

From the land acquisition to the harvest.  
Legal and administrative constraints.  
The case of Italy

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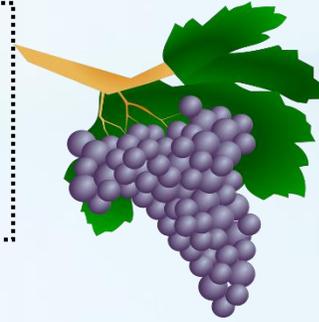
(with the cooperation of Mr. Stefano Vergano)

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## Bureaucratic aspects



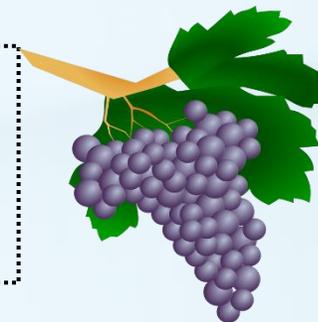
- ownership: **private**
- land registry vs viticulture register (*schedario viticolo*, introduced in 2010)
- **registration** of vineyards: **necessary** to obtain DOP/IGP recognition
- Consortia of Protection: 3 years plan
- the registration shall be requested to the **Region**, that regulates the procedure, **following the indications of the Ministry of Agriculture**
- coordination among Regions: made by SIAN (National Agriculture Informative System)

remarkable innovation: vineyards are measured by the **Geographic Informative System** with aerial photography





## Latest reforms: law 238 / 2016



the reform, approved to complete the process of harmonization of Italian legislation with the European reg. 1308 / 2013, confirms the Regional system of the Register and **follows the French traditional system**

from installation's rights to the system of **authorizations**

**they could be sold** or transferred without the land

they cannot be sold nor transferred

Authorizations, granted by the **Ministry of Agriculture**, are free and valid for **three years**





## Acquisition of the land

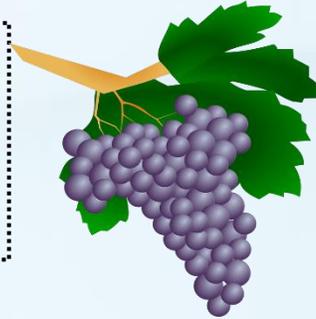


- **Authorizations** can regard lands to be destined, for the first time, to **vineyards** or **vineyards for the replantation** and the following **re-installation**
- every year, the Ministry of Agriculture, gives **new permissions for the 1% of the total amount of land** destined to **vineyards** during the previous years.  
The objective is to promote a **slow and controlled growth**
- every producer can obtain an **authorization** for a **maximum of 50 ha**
- Authorization request submitted **on-line** from 15 February to 31 March
  - **disadvantages**: decrease of Authorizations





# Administrative inspections



- Controls are implemented by Public Authorities and Private Organizations, authorized by the **Ministry of Agriculture**: every DOP/IGP production is subjected to the **inspection** of a single organ of control
- viticulturists, winemakers, bottlers, wine-intermediaries and all the actors of the supply chain are subjected to **administrative controls**

- three types of control:

❖ on documents

❖ analytical

❖ organoleptic

- joint **responsibility** of the **controller**, if there is a dangerous content in the wine, not detected





# The Italian national plan



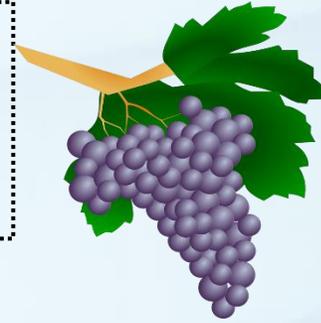
In 2018 Italy received € 336.997.000 by the European Commission. The national plan for the support of the sector is divided in **six strategic entries**:

- **Promotion** and **Advertising** of the wine sector abroad
  - **Redevelopment of vineyards**
    - Green grape harvest
    - **Insurance** for the harvest
  - **Investments** for competitiveness
- **Distillation of other products** (only for industrial purposes)





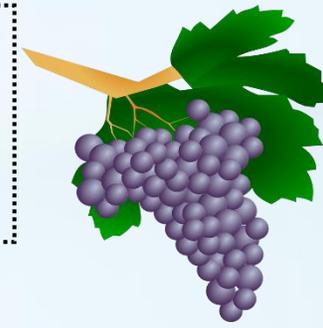
## Protection against climate effects



- climate change is having a strong impact on the production of wine, due to **unusual long droughts** and sudden violent storms
- Italy uses **part of the European funds** to refund the cost of insurances paid by the producers in case of damages
- the last national plan has destined to the refund of insurances **€ 20.000.000** (6% of the entire amount of the plan)



