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Old Wine in New Laws? The Customization of European Wine Regulation in the German Weingesetz

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Old Wine in New Laws?

The Customization of European Wine Regulation in the German *Weingesetz*

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Introduction

In 2021, Germany passed a reform of its *Weingesetz* (wine law) as well as the accompanying administrative ordinance, the *Weinverordnung*. At the core of this legislative package was a reform of the German scheme for quality wine classification and labelling. As the legislative proposal states: “In the quality wine segment, the German system is – based on the *Romanic* model – to be developed towards a system based in geographical origin.”¹ The reader might wonder, why it is significant for the research on European Union politics, that a wine that was previously labelled as *Riesling Kabinett* might in the future be designated as *Deidesheimer Herrgottsacker*. It is, in fact, not the particular name of the wine, but the underlying regulatory differences and deviations from other European quality schemes, in particular from EU wine regulations, that are worth to be examined. While most of the traditional wine producing countries in the EU follow a quality scheme based on the principle of origin and the notion of *terroir*, with protected geographic terms linking a wines origin to certain qualities and characteristics, Germany deviated from this appellation-model. Under its 1971 *Weingesetz*, it established a quality scheme based on analytical and organoleptic testing, the so-called “tested quality in the glass”, a classification scheme based on wine characteristics, mainly the must weight of the grapes.² The 2008 reform of EU wine regulation, introduced Protected Designations of Origin (PDO) and Protected Geographic Indications (PGI), thereby shifting the European framework of quality wine classification towards the so-called *Romanic* origin-based quality scheme, alienating it from the German system and making a reform of the respective German laws necessary.

Against the backdrop of these regulatory differences, this paper asks how EU wine regulations, in particular quality schemes, are implemented in German law. This question does not aim at a descriptive characterization of German wine laws, but at the conditions and dynamics of the implementation of EU regulations into national law. Therefore, it asks where EU regulations show deference to national law, and whether and how this discretion is used. It further asks for the factors determining this implementation. It thus fills a research gap in two respects: It responds to a tendency to ignore German wine law in the research on European wine regulations, thereby taking most recent reforms into account, which have not been studied

¹ BMEL 2020c.

² WeinG in the form of 16 Juli 1971. See also Brunke et al. 2016, pp. 3f.

systematically yet. On the other hand, German wine law serves as an excellent case to study the implementation of EU policies “beyond compliance”, which is often neglected in the literature.³

After a literature review, clarifying why wine is a topic worth studying from the perspective of EU law and policy, showcasing the most important academic debates on wine policy and wine regulations (in the EU), as well as a theoretical chapter conceptualizing the implementation of EU legislation based on the concept of “customization”⁴, the analysis is structured as follows: Chapter 3 provides an overview of EU wine regulations, thereby the essential provisions and characteristics of the EU scheme for quality wine are elaborated and the scope for national legislation is determined. Chapter 4 introduces the German wine law and defines the *Germanic* system of ‘tested quality in the glass’,⁵ and the German classification and German wine designation law before 2008. Chapter 5 analyses the transposition of the Unions quality scheme of PDOs and PGIs into German wine law, identifying two steps of implementation that differed significantly in their scope and depth: The first reaction of the German legislator to the introduction PDOs and PGIs after 2008, as discussed in Chapter 5.1 can be regarded as low ambitious implementation, using a loophole, namely the protection of traditional terms, to maintain the German system based on analytical and organoleptic characteristics. This continuation simultaneously added requirements to the EU regulations. The 2021 reform, as shown in Chapter 5.2, better adopted the European quality scheme insofar as it strengthened the principle of origin and approximated German wine law to the so-called *Romanic* system.

By applying the concept of “customized implementation”⁶, this paper shows that Germany used of leeway for national deviations from European wine regulations, resulting in a higher density and restrictiveness of German wine law. Combining this legal transposition with data on the practical application of the scheme (Chapter 5.1), as well as the policy process (Chapter 5.2), it shows what factors determine this customization of EU wine regulations.⁷ By applying customization to the implementation of EU wine regulations into German wine law, it can be shown why it is worth studying implementation beyond compliance and in how far studying implementation, or rather customization can contribute to our understanding of EU policy.

³ Thomann 2015, p. 1368.

⁴ Ibid. and Thomann 2019.

⁵ Brunke et al 2016, pp. 3f.

⁶ Thomann 2019.

⁷ Ibid., p. 12.

1. Literature review

The academic engagement with wine is by no means limited to the agricultural sciences. Wine has long attracted attention in the social and economic sciences as well. As Kevin Fandl recollects: “Economists and politicians alike tie free trade concepts to the principles of Adam Smith. Yet often forget that his economic model was rooted in the international trade of wine.”⁸ The emergence of global wine markets and rocketing prices for fine wine since the 1980s led to an increasing engagement with the topic and the emergence of the field of wine economics.⁹ A growing literature is studying national and international wine markets and corresponding wine policies. Besides the study of traditional wine producing states like France or Italy (the so-called old-world), recent scholarship focusses on the emergence of wine producers and markets outside Europe like Argentine, South Africa, or the United States (often referred to as the new-world), and consequently on the dynamics and challenges of what is called “wine globalization”.¹⁰ Thereby, the old-world is generally characterized by a high degree of regulations, while the wine industries of new-world in turn are described as more liberal, providing a comparative advantage over their counterparts in Europe.¹¹

The wine regulations of the EU still receive particular attention in the literature. And this for good reason. As Meloni and Swinnen argue: “The EU is not only the largest global wine producing region and the main importer and exporter of wine but also a highly regulated market.”¹² Additionally, many wine regulations that are nowadays applied around the world originate in Europe.¹³ Conversely, it can be argued that due to its regulatory density, its depth and entanglement with different national regulatory systems, wine regulations are an excellent example to study interventions in food and agriculture markets in general and in the European Union in particular. As Corsinovi and Gaeta point out: “Wine policy is one of the most articulated laws of the Common Agricultural Policy (CAP) and the single Common Market Organization (CMO), and this is due to the complexity and heterogeneity of the decision-making system, policy-makers, institutions and organizations involved in the process.”¹⁴

Already in 1962, the European Communities introduced a CMO for wine and from the early 1970s on developed extensive regulatory activities, with more than two thousand legal acts on

⁸ Fandl 2018, p. 279. See also Storchmann 2012, p. 2.

⁹ Storchmann 2012, pp. 27f. See also Carbone 2021, pp. 190–194.

¹⁰ Anderson and Pinilla 2018a. See also Pomarici 2016; Anderson and Pinilla 2018b; Rickard et al. 2018.

¹¹ Fandl 2018; Meloni et al. 2019, pp. 621f.

¹² Meloni and Swinnen 2013, p. 244. See also Meloni et al. 2019, pp. 620f.

¹³ Fandl 2018, p. 282.

¹⁴ Corsinovi and Gaeta 2019a, pp. 249f. See also Meloni et al. 2019, p. 642.

wine.¹⁵ Corsinovi and Gaeta identify three periods of wine policy orientation: A period of price and income support, beginning in the 1970s, which was based on subsidies and protectionist measures to stabilize income for EU wine producers. In view of overproduction and to reduce expenditure, it was replaced by a quality orientated policy in the 1980s, aligning supply to consumer demand in terms of quantity and quality. Eventually, European wine policy entered into an era of competitiveness at the turn of the 20th century. Considering the globalization of wine markets and the rise of the new-world, EU wine policy focussed on the promotion of high-quality wines that could prevail in international competition.¹⁶ Leaving aside economic support and fiscal measures,¹⁷ which would go beyond the scope of the present work, four groups of regulatory measures in the EU can be broadly identified: planting right schemes; vineyard regulations like yield restrictions or vineyard delimitation; wine making regulations, limiting oenological practices; and wine labelling regulations. Some of these regulations affect the quantity of wine, others its quality, and some affect both.¹⁸

In the EU, quality regulations are conflated in the so-called appellations system. Through the classification of origins, supplemented by product and production requirements, and the use of legally protected geographical terms in labelling, a wine's quality and characteristics are linked to its origin.¹⁹ Historically, the origins of that system lie in the 18th and 19th century, when wine regions and vineyards in Italy, Portugal and France were designated as being of a special quality. These designations, like the famous French appellations of Bordeaux and Burgundy, became internationally renowned brands and associated with certain tastes and qualities. In particular the French wine statute of 1935, establishing the famous *appellation d'origine contrôlée* (AOC), a legal system combining appellations and production requirements, has influenced European and international wine regulations.²⁰ At the heart of all of those schemes lies the notion of *terroir*, referring to the origin of a product, taking natural and cultural factors like geology, climate and cultivation methods into account.²¹ Since 2008, this principle also lies at the heart of the EU's scheme for quality wines, codified as Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI).²²

¹⁵ Meloni and Swinnen 2013, p. 245; Corsinovi and Gaeta 2019b, p. 266; Moerland and Bhadouria 2021, p. 346.

¹⁶ Corsinovi and Gaeta 2019, pp. 269–274.

¹⁷ Gaeta and Corsinovi 2014, pp. 11–33; Meloni et al. 2019, p. 623; Pomarici and Sardone 2020, pp. 9–18.

¹⁸ Meloni et al. 2019, pp. 622–624; Pomarici and Sardone 2020, p. 17.

¹⁹ Meloni et al. pp. 622f.

²⁰ Munsie 2002, pp. 8–15; Teil 2017, pp. 150–161; Fandl 2018, pp. 303–306; Meloni and Swinnen 2018; Corsinovi and Gaeta 2019b, p. 278; Meloni et al. 2019, pp. 262f.

²¹ Deconinck and Swinnen 2014, pp. 2–6; Teil 2017; Corsinovi and Gaeta 2019b, p. 279

²² Chaisse et al. 2021, p. 5.

