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CASE NOTES

The Exhaustive Character of the EU Regime [illegible] Indications of Wines [illegible] European Co[illegible] Judgment *Port Charlotte II*
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- Issue 3/2018: 21 May 2018
- Issue 4/2018: 18 July 2018
- Issue 5/2018: 06 September 2018
- Issue 6/2018: 05 November 2018

Articles may be submitted after the published deadlines, by arrangement with the editor.

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Case Note

The Exhaustive Character of the EU Regulation on Geographical Indications of Wines following the European Court of Justice Judgment *Port Charlotte II.*

*Vito Rubino**

This comment on the Port Charlotte II judgment of 14 September 2017 analyses the position taken by the Court of Justice with regard to the convergence of wine Common Market Organisation (CMO) and the EU Regulations related to the protection of geographical names of other foodstuffs. The Court, starting from some elements of the 2009 BUD II judgment, outlines the same exhaustive character in all the European regulations regarding the matter. On this basis the Court holds irrelevant the previous Portuguese protection of the name "Port- Porto" in order to evaluate the existence of an "earlier right" which could preclude the registration of the trademark Port Charlotte. In this sense the judgment sets aside the previous evaluations of the General Court in 2015, which had reached a different decision. The article analyses the consequences of the Court's systematic approach to the matter highlighting the elements of the CMO regulation that are not in line with this judgment with specific reference to the competences of the Member States in this field. The comment concludes, therefore, with two different considerations: 1) the EU Commission must take into account this judgment in the ambit of the new regulation of execution of the Single CMO related to wines (which is being done at the present time and will replace EU Regulation No. 607/2009); 2) in the context described it is urgent to re-think the structure of GIs protection in the European Union, limiting the European protection to the best known denominations and products, and leaving the Member States an independent power to protect geographical indications and traditional mentions of other foodstuffs (whose reputation is well known only at a local level).

I. Introduction

The recent judgment of the Court of Justice *Port Charlotte II*,[1] resulting from the appeal against the previous judgment of the General Court of 2015,[2] deals with the "*vexata quaestio*" of the exhaustive character of the EU regulation, on geographical names of wines during the transitional phase, from the "old" to the "new" Common Market Organization (hereafter "CMO").

As will be explained, the Court set aside *in parte qua* the previous judgment of the General Court with the clear intention of moving the discipline towards a complete uniformity (at least under the interpretive point of view) compared with other similar rules in the ambit of the so-called "product quality policy" of the European Union.

The results, nonetheless, are not completely satisfactory, considering the difference between the text

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1 Court of Justice judgment case C-56/16 P, European Union Intellectual Property Office (EUIPO) v. Instituto dos Vinhos do Douro e do Porto, IP, [2017], not jet published in ECR.

2 General Court judgment Case T-659/14, Instituto dos Vinhos do Douro e do Porto, IP v. Office for Harmonisation in the Internal Market (Trade Marks and Designs), [2015], ECLI:EU:T:2015:863.

of the regulations compared and the specific nature of the wine sector. On the other hand, there is a concrete risk, paradoxically, of a contradiction in the strategies of rural development in this field and of an overall uncertainty about the purpose of the EU discipline on geographical names of foodstuffs.

The following considerations are thus intended to highlight all these aspects, even though the Court did not analyse the problems arising from the difference of the regulations involved and, as a consequence, the judgment in comment cannot give answers to the problems it raised.

II. The Character of the Single Common Market Organisation with Regard to the Protection of Geographical Indications of Wines and the ECJ Statements in the Recent *"Port Charlotte II"* Judgment

The issue under evaluation in the Court judgment *Port Charlotte II* derives from the registration of this trademark, which was filed by an English distillery for the class of alcoholic drinks (later limited to the Whisky category) to the Office for Harmonisation in the Internal Market (OHIM, now EUIPO, European Union Intellectual Property Office), pursuant to Regulation No. 207/2009 on European Trademarks.

