 7 (Commission Delegated Regulation 2019/934) Annex II.C. 2.

68 DOC and Conegliano Valdobbiadene (9%) versus (9.5%) for Asolo, Conegliano Valdobbiadene sparkling 'Rive' or 'Superiore di Cartizze': supra n 67.

69 DOC and Conegliano Valdobbiadene (9%) versus Asolo (9.5%): supra n 67.

70 2019 DOCG Asolo (n 25) art 4(4) (12 tonnes); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(7) (still 13.5 tonnes; sparkling 'Rive' 13 tonnes; 'Superiore di Cartizze' 12 tonnes).

71 2020 DOC (n 27) art 4(6). The maximum yield for pinot nero for sparkling rosé is 13.5 tonne per hectare maximum.

72 2019 DOCG Asolo (n 25) art 4(4); 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(7); 2020 DOC (n 27) art 4(6).

73 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(7); 2019 DOCG Asolo (n 25) art 4(4); 2020 DOC (n 27) art 4(6).

factor in such decisions.⁷⁴ Excess musts and base wines are ostensibly blocked from use, but Regional governments can certify them as DOC or DOCG Conegliano Valdobbiadene, or allocate them to harvest reserves, or other uses.⁷⁵ By contrast, Asolo more strictly restricts use of excess over reduced yield limits only to table wines.⁷⁶

3.3.5 Harvest Method

Only Conegliano Valdobbiadene specifies harvest method. Previously hand harvest was only required for sparkling ‘Rive’.⁷⁷ Now grapes for ‘Superiore di Cartizze’, sparkling ‘Rive’ and bottle-fermented sparkling ‘*sui lieviti*’ (‘on the lees’) must be collected by hand.⁷⁸ Neither the DOC nor Asolo contain such a requirement, thus they permit machine harvest.

3.4 *Vinification Specifications*

The following compares winemaking specifications.

3.4.1 Winemaking Zones

Specification restrictions on vinification outside grape production zones range from tightly restrictive to expansive. Asolo restricts vinification to its primary grape production zones and specified additional municipalities.⁷⁹ Supplemental grapes must be vinified in production zones specified for those grapes.⁸⁰ Oenological practices for secondary fermentation, stabilisation, sweetening as well as bottling and packaging can occur anywhere within Treviso province.⁸¹ Notably, DOCG Asolo does not provide for expansion of these operations to other locations, and thus remains comparatively tightly controlled.

Conegliano Valdobbiadene is slightly less rigid. Vinification must take place within grape production zones but this is satisfied even if vinification ‘only

74 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(7); 2020 DOC (n 27) art 5(9). See also Stefano Ponte, “Bursting the Bubble”: The Hidden Costs and Visible Conflicts Behind the Prosecco “Miracle” (2021) 86 *Journal of Rural Studies* 542, fn 5, 544.

75 By regional government provisions, upon Consortia proposal: 2019 DOCG Conegliano Valdobbiadene (n 26) arts 4(7), 5(5), 5(6) (for sparkling); 2020 DOC (n 27) arts 4(6), 4(7), 5(8) and (9).

76 2019 DOCG Asolo (n 25) art 4(4).

77 2009 DOCG Conegliano Valdobbiadene (n 29) art 4(6).

78 2019 DOCG Conegliano Valdobbiadene (n 26) art 4(6). ‘*Sui lieviti*’ refers to lees or yeasts, the sediments of which remain after fermentation.

79 2019 DOCG Asolo (n 25) art 5(1).

80 *ibid* art 5(2).

81 *ibid* art 5(3).

partly occurs' the within those zones.⁸² Supplemental grape vinification is additionally permitted within Orsago and from 2019, Arcade.⁸³ For 'Superiore di Cartizze' vinification is confined to Valdobbiadene.⁸⁴ Again, greater leeway is given for oenological preparations which can likewise occur anywhere in Treviso province.⁸⁵ However, contrary to Asolo, DOCG Conegliano Valdobbiadene empowers the Ministry to authorise sparkling and semi-sparkling production in factories anywhere in Venezia province for long-established companies meeting certain criteria.⁸⁶

The DOC exhibits comparatively relaxed controls. Vinification, including oenological processes, bottling and packaging can be conducted anywhere in its vast production zone area.⁸⁷ Under certain conditions sparkling and semi-sparkling vinification locations can be expanded even further: the Ministry can authorise vinification in provinces neighbouring the DOC,⁸⁸ Regional governments could authorize vinification beyond neighbouring provinces.⁸⁹ The latter was unrestricted, therefore vinification could potentially have been authorized for anywhere in the world.⁹⁰

3.4.2 Winemaking Methods

The DOC restricts sparkling and sparkling rosé to autoclave fermentation but permits semi-sparkling fermentation to occur either in-bottle or by autoclave.⁹¹

DOCGs omit any mention of autoclaves from their vinification specifications.⁹² Both DOCGs contemplate secondary fermentation but do not specify the autoclave method. However, the Commission Delegated Regulation

82 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(1).

83 *ibid.*

84 *ibid.*

85 *ibid* art 5(2).

86 *ibid* (companies traditionally producing such wine at least 10 years before 1963 Decree).

87 2020 DOC (n 27) art 5(1) (or bordering Verona municipalities subject to time limitation).

88 *ibid* art 5(2) (after consultation, upon request of companies which used traditional processes in five successive seasons before 17 July 2009).

89 *ibid* art 5(3) (although application was required within 30 days of DOC decree declaration).

90 Query whether this satisfies the EU PDO requirement for exclusive production within the geographic area: see Regulation 1308/2013 (n 3) art 93(1)(a)(iii). Discussing PDO requirements generally, see Zappalaglio (n 4) 206 (PDOs require 'strong' exclusive connection).

91 2020 DOC (n 27) art 5(4). Autoclave production is discussed *infra* Section 4.2.3.

92 Each DOCG mentions autoclaves within their Article 9 statement concerning 'human factors' relevant to the GI claim, but this does not create a vinification specification. See further *infra* Section 4.2.

clarifies this since, other than in-bottle, fermentation must be by closed tank, at least for quality sparkling PDO wines.⁹³

In the semi-sparkling category all current specifications permit a choice of in-bottle or other fermentation methods. However, divergence is apparent in the sparkling wine category. While the DOC insists on autoclave fermentation for sparkling wine, both DOCGs contemplate fermentation either in-bottle or (implicitly) by autoclave.⁹⁴

All specifications refer to traditional 'oenological practices'. All specifications were silent on sweetening in 2009. For the first time, addition of musts and sweetening is now expressly addressed in the 2019 DOCG Conegliano Valdobbiadene, which specifies the required content of syrup dosages and permits their addition when required by 'community legislation' to sparkling and quality sparkling wine.⁹⁵ In this respect, it differs from Asolo and the DOC, which merely mention sweetening in passing within a provision aimed at regulating where vinification processes should occur.⁹⁶ Beyond that, Asolo mentions 'only traditional oenological practices are permitted, or otherwise those capable of conferring on the wines their particular characteristics'.⁹⁷ The Commission Delegated Regulation prohibits sweetening of cuvées but permits addition of tirage liqueur (which promotes secondary fermentation) and expedition liqueur (which promotes taste qualities and can contain sucrose) in most sparkling PDO wines.⁹⁸

3.4.3 Timeframes and Pressure

The DOC alone expressly requires fermentation in autoclaves and likewise is the only specification to implement a timeframe for autoclave fermentation, albeit only for sparkling rosé, of 60 days minimum.⁹⁹

93 Commission Delegated Regulation 2019/934 (n 67) Annex II.A.10, C.6 and 8.

94 2020 DOC (n 27) art 5(4); 2019 DOCG Asolo (n 25) arts 5(3), 5(5) and 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) arts 5(2), 5(7) and 6(1).

95 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(2) (specifying dosage syrup for sparkling and quality sparkling must contain sucrose, DOCG Conegliano Valdobbiadene musts and rectified or blended musts). For permitted contents of tirage liqueur: Commission Delegated Regulation 2019/934 (n 67) Annex II.C.4 (sparkling and quality sparkling PDO wine).

96 Sweetening 'where permitted' is listed amongst oenological practices such as secondary fermentation and stabilisation in the provision for the purpose of specifying place of vinification: 2019 DOCG Asolo (n 25) art 5(3); 2020 DOC (n 27) art 5(1).

97 2019 DOCG Asolo (n 25) art 5(10).

98 Commission Delegated Regulation 2019/934 (n 67) Annex II.A 2, 5, 6, 7, C.8. This permits expedition liqueur addition to sparkling and quality sparkling PDO wines but prohibits its addition to quality aromatic sparkling PDO wines: Annex II.C.9(c).

99 2020 DOC (n 27) art 5(4).

Although unregulated in 2009, DOCGs now specify that bottle-fermented sparkling '*sui lieviti*' must commence bottle fermentation between 1 March to 30 June following harvest and must not exceed 0.5 bar pressure after bottle fermentation begins.¹⁰⁰

Likewise, for the first time DOCGs now specify consumption release timeframes for bottle-fermented sparkling '*sui lieviti*', which cannot be released until after 90 days of fermentation and permanence;¹⁰¹ Conegliano Valdobbiadene sparkling 'Rive' must be released from 1 March after harvest year.¹⁰² Timeframe specifications are not found in the DOC, nor do DOCGs specify them for bottle-fermented semi-sparkling '*rifermentazione in bottiglia*' (bottle refermented).¹⁰³

3.4.4 Varieties

Permitted varieties within each wine category vary and have changed over time.