Quality classification schemes for wine serve two major purposes. On the one hand, as studies on the political economy of appellations have shown, they can increase sales and positively contribute to price formation in the market, thereby increasing revenue for producers.²³ On the other hand, they convey information to consumers, solving a so-called lemons-problem by reducing information asymmetries and consequently transaction costs for consumers. The informative effect of appellations is, however, disputed in the literature.²⁴ Much of the work on (European) wine regulations and quality schemes was done from the perspective of political economy, or rather wine economics. As Chaisse et al. critically point out: “While economists and political scientists have been conducting research on the diverse aspects of wine, there is a dearth in wine law scholarship.”²⁵ While there is a certain truth in that statement, there are some noteworthy exemptions. For example, Brüggemann’s comparative work on European wine designation law, Vialard’s work on quality wine regulations in French and European law,²⁶ Blakeney’s work on the protection of geographical indications in the EU, and regarding this work are several recent commentaries on German wine law.²⁷

While the large wine producing states in Europe like France, Italy or Spain, and their origin-orientated quality scheme, which therefore can be referred to as *Romanic*-system,²⁸ receive a lot of attention in the literature, Germany is often ignored or subsumed as one more European wine producing state. However, as the few but noteworthy studies on Germany show, the country has a long history of viticulture and, above all, German wine law shows noteworthy deviations from European regulations as well as the regulatory practices of its *Romanic* neighbours – especially regarding quality wines. The German system of “tested quality in the glass” bases quality on analytical and organoleptic testing and provides for a classification scheme orientated on the must weight of the grapes.²⁹ The tensions between this scheme and the European framework of PDOs and PGIs make the implementation of EU wine regulations into German law after 2008 a particularly interesting case to study the dynamics of EU wine policy. Not at least since it is challenging the assessment of Pomarici and Sardone that “wine policy is the only true vertical policy under the CAP.”³⁰

²³ Rössel and Beckert 2012; Deconinck and Swinnen 2014; Meloni et al. 2019, p. 639f.

²⁴ Conforti and Sardone 2003, p. 93; Parga-Dans and Gonzáles 2017, p. 89; Alston and Gaeta 2021, p. 220.

²⁵ Chaisse et al. 2021, p. 1.

²⁶ Brüggemann 2006; Vialard 1999; Blakeney 2019.

²⁷ Rupp 2021; Schweickert 2022.

²⁸ Brüggemann 2006, pp. 10f.

²⁹ Brunke et al. 2016, pp. 3f. See also Munsie 2002, pp. 36–39; Brüggemann 2006, pp. 20–24; Rössel and Beckert 2012; Storchmann 2018.

³⁰ Pomarici and Sardone 2020, p. 36.

2. Conceptualizing implementation

While many studies on EU policy focus on the emergence of new policies, the adoption of EU legal acts is by no means the end of the process. After EU legislation is adopted, it has to be put into practice. This implementation, as Zhelyazkova and Thomann put it, is “a key stage of the policy process”.³¹ Under Art. 4 TEU, this task is conferred to the member states. There it reads: “The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.”

Three main stages of policy implementation are identified in the literature: Firstly, the transposition of EU legal acts into the national legal system of the member states. Secondly, the administrative implementation, the adoption and enforcement through subnational administrative bodies. And thirdly, the practical application, when individuals or societal actors change their behaviour, and the policy has an actual effect.³² This work primarily concentrates on the first stage, the transposition of EU legislation into national law. While many works on transposition traditionally focussed on legal compliance, insofar as they ask if EU law is correctly implemented into national law (so-called top-down perspectives), other works develop the notion of transposition further, taking so-called bottom-up perspectives into account. As Thomann points out, the research on implementation in the EU tends to “neglect situations when member states go beyond the minimum requirements”.³³

Wim Voermans describe two common forms of transposition beyond minimum requirements: Double-banking, describing situations where national and European regimes are not fully aligned, leading to a situation of two legal systems covering the same matter.³⁴ And gold-plating, referring to situations where the implementation goes beyond the necessary requirements and adds on the respective EU legislation.³⁵ These two terms cover inter alia situations, where a national law extends the scope of an EU act, substitute the EU’s legal terms with wider domestic legal terms, or provides additional sanctions or enforcement mechanisms.³⁶ While in some fields, such as environmental policy, this might be regarded as

³¹ Zhelyazkova and Thomann 2021, pp. 221f.

³² Ibid. p. 222.

³³ Thomann 2015, p. 1368.

³⁴ Voermans 2009, p. 80.

³⁵ Ibid. p. 80.

³⁶ Ibid. p. 83.

beneficial, at least from certain perspectives, it is generally criticized, since it increases administrative burdens, is likely to disturb markets and create obstacles to trade.³⁷

Going beyond gold-plating and double-banking by criticising these terms as one-dimensional, blurring the difference between additional and stricter requirements, Thomann develops a concept of “customization” to analyse and describe how EU legislation is changed in the process of transposition.³⁸ According to Thomann, customization can be understood as the “extent to which some member states add or reduce the amount and stringency of the respective rules when implementing them.”³⁹ Therefore she provides a two-dimensional model of measuring the degree to which a domestic regulation varies from an EU legislation regarding its *density* and *intensity*.⁴⁰ Although this concept shall not be implied here in a quantitative manner, it can serve to analyse and describe to what extent German wine law deviates from the respective EU regulations.⁴¹ Thomann further identifies five policy-specific and domestic factors determining if and to what extent customization takes place: regulatory leeway of the relevant EU regulation, issue salience, domestic resistance, the institutional context of the implementing member state, and domestic sectoral interventionist styles.⁴²

These works conceptualizing implementation generally refer to EU directives, which are not directly applicable and require implementation in the member states. Thus, it could be argued that since the EU wine regulations studied here are codified as regulations, the analysis of their implementation as outlined above would be superfluous and uninformed of the nature of EU regulations. As article 288 TFEU states: “A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.” On the one hand, as shown in detail in Chapter 3.4, the respective regulations show deference to national law and transfer implementation tasks to the member states, thereby providing for situations where customization can take place. Furthermore, the concept of customization is not about compliance or non-compliance with EU law, but, as Thomann says, “presupposes full adoption”.⁴³ I would argue, that it is precisely this presupposed compliance that allows for the application of customization to EU wine regulations and, vice versa, makes the present study an excellent case to test whether and how this concept can be applied to regulations in general.

³⁷ Voermans 2009, p. 81; Thoman 2019, p. 26.

³⁸ Thomann 2015, p. 1370; Thomann 2019, p. 25.

³⁹ Thomann 2019, p. 10.

⁴⁰ Ibid. p. 35.

⁴¹ Ibid. p. 1370.

⁴² Ibid. pp. 1372–1375.

⁴³ Ibid. p. 1371.

3. European wine regulations

The foundations for a European wine policy were laid in 1962, when the first Common Market Organisation (CMO) for wine was introduced. The first detailed regulation on the production of quality wine was introduced in 1970, with Regulation (EEC) 817/70, establishing a system of quality wines produced in specified regions (so called quality wines p. s. r.).⁴⁴ Although repeatedly reformed, the CMO for wine and in particular the classification scheme for quality wines established in 1970 has endured for more than thirty years. This system recently underwent a significant reform: Regulation (EC) 479/2008, the last independent CMO for wine, introduced a new classification system based on PDOs and PGIs. It was, without substantial changes, incorporated into the single CMO for agricultural products under Regulation (EC) 1234/2007 and eventually replaced by Regulation (EU) 1308/2013.⁴⁵ For the following, I will base my analysis on Regulation (EU) 1308/2013, and only refer to earlier versions or provide equivalences where earlier stages of the implementation process into German law make it explicitly necessary.

3.1 Objectives of EU wine policy

The objectives of EU wine policy derive on the one hand from primary law as codified in the treaties, on the other hand from secondary law, in particular the so-called *whereas*-sections of the respective regulations.⁴⁶ Although there is no explicit mention of wine policy in the treaties, since wine is an agricultural product governed under the CAP, the fundamental objectives of the CAP apply. Article 39(1) TFEU defines the increase of agricultural production, fair living standards for agricultural communities, stable markets, supply with agricultural goods, and reasonable prices for consumers as general objectives of the CAP. As Brunke et al. argue with regard to the CAP in general and EU wine policy in particular, income support for producers of agricultural goods has been the dominating objective.⁴⁷ In addition, Article 40 TFEU provides for the establishment of a CMO for agricultural products, serving as the legal basis for Regulation (EU) 1308/2013.

The *whereas*-section of Regulation (EU) 1308/2013 takes up the general objectives of the CAP and specifies them further. Stabilising markets, ensuring a fair standard of living for agricultural communities, as well as the harmonization and simplification of CAP regulations are identified

⁴⁴ Munsie 2002, pp. 21f.; Corsinovi and Gaeata 2019b, p. 266.

⁴⁵ Gaeta and Corsinovi 2014, pp. 47–65; Brunke et al. 2016, p. 47; BLE 2018, pp. 5f., 22; Blakeney 2019, pp. 181f.; Pomarici and Sardone 2020, p. 3.

⁴⁶ Brunke et al. 2016, p. 43.