Considering the affinity with the geographical name *Porto*, which was protected - *inter alia* - by Portuguese law[3] and registered at an EU level as quality wine produced in a specified region ("quality wine PSR"), the Consortium for the protection of Porto wine (*Instituto do Vinho do Douro e do Porto*) immediately lodged an objection with the OHMI Opposition Division, and, after the rejection of the application, brought an action before the General Court of the European Union challenging the OHMI decision.

The General Court stated - *inter alia* - in its 2015 judgment that "neither the provisions of Regulation No 491/2009, nor those of Regulation No 207/2009, state that the protection under the former must be construed as being exhaustive in the sense that that protection cannot be supplemented, beyond its particular scope, by another system of protection. On the contrary, it follows from the unequivocal wording of Article 53(1)(c) of Regulation No 207/2009, read in conjunction with Article 8(4) thereof, and from that of Article 53(2)(d) of that regulation, that the grounds for invalidity may be based, individually or cumulatively, on earlier rights 'under the [EU] legislation or national law governing [their] protection'. It follows that the protection conferred on (protected) designations of origin and geographical indications under Regulation No 491/2009, provided that they are 'earlier rights' within the meaning of the above mentioned provisions of Regulation No 207/2009, may be supplemented by the relevant national law granting additional protection".[4]

The European Union IP Office presented an appeal against this specific statement, by arguing that the 2008 CMO reform radically changed the regime of geographical names of wines, which must be considered equivalent to the system of protection of toponyms of other quality foodstuffs.

From the EUIPO point of view, the centralization of the system in Brussels, with the creation of IP rights in the ambit of the Common Agricultural Policy, precludes, also in this specific sector, the application of national rules dedicated to the matter.

As a consequence, the Portuguese discipline on the protection of the name *"Porto"* – *"Port"* should not have been considered as an earlier right for the purposes intended.

The Court was forced, therefore, to examine the character of the new Single CMO (in which the specific wine CMO has been placed since 2009), and, in particular, to interpret the juridical and political evolution of the wine regulation after the last reform, giving impetus to the transition process from the old to the new regime.

III. Legal Requirements and the Court Evaluation

The protection of geographical indications of wines has followed an independent development process in the ambit of CMO system for a long time, originally based on national rules and, only in the recent past, on a complete *European* framework.

3 See the Decreto-lei n. 173/2009 and the Decreto-lei n. 212/2004 combined with the Portuguese Industrial Property Code (all the references are indicated in para. 40 of the General Court judgment).

4 See para. 44 of the Judgment.

The European Court of Justice has stated in many judgments, from the early development of the Single Market, that Member States cannot adopt national rules in the ambits covered by CMO regulations,[5] except where exceptions are explicitly provided for.[6]

Although in the specific wine area the Court, starting from the early 70's, has stated that "the common organization of the market in wine (...) could be regarded as forming a complete system, especially as regards (...) requirements relating to the designation of wines and labelling"[7] the content of Regulation (EEC) 817/70 (which implemented the first wine CMO with specific reference to geographical indications[8]) and the following regulations which have replaced it demonstrate that there was not a complete pre-emption of the topic.

In fact, article 1 of this regulation specified the definition of "quality wine P.S.R." as wines that are in line with all the community rules in question, "defined by national legislations". In this way it recognised explicitly a shared competence of the Member States in the matter.

In the same way, the regulations on wine PSR set out rules concerning wine labelling "without prejudice to any additional expressions which may be allowed by national laws" or the specific terms traditionally used in the Member States to designate particular wines (see. art. 14). This has allowed Member States to maintain their own traditional expressions in order to designate quality wines as, for example, Italy did with the classifications of its quality wines in three different categories, organised in a scale of values: D.O.C.G. (Controlled and Guaranteed Denomination of Origin), D.O.C. (Controlled Denomination of Origin), and, later, I.G.T. (Geographical Indication of Territory).