# Methods of protection



## Trademarks and DOP/IGP



Companies' trademarks

Collective and geographic trademarks

Trademarks of quality

Packaging: form and colours

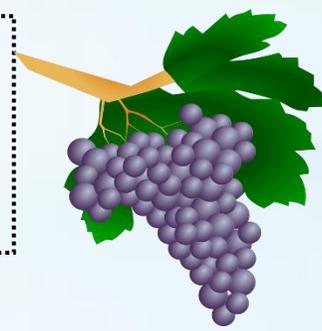
## Trademarks' general requirements

- **Novelty** (different from those previously used/registered by other companies for identical or similar goods or services)
- **Distinctiveness** (the sign must be perceived by consumers as distinctive with respect to a particular good or service)
- **Lack of deceptiveness** (the sign shall not mislead consumers on the **geographic origin**, on the **nature** and on the **quality** of the goods or services)
- **Lawfulness** (trademarks shall not be contrary to law, public order or public policy)





# Non-registrability



Art. 13.1 CPI, non-registrability:  
**generic denominations** and  
**descriptive indications**



- type
- quality
- quantity
- destination
- value
- geographic origin
- period of production
- other characteristics of the product

Descriptive indications: **geographic origin**

- **Invalid** if in the consumers' perception it has a **descriptive value** of the quality of the product: **wines of Chianti, oranges of Sicily, ham of Parma**
- **Valid** when the **place of production** does **not** influence the **quality** of the product: paper of Fabriano
- Valid when the trademark is the result of fantasy: cigarettes of Capri



«Fragolino» for wine/liqueur made with Isabella grapes (*uva fragola*) → generic denomination : **non registrability** (art. 13). Cass. N. 13215/2003, Bottega Sandro ./ . UIBM





# Collective trademark (art. 2570 cc and art 11 CPI)



accessory measure of protection of DOP/IGP

guarantee of **origin**, **nature** and **quality**

➤ **plurality of subjects**



CONSORZIO DI TUTELA  
BAROLO BARBARESCO  
ALBA LANGHE E DOGLIANI

collective geographic trademark (art. 11.4 CPI):  
exception (art. 21 CPI)



ASTI  
D.O.C.G.

collective trademark ≠ DOP/IGP eventual  
coexistence but with some differences

→ *quid pluris*

- easy registration and management
- appreciation of the image and of the quality of the products

❖ **Production specification**

❖ **Regulation on use, control and sanctions:**  
validity requirement to be filed with the trademark application (art. 11.2 CPI)

❖ **Difference ownership/use of the trademark**





# Trademarks of quality



EU Reg. n. 1151/2012, integrated by Reg. n. 664/2014 and n. 668/2014  
standard characteristics of the marked productions

Protected Origin Denomination:  
quality

Geographic Indication

essentially or exclusively

geographic milieu

- Quality
- Reputation
- 1 productive phase in the geographic zone



- production
- elaboration
- transformation

531 wines

DOCG, DOC, IGT



the request must come from at least 20% of producers who own at least 20% of the land of the zone

after 5 years of recognition

after 7 years of DOC recognition





# Wines classification

- Wines **with** geographic designation: special link with the territory

<b>DOC</b>	Barbera d'Alba	<b>IGT</b>	Colli Trevigiani
<b>DOCG</b>	Barbaresco		

- Wines **without** geographic designation: wines not having a special link with the territory

↙

**variety** wines, if claim particular **vineyards** (vitigno), 7 in total, or the **production year**  
(Chardonnay / Merlot)

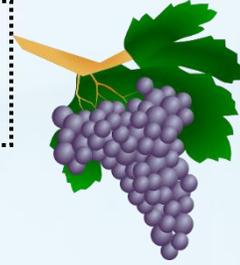
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**generic** wines  
(previously table wine)  
(Tavernello)





# Comparison between Italy and France



**DOC**

(332)

(Denominazione di Origine Controllata)

**DOCG**

(75, 17 in **Piedmont**)

(Denominazione di Origine Controllata e Garantita)

**AOC**

(307)

(Appellation d'Origine Contrôlée)

**IGT**

(126)

(Indicazione Geografica Tipica)

**Vin de Pays**

(75)

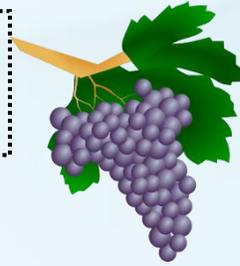
With the DOCG regulation, Italy protects **the most valuable wine productions**. On the other hand, IGT allows a first recognition, creating an intermedium level between generic wine and DOP productions. Piedmont has the **largest number** of DOCG but it has **no IGT productions**.

The aim is to protect and support exclusively the most valuable productions.