– Sparkling

All 2009 specifications specified a sparkling variety range of 'brut' to 'demi-sec'.¹⁰⁴ Conegliano Valdobbiadene has now expanded the range to 'extra brut' to 'demi-sec' range,¹⁰⁵ and the DOC has added 'brut nature',¹⁰⁶ but Asolo remains unchanged.¹⁰⁷

– Sparkling Rosé

This new category is not permitted for DOCGs. The 2020 DOC specifies 'brut nature' to 'extra dry'.¹⁰⁸

100 These must also be obtained from a single harvest: 2019 DOCG Asolo (n 25) art 5(5); 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(2). See also Commission Delegated Regulation 2019/934 (n 67) Annex II.C.5 and 9(f) (quality aromatic sparkling PDO wine: minimum pressure 3 bar).

101 2019 DOCG Asolo (n 25) art 5(7); 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(7). Note general minimum timeframes for fermentation on the lees of 90 days (60 days with stirrers); Commission Delegated Regulation 2019/934 (n 67) Annex II.C.6(b), 7, but these timeframes are reduced to one month for quality aromatic sparkling PDO wine: Annex II.C.9(g).

102 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(7).

103 See also supra n 101. For quality sparkling PDO wine processing minimums of six months (tank-fermented) and nine months (bottle-fermented) apply: Commission Delegated Regulation 2019/934 (n 67) Annex II.C.6.

104 2009 DOCG Asolo (n 30) art 5(4); 2009 DOCG Conegliano Valdobbiadene (n 29) art 5(2); 2009 DOC (n 33) art 5(4).

105 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(3) (specifying locations for, inter alia, 'sweetening where permitted').

106 2020 DOC (n 27) art 5(4).

107 2019 DOCG Asolo (n 25) art 5(4).

108 2020 DOC (n 27) art 5(4).

- Semi-Sparkling

In 2009 both DOCGs specified a range of ‘dry’ to ‘sweet’,¹⁰⁹ but both changed in 2019 to a new range of ‘secco’ (dry) to ‘amabile’.¹¹⁰ The 2009 DOC did not specify varieties, but in 2020 specifies ‘brut nature’ to ‘extra dry’,¹¹¹ thereby differing from current DOCGs.

- Bottle Fermented

Previously not specified, both DOCGs now insist sparkling ‘*sui lieviti*’ be sold as ‘Brut Nature’.¹¹² However, DOC bottle-fermented and DOCG semi-sparkling ‘*rifermentazione in bottiglia*’ specifications remain silent on variety.

3.4.5 Wine Yield

Wine yield per grape volume is specified by all relevant specifications, but earlier divergences have become more pronounced over time. In 2009 DOC maximum yields were 70% (per DOCGs), and (for the excess) DOC was lost if yields were between 70% to 80% (DOCGs 70% to 75%).¹¹³ The entire batch lost DOC status if yields exceeded 80% (DOCGs 75%).¹¹⁴ The 2020 DOC is now even more permissive. Maximum yield is now 75%, with excesses between 75% to 80% denied DOC status; the cap for entire batch loss of DOC status remains 80%.¹¹⁵

3.5 Characteristic Specifications

The following compares character specifications within each wine category.

3.5.1 Appearance (Colour and Bubbles)

- Still

Variations are apparent: Asolo must be ‘straw yellow, more or less intense’;¹¹⁶ there is no mention of ‘intensity’ in the DOC.¹¹⁷ Although it mirrored Asolo in 2009, from 2019 Conegliano Valdobbiadene has now

109 2009 DOCG Asolo (n 30) art 5(5); 2009 DOCG Conegliano Valdobbiadene (n 29) art 5(2).

110 2019 DOCG Asolo (n 25) art 5(8); 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(2).

111 2020 DOC (n 27) art 5(4).

112 2019 DOCG Asolo (n 25) art 5(6); 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(2).

113 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(4); 2019 DOCG Asolo (n 25) art 5(9).

114 2009 DOC (n 33) art 5(5); 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(4); 2019 DOCG Asolo (n 25) art 5(9).

115 2020 DOC (n 27) art 5(5).

116 2019 DOCG Asolo (n 25) art 6(1).

117 2020 DOC (n 27) art 6(1).

diverged by uniquely adding 'sparkling' to its still wine appearance specification.¹¹⁸

– Sparkling

All specifications specify 'straw yellow'; 'varying in strength' or 'more or less intense'; and 'sparkling'.¹¹⁹ The DOC and Asolo both require 'persistent foam'.¹²⁰ In 2009 Conegliano Valdobbiadene likewise specified 'persistent foam' but in 2019 recast this as 'fine and persistent'.¹²¹

– Sparkling Rosé

The new DOC wine category uniquely specifies 'soft pink'.¹²²

– Semi-Sparkling

All specifications again demand 'straw yellow' and 'more or less intense' or 'varying in strength'. Significant differences existed even in 2009. Unlike all other specifications, Asolo has never included 'sparkling' within its colour requirement. On perlage, in 2009 'with bubbles forming' appeared in Asolo and 'clear development of bubbles' in the DOC and Conegliano Valdobbiadene.¹²³ Now taking the opposite direction, Conegliano Valdobbiadene has altered its specification to 'fine and evanescent' (fading or disappearing) bubbles.¹²⁴

– Bottle-Fermented Sparkling and Semi-Sparkling

No appearance specifications existed for this category in 2009. In 2019 both DOCGs introduced semi-sparkling and sparkling bottle-fermented categories. The DOCGs' new sparkling '*sui lieviti*' appearance specifications are identical, including 'possible presence of a thin veil' and 'fine and persistent' bubbles.¹²⁵ By contrast, the DOC and DOCG semi-sparkling '*rifermentazione in bottiglia*' still lack any appearance specifications.

3.5.2 Smell

– Still

Specifications for bouquet differ. Asolo vaguely specifies 'characteristic of fruit'.¹²⁶ By contrast Conegliano Valdobbiadene is extensive and precise;

118 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1). Addition of the word '*brillante*', meaning 'sparkling' or 'bright', is unusual for still wine.

119 2019 DOCG Asolo (n 25) art 6(1); *ibid* art 6(1); 2020 DOC (n 27) art 6(1).

120 2019 DOCG Asolo (n 25) art 6(1); 2020 DOC (n 27) art 6(1).

121 2009 DOCG Conegliano Valdobbiadene (n 29) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

122 2020 DOC (n 27) art 6(1).

123 2009 DOCG Conegliano Valdobbiadene (n 29) art 6(1); 2009 DOCG Asolo (n 30) art 6(1); 2009 DOC (n 33) art 6(1).

124 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

125 2019 DOCG Asolo (n 25) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

126 2019 DOCG Asolo (n 25) art 6(1).

‘vinous, characteristic, with a light fruity perfume.’¹²⁷ The DOC requires smell to be ‘subtle, characteristic, typical of the grapes from which it derives’.¹²⁸

- Sparkling

Asolo matches Conegliano Valdobbiadene, both requiring a bouquet that is ‘pleasant and characteristic of fruit’.¹²⁹ However the DOC specification remains ‘subtle, characteristic, typical of the grapes from which it derives’.¹³⁰

- Sparkling Rosé

Despite being a completely new category, the DOC bouquet specification matches that of still and sparkling.¹³¹

- Semi-Sparkling

This has shifted over time. Conegliano Valdobbiadene and Asolo now specify ‘pleasant and characteristic of fruit’.¹³² The DOC retains identical bouquet specification for all categories of ‘subtle, characteristic, typical of the grapes from which it derives’.¹³³

- Bottle-Fermented Semi-Sparkling and Sparkling

All relevant specifications previously relied on a standard bouquet specification of ‘pleasant and characteristic, possible hints of bread crust and yeast’.¹³⁴ The DOC substantially retains this formulation,¹³⁵ and DOCGs have largely retained the same formula across their newly separate Bottle-Fermented categories with minor wording changes.¹³⁶

3.5.3 Taste

- Still

These differ significantly. Although each specification now requires ‘dry to sweet (or sweetish)’ they otherwise diverge. For Asolo, other aspects of taste have moved from ‘smooth, characteristic’ to now specify ‘full-bodied, characteristic’,¹³⁷ while the DOC somewhat differently demands ‘fresh and

¹²⁷ 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

¹²⁸ 2020 DOC (n 27) art 6(1).

¹²⁹ 2019 DOCG Asolo (n 25) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

¹³⁰ 2020 DOC (n 27) art 6(1).

¹³¹ See supra n 143 and accompanying text.

¹³² 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2019 DOCG Asolo (n 25) art 6(1).

¹³³ 2020 DOC (n 27) art 6(1).

¹³⁴ 2009 DOC (n 33) art 6(1); 2009 DOCG Conegliano Valdobbiadene (n 29) art 6(1); 2009 DOCG Asolo (n 30) art 6(1).

¹³⁵ 2020 DOC (n 27) art 6(1).

¹³⁶ 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2019 DOCG Asolo (n 25) art 6(1).

¹³⁷ 2009 DOCG Asolo (n 30) art 6(1); 2019 DOCG Asolo (n 25) art 6(1).

characteristic'.¹³⁸ Quite the contrast, Conegliano Valdobbiadene must be 'pleasantly bitter and appropriately sapid' but not 'characteristic'.¹³⁹

– Sparkling

For Asolo taste must be 'dry to sweetish, full-bodied, pleasantly fruity, characteristic';¹⁴⁰ quite differently, for Conegliano Valdobbiadene it must be 'fresh, harmonious, pleasantly fruity, characteristic'.¹⁴¹ The DOC must taste 'from brut nature to demi-sec, fresh and characteristic',¹⁴² which has shifted along the spectrum from 2009's 'dry or sweet'.¹⁴³

– Sparkling Rosé

The DOC specifies the new category's flavour as 'brut nature to extra dry, fresh and characteristic'.¹⁴⁴

– Semi-Sparkling

Specifications vary significantly. Asolo requires 'dry to sweet, fruity, characteristic';¹⁴⁵ the DOC does not include 'fruity' but does include 'fresh'.¹⁴⁶ Conegliano Valdobbiadene likewise includes 'fresh' but diverges from the DOC and Asolo by inclusion of 'harmonious' and omission of 'dry to sweet'.¹⁴⁷ In 2009 Conegliano Valdobbiadene had also included 'pleasantly lively', but this is now omitted.¹⁴⁸

– Bottle-Fermented Semi-Sparkling and Sparkling

This has changed over time and continues to exhibit significant divergence, except for the ubiquitous 'hints of bread crust and yeast'. In 2009 Conegliano Valdobbiadene demanded a 'fresh, harmonious, pleasantly lively, fruity' taste whereas Asolo and the DOC added 'dry' but not 'fresh' or 'harmonious'.¹⁴⁹ None distinguished between wine categories. In the 2019 semi-sparkling '*rifermentazione in bottiglia*' category the DOCGs each retained their earlier divergent taste specifications.¹⁵⁰ For sparkling

138 2020 DOC (n 27) art 6(1) (emphasis added) (minor wording change from 2009).