In this context paragraph 4 of article 12 appears particularly significant, where the regulation states that "a quality wine P.S.R. shall be sold under the name of the specified region granted it by the producer Member State" which, ultimately, means that the protection of a geographical name was a national decision, which the European Community was entitled only to ratify in a sort of "mutual recognition" system.

This juridical approach remained unaltered until the early 2000s, considering that EC Regulation n. 1493/1999[9] confirmed the power of the Member States to "forward to the Commission the list of quality wines P.S.R. which they have recognised",[10] holding a cooperation method which is not attributable to a simple co-administration in a centralised system.

The relative decisions, on the other hand, were published in the Official Journal "C" series, as a further confirmation of the lack of "normative" character of the final step in the toponym registration process by the EU Commission.The described framework was dramatically changed by the most recent reform of CMO in 2008.

EU Regulation n. 479/08,[11] later merged into the Single CMO by EU Regulation 491/09,[12] modified the rules on protection of geographical names at the EU level starting from the registration process, centralised in Brussels.

Articles 92-113 of EU Regulation n. 1308/13[13] has abandoned, as a consequence, the previous model based on national competences, and adopted a mech-

5 Court of Justice judgments case 31/74, Galli, [1975] ECR-47; Case 65/75, Tasca, [1976] ECR-47; Case 111/76, Van Der Hazel [1977] ECR-901; Case 83/78, Pigs Marketing Board e Raymond Redmond [1978] ECR-02347; Case 223/78, Grosoli [1979] ECR-1573; Cases from 16 to 20/79, Danis e Depre [1979] ECR-3327; Case 222/82, Apple and Pear Development Council, [1982] ECR-4083.

6 Court of Justice judgment Case 16/83, Prantl, [1984] ECR-1299, at para. 13.

7 See Prantl, cit., at para. 14.

8 Council Regulation (EEC) No 817/70 laying down special provisions relating to quality wines produced in specified regions, OJ 1970 L 99/20.

9 Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, OJ 1999 l 179/01.

10 See art. 54 of the regulation on wine CMO cit.

11 Council Regulation (EC) No 479/2008 on the common organisation of the market in wine, OJ 2008 L 148/01.

12 Council Regulation (EC) No 491/2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), OJ 2009 L 154/01. On the new wine regulation see Konrad scheimann, "Wine and Food in European Union Law", *ERA Forum*, 2011, p. 241 *et seq.*; Ferdinando Albisinni, "L'officina comunitaria e l'OCM vino: marchi, denominazioni e mercato", *Rivista di diritto agrario*, I, 2008, pp. 422 *et seq.*; Luis. Gonzalez Vaqué, Sebastián Romero Melchor, "Wine Labelling: future perspecitves", *EFFLR*, 2008, pp. 25 *et seq.*; Tomas García Azcárate, Marine Thizon, "La réforme de l'organisation commune de marché du vin", *RMCUE*, 2008, pp. 320 *et seq.*

13 Articles 92 – 113 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ 2013 L-347/671, previously 118 bis – 118 tervicies of the Council Regulation (EC) No 1234/07 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), OJ 2007 L 299/1. From here on all the references will be to the consolidated text of Regulation (UE) n. 1308/13 cit.

anism for the GIs protection similar to the PDO – PGI discipline of other foodstuffs content in EU Regulation 1151/2012, which has replaced the previous EC Regulation 510/06.

Symbolically, the same expressions (PDO – PGI)[14] were adopted as well.

In the new system, the national Authority has only a preliminary role whereas the final decision, which is constitutive in effect, is conferred on the EU Commission, which verifies whether the documents and the required information are complete and that the procedure was respected at the national level.

The judgment in comment is part of this dynamic, and assesses the preemption degree of the new matter, defining residual powers of the Member States.