⁴⁷ Ibid. p. 47.

as general objectives applying to all sectors and products governed under the single CMO.⁴⁸ With regard to wine, Recital 55 states the “key objective of increasing of the competitiveness of the Union wine sector”.⁴⁹ And regarding quality schemes, it further says that “additional quality terms should be established in order to ensure that terms describing specific product characteristics, or farming, or processing attributes are not misused in the market place and can be relied on by consumers to identify different qualities of the product.”⁵⁰ While other interventions in the wine sector are justified on grounds of market stability and competitiveness only, the Unions quality scheme for wine is based on competitiveness, thus producer interests, as well as consumer protection. This double objective runs through the aims of wine policy, with Recital 106 stating the “protection of the legitimate rights of producers and operators” as the reason for strengthening quality schemes, while Recitals 30, 92 and 125 emphasizes the interests of consumers, and consumer protection through adequate labelling. It can be concluded that while the wine policies overall objective is strengthening competitiveness of European wine industries – confirming the observation of Corsinovi and Gaeta that after a period of income support and quality orientation, the EU wine policy is now in a phase of competitiveness⁵¹ – the objectives of the EU’s quality policy go beyond producer interests and take additional aims, in particular consumer protection into account. These multidimensional objectives are reflected in the principles governing the quality scheme, as set out in Article 92(2) of Regulation (EU) 1308/2013: “The rules [...] shall be based on: (a) protecting the legitimate interests of consumers and producers; (b) ensuring the smooth operation of the internal market in the products concerned; and (c) promoting the production of quality products [...]”.

3.2 Structure and overview of EU wine regulations

Regulation (EU) 1308/2013 establishes a single CMO for agricultural products which have previously been governed under 21 individual regulations.⁵² Thereby, it aims to streamline and simplify provisions covering more than one sector.⁵³ Therefore, provisions on wine, which were previously kept together in a separate regulation and were clearly structured, are scattered over the 232 articles of the regulation. Nevertheless, with comparison to other products, provisions on wine stand out in terms of quantity and depth. It contains provisions on support programmes

⁴⁸ Rec. 1 and 10 Regulation (EU) 1308/2008.

⁴⁹ See also Rec. 43 and 44 Regulation (EU) 1308/2013.

⁵⁰ Rec. 85 Regulation (EU) 1308/2008. For wine see also Rec. 92.

⁵¹ Corsinovi and Gaeta 2019, p. 266.

⁵² Ibid. p. 266.

⁵³ Rec. 1 Regulation (EU) 1308/2013.

for the wine industry,⁵⁴ the authorization scheme for vine plantings,⁵⁵ rules on oenological practices and allowed grape varieties,⁵⁶ rules on designation of origin, geographical indications and traditional terms in the wine sector,⁵⁷ as well as labelling and presentation requirements.⁵⁸ Furthermore, individual articles regulate specific features of the wine industry, like the establishment of vineyard registers, the designation of competent national authorities for the supervision of wine production,⁵⁹ rules on wine imports,⁶⁰ or deviations from competition rules in the case of economic crisis on the wine market.⁶¹

Specific definitions and requirements for wine production can be found in the Annexes of Regulation (EU) 1308/2013. Annex VII Part II lays down definitions and minimum requirements applicable to all categories of wines produced in the European Union. Annex VIII specifies the allowed oenological practices referred to in Article 80. And Appendix 1 distinguishes wine growing zones along climatic conditions, situating most of the German wine growing regions in zone A, the coolest zone, and only the southern region of Baden in zone B.

The relevant sections concerning the quality scheme and labelling practices under Regulation (EU) 1308/2013 are structured as follows: Article 92 defines the scope for and principles of the protection of PDOs, PGIs and traditional terms in the wine sector. Article 93 provides definitions for PDOs and PGIs. Articles 94–102 and 105–106 lay down the rules for the application procedure, amendments, and cancellations of PDOs and PGIs. Article 103 provides for the protection of PDOs and PGI and article 104 establishes an electronic register, the eAmbrosia database, where all PDOs, PGIs and traditional terms are registered. Additionally, Article 107 automatically provides wines which origins have been protected under EU law before with a PDO or PGI. Articles 108–111 eventually provide for the implementation of the scheme and delegate powers to the commission. Articles 112–116 lays down rules for the protection of traditional terms used in the member states, which are of particular relevance for the case of Germany. And Articles 118–123 provide rules on wine labelling, listing so-called compulsory and optional particulars.

⁵⁴ Arts. 39–54 Regulation (EU) 1308/2013.

⁵⁵ Arts. 61–78 Regulation (EU) 1308/2013.

⁵⁶ Arts. 80–83 Regulation (EU) 1308/2013.

⁵⁷ Arts. 92–116 Regulation (EU) 1308/2013.

⁵⁸ Arts. 117–123 Regulation 1308/2013.

⁵⁹ Arts. 145–147a Regulation 1308/2013.

⁶⁰ Arts. 90 and 191 Regulation 1308/2013.

⁶¹ Art. 216 Regulation 1308/2013.

Since its adoption, Regulation (EU) 1308/2013, has repeatedly been changed and amended. While a systematic examination of all these amending acts would go beyond the scope of this thesis, only the most important ones should be mentioned here. Commission delegated Regulation (EU) 2019/33 provides further details on the application, amendment, and cancellation of PDOs, PGIs, and traditional terms, specifies product requirements and terms for labelling. Commission implementing Regulation (EU) 2019/34, provides inter alia rules for the analytical and organoleptic testing of wines. And Regulation (EU) 2019/934 is specifying allowed oenological practices and product requirements. For the sake of completeness, it has to be stated here that Regulation (EU) 2021/2117 of December 2021 led to a few, but not unsubstantial changes in Unions quality scheme. Nevertheless, since this Regulation was passed after the two implementation steps into German law analysed here, it will not be discussed further.

3.3 Quality scheme for wines in the EU

The 2008 reform of European wine regulations replaced the Union's old system of quality wines p. s. r., which was predominantly based on wine factors such as alcoholic strength and cultivation methods like maximum yield, with a new framework consisting of Protected Designations of Origin (PDO), Protected Geographical Indications (PGI), and protected traditional terms, putting a stronger emphasis on the origin of wines, similar to the so-called *Romanic* system of appellations. Also, while the old system allowed the member states to set up their own system of classification and designation, the new quality scheme Europeanizes the administrative procedure and establishes legal protection under EU law.⁶²

3.3.1 Protected Geographic Indications: PDO and PGI

Article 93(1)a of Regulation 1308/2013 establishes a two- or rather three-tier classification system for (quality) wines produced in the EU, in descending order, consisting of wines with protected designations of origin (PDO), protected geographical indications (PGI), and other wines. At the top of that system are PDOs, defined as:

“[...] the name of a region, a specific place or, in exceptional duly justifiable cases, a country used to describe a product referred to in Article 92(1) fulfilling the following requirements:

- (i) the quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;

⁶² Munsie 2002, p. 22; Brunke et al 2016, pp. 47f.; Teil 2017, p. 165; Corsinovi and Gaeta 2019b, p. 266.

- (ii) the grapes from which the product is produced come exclusively from that geographical area;
- (iii) the production takes place in that geographical area; and
- (iv) the product is obtained from vine varieties belonging to *Vitis vinifera*;⁶³

PGIs, which constitute the second, lower stage of quality wines, are under Article 93(1)b defined as:

“[...] the name of a region, a specific place or, in exceptional duly justifiable cases, a country used to describe a product referred to in Article 92(1) fulfilling the following requirements:

- (i) it possesses a specific quality, reputation or other characteristics attributable to that geographical origin;
- (ii) at least 85% of the grapes used for its production come exclusively from that geographic area;
- (iii) The production takes place in that geographical area, and
- (iv) it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*.⁶⁴”

These definitions under Article 93(1) provide both the key requirements as well as the differentiation between PDOs and PGIs. PDOs emphasize the essential or exclusive relation between a wine’s origin and its quality as well as characteristics, following the principle of *terroir*. The definition for PGIs is much broader, requiring only ‘a specific quality, reputation or characteristic’ to be related to the origin. The stronger emphasis of PDO wines on the origin is further strengthened by the requirement that 100 % of the grapes must be produced in the demarcated area, while PGIs require only 85 % of the grapes to be produced in that area. Both categories require the production process to take place in the same area, although Article 5 of Regulation (EU) 1308/2013 allows for certain derogations, inter alia in the case of immediate proximity or for sparkling and fortified wines. Additional requirements derive from the product specifications required in the application procedure under Article 94(2). To obtain a PDO or PGI, so-called product specifications containing a description of the wine, a list of specific or restricted oenological practices, an indication of the maximum yield per hectare, and allowed grape varieties need to be submitted to the commission. Applicants furtherly need to describe the details of the link between the PDO or PGI and product characteristics.⁶³ These product specifications are part of the PDO or PGI, binding for producers who wish to obtain protection, and are published in the Official Journal and the eAmbrosia database.⁶⁴ They legally write down

⁶³ Art. 94 (2)g Regulation (EU) 1308/2013.

⁶⁴ Art. 104 Regulation (EU) 1308/2013.

the link between a wine's origin and its quality and characteristics according to the notion of *terroir*.

PDOs and PGIs are protected and promoted in four ways: First, under Article 103(2) Regulation (EU) 1308/2013, they are broadly protected against any form of misuse. This covers any direct and indirect commercial use of the protected terms for all comparable products, exploitation of the reputation of a PDO or PGI, translations or indications of similarity through terms like “style” or “like” throughout the entire Union. Secondly, the administrative and legal enforcement of this protection is transferred to the member states under Art. 16 of Regulation (EU) 2019/34, requiring them to “take any necessary measures to address non-compliance”, designate competent authorities for protection, and to conduct annual verifications of compliance with the product specifications.⁶⁵ Thirdly, PDOs and PGIs are additionally protected under the TRIPS agreement, in a similar, but slightly less strict way than under EU-law.⁶⁶ Fourthly, the protection of geographic terms against misuse is one side of the coin. The labelling and thereby promotion of PDOs and PGIs is the other. Thereby, as suggested in the literature, PDOs and PGIs are strengthened as “collective labels” and, ideally, convey information about quality and product specifications to consumers.⁶⁷ Under Article 119(1)b of Regulation 1308/2013, it is compulsory for wines with a PDO or PGI to state *inter alia* the term “protected designation of origin” or “protected geographical indication” as well as the protected geographical term on the label. However, and this is an important exemption with regard to the implementation of this scheme into German law, Article 119(3) allows to replace the term PDO or PGI with a term traditionally used in a member state to indicate that a wine has a such protection. Additionally, as a so-called optional particular, producers may use the official Union symbol, which is yellow and red for PDOs, and yellow and blue for PGIs on wine labels.⁶⁸ Of the other optional particulars in labelling, Article 120(1)g is of particular interest, since it allows to indicate “the name of another geographical unit that is smaller or larger than the area underlying the [PDO or PGI].”