139 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1) ('*sapido*' meaning 'sapid' or 'savoury').

140 2019 DOCG Asolo (n 25) art 6(1).

141 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

142 2020 DOC (n 27) art 6(1).

143 2009 DOC (n 33) art 6(1).

144 2020 DOC (n 27) art 6(1).

145 2019 DOCG Asolo (n 25) art 6(1).

146 2020 DOC (n 27) art 6(1); 2009 DOC (n 33) art 6(1).

147 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

148 2009 DOCG Conegliano Valdobbiadene (n 29) art 6(1).

149 2009 DOC (n 33) art 6(1); 2009 DOCG Conegliano Valdobbiadene (n 29); 2009 DOCG Asolo (n 30) art 6(1).

150 2019 DOCG Asolo (n 25) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

Conegliano Valdobbiadene omitted 'lively'; Asolo shifted away from earlier 'dry' and 'lively' requirements and added 'fresh, harmonious'. The end result is convergence to a 'fresh, harmonious, fruity' taste for DOCG sparkling '*sui lieviti*'.¹⁵¹ Yet the DOC then headed in the opposite direction. In 2020 it removed 'harmonious' and 'fresh' to become 'dry, lively, fruity'.¹⁵² Thus the DOC now matches one of the two Asolo specifications but differs from both of the Conegliano Valdobbiadene specifications.¹⁵³

3.5.4 Minimum Total Alcohol Strength by Volume

– Still

Conegliano Valdobbiadene and the DOC require 10.5% vol. minimum.¹⁵⁴ Asolo also previously required 10.5% minimum but in 2019 decreased this to 10%.¹⁵⁵

– Sparkling

Generally, DOCGs and the DOC specify a minimum of 11%, including Bottle-Fermented categories,¹⁵⁶ but Conegliano Valdobbiadene 'Superiore di Cartizze' and now sparkling 'Rive' must be stronger, with a minimum of 11.5%.¹⁵⁷ Previously, 'Rive' did not have its own specification; presumably the standard sparkling minimum 11% applied.¹⁵⁸

– Sparkling Rosé

The DOC specifies a minimum of 11% for the new category.¹⁵⁹

– Semi-Sparkling

Relevant specifications uniformly specify a 10.5% minimum.¹⁶⁰

¹⁵¹ 2019 DOCG Asolo (n 25) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

¹⁵² 2020 DOC (n 27) art 6(1).

¹⁵³ 2019 DOCG Asolo (n 25) art 6(1) (albeit the Asolo specification relates to bottle-fermented semi-sparkling wine only, whereas the DOC specification related to bottle-fermented wine generally).

¹⁵⁴ 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2020 DOC (n 27) art 6(1).

¹⁵⁵ 2019 DOCG Asolo (n 25) art 6(1); 2009 DOCG Asolo (n 30) art 6(1).

¹⁵⁶ 2019 DOCG Asolo (n 25) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2020 DOC (n 27) art 6(1).

¹⁵⁷ 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1).

¹⁵⁸ Note also minimums in Commission Delegated Regulation 2019/934 (n 67) Annex II.C.3 (quality sparkling PDO wines, actual alcohol strength including expedition liqueur), II.C.9(e) (quality aromatic sparkling PDO wines, total alcohol strength).

¹⁵⁹ 2020 DOC (n 27) art 6(1).

¹⁶⁰ 2019 DOCG Asolo (n 25) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2020 DOC (n 27) art 6(1).

3.5.5 Minimum Total Acidity

– Still, Sparkling and Semi-Sparkling

All 2009 specifications required a minimum of 5 grams per litre.¹⁶¹ The DOC and Conegliano Valdobbiadene have now reduced this to 4.5 grams, thereby diverging from Asolo, which remains at 5 grams.¹⁶²

– Sparkling Rosé

The DOC sets acidity at 4.5 grams per litre minimum.¹⁶³

– Bottle Fermented Semi-Sparkling and Sparkling

The 2009 uniform minimum acidity of 4 grams per litre remains within most current specifications.¹⁶⁴ However, from 2019 Conegliano Valdobbiadene sparkling '*sui lieviti*' has increased to a minimum acidity of 4.5 grams.¹⁶⁵

3.5.6 Minimum Net Dry Extract

– Still, Sparkling and Semi-Sparkling

The DOC and Conegliano Valdobbiadene demand at least 14 grams per litre,¹⁶⁶ compared with 16 grams for Asolo.¹⁶⁷

– Sparkling Rosé

The DOC also specifies 14 grams per litre minimum for the new category.¹⁶⁸

– Bottle-Fermented Semi-Sparkling and Sparkling

Previously no specifications existed for dry extract: the DOC and semi-sparkling categories in both DOCGs still lack such a specification. By contrast, both DOCGs now specify 14 grams per litre for sparkling '*sui lieviti*'.¹⁶⁹

161 2009 DOCG Asolo (n 30) art 6(1); 2009 DOCG Conegliano Valdobbiadene (n 29) art 6(1); 2009 DOC (n 33) art 6(1).

162 2020 DOC (n 27) art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2019 DOCG Asolo (n 25) art 6(1). Note that for Asolo the Ministry of Agricultural, Food and Forestry Policies (Ministry) may alter acidity limits by decree: *ibid* art 6(1).

163 2020 DOC (n 27) art 6(1).

164 *ibid* art 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1) (for semi-sparkling); 2019 DOCG Asolo (n 25) art 6(1).

165 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1) (for sparkling '*sui lieviti*').

166 *ibid*; 2020 DOC (n 27) art 6(1).

167 2019 DOCG Asolo (n 25) art 6(1) (Ministry may alter by decree).

168 2020 DOC (n 27) art 6(1).

169 2019 DOCG Conegliano Valdobbiadene (n 26) art 6(1); 2019 DOCG Asolo (n 25) art 6(1).

4 Analysis

4.1 *Divergence Between Current Specifications and Over Time*

The following summarises divergence between relevant specifications and highlights how they have changed historically. It establishes an absence of distinctive qualities or characteristics of wine that are essentially attributable to the whole geographical area in accordance with the criteria within Article 22(1) TRIPS.

4.1.1 Ampelographic Divergence and Changes

The minimum 85% 'glera' input is standardized. However, significant ampelographic specification divergence has been created by the 2020 introduction of sparkling rosé which has for the first time capped 'glera' inputs and removed three previously standardized choices: whether or not to supplement at all ('glera' input is capped); extent of supplementation (minimum 10% pinot nero); and which grapes to supplement with (pinot nero is mandatory).

4.1.2 Viticultural Divergence and Changes

Significant differences exist between current viticultural specifications in relation to terrain; training methods; plant density; pruning; harvest yield and alcohol strength; use of excess; and harvest methods.

Concerning terrain, the DOCGs clearly set strict criteria which demand hilly terrains and exclude low plains and north-facing slopes.¹⁷⁰ whereas the DOC permits flat plains, coastal regions and north-facing slopes. The type of training permitted differs between current specifications and over time: only the DOC now permits double espalier, but in 2009 Conegliano Valdobbiadene permitted either single or double. Moreover, Asolo is alone in failing to prohibit any specific or expansive training techniques. Whilst both the DOC and Conegliano Valdobbiadene prohibit expanded training methods, they each single out slightly different specific techniques. Further banned examples were added by the latter in 2019. Only Asolo does not specify any pruning methods; other specifications do albeit vaguely. Minimum planting density is different for every relevant specification, varying by up to 30%.

Minimum alcohol strengths by volume of grapes vary across current specifications, and this variance is not dependent on wine category. Maximum

¹⁷⁰ For the remainder of this article, the term 'north-facing slope' is used for convenience. Technically, DOCG specifications more strictly exclude any vineyards exposed to northerly winds, but due to their 'hilly' terrain requirement, the exclusion will predominantly relate to north-facing slopes: see *supra* Section 3.3.1.

harvest yields vary by as much as 50%. Notably, maximum harvest yields are adjustable, with Regional governments able to determine the fate of excesses, except for Asolo where table wine is the sole permitted use. Finally, harvest methods differ. All current specifications permit machine harvest except for select wines within the DOCG Conegliano Valdobbiadene which require hand harvest. However, these have changed over time. In 2009 sparkling ‘Rive’ alone demanded hand harvest; only since 2019 has hand harvest also been specified for ‘Superiore di Cartizze’ and bottle-fermented sparkling ‘*sui lieviti*’.

4.1.3 Vinification Divergence and Changes

Current specifications demonstrate divergence in vinification location control, autoclave fermentation, regulation of in-bottle fermentation, sweetening, permitted varieties and wine yield per grape volume.