The European Court of Justice, although it acknowledges the persistent differences between the wording of the new CMO and Regulation 510/06/CE on PDO - PGI of other foodstuffs[15] (now EU n. 1151/2012[16]), insists on the same juridical and logical process used in the 2009[17] case on the Czech beer *Budvar*, concerning the conflict between the relative geographical name (protected by a bilateral international agreement between the Czech Republic and the Republic of Austria) and a trademark registered in another European country.

In that judgment the Court highlighted two different symptomatic elements of the "exhaustive character" of EU Regulation 510/06/EC: its function pursuant to the aims of the Common Agriculture Policy and the fact that many elements of the regulated proceeding made it evident that the national cooperation is a mere "phase" of a co-administration procedure, outside of which any national protection and promotion of the names in question must be considered incompatible.

In particular, with regard to the first point, the Court, at point 83 of the *Port Charlotte II* judgment, reproduced literally the evaluation given in the *BUD II* judgment in 2009, and stated that "if the Member States were permitted to allow their producers to use, within their national territories, one of the indications or symbols which are reserved, under Regulation No 1234/2007, for designations registered under that regulation, on the basis of a national right which could meet less strict requirements than those laid down in that regulation for the products in question, the risk is that that assurance of quality, which constitutes the essential function of rights conferred pursuant to Regulation No 1234/2007, could not be guaranteed. To confer such a discretion on those national producers would also carry the risk of jeopardising the attainment of free and undistorted competition in the internal market between producers of products bearing those indications or symbols and, in particular, would be liable to harm rights which ought to be reserved for producers who have made a genuine effort to improve quality in order to be able to use a geographical indication registered under that regulation".[18]

With regard to the second point, the Court underlines that, as established with regard to Regulation 510/06/EC, also the current CMO determines the loss of any autonomy for the Member States.

In fact article 118 septies, paragraph 7, of Regulation 1234/07/EC (now 96 Regulation EU n. 1308/13) provides the possibility to protect geographical names at a national level only during the EU registration proceeding, and the relative rules are intended to lose any juridical effect after the conclusion of the *iter*.

On the other hand, the transition from the "old" to the "new" scenario is distinguished by the reception "*ex officio*" of the toponyms protected previously at

14 See the 27th "whereas" of Regulation (EC) n. 479/08 cit., according to which "the concept of quality wines in the Community is based, inter alia, on the specific characteristics attributable to the wine's geographical origin. Such wines are identified for consumers via protected designations of origin and geographical indications, although the current system is not fully developed in this respect. In order to allow for a transparent and more elaborate framework underpinning the claim to quality by the products concerned, a regime should be established under which applications for a designation of origin or a geographical indication are examined in line with the approach followed under the Community's horizontal quality policy applicable to foodstuffs other than wine and spirits in Council Regulation (EC) No 510/2006 (...) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs".

15 See Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ 2006 L 93/12.

16 See Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, OJ 2012 L 343/1.

17 Court of Justice judgment Case C-478/07, Budějovický Budvar, národní podnik v. Rudolf Ammersin GmbH, [2009] ECR I-07721, with regard to which see the comments of di Anne-LaureMosbrucker, "Appellations d'origine et indications géographiques", *Europe*, 2009, pp. 19 *et seq.*; José Manuel Cortés Martín, "Jurisprudencia del Tribunal de Justicia de la Uníon Europea", *Revista de Derecho Comunitario Europeo*, 2010, pp. 257 *et seq.*; Fausto Capelli, "La Corte di giustizia in via interpretativa, attribuisce all'Unione europea una competenza esclusiva in materia di riconoscimento delle denominazioni di origine e delle indicazioni geografiche protette, riferite ai prodotti agroalimentari, mediante la sentenza Bud II motivata in modo affrettato, contraddittorio e per nulla convincente", *DCSCI*, 2010, pp. 401 *et seq.*

18 See para. 83, in line with the judgment BUD II cit., at para. 112.

a national level, but with an obligation for the Member States to forward to the EU Commission the relative dossiers before a deadline, failing which the protection of those names would have been cancelled.