While PDOs and PGIs ideally constitute the highest level of quality, other wines produced in the EU are implicitly classified as wines without a PDO or PGI and must, under Article 119(1)d Regulation 1308/2013 in combination with Article 45(1) Regulation 2019/33, be labelled as “wine of (...)”, “produced in (...)”, or “product of (...)”, mentioning the member state where

⁶⁵ Art. 90 Regulation (EU) 1306/2013 and Arts. 90 and 20 Regulation (EU) 2019/34.

⁶⁶ Munsie 2002, p. 51; Profeta et al. 2010, pp. 178f.; Deconinck and Swinnen 2014, pp. 2f.; Corsinovi and Gaeta 2019b, pp. 297–282.

⁶⁷ Deconinck and Swinnen 2014, pp. 2f.

⁶⁸ Art. 120(1)e Regulation (EU) 1308/2013. See also Schweickert 2022, p. 3.

the grapes were harvested and processed, or be labelled as “European Union wine” or “blend of wines from different countries of the European Union” if it consists of wines from more than one member state.⁶⁹ These wines are not further differentiated in terms of quality and only have to comply with the minimum requirements for the respective category of grapevine products referred to in Annex II Part II of Regulation 1308/2013.⁷⁰ In conclusion, it can be said that this classification into wines from the EU respectively a member state, wines with a PGI, and wines with a PDO, in combination with stricter requirements and more detailed product specifications when going up that scheme, confirms the assessment of Chaisse et al. that “[t]he *raison d’être* of the enhanced protection of PDOs and PGIs is the *terroir*”.⁷¹

3.3.2 Traditional terms

Additionally, or rather complementary to the protection of designated origins and geographical indications discussed above, Regulation (EU) 1308/2013 provides for the protection of traditional terms. There are two types of traditional terms eligible for protection, which are defined under Article 112 as follows:⁷²

“A ‘traditional term’ means a term traditionally used in Member states [...] to designate:

- (a) that the product has a protected designation of origin or a protected geographical indication under Union or national law; or
- (b) 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.”

The first category of traditional terms is reserved for terms in the language of the member state, that are not identical with PDOs or PGIs, but refer to national schemes that indicate that a wine bears a PDO or PGI. These terms may be used in labelling instead of the term PDO or PGI. Well known example for such schemes indicating a PDO would be the French *appellation d’origine contrôlée* (AOC) or the Italian *denominazione di origine controllata* (DOC). Examples for terms indicating a PGI would be the French *Vin de pays* or the Spanish *Vin de la Tierra*.⁷³ This category is of special importance for the case of Germany, as it will be discussed in detail below, allowing the further use of the terms *Landwein*, *Qualitätswein*, and *Prädikatswein*. Under the second category, terms are protected that further specify wines with

⁶⁹ Art. 34(1)b Regulation (EU) 2019/33.

⁷⁰ See also BLE 2018, pp. 22f.; Alston and Gaeta 2021, p. 224; Schweickert 2022, pp. 2f.

⁷¹ Chaisse et al. 2021, p. 5.

⁷² Corsinovi and Gaeta 2019b, pp. 283–287; Moerland and Bhaouria 2021, pp. 354–340.

⁷³ Corsinovi and Gaeta 2019b, p. 286; Moerland and Bhaouria 2021, p. 349.

a PDO or PGI insofar, as they indicate a certain characteristic, production method, place or history of the product. While most of these terms are usually not very well known,⁷⁴ prominent examples would be French terms like *Chateau*, referring to a place, *Grand Cru*, referring to a quality, the Italian *Amarone*, referring to a historical wine typology, or the Portuguese *Ruby*, referring to a colour.⁷⁵

The protection of traditional terms is essentially like the protection of PDOs and PGIs, with two significant deviations. First, while Article 103(2)a provides for PDOs and PGIs to be protected against any direct or indirect use of the protected geographic terms, traditional terms are explicitly protected “only in the language and for the categories of grape-vine products claimed in the application”⁷⁶. Secondly, traditional terms are not regarded as intellectual property and therefore not protected under the TRIPS. Therefore, they are only protected within the European Union, with a few examples based on bilateral agreements.⁷⁷

3.4 Implementation of EU wine regulations and member state discretion

As mentioned above, wine is regarded as one of the most regulated products, and wine policy as “the only true vertical policy within the CAP.”⁷⁸ PDOs, PDIs, and traditional terms establish a quality scheme on the European level, that is directly applicable in the member states, with product specifications, production and labelling requirements directly and significantly affecting wine producers. To determine whether and where these regulations nevertheless need implementation and thus provide the scope for customization, it has to be established where EU wine regulations show deference to national law. In Thomann’s concept of customization, this is referred to as the responsiveness EU regulatory mode.⁷⁹

Subsidiarity – a principle of EU policy that was emphasized in recent CAP reforms –⁸⁰ can be found throughout wine regulations, not only, but in particular regarding the Unions quality scheme. Recital 93 of Regulation (EU) 1308/2013 states: “In order to preserve the particular quality characteristics of wines with a protected designation of origin or a protected geographical indication, Member States should be allowed to apply more stringent rules.”⁸¹ The notion of subsidiarity regarding quality schemes is further elaborated in Recital 3 of Regulation

⁷⁴ Moerland and Bhaouria 2021, p. 347.

⁷⁵ Corsinovi and Gaeta 2019b, pp. 284f.

⁷⁶ Art. 113(2) Regulation (EU) 1308/2013. See also Moerland and Bhadouria 2021, p. 360.

⁷⁷ Moerland and Bhadouria 2021, pp. 362–367.

⁷⁸ Pomarici and Sardone 2020, p. 36. See also Chaisse et al. 2021, p. 1.

⁷⁹ Thomann 2015, pp. 1372.

⁸⁰ Art. 5(3) TEU. See also Pomarici and Sardone 2020, p. 2.

⁸¹ See also Art. 92(2)c Regulation (EU) 1308/2013.

(EU) 2019/33: “Designations of origin and geographical indications are intrinsically linked to the territory of member States. National and local authorities have the best expertise and knowledge of the relevant facts. This should be reflected in the relevant procedural rules, having regard to the principle of subsidiarity [...].”

Five main provisions that specify this subsidiarity and allow for the application of more – or less – stringent rules regarding the EU’s quality scheme for wine have been identified. First, as discussed above, member states are allowed to replace PDOs and PGIs with terms for traditional quality schemes and to use traditional terms that indicate further specifications of a wine.⁸² Second, Article 94(2)h explicitly allows for requirements deriving from national legislation to be part of the product requirements of a PDO or PGI, as long as they are non-discriminatory and compatible with Union law. Third, although the decision on the protection of a designation of origin or geographical indication is ultimately taken at the Union level by the Commission, the principle of subsidiarity is applied insofar, as a preliminary application procedure on the national level is required. Applications for a PDO, PGI, and the protection of a traditional term are filed with and examined by the member states before passed to the commission.⁸³ Fourth, as indicated above, the member states are tasked with the protection and enforcement of the quality scheme. In particular the procedures for annual verification of PDOs and PGIs are only broadly defined under Articles 19 and 20 of Regulation (EU)2019/34 and leave it to the member states how comprehensive these verifications are conducted. Fifth, the provisions on wine labelling allow for deviations from the so-called compulsory particulars, as in the case of traditional terms. The provisions on optional particulars, which are not mandatory, provide scope for more detailed labelling requirements under national law, for example regarding the indication of smaller or larger geographical units for wines with a PDO and PGI.⁸⁴

Although the EU quality scheme establishes comprehensive, detailed and directly applicable rules, it has subsidiary elements and, as the list above demonstrates, shows deference to national law at various points and provides leeway for national implementation. According to Thomann, the existence of such “flexible instruments” and “a responsive EU regulatory mode” – which I would argue is given here – “is a necessary condition for extensive customization”.⁸⁵

⁸² Art. 112 and Art. 119(3)a Regulation (EU) 1308/2013.

⁸³ On the application procedure and decision on protection, see Arts. 95–99, in particular Art. 96 Regulation (EU) 1308/2013

⁸⁴ Art. 119(3)a and 120(1)g Regulation (EU) 1308/2013.

⁸⁵ Thomann 2015, p. 1372.