Controls on vinification zones range from the tightly controlled down to comparatively relaxed. On the one hand, Asolo restricts winemaking zones tightly and does not permit expansion by authorisation. On the other hand, with Ministry or Regional approval the DOC permits expansion for vinification processes not only to provinces neighbouring the already large DOC area, but beyond – presumably to anywhere – provided certain criteria are met.¹⁷¹ Conegliano Valdobbiadene is also tightly restricted but permits of some expansion with authorisation. Notably, its permitted vinification area has changed over time with addition of a further municipality.

Only the DOC expressly specifies ‘autoclave’ fermentation, whereas ‘secondary fermentation’ for DOCGs is confined to fermentation in-bottle or autoclave for quality sparkling PDO wines by Commission Delegated Regulation.¹⁷² Most importantly, the DOC and DOCGs diverge on acceptable fermentation methods. For sparkling secondary fermentation the DOC expressly insists on autoclave; whereas the DOCGs permit either in-bottle or (implicitly) autoclave methods.

In 2020 for the first time the DOC uniquely specified a minimum timeframe of 60 days autoclave fermentation for sparkling rosé. Apart from implications for fermentation of the sparkling ‘Rive’ release date restriction, tank fermentation periods are otherwise only regulated by Commission Delegated Regulation timeframes for all other DOC and DOCGs categories.¹⁷³

¹⁷¹ See discussion regarding PDO qualification: *infra* n 250.

¹⁷² 2019 DOCG Conegliano Valdobbiadene (n 26) art 5(2); DOCG Asolo (n 25) art 5(3); see *supra* n 93.

¹⁷³ *Supra* Section 3.4.3, n 103.

All specifications now provide for in-bottle fermentation. However, in-bottle vinification methods were unregulated in 2009 specifications. Some specifications now regulate in-bottle fermentation methods, others do not. For sparkling '*sui lieviti*' the DOCGs now specify in-bottle fermentation timeframes and pressure requirements.¹⁷⁴ These matters are not specified by DOCGs in relation to semi-sparkling '*rifermentazione in bottiglia*', nor are they addressed by the DOC at all, although the Commission Delegated Regulation regulates some matters.¹⁷⁵

Only Conegliano Valdobbiadene has changed to now expressly addresses addition of dosage syrup containing sucrose. The 2009 specifications were silent on this, whilst current DOC and Asolo specifications only mention sweetening in passing. Commission Delegated Regulation provides some regulation by prohibiting sweetening but permits addition of expedition liqueur (containing sucrose) in limited wine categories.¹⁷⁶

Permitted varieties vary between relevant specifications. Such differences are not due to wine categories. For example, in the sparkling category current specifications permit three different variety ranges: brut to demi-sec; extra brut to demi-sec; and brut nature to demi-sec. Additionally, since 2009 all but Asolo changed their permitted sparkling variety range. For Bottle-Fermented wine no categories were specified in 2009; however, present DOCGs now confine sparkling '*sui lieviti*' to the sole variety of brut nature but do not specify semi-sparkling '*rifermentazione in bottiglia*' varieties; the DOC remains silent on both variety and categories for any Bottle-Fermented wine.

Since 2009 wine yields per grape volume have diverged between specifications but the 2020 DOC has now shifted to yields closer to less stringent Prosecco IGT yields.¹⁷⁷ This has widened divergence; DOC yields are now 5% higher than those permitted by DOCGs.¹⁷⁸

Finally, the new category of sparkling rosé is only permitted by the DOC.

4.1.4 Characteristics Divergence and Changes

Historically, there have been significant shifts in character requirements within relevant specifications, as summarised below. In terms of individual

¹⁷⁴ Timeframes for commencement of fermentation and release: supra Section 3.4.3, n 102.

¹⁷⁵ This regulates the categories of quality sparkling, quality aromatic sparkling and wine 'on the lees': supra Section 3.4.3, nn 101 and 103.

¹⁷⁶ See supra n 98.

¹⁷⁷ Even more permissive, Prosecco IGT maximum yields were 75% and one at 80%: see for example IGT Alto Livenza (n 32) art 5.

¹⁷⁸ See supra Section 3.4.5.

characteristics and how these have altered over time, the following observations can be drawn from the above comparison.

– Appearance

Very noticeable divergence to the consistent ‘straw yellow’ colour specification arose following the introduction of ‘soft pink’ sparkling rosé, rendering the DOC quite different from the DOCGs which do not permit this category. Even within wine categories changes have occurred and divergences persist. For the still style, only Conegliano Valdobbiadene added the oddity ‘sparkling’ in 2019. The DOC alone does not mention ‘intensity’. For sparkling wine, Conegliano Valdobbiadene’s bubble specifications now differ due to its shift from ‘persistent foam’ to ‘fine and persistent’. Semi-sparkling requirements have always varied and changes have widened this divergence, from the DOC’s ‘clear development’ and Asolo’s ‘forming’ of bubbles to Conegliano Valdobbiadene’s very different ‘evanescent’ (fading) ones, as well as Asolo’s unique omission of ‘sparkling’ from appearance. Bottle-Fermented wines previously uniformly lacked any visual requirements: now the DOCGs have matching sparkling ‘*sui lieviti*’ specifications, but DOCG semi-sparkling ‘*rifermentazione in bottiglia*’ categories and the DOC all lack any appearance requirements.

– Smell

Specifications for bouquet vary within wine categories and over time. Conegliano Valdobbiadene’s still wine specification ‘vinous, characteristic, with a light fruity perfume’ stands out as more precise with significant additional components compared with other still specifications. Vaguer DOC and Asolo bouquets lack any ‘vinous’ requirements but diverge on whether bouquet must be ‘subtle’. Sparkling bouquet for DOC still differs slightly from the DOCGs’ ‘pleasant’ specification. DOCG semi-sparkling specifications have shifted to now converge due to Asolo altering its bouquet criteria, but still differ from the DOC’s ‘subtle’ smell. Bottle-Fermented bouquet requirements are substantially similar.

– Taste

Perhaps more obvious in terms of divergence and change is flavour. In the still category all three differ: Conegliano Valdobbiadene has always uniquely incorporated references to ‘bitter’ flavour in still wine; they also diverge on whether ‘full-bodied’ or ‘fresh’, and ‘characteristic’ tastes are required. For sparkling, all three diverge on specific flavours, and the DOC has shifted its dry-sweet profile to now differ from that of Asolo. Semi-sparkling taste specifications all significantly diverge, with Conegliano Valdobbiadene changing over time. Already differing in 2009, all three specifications have altered their Bottle-Fermented

specifications, in opposite directions. They now diverge considerably, especially on 'dry' and 'lively' flavours.

- Alcohol strength

The only category in which there is no divergence is semi-sparkling. All other categories demonstrate divergence of 0.5% vol. Additionally, some specifications have shifted over time, such as Asolo still and Conegliano Valdobbiadene sparkling 'Rive'.

- Acidity and net dry extract

Changes in minimum acidity since 2009 have created new differences in each wine category. Moreover, every category exhibits divergence in net dry extract.

Consequently, divergences remain regarding almost every characteristic within wine categories in current specifications:

- Still: Appearance, smell, taste, alcohol strength, acidity and net dry extract.
- Sparkling: Appearance, taste, alcohol strength, acidity and net dry extract.
- Sparkling Rosé: This category is absent from DOCGs. One of its most significant departures from other categories is appearance.
- Semi-Sparkling: Appearance, smell, taste, acidity and net dry extract.
- Bottle-Fermented: Appearance, taste, acidity and net dry extract.

4.1.5 Conclusion on Specification Comparison

Given demonstrable divergences in almost all matters regulated by relevant specifications it is difficult to credibly argue on the available objective evidence that any consistent or distinctive quality exists for 'Prosecco' wine that could be attributable to the geographic region; much less strong evidence that it has distinctive qualities that are predominantly caused by the geographic area. The above analysis highlighted divergent qualities in relation to ampelographic, viticulture, vinification and characteristic specifications, even within individual wine categories. Thus, it is difficult to support the GI claim on grounds of character or quality.¹⁷⁹

The claim is rendered more difficult to sustain by specification changes over time. Moreover, the divergence observed above is merely what is visible on the surface. It should be recalled that Regional governments are empowered to adjust yields, use of excess, vinification locations, training methods and acidity. It is difficult to envisage how authorized vinification processes outside the geographical area could produce qualities that satisfy the 'essentially attributable'

¹⁷⁹ Reputation will be discussed in a future article.

causal requirement of Article 22(1), especially when reliance is placed upon human skills connected with the region, as discussed below.

4.2 *Analysis of DOC Article 9*

Despite inconsistencies evident on the face of product specifications observed earlier (*supra* Section 4.1), the DOCGs and the DOC each contain a separate statement within their respective Article 9s outlining the basis for the GI assertion.¹⁸⁰ These are modelled on a standard EU ‘Single Document’ template but each is tailored to their specific geographic area.¹⁸¹ However, the DOC Article 9 statement will be the primary focus here. Smaller sized DOCGs with tighter production restrictions can more readily justify qualities essentially attributable to their locations of Asolo and Conegliano Valdobbiadene. Use of such recognisable place names is not contentious. However, the DOC relies purely upon the GI ‘Prosecco’ alone.¹⁸² This makes the Article 9 statement within the DOC the appropriate test case for the hypothesis that ‘Prosecco’ is a geographical indication.

4.2.1 Preliminary Observations

The respective Article 9s first appeared in each relevant specification in 2019 and 2020.¹⁸³ Despite appearing as a provision within the DOC product specifications, DOC Article 9 cannot be treated as a product specification because it does not actually state any requirements which must be met by producers. Instead, it fills seven pages, recounts historical developments, and seeks to link environmental and human factors to the ‘domestic and international reputation’ of ‘Prosecco’. It markedly departs in style from all other DOC Articles (Articles 1–8 and 10) which provide specifications to be met by producers. By contrast, Article 9 presents a ‘thesis’ with sub-headings: ‘Natural factors’; ‘Historical and human factors’; ‘Specificity of the product’; and ‘Cause-effect relationship between environment and “Prosecco”’.