The Court deduced from these elements the elimination of any regulatory space and excluded, at the same time, the possibility of having a "double protection regime" (both at a national and EU level), with the consequent exclusion of any relevance of the Portuguese law for the purpose evaluated by the EU General Court in its *Port Charlotte* judgment of 2015.[19]

1. The Problem of the Uniformity of CMO with Respect to Regulation 510/06/CE (PDO – PGI of Other Foodstuffs)

In the same way that the *BUD II* judgment in 2009 generated strong reactions from scholars,[20] also the Court position here in comment can be criticised from many points of view.In *Port Charlotte II*, as well as in *BUD II*, the question was the possibility for the Member States to maintain, alongside the EU system of GIs promotion and protection, their own rules and alternative small-scale regimes based on intellectual property rights.

As a consequence, in *Port Charlotte*, as well as in the *BUD* case, what is at stake was the efficiency of the EU system, which risks losing visibility and credibility in the consumer's eyes if the protected products were watered down by a plethora of names, symbols, and additional terms referring to the origin of the products and regulated by national rules.

This point, which is fundamental in the criticism of the *Port Charlotte* judgment and that will be better explained in the conclusions of this article, requires special attention also in the wine sector, where the effect of the Court's approach risks having a negative impact on the identity and value of the territory, going way beyond what the CMO literally establishes.

2. The Recent Changing Role of "Traditional Terms" in Wine Labelling and their Strict Connection with the Matter Analysed by the Court

The Court stated that "the characteristics of the system of protection provided for by Regulation No 1234/2007 are similar to those established by Regulation No 510/2006" (point 85).

So the national registration procedures of a geographical name "cannot exist outside the EU system of protection" (point 87) also in order to preserve the effectiveness of the EU law (which the Court considers "at risk" "if the Member States were able to retain their own systems of protection (...)"[21]). This position poses, first of all, the problem of the evaluation of the effective uniformity of the rules of the Single CMO and the PDO – PGI discipline of other foodstuffs.

With regard to the first point, the scholars who commented on the *BUD II* judgment observed that when the Court declared the exhaustive character of Regulation 510/06/EC, it did not intend to deprive geographical indications of a formal protection at a national level (as their nature of intellectual property rights grants), against anyone who markets copies in order to exploit the GIs reputation or suggest that their products are equivalent to the original ones.

The judgment just wanted to declare *contra legem* the use of replacement schemes at a national level when they can create obstacles to the efficiency of the PDO – PGI EU system [22].Similar evaluations can be repeated today with reference to the wine sector, where the purpose in question finds specific bases in the CMO regulation.

The comparison of the regulations raises doubts about the effective uniformity of the two systems (wine and other foodstuff) and triggers a new debate on the residual powers of the Member States about

19 See paras. 107-108 of the judgment.

20 See F. Capelli, *La Corte di giustizia*, cit.; Giuseppe Coscia, "Considerazioni sulla portata esauriente del regolamento n. 510/2006", in Luigi Costato, Paolo Borghi, Luigi Russo, Silvia Manservisi (eds.), *Dalla Riforma del 2003 alla PAC dopo Lisbona. I Riflessi sul Diritto Agrario Alimentare e Ambientale*, Napoli: Jovene, 2011, pp. 439 *et seq*. For a report of the scholars' positions on this point before the *BUD II* judgment, see José Manuel Cortés Martín, *La Protección de Las Indicaciones Geográficas en el Comercio Internacional e Intracomunitario*, Madrid: Ministero dell'Agricoltura, Pesca e Alimentazione, 2003, p. 452. In this article it does not appear useful to reinforce the points that have been made by the scholars about the formal prerequisites of the EU law pre-emption in the industrial property rights, also because the problem seems to be largely overcome on a technical level thanks to the innovations made by the Lisbon Treaty. Instead, it is preferable to make some remarks on the consequences of the position of the Court about the convergence of the different EU rules dedicated to the protection of geographical indications of wines and other foodstuffs.