4. German wine law

Today's German wine law, in particular its classification scheme for quality wines originates in the wine law of 1971. This law can be seen as a reaction to the new European regulatory scheme, introduced by the above-mentioned Regulation (EEC) 817/70. It created a framework for quality wines, that on the one hand was compatible with the requirements of the new EU regulations and on the other hand carried over traditional elements of German wine legislation.⁸⁶ Although Germany's system of 'tested quality in the glass' significantly deviated from the other EEC countries, the essential components and the terminology of this scheme have withstood the numerous reforms of European as well as German law and are still to be found today.⁸⁷ This deviation from other European wine producing states, which follow the *Romanic* system of appellations, and the resilience of the German scheme, according to Thomann, must be understood as a domestic, sectoral interventionist style, determining the customization of EU regulations. As she puts it: "Countries with a coercive interventionist style typically customize flexible instruments extensively."⁸⁸

4.1 Scope and objectives of German wine law

It is a commonplace that EU law has supremacy over national law and since EU wine regulations are drafted as regulations, they have direct effect in the member states. Consequently, provisions under German wine law are only permissible, where EU law leaves regulatory areas unregulated or explicitly delegates regulatory powers to the member states.⁸⁹ This is reflected in § 1 on the purpose of the *Weingesetz* (WeinG), providing that this law covers the cultivation, processing, marketing and promotion of wine, insofar as this is not regulated under EU wine regulations, and the legal acts of the Union, in particular the CMO, allow for national quality measures. While the scope of German legislation is limited by EU regulations, it is similarly broad as European regulations regarding the objects of regulation. Additionally, it provides rules on fines and criminal proceedings.⁹⁰ It covers all categories of grapevine products regulated under EU wine regulations. Although German wine law provides specific quality rules for sparkling wines (*Sekt*) and liqueur wines,⁹¹ the following analysis shall concentrate on the implementation of quality schemes for non-sparkling, so-called still wines.⁹²

⁸⁶ Munsie 2002, pp. 36f.; Brunke et al. 2016, pp. 52f.; BLE 2018, p. 4

⁸⁷ Munsie 2002, p. 39; Brunke 2018, p. 78 ; Schweickert 2022, p. 1.

⁸⁸ Thomann 2015, p. 1375.

⁸⁹ Brunke et al. 2016, p. 43; Rupp 2021, No. 263.

⁹⁰ Sections 6 and 9 WeinG.

⁹¹ §§ 2(29–30), 29 WeinG. See also §34a WeinV.

⁹² Brüggemann 2006, p. 9.

Besides the reference to EU regulations and the mentioning of the marketing and promotion of wine in § 1 WeinG, German wine law itself states no further objectives. Objectives of German wine law and policy additional to the objectives deriving from EU regulations nevertheless can be found in the legislative proposals for the wine law, the amending laws and the accompanying documents published by Federal Ministry of Food and Agriculture. The original proposal for the current *Weingesetz* from 1993 states the adjustment to European regulations and the structure of the CMO as primary objective.⁹³ The adjustment to European regulations as an objective can be found in all consequent amending laws as well. In particular the proposal for the 5th amending law of 2009, implementing Regulation (EU) 479/2008, states the harmonization of the German classification scheme for quality wines with the new European system of PDOs and PGIs as its aim.⁹⁴ Besides the implementation of European regulations, the proposal for the most recent tenth amending law refers to competitiveness and the market situation of German wines. In its announcement of the reform, the Federal Ministry states:

“In essence, it [the reform] aims to position German viticulture well in European and international competition. Therefore, wine law shall be adapted to recent market and sectoral developments. Also, as a consequence of the reform, consumers should be able to orientate themselves better at the wine shelf in retail.”⁹⁵

This double objective of strengthening competitiveness of the German wine industry whilst simplifying information for consumers in wine labelling, is congruent with the twofold aim of the Unions quality scheme as identified above.

4.2 Structure and overview of German wine law

Since its last comprehensive reform in 1994/95, German wine law on the federal level consists of two statutes: the *Weingesetz* (WeinG), which contains the basic wine-growing regulations, and the *Weinverordnung* (WeinV), in which more specific detailed regulations are outsourced. This legal structure of two statutes jointly governing the wine market is not based on a substantive logic regarding the scope or the subject matter, but on legislative reasons. While the *Weingesetz* as a formal law, requiring the consent of both chambers of the German parliament (*Bundestag* and *Bundesrat*), the *Weinverordnung* is an ordinance issued by the Federal Ministry of Food and Agriculture, based on an authorization in the wine law and only in some cases requires the consent of the *Bundesrat*, representing the sixteen states.⁹⁶ This

⁹³ Bundesrat 1993, p. 1.

⁹⁴ Deutscher Bundestag 2009, p. 1.

⁹⁵ BMEL 2020a. Translation by the author.

⁹⁶ Brüggemeann 2006, p. 22; Brunke et al. 2018, p. 50; BLE 2018, p. 7; Rupp 2021, No. 264. For the authorization to issue ordinances see § 19(3) and § 53 WeinG.

should allow for a faster adaption to reforms of the EU wine market organization and market changes.⁹⁷ In addition, further subsidiary regulations are made by the federal states, but shall not be discussed here.⁹⁸

The *Weingesetz* comprises eleven sections, which, as the EU regulations discussed above, regulate all aspects of the wine sector: general provisions (Section 1) planting rights and cultivation (Section 2), processing (Section 3), quality rules (Section 4), geographic indications and labelling (Section 5), monitoring of the wine industry (Section 6) and wine trade (Section 7). Additional to the objects regulated under EU law, it provides rules on programmes promoting German wine (Section 8), fines and criminal proceedings (Section 9), cross-references to general consumer protection law and crisis arrangements (Section 10) and final provisions (Section 11). The *Weinverordnung* in turn comprises of seven sections, mirroring section one to five, nine and eleven of the *Weingesetz*. Additionally, it contains eleven, mostly technical appendices.

Relevant provisions of the *Weingesetz* with regard to quality schemes are § 1a on the terminological application of PDOs and PGIs, § 2 containing definitions, Section 4 (§§ 16a–22a) on quality wines and Section 5 specifying rules on the application of geographic indications and labelling (§§ 22b–26a). The *Weinverordnung* in turn provides further specifications, again under Section 4 on quality wines (§§ 19–28a) and section 5 on designation and presentation of wines (§§ 29–51).

4.3 “Tested quality in the glass” – the German classification scheme for quality wines

While the *Romanic* system of appellations implies a direct link between a wines origin, the so-called *terroir*, and its quality, the traditional German system separates origin and quality and classifies wines along so-called wine factors based on a chemical and organoleptic analysis of the final product. Therefore, it is referred to as “tested quality in the glass”.⁹⁹ Instead of providing rules on the classification and designation of appellations, German wine law primarily provided for testing procedures and constituted quality levels based on wine characteristics.¹⁰⁰ Drawing on German wine growing traditions, this was introduced in the 1971

⁹⁷ BLE 2018, p. 7. In fact, the *Weingesetz* has been amended ten times since its introduction in 1994, the *Weinverordnung* 24 times since 1995.

⁹⁸ Brüggemeann 2006, pp. 22f.; Brunke et al. 2016, pp. 43, 50.

⁹⁹ Brüggemeann 2006, pp. 23f.; Rössel and Beckert 2012, p. 12.; Brunke et al. 2016, pp. 3f.

¹⁰⁰ Brunke et al. 2016, pp. 43–54; Schweickert 2021, p. 1.

Weingesetz, re-established in 1994, and is in its basic features present in German wine law until today.¹⁰¹ The main elements of this system are:

- the assignment of an official test number – *amtliche Prüfnummer* (A. P. Nr.) – based on a laboratory test and an organoleptic test by a panel of experts, ensuring that the wine is free from faults and has the characteristics required for the respective quality grade, such as minimum alcoholic strengths and must weights¹⁰²
- the definition of quality grades consisting of *Qualitätswein* (quality wine) and the *Prädikatswein*-group, with seven predicates based in ascending order on a minimum predefined must weight (*Kabinett*, *Spätlese*, *Auslese*, *Beerenauslese*, *Trockenbeerenauslese* and *Eiswein*)¹⁰³
- rules on chaptalization, the addition of sugar in the winemaking process, whereas chaptalization is allowed for *Qualitätswein*, but not allowed for the *Prädikatswein* grades¹⁰⁴
- additional to the labelling requirements under EU law, the mandatory indication of the A. P. Nr., and quality grade (*Qualitätswein* or *Prädikatswein*), and the optional indication of the predicate¹⁰⁵

The emphasis of this quality scheme on sweetness and sweetening, the must-weight as criterion for the predicate grades and rules on chaptalization, can be traced back to climatic and historic-cultural particularities of German viticulture. Due to its cooler climate, which often made it difficult in the past to harvest fully ripe grapes, the artificial enrichment of the sugar content of the must, to increase alcoholic strength and achieve a more pleasant taste, was widely used. In turn, wines that naturally achieved the necessary must weight were regarded of higher quality. Additionally, Germany has a tradition of sweet (white) wines –predicates above *Kabinett* like *Beerenauslese*, *Trockenbeerenauslese* and *Eiswein* are very sweet dessert wines – and while consumer nowadays generally prefer dry wines, for reasons of taste and rareness up to the last quarter of the 20th century, sweet wines were regarded of higher quality. Therefore, the

¹⁰¹ For the origin and development of the scheme see §§ 11 and 12 WeinG in the form of 16 Juli 1971 and §§ 17–20 WeinG in the form of 8 July 1994.

¹⁰² §§ 18(1) and 20(1) WeinG. The procedural rules are laid down under §§ 21–28 WeinV. See also Brunke et al. 2016, pp. 55–66; BLE 2018, pp. 28–30.

¹⁰³ §§ 20(4) and 20(6) WeinG. See also BLE 2018, pp. 25f.; Brunke et al. 2016, p. 14; Schweickert 2021, pp. 5f.

¹⁰⁴ § 20(3) WeinG. See also Brunke et al 2016, p. 12.