180 2019 DOCG Conegliano Valdobbiadene (n 26) art 9; 2019 DOCG Asolo (n 25) art 9; 2020 DOC (n 27) art 9.

181 See Regulation 1308/2013 (n 3) art 94(1) and (2)(g); and (discussing this in relation to Chianti Classico) Zappalaglio (n 4) 201, fn 82 (‘the Single Document summarises the key contents of a GI specification on the basis of a standard template provided by the EU Commission’ which is ‘a self-sufficient document through which anyone can understand what the protected product is’).

182 Sub-denominations of DOC Treviso and DOC Trieste (*supra* Section 3, n 34) are uncontentious.

183 See also Regulation (EU) 33/2019 (2019/C 412/09) art 8 (largely reproducing DOC art 9).

At its highest, the DOC thesis boils down to *terroir* including technique, and reputation. Matters relevant to reputation are set aside for now.

4.2.2 Terroir

Contained under the heading 'Natural factors' in Article 9, the DOC thesis primarily rests on *terroir*; that quality and characteristics are essentially attributable to the DOC geographical area. The 2009 recognition of the DOC was said to be based on *terroir*.¹⁸⁴ Although sometimes defined more broadly, the term '*terroir*' is used here to describe interactions of soil, topography and climate which affect the end-product characteristics such that it becomes 'more than just a commodity, but rather a distinct product from an inimitable place'.¹⁸⁵ *Terroir* leads to something distinctive or evident in the end-product arising from natural features; thus it necessarily requires relative homogeneity in soil, topography and climate.¹⁸⁶

As noted earlier, following the 2009 DOC expansion, the DOC now comprises almost all of North-Eastern Italy. It includes five Veneto provinces (Treviso, Venezia, Vicenza, Padova, Belluno) and four provinces in Friuli-Venezia Giulia (Gorizia, Pordenone, Trieste and Udine).¹⁸⁷ This includes flat river plains, mountainous alpine areas, valleys, hilly areas below the pre-Alps and cooler areas stretching from the Dolomites to warmer coastal regions.¹⁸⁸ This vast array of landscapes, acknowledged by the DOC Consortium,¹⁸⁹ necessarily incorporates a range of soils and climates. After all, the DOC plantation areas alone cover 24,450 hectares.¹⁹⁰

¹⁸⁴ Bonadio and Contardi (n 4) 269 f.

¹⁸⁵ Valérie Bonnardot and others, 'Sea Breeze Mechanism and Observations of Its Effect in the Stellenbosch Wine Producing Area' (2001) 10(14) Wynboer 107. Human skills and techniques are discussed separately in infra Section 4.2.3, although some define *terroir* to include these. See Elizabeth Barham, 'Translating Terroir: The Global Challenge of French AOC Labeling' (2003) 19 Journal of Rural Studies 127.

¹⁸⁶ Bonnardot and others (n 185) 1; Jacobus W Pienaar, 'The Effect of Wind on the Performance of the Grapevine' (Masters Thesis, Stellenbosch University, 2005) 7; Victoria Carey, 'Spatial Characteristics of Natural Terroir Units for Viticulture in the Bottellaryberg-Simonsberg-Helderberg Winegrowing Area' (Masters Thesis, Stellenbosch University, 2001) 3, 6, 7, and 81 <<https://scholar.sun.ac.za/handle/10019.1/52459>> accessed 3 March 2022.

¹⁸⁷ 2020 DOC (n 27) art 3.

¹⁸⁸ DOC Consortium <<https://www.prosecco.wine/en/story>> accessed 3 March 2022; Bonadio and Contardi (n 2) 285.

¹⁸⁹ Acknowledging landscape diversity: DOC Consortium <https://web.archive.org/web/20171113075015/http://www.discoverproseccowine.it/en/the_prosecco/production_area/> accessed 3 March 2022; Bonadio and Contardi (n 2).

¹⁹⁰ The DOC plantation area covers 24,450 hectares, Conegliano Valdobbiadene 8,431 hectares and Asolo 1,253 hectares: Ponte (n 74) 545, 546, Table 1; Italian Wine Central, Asolo

This raises the question; how can qualities and characteristics essentially attributable to the geographic location arise when the expanded DOC zone includes such vastly inconsistent terrain?

Whilst DOC's specifications must be met by producers of DOC wine, they do not encapsulate the full complement of characteristics, nor do they reveal anything 'distinctive' to the geographical area. The DOC's diverse topography would suggest it is highly probable that qualities of DOC wine will be inconsistent between various parts of the DOC. Divergence between DOCG areas and the DOC are but an example of this diversity.

Linking criteria of qualities or characteristics to the vast expanded DOC zone is a daunting task, especially when compared with the former DOC (now DOCG) area.¹⁹¹ Claims of 'unique environmental conditions' within the DOC have lacked detail until insertion of Article 9 into the DOC in 2020.¹⁹² The DOC Article 9 thesis presumably asserts the strongest official basis for the GI claim. It outlines the 'terroir' argument by relying on geological and meteorological features. In summary, it relies on the Alps to the north and Adriatic Sea to the south, with resultant winds (Sirocco, Bora), temperatures (temperate, night-day temperature range) and soil types (clay-silt, alluvial deposits).¹⁹³

The DOC Article 9 thesis makes the uncontentious argument that prevailing winds and temperature, including day-night temperature range, impact upon ripening, acidity, alcohol and sugar composition of grapes.

However, what is left unsaid by DOC Article 9 is crucial. There are no assertions about hilly terrain, slope orientation, or low-lying flat land. The relevance of this is clear; there is simply too much variance in eligible DOC landscape for that landscape to impart common qualities or characteristics to wine from the DOC. Here it is important to recall what each specification says about eligible production zones and terrain.

Prosecco DOCG <<https://italianwinecentral.com/denomination/asolo-prosecco-docg/>> accessed 3 March 2022.

191 See map illustrating DOC expansion: Luca Rosetto and others, 'Strategies and Interpreting Models of a Reformed DOC: The Prosecco Case' (2011) 1 *Enometrika* 57, 58.

192 DOC Consortium (n 188).

193 2020 DOC (n 27) art 9. On 'quality', broad descriptives (such as 'excellent', 'delicious' and 'melaromantic') aside, Bonadio and Contardi do not elaborate any specific qualities, but instead essentially repeat the DOC art 9 statement and quote also the Prosecco GI application filed in India: '[A]s can be expected, the land in this relatively large territory is very diverse but the climate on the whole is mild: the area is protected by the Alps to the north and caressed by the warm breezes which come off the Adriatic Sea to the east': Bonadio and Contardi (n 4) 286.

Production zones specified by each DOCG are not identical but are similar.¹⁹⁴ Each DOCG demands 'hilltop' or 'hilly' terrain; both exclude 'valley floor[s]', one clarifying this excludes 'lower plains'. Each delimits production zones very strictly, with map references that often include altitudes; both prohibit production on north-facing slopes. However, the DOC merely requires 'well-exposed' land. Unlike the DOCGs, it fails to demand that terrain be 'hilly'. Unlike the DOCGs, the DOC fails to exclude land 'exposed to northern winds'. It does not exclude flat plains, valley floors or coastal landscapes. DOC grapes could be grown on warm Adriatic coastlines, chilly north-facing mountain slopes, flat river plains or low valleys, provided they are not 'peaty' or highly saturated by groundwater.¹⁹⁵ The terrain picture painted by the DOC is markedly different from that demanded and delimited by DOCGs.

The question remains; does this variability in eligible DOC terrain matter? Does it affect qualities and characteristics? There are six reasons to believe so.

4.2.2.1 *The DOCGs Think It Matters and Logic Holds It Should*

The first arises from relevant specifications themselves. Why would DOCGs exclude north-facing slopes,¹⁹⁶ demand only 'hilly' areas, or exclude valley floors, if those features made no appreciable difference to the quality and characteristics of the wine?

It seems incredible to expect the same qualities of wine from grapes grown on the warm Trieste coastline on the one hand, and grapes grown in the north-facing slopes in the mountainous Dolomites on the other. Yet that is exactly what the GI assertion asks us to accept.

Logically, DOCG 'hilly' terrain which excludes valley floors and north-facing slopes must produce different qualities to DOC terrain of flat plains, coastlines, north-facing hills, alpine mountains and valley floors. Topographic variation strongly influences indices of temperature, rainfall, soil hydrology and fertility,¹⁹⁷ by altering exposure to sunlight and prevailing winds.¹⁹⁸ The orientation or direction of slopes (aspect) affects sunlight, temperatures,

194 Jancis Robinson (ed), *The Oxford Companion to Wine* (14th edn, OUP 2014) 585.

195 2020 DOC (n 27) art 4(2).

196 On the term 'north-facing slopes', see *supra* n 170.

197 Robert Bramley, 'Making Sense of a Sense of Place: Precision Viticulture Approaches to the Analysis of Terroir at Different Scales' (2020) 54(4) *OENO One* 1, 7; Carey (n 186) 10–12, 52 ff.

198 Bonnardot and others (n 185) 7–8; Pienaar (n 186) 12–15; PR Dry and DG Botting, 'The Effect of Wind on the Performance of Cabernet Franc Grapevines' (1993) 8 *Australia & New Zealand Wine Journal* 347, 351.

day-night temperature ranges and wind strength; as do altitude and valleys.¹⁹⁹ Slopes facing prevailing winds are more affected by them than valley floors.²⁰⁰ DOC Article 9 also correctly acknowledges that prevailing winds affect growing, ripening, acidity, alcohol and sugar levels and grape skins but does not mention topographical features with which those prevailing winds interact (such as hills, slopes, altitudes, distance inland from the sea) other than the Alps and Adriatic.