21 See para. 90 of the judgment.

22 See Coscia, "Considerazioni sulla portata esauriente", *supra*, note 20, at pp. 447 – 448.

the protection of toponyms despite the common functionality to CAP aims and, in particular, to rural development.

Article 92, paragraph 2, lett. c) of EU regulation n. 1308/13 states, in fact, that the EU rules on wine denominations of origin and geographical indications (and on traditional terms as well) shall be based on "promoting the production of quality products referred to in this Section, whilst allowing *national* quality policy measures".[23]

The measures indicated cannot, obviously, be limited to some aspects of oenological practices, as they must extend themselves to all the factors that contribute to the policy in question, including the geographical names of foodstuffs, as is well known.

Article 112 of Regulation EU n. 1308/13 seems to support this interpretation, since it states that traditional terms, regulated by Member States, can be used, inter alia, to determine "that the product has a protected designation of origin or a protected geographical indication under Union or *national* law (...)".[24]

These two articles, which are still in force ten years after the CMO reform[25], highlight two things: 1) Member States still have the power to protect their geographical denominations (art. 112); and 2) this power is strictly connected to their national quality policy measures (art. 92).Both these elements seem to be in contradiction with the Court's view of the exhaustive character of the new CMO in the issue discussed.

As a confirmation, EU Commission Regulation n. 607/2009,[26] which executed the discipline under examination, has *de facto* permitted Member States to make a sort of "unpacking" of PDO – PGI schemes and their replacement with the traditional expressions previously used at a national level in order to distinguish the "quality categories" of wines.

In part "A" of Annex XII traditional terms, previously used at a national level, are listed State by State, and wine business operators may continue to use them as synonymous equivalent to PDO – PGI.

On this basis, for example, Italy has used its power to secure the continuation of its old "pyramid stratification" of DOCG, DOC and IGT and the different *quality meaning* of any of these terms, as recently reaffirmed by article 28 of law n. 238, adopted in 2016.[27]

At the same time, the evolution of the meaning of "traditional expressions" in quality wine labelling, used in order to inform the consumer about "the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the product with a protected designation of origin or a protected geographical indication",[28] seems to aim at the same result.These terms, fully regulated by national law, highlight some specific characteristics of the products designated[29] outside the industrial property rights field (as the EU Commission recently stated[30]) and do not have a direct geographical meaning.

Nonetheless, analysing the *E-Bacchus* database, it is possible to find expressions and terms that, even though they originate from historical episodes or production methods, are now considered by an average consumer as product names with an indirect geo-

23 Italics added.

24 Italics added.

25 It is worth noting that the rule can not be simply considered functional only to the transition from the old to the new regime, when many geographical indications, previously protected at a national level, still had to be "confirmed" after the documentary revision by the European Commission, as already mentioned. In fact, the rule still exists today (long after the procedure had already been concluded) in the text of Regulation n. 1308/13, and it is passed unscathed through three successive changes of the texts of the regulations on the matter (see art. 54 Reg. 479/2008, literally reproduced in art. 118 duovicies of Reg. 491/2009 and of EC Regulation 1234/07, now art. 112 EU Reg. 1308/13 cit.). The meaning of the rule can, therefore, only be understood by recognising the persistent multilevel nature of the subject, which is still characterised by a certain cooperation between the Member States and the European Union.

26 See Commission Regulation (EC) 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products, OJ 2009 L 193/60.

27 See the Italian law no. 238 of 12 December 2016, Systematic regulation of wine growing and production and commerce of wine, art. 28.