## Relationship DOP/IGP and trademarks



- EU Regulation 1151/2012 and sec. 29-30 CPI: when a DOP/IGP is registered, the **later** registration of a trademark (similar/identical) is **rejected**

but

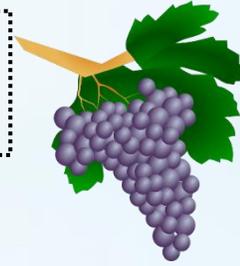


- if the relevant trademark has been used **in good faith before** the protection of the PDO or GI, the use of such trademark can continue





## A special case



**Malvasia** indicates several Italian vineyards in Piedmont, Sicily and other Regions



vineyards without geographic links and with different characteristics. Even the colour, special because of the high alcoholic degree, can differ

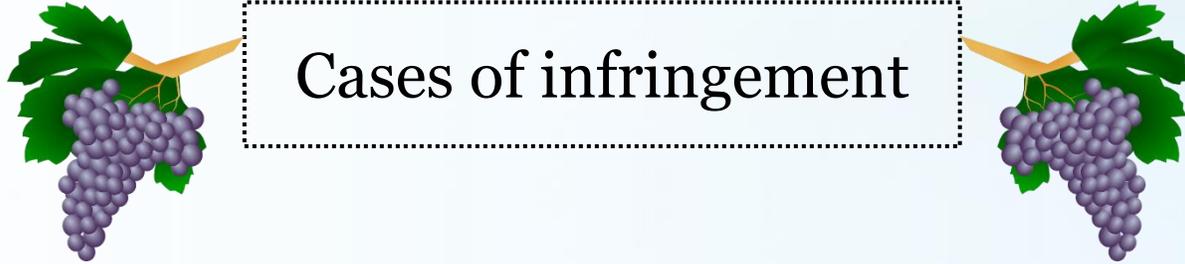


Malvasia delle **Lipari** DOC  
(Sicily)



Malvasia di **Casorzo** DOC  
(Piedmont)

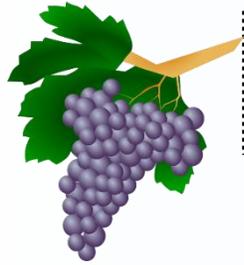




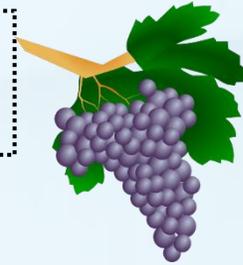
Cases of infringement

- **Pajana – Pajana** (Trib. Turin 2012): the trademark is valid because the characteristics of the product do not depend on its geographic origin; the name of the **place is unknown to consumers** → Infringement
- **Solinerio – Solenero**: Solinerio (registered for red wines) is an **original** and **strong trademark** (without conceptual adherences to the products). The trademark Solenero (registered for white wines) is confusingly similar → Infringement
- **Villa Frattina – Conti della Frattina** (Trib. Trieste 2007) → Infringement





## Criminal relevance of infringement : frauds



### Fraud:

Art. 515 et seq cp, sanctions: **imprisonment from 6 months to 3 years, penalty from € 103 to € 30000**

Art. 515 cp: **fraud in business**, case of *aliud pro alio* (seizure of table/generic wine, with the IGT Tuscany designation)

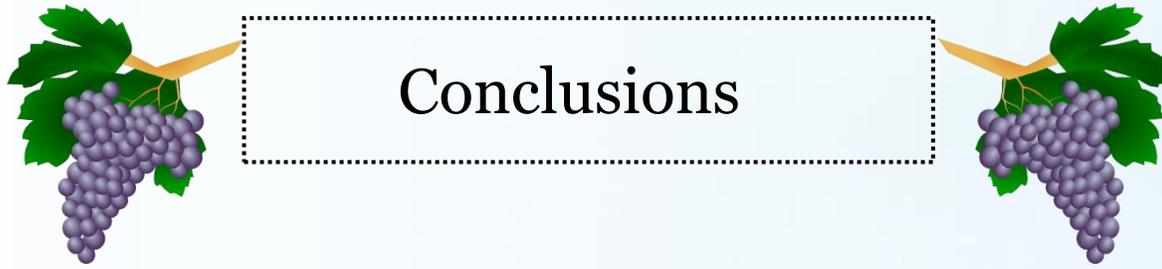
≠ **health fraud**: it masks deficiencies or the state of conservation of the product → risks for health

Ex: use of sugars different from those coming from grape and wine sub products, as abnormal wines, excessively pressed, dregs and additional prohibited for winemaking → episode of «**toxic fraud**»: **methanol added to wine** with low alcoholic degree or watered down

Cass. Pen. 5/11/2008 (Brunello di Montalcino case): not compliance to vineyards

Cass. Pen. 23/10/2013, n. 46183: the possession, in the factory, of **abnormal wine divided for type, place of origin and year of production**, with the addition of **water and beetroot**, constitutes an **attempt to fraud in business**, because the **process alters the natural composition** of the product, despite the lack of harmful components





## Conclusions

Origin: **geographical** and **commercial**

individual **collective trademarks** and  
**geographic collective trademarks**

**Quality warranty** → territory – production method → DOP - IGP

Protection of products and components  
Brands and **quality trademarks**

↓  
DOC  
DOCG

↓  
IGT

Origin compliance: fight against any form of **confusion**,  
**fraud**, **misleading indication**