4.2.2.2 *Science Proves It Matters*

The third reason is scientific. Terroir involves wind, soil, altitude and aspect.²⁰¹ Good terroir protects against climatic extremes to promote slower ripening.²⁰² Topography, soil and wind interact to affect climate and drainage. Topography is considered the link between soil and climate.²⁰³ Interactions between topography and wind affect climatic variables of sunlight, rainfall, humidity and temperature.²⁰⁴ Important topographical variables are slope inclination, aspect, altitude and proximity to large water bodies.²⁰⁵ These alter exposure to prevailing winds, sea breezes, rainfall, sunlight, temperature, frosts and humidity.²⁰⁶ Elevation affects rainfall and temperature.²⁰⁷ Aspect affects wind exposure, rainfall and sunlight.²⁰⁸ Proximity to bodies of water (like the Adriatic) profoundly affect sea breezes, humidity and temperature range,²⁰⁹ with effects of sea breezes rapidly diminished just 20–50 km from the

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- 199 John Gladstones, *Wine, Terroir and Climate Change* (Wakefield 2011) 34, 41–42; Pienaar (n 186) 14.
- 200 Or slopes facing away from prevailing winds: Carey (n 186) 8–10, 62–63; Pienaar (n 186) 15.
- 201 Pienaar (n 186) 3.
- 202 Gladstones (n 199) 45–46; *ibid* 3, 10; Carey (n 186) 7.
- 203 Pienaar (n 186) 8.
- 204 Bonnardot and others (n 185) 7–8; Pienaar (n 186) 14, 15; Carey (n 186) 52 ff; Dry and Botting (n 198) 351.
- 205 Gladstones (n 199) 31–36, 45–46; Bonnardot and others (n 185) 4–8; Pienaar (n 186) 7, 8 15; Carey (n 186) 8–13.
- 206 Gladstones (n 199) 31, 41; Antonio Calò and others, 'Relationship Between Environmental Factors and the Dynamics of Growth and Composition of the Grapevine' (1996) 427 *Acta Horticulturae* 217, 221; Pienaar (n 186) 8, 11; J Marais and others, 'Effect of Canopy Microclimate, Season and Region on Sauvignon Blanc Grape Composition and Wine Quality' (1999) 20 *South African Journal Enology and Viticulture* 19, 20, 26–27; Bonnardot and others (n 185) 7 (noting a hill 'stopped' moist air); Carey (n 186) 12–13, 64–72; Dry and Botting (n 198).
- 207 Bramley (n 197) 7; Gladstones (n 199) 39–40; Carey (n 186) 8–10, 67, 72; Pienaar (n 186) 15.
- 208 Pienaar (n 186) 14, 15; Carey (n 186) 10, 63, 67, 70, 72; Bonnardot and others (n 185) 7.
- 209 *ibid* 4–8; Pienaar (n 186) 23–24; Carey (n 186) 62–66.

coastline.²¹⁰ The DOC includes areas 136 km from the coastline with elevations of 1,700 m.²¹¹

Evidence shows topography and wind exposure significantly alter grape and wine qualities; by comparison with exposed grapes, sheltered grapes have lower pH levels, lower potassium concentrations and lower malic acid; wine from sheltered grapes have better acid balance, superior fullness and body and stronger vegetative undertones.²¹² Elevation also alters acidity, potassium and pH.²¹³ These *terroir* elements affect wine qualities because they affect grape development, ripening and enzymatic processes to directly affect 'flavours, aromas and colour in grapes, accumulation of sugar and production of carbohydrates ... [and] metabolism of acids'.²¹⁴ Impact of *terroir* is more pronounced in white grapes than other varieties.²¹⁵

North-facing aspects in the Northern Hemisphere, particularly with Alps to the north, are colder and affected by prevailing winds differently to south-facing aspects. The DOCGs excluded north-facing slopes for good reason.²¹⁶ By contrast, the DOC contains many north-facing aspects within its eligible terrain. Moreover, 'hilliness' impacts upon soil quality, rainfall, drainage and wind exposure. The DOCGs demanded 'hilly' vineyards and excluded valley floors for good reason. However, the DOC contains many eligible flat areas and valley floors. Wind exposure, elevation, average temperature, day-night temperature ranges, drainage, soils and season growing days are likely to be highly inconsistent across the DOC production zone due to enormous variability in terrain. Exposure to sea breezes and proximity to the Adriatic differ drastically between coastal and inland areas. The scientific evidence would lead one to expect significant absence of common qualities between wines from different

210 Bonnardot and others (n 185) 4–8 (despite the fact sea breezes were found to penetrate 100 km inland, by comparing distances of 10, 20 and 50 km from the coastline, concluding the effect of sea breezes on temperatures and humidity rapidly decreases with distance from coastlines); Carey (n 186) 23 (citing Carrega) 62–66 (almost negligible at 20 km).

211 For example, Cortina d'Ampezzo.

212 Pienaar (n 186) 3, 58, 64, 66, 67 (two-year controlled study in uniform soil); Carey (n 186) 23. Effects may depend on cultivar. Finding shelter impacted upon acidity and pH but differently for a different cultivar: PR Dry and others, 'The Effect of Wind on the Performance of Cabernet Franc Grapevines' (1989) 240 *Acta Horticulturae* 143, 184.

213 See also Carey (n 186) 8–10 (citing Bertamini et al 1996 study of altitude effects on sauvignon blanc in mountainous Trentino province).

214 Calò and others (n 206) 219–25; Pienaar (n 186) 8, 9, 58, 65, 67; Marais and others (n 206) 20, 27; Carey (n 186) 14.

215 Bonnardot and others (n 185) 2; Pienaar (n 186) 15.

216 See supra n 170.

places within the vast DOC zone. Numerous divergences between relevant specifications confirm that expectation.

4.2.2.3 *DOCGs Explain Why It Matters*

The fourth reason is that DOCGs and their Consortia give detailed explanations about why terrain requirements of 'hilly' and 'non-north facing slopes' matter. They describe climate and soil conditions created by their delimited production zone and strict terrain specifications. The Conegliano Valdobbiadene Consortium explains its 'hogback' elevated hilly ridges and soil types create good drainage,²¹⁷ with cool average temperatures of 12.3 degrees Celsius, 'constant breezes, which allow the grapes to dry quickly after it has rained'²¹⁸ and east-west hills with south-facing slopes at 100-500 m altitudes which ensure 'good differences between day and night temperatures'.²¹⁹ Asolo has soil 'rich in iron and minerals'²²⁰ with a 'typical red colouring'.²²¹ Its Consortium explains hilly ridges,²²² altitude, climate and minerality lend specific aromas and crisp flavour to its wine.²²³ These explanations highlight the intermediation between terrain (elevation, aspects), temperatures, prevailing winds, drainage and soils.

Topographic variation strongly influences indices of temperature, rainfall, soil hydrology and fertility.²²⁴ Soil types may also influence wine characteristics.²²⁵ However, DOC soils are 'not homogenous [but rather] clays and loose sandstones mix[ed] with conglomerates and isolated layers of limestone'.²²⁶

217 Preventing stagnation 'the gradient of the hills ensures that rainfall always drains away': Consortium DOCG Conegliano Valdobbiadene <www.prosecco.it/en/consortium/>. Describing 'hogback' hills (*ciglion*i): UNESCO World Heritage Centre, "Two Cultural Sites Added to UNESCO's World Heritage List" (7 July 2019) <<https://whc.unesco.org/en/news/2006/>> both accessed 3 March 2022.

218 Consortium DOCG Conegliano Valdobbiadene (n 217).

219 To allow good aromas to development, see *ibid*. See also 2019 DOCG Conegliano Valdobbiadene (n 26) art 9.

220 'Montello – il bosco dei dogi' <www.montello.eu/en/wine-prosecco-italian-wine> accessed 3 March 2022.

221 2019 DOCG Asolo (n 25) art 9.

222 Including karst sinkholes: *ibid*.

223 *ibid*; Consortium DOCG Asolo Montello <www.asolomontello.it/vini-del-montello/> accessed 3 March 2022.

224 Bramley (n 197) 7.

225 Calò and others (n 206) 225; Gladstones (n 199) 43, 45, 48 ff; Bramley (n 197) 4; Pienaar (n 186) 15.

226 Francesco Visentin and Francesco Vallerani, 'A Countryside to Sip: Venice Inland and the Prosecco's Uneasy Relationship with Wine Tourism and Rural Exploitation' (2018) 10 Sustainability 2195, 2196.

4.2.2.4 *View of Controlled DOC Colli Euganei and Others*

The fifth reason is illustrated by the mystery of Euganei. Interestingly, the DOC Colli Euganei specifies a wine created from a minimum 85% 'glera' grapes.²²⁷ Yet, despite the DOC Colli Euganei production zone being entirely located within the Prosecco DOC this is not denominated as 'Prosecco' but rather 'Serprino' wine. The Consortium explains the landscape and microclimate is so different to that of Asolo and Conegliano Valdobbiadene that it 'eschews the denomination Prosecco'²²⁸ in contrast to DOC assertions that its enormous area produces relatively homogenous qualities.

Others have also pointed to vastly different growing conditions across the DOC landscape.²²⁹ Tanghe simply states '[t]he DOC ... is too large to categorize into one climate type',²³⁰ Despite supporting the GI claim, Bonadio and Contardi acknowledge that 'the broad [DOC] production area ... is characterised by the coexistence of different types of soil as well as ... steeper and gentler slopes ... producing different kinds of Prosecco wine'.²³¹ Zappalaglio concludes it unlikely that the 'Veneto' name could ever qualify for PDO protection because it is 'an area of more than 18,000 km² – with a very diverse territory spanning from the Alps and the Dolomites to the seaside and the Laguna of Venice'.²³² As noted, the DOC stretches across most of the Veneto region and all of the Friuli-Venezia Giulia region. Concerns about the effect of expansion upon quality were aired in 2011 when DOC plantation areas were envisioned to grow to half of their present size.²³³

227 DOC Colli Euganei (GU 295 of 2011 as consolidated with Ministerial Provisions of 4 July 2018) art 2(1) lists 'Serprino' grapes as the local synonym for 'Glera'.