28 See art. 112, par. 1, lett. b) Reg (UE) no. 1308/13 cit.

29 Consider traditional terms such as *riserva*, "applied to wines for which the product specification stipulates an ageing period of at least two years for red wines, one year for white wines, one year for sparkling wines obtained from cask fermentation and three years for sparkling wines obtained from natural bottle refermentation", or *lacrima*, "connected to the name *Lacrima di Morro d'Alba* wine, the integral part of the name of this wine. It refers to the particular production method whose slight grapes pressing leads to a product of high quality level".

30 See the report from the Commission to the European Parliament and the Council in accordance with Article 184(8) of Council Regulation (EC) No 1234/2007 on the experience gained with the implementation of the wine reform of 2008, COM (2012), 737 def., 10 December 2012, p. 11.

graphical meaning and a strong link with the specific area where the wine comes from.

Some examples can clarify the situation. Traditional terms such as *Gutturnio* (described as an "exclusive historical term connected to a type of wine which originates from a sub-area of the *Colli Piacentini* wines (...)"), *Amarone* (which corresponds to an "exclusive historical term related to the production method of the *Valpolicella* wine" typology. It has been used, since antiquity, to identify the place of origin of the wine produced following a specific production method"), or *Sangue di Giuda* (that the database defines as "exclusive historical traditional term connected to a wine typology produced in the *Oltrepò Pavese* territory (...)"[31]), have acquired a greater reputation than the geographical names to which they are linked, and are perceived by consumers as implicit geographical expressions.

In other words they are considered product names with a strong geographical link even if, from an etymological and juridical point of view, they are not geographical terms.

This specific function (and meaning) should require their registration as toponyms in the ambit of the EU protection procedure of GIs, as stated by article 93, par. 2, Reg. EU n. 1308/13[32] and the Court case-law on Regulation 510/06/EC (specifically the *Feta* case[33]).

In current practice, on the contrary, they are still used as generic indications regulated by national law, probably for the purpose of maintaining a co-legislation space which seems difficult to reconcile with the Court approach in *Port Charlotte II*.

IV. Final Evaluations

The proposed alternative makes it possible, in the end, to summarise the reasoning with some final remarks (which could still be defined *de iure condendo*, considering the situation).

The intention of the European legislator to centralise the geographical indications protection system seems clear, since they are the central point of the EU quality policy that engages the European Union both from the "internal" side (in order to boost the competitiveness of agriculture after the end of many CAP aid regimes) and in the global arena (where the EU public approach to the matter in the bilateral and multilateral negotiations requires complete clarity of the EU regulatory strategy behind this).

The question is whether the exhaustive character of the different (and converging) disciplines stated by the Court of Justice can serve the cause.

Many scholars have underlined that the exclusivity of the EU protected denominations of origin (PDO) or protected geographical indications (PGI) schemes can stimulate a senseless rush to the registration of names and terms which could be better protected (and enhanced) at a national level because of the limited production or the mere local relevance of the product.

The coexistence of a national protection system, in the ambit of IP property, does not damage the EU regulatory framework and the quality policy, considering that the PDO – PGI schemes would be limited only to products with a consolidated international reputation, which exposes them to the concrete risk of passing-off or evocation by generic products.[34]

The *Port Charlotte II* judgment, on the contrary, continues to ignore this need of a multilevel structure of protection system of GIs, maintaining a rigid position that, in the case of wine, is difficult to reconcile with the persistent discrepancies of the CMO with respect to the regulation on PDO - PGI of other foodstuffs and with the application practices between the Commission and the Member States.

Given the need to make a choice (also with regard to the mentioned review of Regulation 607/2009) it is desirable that the European Union takes a step back

31 See the E-Bacchus database at <http://ec.europa.eu/agriculture/markets/wine/e-bacchus>.

32 This article states that "certain traditionally used names shall constitute a designation of origin where they: (a) designate a wine; (b) refer to a geographical name; c) fulfil the requirements referred to in points (a)(i) to (iv) of paragraph 1; and (d) have undergone the procedure conferring protection on designations of origin and geographical indications laid down in this Subsection".