¹⁰⁵ Rössel and Beckert 2012, p. 13; BLE 2018, pp. 35f.

introduction of a quality system based on analytical criteria and strict rules on chaptalization was only consequent, when introduced in 1971.¹⁰⁶

The traditional quality scheme nevertheless provided for an indication of origin for quality wines, a requirement deriving from the European scheme of quality wines p. s. r. under Art. 5 of Regulation (EEC) 817/70, insofar as the grapes had to come from one single specified growing region (*bestimmtes Anbaugebiet*).¹⁰⁷ But without any further link between the origin and the quality. The quality scheme outlined above was applied throughout all regions alike, without taking into account smaller geographic indications within the growing areas, although the indication of smaller origins was allowed.¹⁰⁸ This separation of origin and quality was further strengthened by the creation of *Großlagen* (large appellations) in the 1970s. Individual appellations, which for various reasons often had no particular quality characteristics, were grouped together, which allowed large-scale producers, in particular the then dominant cooperatives, to market large quantities of wine under one label.¹⁰⁹ Without going further into the details of that scheme, it can be concluded that the German system of ‘tested quality in the glass’ in its understanding of how to define quality as well as the parameters regulated significantly differs from any origin-orientated scheme and constitutes a quality scheme sui generis. Or, to speak with Thomann’s terminology, a “domestic, sectoral interventionist style” with “substantive, additional stringency”, increasing the likelihood of extensive customization of EU legislation, adding requirements and increasing restrictiveness.¹¹⁰

There are some flaws of this system, identified in the literature, that shortly need to be addressed. First, on average 95 % of German wines were classified as *Qualitätswein* or *Prädikatswein* over the last decades, with about 50 % reaching the *Prädikatswein* levels. This raises the question if the system actually provides for reliable quality indicators and a proper differentiation on the market.¹¹¹ Secondly, research on price formation in the German market suggests, that the official German wine qualification scheme has only a very limited effect on wine prices, while alternative origin-based systems, or factors like grape varieties and wine styles, have a much greater positive influence on pricing.¹¹² This puts the schemes economic relevance for producers as well as its acceptance on the market into question.

¹⁰⁶ Munsie 2002, pp. 36f.; Rössel and Beckert 2012, p. 6; Brunke et al. 2016, p. 13; Deckers 2021, p. 5.

¹⁰⁷ §§ 11(2) and 12(2) WeinG in the form of 16 July 1971; §§ 17–20 WeinG in the form of 8 July 1994.

¹⁰⁸ § 10 WeinG 1971, § 23 WeinG 1994. See also Brüggemann 2006, pp. 23f.

¹⁰⁹ § 10(2) WeinG 1971. Munsie 2002, p. 37; Rössel and Beckert 2012, pp. 12f.; Deckers 2021, pp. 4f.

¹¹⁰ Thomann 2015, pp. 1374f.

¹¹¹ Munsie 2002, p. 39; Rössel and Beckert 2012, p. 13; Brunke et al. 2016, p. 31.

¹¹² Rössel and Beckert 2012, p. 20; Brunke et al. 2016, pp. 35–41.

5. Implementation of EU quality schemes for wine in Germany

With the abandonment of the old ‘quality wine p. s. r.’ scheme, which provided for a classification along wine factors and the introduction of PDOs and PGIs in 2008, the EU system became more similar to the *Romanic* appellation system and more removed from the wine-factor based German system of ‘tested quality in the glass’.¹¹³ As a result, German wine law had to be adapted to the new EU law, confronting the legislator with the question whether and how the German quality scheme could be continued in view of systemic differences.

Two reforms of German wine law implementing the Unions new quality scheme have been identified: the 5th law amending the *Weingesetz* of 2009 (5. WeingGÄndG) and the 10th law amending the *Weingesetz* of 2021 (10. WeinGÄndG). Four other amending laws in between partly reframed the relevant paragraphs of the quality scheme without substantial changes to the way the Unions quality scheme was implemented, and therefore should not be analysed in detail here.

5.1 The implementation of PDOs and PGIs after 2008

The legislative proposal for the 5th law amending the *Weingesetz* from 2009 acknowledges the introduction of PDOs and PGIs as major element of the reform of EU wine regulations. However, it states no intention to change of the German quality scheme towards the origin-orientated European scheme. Instead, it only says: “Linking the German quality wine system to this new system requires adjustments to numerous provisions of the wine law.”¹¹⁴ As Brunke et al., who point out the alienation of the German system from the European scheme after 2008, succinctly state: “Germany saved its system by declaring it as a traditional one.”¹¹⁵

This saving of the German system consisted of three main elements, making full use of the regulatory leeway provided under EU regulations, as discussed in Chapter 3.4. Firstly, in 2008, all German wine growing areas for *Qualitäts-* and *Prädikatsweine*, were automatically protected as PDOs, the *Landwein*-areas as PGIs, under Article 118s Regulation (EC) 489/2008 (now Article 107 Regulation (EU) 1308/2013). Secondly, the terms *Qualitätswein*, *Prädikatswein*, and *Landwein*, as well as four other terms for sparkling and liqueur wines, were declared traditional terms – falling into the first category of traditional terms; national schemes in place of PDO or PGI – and protected under Art. 118u(1)a Regulation (EC) 1234/2007 (now

¹¹³ Brunke et al 2016, p. 53. See also Chapter 3.3.

¹¹⁴ Deutscher Bundestag 2009, p. 1.

¹¹⁵ Brunke et al. 2016, p. 53.

Article 112a Regulation (EU) 1308/2013).¹¹⁶ Therefore, it was allowed to use the old terminology instead of the EU's PDO and PGI terminology. An amendment to the WeinV in 2011 strengthened these terms insofar, as under §39a(1) it was only allowed to use the PDOs and PGIs in combination with the term *Qualitätswein*, *Prädikatswein*, or *Landwein*.¹¹⁷ Conversely, this made the use of the PDOs and PGIs impossible for all wines that did not conform to the traditional German scheme. Thirdly, according to Art. 118s(2)a of Regulation (EC) 1234/2007, the competent authorities, in that case the agricultural ministries of the *Länder*, submitted the required product specification files for the automatically protected PDOs and PGIs, applying the traditional scheme to all thirteen wine growing areas alike.¹¹⁸ Legally, the terminology of the 'tested quality in the glass' scheme was maintained through the protection of traditional terms. The corresponding wine characteristics and the testing procedure assigning an A. P. Nr. were framed as product specifications deriving from national law, as allowed for under Article 94(2)h Regulation (EU)1308/2013.

This continuation and protection of the traditional German classification system under the new EU scheme was implemented by the 5th law amending the *Weingesetz* as follows: The newly introduced § 2(24) WeinG defined *Qualitätswein* and *Prädikatswein* inter alia as wines originating from a wine growing area bearing a name protected as a PDO under Art. 118s(1) of Regulation (EC) 1234/2007. § 2(25) does the same for *Landwein*, requiring it to originate from an area bearing a name protected as PGI.¹¹⁹ The formulation was chosen in such a way, that the requirements of the PDO and PGI do not apply instead of, but in addition to the requirements for the respective quality grades. This can be regarded as gold-plating according to Voermans, insofar, as the terms used in the regulation were substituted by wider domestic terms.¹²⁰ In section four, which originally established the traditional quality scheme, §16a was added, stating that the following provisions of the section and the requirements for wines laid down there, were product specifications in the meaning of Art. 118c(2) of Regulation (EC) 1234/2007 (now Article 94 of Regulation (EU) 1308/2013).¹²¹ The following paragraphs laying down the requirements for *Qualitätswein*, *Prädikatswein*, and *Landwein* remained substantially unchanged. A small, but noteworthy change was made to § 19(3), adding that the A. P. Nr. is to be allocated after "systematic analytical and organoleptic testing".¹²² Although the procedure

¹¹⁶ Brunke et al. 2016, p. 50.

¹¹⁷ Art. 1(5) 9. WeinRÄndV.

¹¹⁸ Brunke et al. 2016, p. 50.

¹¹⁹ Art. 1(3)e 5. WeinGÄndG.

¹²⁰ Voermans 2009, p. 83.

¹²¹ Art. 1(18) 5. WeinGÄndG.

¹²² Art. 1(20)b 5. WeinGÄndG.

assigning the A. P. Nr. required for analytical and organoleptic testing before, the exact terminology is new and has been taken from EU wine regulations. It indicated that the procedure for assigning the A. P. Nr. meets the requirements for quality controls under EU law. Accordingly, a reference to the monitoring of product specifications of PDOs and PGIS as required under EU law, was added to § 21 WeinG, which provides for and delegates the procedure of assigning the A. P. Nr. to the federal states.¹²³ Although they were made legally consistent, the continuation of the traditional German quality scheme as well as the extensive testing requirements coming along with the assignment of the A. P. Nr. factually constitute national regimes covering the same grounds as the EU regimes, adding administrative burdens to the industry and therefore could be described as double banking according to Voermans.¹²⁴ This refers in particular to the testing procedures, since the minimum requirements under EU law only foresee random sample testing.¹²⁵

Additionally to the implementation of the quality scheme, Section 5 on wine labelling was renamed into “Geographic Designations and Labelling” and three new paragraphs were added:¹²⁶ § 22b defining geographic terms allowed in wine labelling, namely the PDOs and PGIs established under Article 118b(1) of Regulation (EC) 1234/2007 (now Article 93(1) Regulation (EU) 1308/2013), appellations and areas registered with the federal states, as well as the names of municipalities and localities. This corresponds with the allowed specifications for optional particulars in labelling with regarding to the indication of smaller or larger geographical units for wines with a PDO and PGI, as provided for under Article 118z(1)g of Regulation (EC) 1234/2007 (now Article 120(1)g Regulation (EU) 1308/2013). § 22c lays down rules for the application procedure for PDOs and PGIs as required for and in accordance with Article 118f Regulation (EC) 1234/2007 (now Article 96 Regulation (EU) 1308/2013) and designates the Federal Agency for Agriculture and Food as the competent national authority. Thus, as provided for by EU regulations, producer groups and individual producers were allowed to apply for the registration of new PDOs and PGIs. Eventually, § 22d authorizes the Federal Ministry of Food and Agriculture to lay down further product specification for wines with PDOs and PGIs, as allowed for under Article 118c(2)h of Regulation (EC) 1234/2007 (now Article 94(2)h of Regulation (EU) 1308/2013).