228 Consortium DOC Colli Euganei <www.colleuganeidoc.com/en/wine-selection> accessed 3 March 2022.

229 For example Pierazzo da Feltre, 'In Praise of Prosecco' (1 May 2017) (commenting that growing conditions in Conegliano Valdobbiadene are different to those in the DOC in almost every way) <www.jancisrobinson.com/articles/in-praise-of-prosecco> accessed 3 March 2022.

230 Christopher Tanghe, 'An Introduction to Prosecco' (*GuildSomm*, 21 July 2017) <www.guildsomm.com/public_content/features/articles/b/chris-tanghe/posts/prosecco> accessed 3 March 2022.

231 Bonadio and Contardi (n 4) 286 (quoting also from Prosecco GI application filed in India: '[A]s can be expected, the land in this relatively large territory is very diverse' but nonetheless concluding the GI claim satisfies the quality requirement).

232 Zappalaglio (n 4) 207, 215 (arguing 'Veneto' must be confined to PGI status relying on reputation alone).

233 Anticipating adverse impacts on brand from variable DOC *terroir*: Rosetto and others (n 191) 62, 69.

4.2.2.5 *The DOC Does Not Restrict Terrain in a Meaningful Way*

Article 9 mentions the Alps, soils, prevailing winds and the Adriatic, but as we have seen, intervening topographical features are highly significant in imparting qualities to wine. For objective evidence of terrain we must turn to the DOC's substantive specification on terrain. Since 2009 DOC Article 4 has resolved the question as to which terrain is eligible for DOC purposes. The answer is 'well-exposed' land excluding land that is 'peaty' or highly saturated by rising groundwater. Prior to 2020 a similar description was specified.²³⁴

While it is clear that a marsh will not qualify, pursuant to Article 4 DOC, areas where there is low saturation from groundwater, flat plains and valley floors are all still eligible terrain. Each has significant impact upon wine characteristics. The DOC does not restrict terrain to 'hilly' landscapes to ensure good drainage and temperature ranges, nor impose any aspect limitations. Consequently, huge variances exist for temperature, wind conditions, sunlight, humidity, drainage and rainfall across eligible DOC terrain.

The modest terrain restrictions in Article 4 tend to undermine the DOC Article 9 thesis that there are any distinctive characteristics attributable to the *terroir* of nearly all North-Eastern Italy.

4.2.2.6 *DOC Expansion in Light of Croatian GI Claims*

The 2009 DOC expansion encompassed a huge area on grounds that its *terroir* included most of North-Eastern Italy. The newly expanded DOC stretched around the coastline to include the village of Prosecco.

The township of Prosecco lies 10 km from the Slovenian border, and 50 kms from Croatia. Conegliano Valdobbiadene is some 150 km away. The town's name is an Italianisation of its Slovenian name *Prosek*. However, the Italian government has opposed claims by Croatia for EU recognition of the term *Prošek* for its sweet desert wine.²³⁵

To maintain its opposition the Italian government must simultaneously: (1) argue historical connections 50 km into Croatia confuse consumers but those which stretch 200 km on the Italian side of the border do not; and

234 2009 DOC (n 33) art 4(2).

235 Angela Giuffrida, 'Croatia and Italy Renew Feud over Prošek and Prosecco Wines' (*The Guardian*, 3 July 2021); Mike Pomranz, 'Italy's Prosecco Producers Don't Want Croatia's Prosek Confusing Customers' (*Food and Wine*, 4 November 2021) <www.foodandwine.com/news/italy-croatia-prosecco-prosek-designation> accessed 3 March 22; National Coldiretti, 'EU, Green Light for Prosek, Croatia Prosecco: Furious Producers; Zaia "Shame"; The Ministry "We Will Oppose"' (*Il Gazzettino*, 13 September 2021) (translated by Lisa Spagnolo).

(2) adopt the intriguing position that EU recognition of Prošek ‘would be an institutionalisation of Italian-sounding products.’²³⁶

It is debatable whether *terroir* could be limited by national borders where topographical features and techniques are not affected.

4.2.3 Autoclave Technique – Character and Qualities

Of matters discussed under the DOC Article 9 sub-heading ‘Historical and Human Factors’, the main arguments which potentially affect quality or characteristics are fermentation methods. The two methods mentioned are bottle fermentation and autoclave. Presumably Article 9 does not dwell upon bottle fermentation due to its earlier development in France. However, much is made of the Martinotti Method as a human factor connected with the GI claim. Maumené had already experimented with this cheaper production method in 1852, inspired by Louis Pasteur,²³⁷ which uses a large vessel (autoclave) for fermentation under pressure. Federico Martinotti developed and patented the autoclave in 1895,²³⁸ which was further improved and patented by Eugene Charmat in France.²³⁹ The main advantage of the autoclave (or Tank Method, Bulk Method or Cuve Close) is production of sparkling wine far more quickly than the Champagne method.²⁴⁰

There are five problems with the notion that the autoclave technique is essentially or predominantly attributable to the DOC zone.

Martinotti was not in the DOC area when he developed the method. Martinotti was an Italian oenologist stationed at the Istituto Sperimentale per l’Enologia (now known as Research Centre for Oenology (CRA-ENO)) located in Asti in the North-Western province of Piedmont, where he developed the

²³⁶ Viola Stefanello, ‘Italy Ready to Pick a Fight with Croatia over “Prošek”’ (*Euractiv*, 16 September 2021) <www.euractiv.com/section/politics/short_news/italy-ready-to-pick-a-fight-with-croatia-over-prosek/>. See also Ponte (n 74) 545; Antonio Calanni, ‘The Fight Between Italy and Croatia over the Name Prosecco Gets Ready to Pop’ (*Associated Press*, 3 November 2021) <www.npr.org/2021/11/03/1051967995/prosecco-italy-croatia-name-prosek-fight> both accessed 3 March 2022.

²³⁷ Maumené developed methods and apparatus to speed second fermentation in large vessels rather than in bottles: Tanghe (n 230); Jeremy Parzen, ‘A Note on the History of the “Tank” Method of Sparkling Wine Production’ (*Lini Lambrusco*, 26 October 2018) <<https://linilambrusco.com/2018/10/26/origin-charmat-method-name/>> accessed 3 March 2022. See also Ponte (n 74) 544.

²³⁸ Parzen (n 237).

²³⁹ Patrizia Marazzi, ‘Italian Method Sparkling Wine is National Pride’ (29 August 2020) <<https://patriziamarazzi.com/en/blog/italian-method-sparkling-wine-is-national-pride/>> accessed 3 March 2022.

²⁴⁰ Madeline Puckett, ‘How Sparkling Wine is Made’ (*Wine Folly*, 6 June 2016) <<https://winefolly.com/deep-dive/how-sparkling-wine-is-made/>> accessed 3 March 2022.

autoclave method.²⁴¹ Until the 1980s, Asti Spumante was the more renowned Italian sparkling wine for celebrations.²⁴² The autoclave method is still used today to produce Asti Spumante.²⁴³

The second problem is that autoclaves are widely used in many places outside the DOC and their use is therefore not especially associated with the DOC zone. Invention and use of autoclave in Asti in North-Western Italy naturally predates its use in the DOC.²⁴⁴ It is also used to make sparkling wines in France (as the Charmat method), the United States, Germany (for *Sekt*) and Australia.²⁴⁵

The third problem is that the method is not just used to make 'Prosecco'. The autoclave method is used for other sparkling wines such as Lambrusco, Malvasia and Moscato including Asti Spumante.²⁴⁶

The fourth problem is that not all 'Prosecco' wines are made in autoclaves. Only the DOC expressly specifies the autoclave method; DOCGs do not.²⁴⁷ Autoclaves are not used for still nor Traditionally Bottle-Fermented 'Prosecco' styles. Even within the sparkling category, fermentation specifications differ. Only autoclave fermentation is permitted by the DOC;²⁴⁸ however DOCGs both permit either in-bottle or autoclave fermentation.²⁴⁹

Finally, as the autoclave is a vinification process, it is worth briefly recalling where such processes may occur. Under certain conditions, with Ministry authorisation, vinification can take place in provinces neighbouring the DOC, and Regional governments may have authorized vinification beyond that, presumably anywhere in the world. This possibility severely reduces any 'human factor' causal connection;²⁵⁰ vinification techniques which can occur

241 Martinotti previously worked in Torino: 'What is Charmat Method?' (*Glass of Bubbly*, 8 July 2020) <<https://glassofbubbly.com/what-is-charmat-method/>> accessed 3 March 2022.

242 Ponte (n 74) 544.

243 For a single fermentation process: Karen MacNeil, *The Wine Bible* (Workman 2001) 333–35.

244 See supra n 241; Bele Casel, 'Charmat Method or Martinotti Method?' (28 July 2017) <www.belecasel.com/en/2017/07/28/charmat-sparkling-wine-prosecco/> accessed 3 March 2022.

245 See supra n 241.

246 Marazzi (n 239).

247 Although their use is implicit due to the Commission Delegated Regulation: supra n 93. Autoclaves are only expressly mentioned in DOCGs within Article 9 statements: 2019 DOCG Asolo (n 25) art 9; 2019 DOCG Conegliano Valdobbiadene (n 26) art 9.

248 2020 DOC (n 27) art 5(4).

249 2019 DOCG Asolo (n 25) arts 5(3), 5(5) and 6(1); 2019 DOCG Conegliano Valdobbiadene (n 26) arts 5(2), 5(7) and 6(1).