33 Court of Justice, judgment of 25 October 2005, joined cases C-465/02, C-466/02, Federal Republic of Germany (C-465/02) and Kingdom of Denmark (C-466/02) v. Commission of the European Communities, [2005] ECR I- 09115 which confirmed the possibility to register the name *Feta* as a PDO (overturning its previous decision in joined cases C-289/96, C-293/96 and C-299/96, Kingdom of Denmark, Federal Republic of Germany and French Republic v. Commission of the European Communities, [1996] ECLI:EU:C:1999:141, where the controversial denomination was probably referred to an old Venetian word used for *"fetta"* (slice), the way in which the cheese in question was usually served).

34 See Fausto Capelli, Valorizzazione dei prodotti agroalimentari di qualità e loro tutela contro le pratiche commerciali scorrette e pregiudizievoli, *Alimenta*, 2017, pp. 185 *et seq*.

from this view, and admits the ineffectiveness of such a restrictive position for the national capability of "communicating the territory".

In fact, the national competence in the classification of quality wines and in the communication of their characteristics related to origin is necessary to avoid a certain debasement of producers' efforts, which had aimed at a progressive improvement of local products thanks to the "pyramid promotional scheme" contained in many national legislations (in Italy, in particular).

The current European approach, which is oriented to simplifying the normative panorama of terms and quality schemes in the Single CMO, risks leading to a situation where wines of lower quality are classified as PGI or PDO.[35]

The decline of the communication capability of national identity and product characteristics (symbolised by the request of the Commission which has asked Italy to reduce the number of traditional terms registered, because they are deemed excessive), combined with a rigid centralization of quality recognition and the costs in order to obtain them, therefore risks to produce two opposite effects: the watering down of the value of the European terms, granted to very different products, and the loss of capability in communicating the local traditions at a lower level, because of a progressive inhibition of national regulations on the matter.

Given this scenario it is not surprising that Member States (especially in the "Mediterranean area") are implementing their national rules with a number of new mandatory particulars on the origin of foodstuff, ingredients or the site of production: it is just the reaction to the progressive loss of the capability of "communicating the territory" and a call for a wider subsidiarity and proximity in this matter.

This tension between the two different approaches to the matter has negative effects on political and economic integration, as the case in comment makes clear.It is desirable that the further restriction deriving from this judgment of the European Court of Justice leads to a rapid redefinition of the issue, restoring the information discipline (and the protection of the respective instruments, although in the ambit of intellectual property rights) on the basis of a scale of values and recognition that only a shared competence can really guarantee.

35 See Ferdinando Albisinni, "La OCM vino: denominazioni di origine, etichettatura e tracciabilità nel nuovo disegno disciplinare europeo", *Agriregionieuropa*, n°12, 2008, <https://agriregionieuropa.univpm.it/it/content/article/31/12/la-ocm-vino-denominazioni-di-origine-etichettatura-e-tracciabilita-nel-nuovo>; Marko Lovec, "The European Union's Common Agricultural Policy reforms: towards a critical realist approach. The global competitiveness of European wine producers", *British Food Journal*, 2017, p. 2076 ss.

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Food regulations have increased considerably in the last few years and more and more [illegible] being controlled by European law. At the same time, food and feed law is evolving in international organisations, such as WTO and the Codex Alimentarius Commission, to a worldwide dimension. This increasingly uniform legal framework is not always interpreted and applied uniformly in the individual European States. National courts and public authorities pursue their – against the background of the respective national legal cultures – very [illegible] [illegible] paths.

To achieve the [illegible] of the European legal area, a [illegible] [illegible] [illegible] in regulatory [illegible], at a scientific level, discussion and information exchange [illegible] [illegible] [illegible] [illegible] [illegible]. This forum is the European Food and Feed Law Review (EFFL). The aim and purpose of EFFL is to [illegible], with [illegible] for [illegible] and the application of the law.