¹²³ Art. 1(21)b 5. WeinGÄndG.

¹²⁴ Voermans 2009, p. 80.

¹²⁵ Arts. 19 and 20 Regulation (EU) 2918/34.

¹²⁶ Art. 1(25) and Art. 1(26) 5. WeinGÄndG.

The analysis of the implementation of the EU's quality scheme by the 5th law amending the *Weingeseztz* shows, that the German legislator has made use of the provisions allowing for the application of national rules that were established in Chapter 3.4. As discussed above, there is evidence for so-called gold-plating and double banking, as described by Voermans. Nevertheless, I would argue that these concepts only focussing on requirements added is insufficiently describing the transposition of EU quality schemes into German law. Thomann's multi-dimensional concept of customization provides for a more nuanced assessment. Accordingly, three different styles of transposition can be identified: First, the continuation of the traditional German quality scheme, using the protection of traditional terms and product specifications, is adding regulatory density. With regard to the testing procedures, also restrictiveness was added to the European scheme. This can be drawn back to a responsive EU regulatory mode – although EU wine law is framed as directly applicable regulations allowing for deviations and requiring the implementation of certain provisions –, and a coercive domestic interventionist style, the 'tested quality in the glass' scheme. Second, with regard to the use of smaller or larger geographic indications in labelling and the preliminary national application procedure, EU regulations are transposed into German law, without adding density or restrictiveness to the EU scheme. Third, with regard to the essence of the EU's new quality scheme, the emphasis on origin and its objective to harmonize European wine regulations, the continuation of the 'tested quality in the glass' scheme could be regarded as low ambitious implementation, adapting German wine law only as far as necessary to comply with Regulation (EC) 1234/2007. As the critical evaluation of Brunke et al. adds, Germany has manoeuvred itself into a "cul-de-sac", constraining its ability to adapt to further changes and innovations in the wine market.¹²⁷

Leaving legal transposition aside for a moment, now, twelve years after the implementation of the Union's new quality scheme into German law, there is the opportunity to look at the practical application of PDOs and PGIs in Germany to check whether the conclusions drawn above hold up to the available data. An analysis of PDOs, PGIs and traditional terms registered in the eAmbrosia database shows, that there are nineteen PDOs, consisting of the thirteen wine growing regions that were automatically protected after 2008 under Article 118s of Regulation (EC) 1234/2007, and only six PDOs registered through the application procedure between 2017 and 2020. There are 26 PGIs, all of which are *Landwein* regions and have also automatically protected. Additionally, there are 17 registered traditional terms, seven falling into the first

¹²⁷ Brunke et al. 2016, p. 53.

category of terms used instead of PDOs and PGIs, as described above, and ten falling into the second category providing traditional product specifications. A comparison with the number of registered PDOs and PGIs in France and Italy (see below table 1) shows, that even if different levels of production are considered, Germany has protected relatively few designations of origin and geographical indications.¹²⁸ The use of traditional term instead, is at least partly in line with their use in other EU countries. In addition, as the second column of table 1 shows, still more than 90 % of German wines fall into the highest quality classes, which is about 30 % above the figures for France and Italy.

Table 1: PDOs and PGIs in comparison¹²⁹

	Total wine production in thousand hectolitres / share of PDO/PGI wines thereof (2018)	Registered PDO / PGI / total (2022)	Registered traditional terms instead of a PDO/PGI / product characteristics / total (2022)
Germany	10.3 / 93.6 %	19 / 26 / 45	7 / 10 / 17
France	49.6 / 74.4 %	361 / 76 / 437	5 / 24 / 29
Italy	55.8 / 64.4 %	408 / 118 / 626	11 / 69 / 80

The relatively low numbers of PDOs and PGIs for wine in Germany are in line with the observations of Profeta et al. that in comparison to the *Romanic* countries, Germany has not used the system of geographic indication extensively so far. This is attributed to a lack of political impetus for the scheme and a slow preliminary application procedure due to missing administrative capacities.¹³⁰ These numbers, as I would argue, confirm the observation that although Germany is in full compliance with EU wine regulations, a change to a quality system with differentiated origins making full use of PDOs and PGIs has not taken place. The fact that six PDOs were registered between 2017 and 2020 shows, that at the application procedure works and is used, at least in principle.

The practical continuation of the traditional German system can not only be confirmed quantitatively, but also qualitatively. An analysis of the product specification files for the thirteen wine growing regions bearing a PDO confirmed that the categories and corresponding wine characteristics of the ‘tested quality in the glass scheme’ have been applied to all regions alike. This shall be shortly demonstrated here on the example of the largest and the smallest of these regions: Rheinhessen, situated in the west of Germany on the Rhine, comprising 28.886

¹²⁸ See also Schweickert 2021, p. 4.

¹²⁹ Created by the author drawing on data from Alston and Gaeta 2021, the eAmbrosia wine register (<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>) and the eAmbrosia register for traditional terms (<https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/tdt>).

¹³⁰ Profeta et al. 2010, pp. 191f.

hectares; and Sachsen in the east of Germany, formerly GDR, comprising of 492 hectares.¹³¹ The sections on the analytical characteristics of the wine are identical in structure, providing for the same characteristics, and only differ by about 10% in the alcohol contents and must weights for the predicate grades.¹³² As required under EU regulations, they contain short descriptions of the regions' geographic characteristics indicating a link to the wines produced there, but, as I would argue, do not provide for a specific "quality or characteristics of the product [that] are essentially or exclusively due to a particular geographical environment".¹³³ They identically allow for all wine styles from dry to sweet, allowing residual sugar contents from zero to more than 45g/l, and only contain short organoleptic characteristics, broadly describing the difference between white, red and rosé wines based on colour and taste.¹³⁴ Furthermore, the information on allowed grape varieties, which contribute significantly to the profile of a region, is very broadly defined. Rheinhessen allows 110 different grape varieties, Sachsen for 71.¹³⁵ To put this into context, the French region *Bourgogne* for example only allows for residual sugar contents of not more than 4 g/l, wines from six grape varieties, and has several of its subregions and individual appellations protected with separate PDOs.¹³⁶ The differences are obvious. In conclusion, it can be said that neither the legal transposition, nor the statistical evidence for the use of PDOs and PGIs, nor the practical application in the product specification files provide for a consequent implementation of the principle of origin.

5.2 Towards *terroir*? The 2021 reform of German wine law

While in recent years European wine producing states could overall increase production as well as revenue and improve their position on global wine markets, German wine is continuously losing market shares internationally, which, in combination with falling domestic consumption, is leading to constant decline of revenues. This was acknowledged by the German legislator and stated as reason for the 2021 reform of German wine law.¹³⁷ The reform, as discussed above, aimed to improve the economic situation of German wine producers as well as simplify and improve consumer information.¹³⁸ This was to be achieved through a better use of the EU quality scheme of designations of origin and an approximation of the German quality scheme to the *Romanic* model. As it says in the legislative proposal for the 24th law amending the

¹³¹ BLE 2018, p. 32.

¹³² Ares 2011a, pp. 2f.; Ares 2011b, pp. 3–5.

¹³³ Article 93(1)a Regulation 1308/2013.

¹³⁴ Ares 2011a, pp. 2–5.; Ares 2011b, p. 3–5.

¹³⁵ Ares 2011a, pp. 6–9; Ares 2011b, p. 8–12.

¹³⁶ Ares 2011c.

¹³⁷ Klöckner 2020, p. 2.; BMEL 2020b, p. 1; BMEL 2020c, p. 1.

¹³⁸ BMEL 2020a.

WeinV: “Each origin should stand for a clear profile and follow the basic principle ‘the smaller the origin, the higher the quality’.¹³⁹

Against the backdrop of this objective, the reform conducted under the 10th law amending the *Weinggesetz*, which was passed in January 2021, seems to fall short, or rather solidifies the continuation of the traditional German system. A newly added §1a requires all wines with a PDO or a PGI to comply with the requirements laid down for *Qualitätswein* and *Prädikatswein*.¹⁴⁰ This was reasoned by the fact, that §39a(1) WeinV, requiring the use of the traditional terms for all wines bearing a PDO or PGI, needed to be repealed since it was regarded incompatible with EU law. The requirements of the traditional system should be maintained to ensure quality and prevent inequalities in domestic competition.¹⁴¹ In order to implement these changes consistently, the definitions for PDOs and PGIs, as well as for *Qualitätswein* und *Landwein*, were amended with reference to the corresponding EU regulations.¹⁴² Apart from that, references to EU law were updated where regulations were changed, and an at first sight negligible change has been made to §23 on the indication of smaller or larger geographical unit in labelling.¹⁴³ Based on those changes of the *Weinggesetz* it could be argued, that there has been no significant change in the way the EU quality scheme was implemented and the legal order of German law remains substantively unchanged with regard to quality wine classification.

To fully understand the 2021 reform of German wine law, the changes made to the WeinG must be seen in close connection with the changes to the WeinV, the 24th law amending the WeinV (24. WeinVÄndG), passed in May 2021.¹⁴⁴ Thereby, three changes to the rules on labelling can be identified that, taken together, actually allowing for a stronger profiling of origins for German quality wines. Firstly, § 23(1a) WeinG is inserted, which prohibits the use of smaller geographic indications for wines with a PGI.¹⁴⁵ This should provide for a clearer distinction between PDO and PGI wines, insofar as origin profiling within an area is only allowed in the top segment, namely for wines with a PDO.¹⁴⁶ Secondly, specifying the use of smaller geographic indications for wines with a PDO, several changes are made to §39 WeinV, providing for more distinguishability of municipality names and appellation names, as well as adding product specifications that ensure higher quality and specific characteristics of those

¹³⁹ BMEL 2020c, p. 1.