250 Query whether production steps taken outside the DOC satisfy requirements in Regulation 1308/2013 (n 3) art 93(1)(a)(iii): see supra n 90.

outside the DOC cannot create qualities or characteristics predominantly attributable to it.

Clearly, the autoclave fermentation method is not a technique essentially attributable to the DOC area but a method commonly associated with other wines, other countries, and other regions within Italy. Nor is it the common denominator which gives wines produced in the area a relatively distinctive character. It is submitted the common denominator is instead the main grape variety.

4.2.4 Specificity of the Product

DOC Article 9 describes features of aroma, low alcoholic strength, dryness, colour, perlage, effervescence and palate. There is much to say here. First, Article 9 itself describes a large array of flavours, colours, and bouquets. Such breadth of qualities is inconsistent with the claim of homogeneity; that there is an essential or distinctive character or quality justifying the GI claim. Secondly, whilst certainly describing desirable attributes, Article 9 does not set any standards or criteria to be met by DOC producers, and most qualities described within it are not replicated in the substantive production standards set out in Arts 1–6.²⁵¹ Thus the disparity between Article 9 descriptions of ‘citrus’, ‘pear’, ‘strawberry’, ‘raspberry’ ‘white flowers’ and ‘red flowers’²⁵² when compared with specification standards for bouquet in Article 6,²⁵³ merely underscores that Article 9 is not expressed as a regulation and consequently is not evidence of qualities or characteristics.²⁵⁴ To the contrary, significant diversity can be expected due to topographical differences which affect characteristics of wines produced across the expanded DOC zone.

Article 9 claims viticultural techniques make it ‘possible to guarantee to consumers the same distinctive quality characteristics ... even for a rosé sparkling wine’.²⁵⁵ It asserts a link between viticulture and wine characteristics, describing the ‘right cultivation technique’, clipping²⁵⁶ and tying, and canopy management. This does not specify a standard to be met by DOC producers.

²⁵¹ Substantive standards are set by Articles 1–8 and 10 of the 2020 DOC. These set standards which DOC wine must satisfy. For present purposes, only Articles 1–6 are relevant.

²⁵² 2020 DOC (n 27) art 9.

²⁵³ That is ‘subtle, characteristic, typical of the grapes from which it derives’: *ibid* art 6(1); *supra* Section 3.5.2.

²⁵⁴ Qualities are described very broadly, and not usually in relation to particular wine categories. Moreover, they are not stated as standards or criteria for DOC wines, contrary to Articles 1–8 and 10.

²⁵⁵ 2020 DOC (n 27) art 9.

²⁵⁶ ‘*Cimatura*’ refers to ‘topping’ or ‘clipping’.

More importantly, it is simply not reflected in any of the substantive specifications themselves (Arts 1–6 DOC), which are confined to minimal restrictions on training techniques (simple or double espalier, not expanded planting), plant density and harvest yield.²⁵⁷ Pruning is not specified at all within the DOC.²⁵⁸

4.2.5 Cause-Effect Relationship Between Environment and ‘Prosecco’

Finally, DOC Article 9 describes effects of temperatures and winds upon development of grapes, in particular acidity, aromatics, concentrations of polyphenolic substances in grapes vinified as red wine for sparkling rosé and ascribes moderate sugar accumulation and ‘chemical-sensory composition’ of grapes to the ‘alluvial’ soils with ‘clay-silty texture’.²⁵⁹ As noted earlier, DOC terrain specifications do not support such statements, since they lack meaningful eligibility restrictions. Moreover, the demonstrably stricter terrain requirements of DOCGs only serve to emphasize why specifications diverge so widely; the ‘cause-effect’ of these inconsistent qualities.

DOC Article 9 asserts that the sensory profile is ‘recognisable to national and international consumers’.²⁶⁰ However, objective evidence does not support this claim.

4.2.6 Conclusion on DOC Article 9

As the strongest case to be made for the EU GI ‘Prosecco’ claim, the DOC Article 9 thesis remains unconvincing. The assertions within it cannot provide an evidentiary basis for the GI assertion. Substantive product specifications could furnish an objectively verifiable evidentiary basis for the claim. Yet the above analysis revealed evidence of an absence of distinctive qualities or characteristics attributable to the purported *terroir* or human techniques of the geographical area. Instead, it revealed that few areas of similarity exist concerning characteristics, vinification and a significant divergence in ampelographic specifications.

Extensive divergence between specifications undermines the credibility of assertions that qualities of wine from within the DOC area are distinctive or essentially attributable to the geographical location.²⁶¹ Specifications have also altered significantly since 2009. Where not caused by changes in *terroir*,

²⁵⁷ See *supra* Sections 3.3.2, 3.3.3 and 3.3.4.

²⁵⁸ Contrast the Conegliano Valdobbiadene pruning requirement (albeit vague): *supra* Section 3.3.2.

²⁵⁹ 2020 DOC (n 27) art 9.

²⁶⁰ *ibid* art 9.

²⁶¹ Defining ‘essentially’ as being ‘in its essential parts’ or for the ‘most part’: Zappalaglio (n 22).

this calls into question attributability of characteristics to place. Together with evidence of the diversity of topography within eligible terrain across the vastly expanded DOC zone and its effect upon wine quality, the argument that wine from anywhere within the DOC (and wine vinified outside the DOC with authorization) bears distinctive qualities which are predominantly causally attributable to the geographical area appears unconvincing and unsubstantiated.

Evidence does not support the view that the DOC *terroir* imparts consistent qualities in wine. It is unlikely that such a large landscape could ever produce sufficient consistency in quality that it could be considered 'distinctive' and therefore essentially attributable. Dangers of the enormous 2009 DOC expansion were anticipated long ago.²⁶² Hughes observes that ability to rely on *terroir* or natural factors is universally problematic once the geographical area for which a GI is claimed has expanded to large regions.²⁶³ Expansion makes it increasingly difficult to achieve consistent quality and character through techniques, technology, across small and large producers. The specification variances bear this observation out perfectly. Science, the Consortia and the DOCG Article 9 theses explain why this is so.

Evidence does not support the argument that characteristics of DOC wine are predominantly due to techniques of the region. Autoclave techniques are not reasonably attributable to the DOC area; they are used in many places for many types of wines; they were invented elsewhere and have always been used outside the DOC. Nor are autoclaves consistently required by relevant specifications. Still wine categories do not use autoclave at all. Even within the sparkling category, secondary fermentation in one specification is confined to autoclave whereas other specifications permit in-bottle fermentation. Finally, the 2009 DOC expansion admitted less skilled operators despite warnings about quality.²⁶⁴

It appears far more probable that – if there is any commonality between wines produced throughout the DOC – it is attributable to something other than *terroir* or technique. A rare point of convergence amongst specifications is the minimum requirement of 85% 'glera' grapes. Any consistent qualities of its wine are most likely attributable to the prosecco grape variety, not the DOC area.

262 Rosetto and others (n 191) 62, 69.

263 Justin Hughes, 'Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications' (2006) 58 Hastings Law Journal 299, 360.

264 Rosetto and others (n 191) 72–73 (noting the threat to quality).

5 Conclusion

This article outlined policy bases for recognition of GI claims, and the need for a reasonable approach to interpretation of ‘essentially attributable’ within TRIPS Article 22(1). Rent-seeking and reduced competition is acceptable only where strong objective evidence exists that Article 22(1) criteria are satisfied. However, the EU offensive to boost exports via GI claims in FTAs since 2012 has not been matched by strong evidentiary substantiation of their legitimacy. This poses a serious threat to fair and competitive trade. Where there is controversy, only a detailed factual analysis, such as that undertaken here, can help reveal whether or not GI claims are legitimately grounded. Indeed, the approach taken by this article can be utilized to test the legitimacy of any GI claim so far as it relates to quality and characteristics.

By comparing DOCG and DOC specifications, the above analyses the evidentiary basis upon which the EU GI assertion rests. This cannot credibly sustain the claim that ‘Prosecco’ wine has qualities or characteristics essentially attributable to the DOC geographical area. Current specifications for ‘Prosecco’ lack consistency *inter se*, thus qualities are not sufficiently distinctive, suggesting absence of a link with geographical area. Specifications have changed over time, often in varying directions, further highlighting the lack of causal link with geographic location. Analysis of the Article 9 DOC thesis underscores the need to critically evaluate GI claims by reference to substantiated objective evidence.

A reasonable interpretation of Article 22(1) should distinguish objective evidence from unsubstantiated argument. Weak evidence should be rejected to avoid unduly stretching GIs to facilitate protectionist ends.

Insofar as it relies on quality or characteristics, the EU GI ‘Prosecco’ claim is unconvincing. Far from supporting the GI claim, the above analysis of the objective evidence demonstrates the absence of any distinctive qualities or characteristics predominantly attributable to the DOC area. The evidence reveals that ‘Prosecco’ wine qualities are overwhelmingly inconsistent. This proves absence of distinctive qualities or characteristics, let alone any which might be essentially attributable to the geographical area. *Terroir* and human skill arguments are not borne out by the objective evidence. Quite to the contrary, the analysis within this article shows that specifications diverge in almost every respect, and that evidence leads to the conclusion that the DOC’s highly varied terrain inevitably leads to divergent qualities amongst its wines. Quite simply, the 2009 DOC expansion precludes any distinctiveness that might be attributable to such a vast landscape. It can be reasonably concluded that any

distinctive qualities of DOC 'Prosecco' wine is predominantly attributable to its key input; 'prosecco' grapes.

Consequently, the EU 'Prosecco' GI assertion lacks legitimacy unless it can adduce strong, objectively verifiable evidence for its claim on grounds of reputation alone. Until then, 'Prosecco' is not entitled to GI protection and the GI claim amounts to an unfair trade barrier and potential breach of the TBT.²⁶⁵

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²⁶⁵ See generally Henckels (n 5) 294, 297 ff.