¹⁴⁰ Art. 1(2) 10. WeinGÄndG.

¹⁴¹ BMEL 2020b, pp. 11f.; BMEL 2020c, pp. 18f.

¹⁴² Art. 1(3) 10. WeinGÄndG.

¹⁴³ Art. 1(16) 10. WeinGÄndG.

¹⁴⁴ BMEL 2020b, p. 1.

¹⁴⁵ Art. 1(16)c 10. WeinGÄndG.

¹⁴⁶ BMEL 2020b, p. 17.

wines.¹⁴⁷ The use of *Großlagen* (large appellations) that were previously indistinguishable from individual appellations was restricted under § 39(1)1 insofar, as the term *Region* (region) must be placed before the name of the *Großlage*, using the same font, size and colour. In the eyes of some observers, this corrects one of the greatest flaws and obstacles to a clear indication of origins in German wine law.¹⁴⁸ For wines bearing a municipality name, § 39(1)2 laid down a minimum must weight and a marketing date, guaranteeing a certain ripening period. Even stricter requirements are laid down for the use of individual appellations under §39(1)3. It requires them to be labelled in connection with the corresponding municipality name, to avoid any confusion with other geographic terms, set a marketing date providing for even longer ripening, only allows grapes from one grape variety of varieties therefore laid down in the product specifications and specifies a minimum must weight. Thirdly, a newly added § 32b introduces the terms *Erstes Gewächs* and *Großes Gewächs* to designate dry wines of the highest quality from particularly characterful vineyards providing best conditions.¹⁴⁹ It also contains specific requirements, inter alia on grape varieties, alcoholic strength, maximum yield, production methods and marketing dates, that shall guarantee the quality of these wines and at the same time provide for differentiated qualities between those two terms. Without going into detail, it can be said that these requirements are more specific and stricter than other product specifications provide for under German wine law. The codification and protection of these terms – which are inspired by and literary translations of the French terms *Premiere Cru* and *Grand Cru* – was intended to designate absolute top-quality products and prevent an arbitrary and misleading use of the already popular terms, creating reliability for consumers.¹⁵⁰

Through these changed labelling requirements, an origin-based classification system – also referred to as quality pyramid – was introduced, following the principle the smaller the origin the higher the quality. It is, from large origins and low quality to small origins and high quality consisting of: PGI wines, wines from a PDO region, wines from *Großlagen*, wines from one municipality, appellation wines, *Erstes Gewächs*, and *Großes Gewächs*.¹⁵¹ Since it combines geographic terms and gradual stricter product specifications, it picks up the notion of *terroir*. Thereby it simultaneously better implements the essence of the EU's origin-based quality scheme, approaches the German system to the regulatory practices of most other EU wine producing countries like France, Italy or Spain, consequently harmonising quality wine

¹⁴⁷ Art. 1(11) 24. WeinVÄndG

¹⁴⁸ Deckers 2021, p. 3f.; VDP 2021.

¹⁴⁹ Art. 1(7) 24. WeinVÄndG.

¹⁵⁰ Bundesrat 2021. pp. 6f.

¹⁵¹ DWV 2020; Schweickert 2021, p. 7.

regulations within Europe. On the other hand, the scope and implications of this reform should not be overestimated. By using labelling requirements, the general framework of German quality wine regulations as established under the 2009 reform remained unchanged. Therefore, the new origin-based quality pyramid is not mandatory, since the ‘tested quality in the glass’ scheme and the traditional classifications are furtherly maintained. The use of smaller geographical indications is only optional. Also, as some critics note, the requirements of the new scheme are not restrictive enough and lack an official classification of appellations, to fully align the German scheme with the *terroir*-concept.¹⁵²

Both, the fact that this orientation towards origin took place thirteen years after the respective reform of EU wine regulations and that it did not represent a fundamental change, but rather comprised of optional and carefully defined terms and concepts, can be drawn back to characteristics of German (wine) politics as well as structural and institutional conditions of the German wine industry. A short look at the policy process confirms the assumptions of Thomann and further shows the value of her concept. It proves that the customization of European wine regulations does not only depend on the EU regulatory mode and domestic sectoral interventionist styles, but also on issue salience, the institutional setting, and domestic resistance.¹⁵³ Drawing on the literature, the documentation of the legislative procedure, and official opinions of interest groups, three elements of the policy process, determining the outcome of the implementation could be identified. Firstly, the Federal Ministry of Food and Agriculture recognized the need for reform and provided impulses for a more origin-based orientation of wine law. However, a solution on the political level and a legislation along partisan majorities was avoided. Instead, a broad consensus of all economic and political interests was pursued.¹⁵⁴ From the perspective of German politics, the wine law reform was neither salient nor controversial. This can explain the time the reform took. It is also reflected in the fact that there were no controversial debates in the Bundestag or its committees, but the reform was eventually passed consensual with a broad majority going beyond the government coalition.¹⁵⁵ Secondly, since the design of concrete reform steps was factually delegated to the winegrowers’ associations, the reform process and its outcome was dominated by frictions within the wine industry. Schweickert identifies a conflict between so-called ‘modernizers’, mainly high-quality producers like the *Verband der Prädikatsweingüter* (VDP), and ‘market

¹⁵² VDP 2021.

¹⁵³ Thomann 2015, p. 1372ff.

¹⁵⁴ Klöckner 2020, pp. 2f.; Schweickert 2022, p. 2.

¹⁵⁵ Deutscher Bundestag 2020a; Deutscher Bundestag 2020b, p. 24685;

orientated traditionalists', mainly large-scale wineries, cooperatives, and their national associations.¹⁵⁶ While the former strived for a comprehensive reform, a complete adoption of the *Romanic system*, and an end of the traditional German system,¹⁵⁷ the latter opposed the principle of origin in general, rejected stricter requirements for smaller geographic indications, and above all opposed any changes to the use of the *Großlagen* in labelling.¹⁵⁸ Eventually, a solution was found within the *Deutscher Weinbauverband* (DWV), the industry's federal umbrella organization.¹⁵⁹ The conflict between influential stakeholders in the industry nevertheless slowed down the reform and led to what some observers would call a minimal compromise.¹⁶⁰ Thirdly, the terms and concepts *Erstes Gewächs* and *Großes Gewächs* were neither part of the classification scheme proposed by the DWV, nor the original version of the 24th law amending the *Weinverordnung* as introduced by the German government.¹⁶¹ Instead, it was amended by the second chamber, the *Bundesrat*, at the suggestion of the states of Hesse and Bavaria, which already provided definitions for those terms under state law and wanted to achieve binding definitions and requirements on the federal level.¹⁶² This shows, in accordance with determinants provided for by Thomann, that customization depends not only on the EU regulatory mode and domestic sectoral interventionist styles, but also on the institutional setting of the implementing member state.¹⁶³ In this case, bicameralism, the shared competence of the federal government and the *Länder* for wine policy, and regulatory preferences on the subnational level in a federal system contributed to customization. Summing up these three observations, it can be confirmed that domestic politics, interests, and institutions matter for implementation.

¹⁵⁶ Schweickert 2021, p. 7.

¹⁵⁷ VDP 2020.

¹⁵⁸ Deutscher Raiffeisenverband 2020.

¹⁵⁹ DWV 2020.

¹⁶⁰ Deckers 2021; VDP 2021.

¹⁶¹ DWV 2020; BMEL 2020c

¹⁶² Bundesrat 2021, pp. 6f.

¹⁶³ Thomann 2015, p. 1373.

Conclusion

EU wine regulations under the single CMO extensively regulate all aspects of viticulture and viniculture, with detailed requirements permeating national wine laws and directly affecting European wine producers. With the 2008 reform of EU wine regulations, a quality scheme based on protected designations of origin (PDO) and protected geographical indications (PGIs) was established, that Europeanized administrative procedures and established the legal protection of geographic terms under EU law. This system is orientated on the Romanic appellations-system and based on the notion of *terroir*, insofar as it links a wines origin to its characteristics and qualities. This alienated European wine regulations from the German quality scheme, the so-called ‘tested quality in the glass’, and although EU regulations have direct effect, it created the need for implementation into German law, due to the subsidiary character of EU the wine regulations.

Two different stages of policy implementation, or rather transposition, have been identified. First, in 2009, instead of changing the German system and consequently applying the principle of origin in quality wine classification, Germany saved its system by declaring it *traditional*. This could be regarded as low ambitious implementation, only adapting German wine law to comply with the letter of EU regulations. Simultaneously, it was customized insofar, as this added regulatory density, since the traditional terms, classifications, and requirements were continued, and with regard to testing procedures, also restrictiveness was added. The 2021 reform of German wine law left this legal double-structure substantially unchanged. Instead, by changing labelling requirements, it established an optional classification system following the principle the smaller the origin the higher the quality. This can be regarded as a first step towards *terroir*, but since it is not mandatory and lacks vineyard classification, it may not be overestimated.

What do these results mean for the implementation of EU law in general? First, it was shown, that Thomann’s concept of customization can be applied not only to directives, but also to regulations. Secondly, out of the factors provided to explain customization, the combination of a responsive EU regulatory mode and a coercive domestic sectoral interventionist style, which in present case where both strongly pronounced, are identified as necessary conditions for the customization of EU regulations. Thirdly, going beyond the legal analysis, it could be shown that the particular outcome of the implementation also depends on domestic institutional settings, in this case frictions within the German wine industry and the co-legislation of the *Bundesrat*. The influence of these domestic factors put the notion that European wine policy is

a truly vertical policy into question – at least to a certain degree. At the same time, it shows the importance of bottom-up explanations of implementation, to fully understand the outcomes of EU policy.

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