

EU Legal Framework for Inter-branch Organisations (IBO's) in the Wine Sector



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(Wine, alcohol, spirit drinks, tobacco, seeds and hops)

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Topics

- Supply chain issues in current post-2013 CAP debate
- Competition rules applicable to inter-professional agreements
- Inter-branch organisations in the context of Single Common Market Organisation (CMO)
- Conclusions



Post-2013 CAP debate

“Finally, improving the functioning of the food supply chain is necessary. (...)

Without well-functioning transmission of market signals, the long-term prospects of the farm sector and its share of the value added generated by the whole food chain are in jeopardy.

*Key issues of interest relate to the current **imbalance of bargaining power along the chain**, the **level of competition** at each stage in the chain, the **contractual relations**, (...)”*

Commission Communication: « The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future » (page 10, 18/11/2010)



Competition rules

Legislation at EU level (DG COMP domain)

- "*Anti-trust rules in the Treaty*" - Articles 101-106 of the TFEU (in particular articles 101(1) and (3))
- "*Block exemption regulation*" - Regulation (EC) N° 330/2010 of 20/04/2010, OJ 210 L102/01 of 23/04/2010
- "*Guidelines on vertical restraints*" - OJ 2010 C131/01 of 19/05/2010
- "*Horizontal Guidelines*" - OJ C 11/1 of 14/01/2001
- "*Commission notice on agreements of minor importance (de minimis)*", OJ C 368, 22/12/2001, page 13
- "*Guidelines on the effect of trade concept*", OJ C 101, 27/04/2004, p.81
- "*Definition of relevant market*" OJ C 372, 9/12/1997
- "*Parallel networks of vertical agreements*" - Article 29 of Council Regulation (EC) N° 1/2003, OJ L 1 of 4/1/2003



Competition rules

Applicability of article 101(1) of TFEU

Inter-professional agreements may raise concerns if:

1. **Trade between MS** significantly affected
2. **15% *de minimis*** threshold for market shares in **relevant markets** is exceeded by parties to the agreement
3. **30% *de minimis*** threshold for market shares in **relevant markets** is exceeded by parties to an agreement **complying** with criteria for **block exemption**



Competition rules

Applicability of article 101(1) of TFEU

Inter-professional agreements may raise concerns if:

4. Contain **hardcore restrictions** (price fixing, output restrictions, partitioning of markets, etc.)
5. **Parallel networks of vertical agreements** emerge, which may have as global effect the restriction of competition



Competition rules

Applicability of article 101(1) of TFEU

- Above market share limits – case-by-case analysis
- “**Relevant market**” = relevant **product** market + relevant **geographic** market: not straightforward
- National Competition Authorities (**NCA's**) have the main role in implementing EU rules
- More specific national rules may apply



Single CMO

Provisions on wine IBO's in Regulation (EC) N° 1234/2007

- Articles **123** and **125o** – **conditions for recognition** of IBO's at EU level
- Article **125k(3)** – procedure of recognition of IBO's and **MS obligations** in this regard (similar as for F&V)
- Articles **176** and **176a** – **exceptions** to article 101(1) of TFEU (similar as for F&V)
- **Article 113c** – **marketing rules** to improve and stabilise the operation of the common market in wines



Single CMO

Conditions for recognition of wine IBO's by a MS:

- ✓ are made up of representatives of economic activities linked to the **production** of, **trade** in, or **processing**
- ✓ are formed on the **initiative of all or some** of the representatives of different stages of the supply chain
- ✓ carry out **activities** in **one or more regions of the EU**, taking account of the interests of consumers/public health



Single CMO

Conditions for recognition of wine IBO's by a MS:

- ✓ represent a **significant share** of the production of, or trade in, products of the wine sector
- ✓ do not engage directly in the production, processing or marketing of wine products



Single CMO

Activities of wine IBO's (foreseen in article 123):

- ✓ Improving knowledge and transparency of production and market, (...) in particular by means of **research and market studies**
- ✓ Drawing up **standard forms of contract** compatible with EU rules
- ✓ Developing methods and instruments for improving (...) vinification



Single CMO

Activities of wine IBO's (foreseen in article123):

- ✓ Providing **information** on particular characteristics of wine with a **PDO or PGI**
- ✓ Encouraging **moderate and responsible consumption of wine** and informing on the harm linked to hazardous consumption patterns
- ✓ Carrying out **promotion actions for wine, especially in third countries**



Single CMO

MS obligations on wine IBO's (foreseen in articles 125o and 125k(3)):

- ✓ Decide whether or not to **grant recognition** on the basis of an application
- ✓ Carry out regular **checks**, and impose **penalties** if irregularities observed
- ✓ **Withdraw recognition** if:
 - requirements and conditions for recognition are no longer met;
 - the IBO engages in any agreements, decisions and concerted practices incompatible with EU rules (e.g. article 101 of TFEU)
 - agreements have not been notified



Single CMO

Examples of recognised wine IBO's (notified to COM) :

- ✓ **BIVB** – Bureau interprofessionnel des vins de Bourgogne
- ✓ **Inter Rhône**
- ✓ **CIVRB** – Conseil interprofessionnel des vins de la région de Bergerac



Single CMO

Exceptions to competition rules (foreseen in article 176(1)):

- ✓ Agreements forming part of a national market organisation
- ✓ Agreements necessary for the attainment of CAP objectives (article 39 of TFEU)
- ✓ Agreements concerning the use of joint facilities, under which there is no obligation to charge identical prices

Very difficult to be applied!



Single CMO

Marketing rules on wine (foreseen in article 113c):

- ✓ MS may lay down **marketing rules to regulate supply**, particularly by way of implementing decisions taken by the inter-branch organisations
- ✓ Scope of these rules must be to **improve and stabilise** common market on wines, and they must be proportionate in this regard; such scope should exclude practices which distort competition
- ✓ These **rules shall not**:
 - Relate to any transaction after first marketing;
 - Allow for price fixing, including where prices are set for guidance;
 - Render unavailable an excessive proportion of the vintage that would otherwise be available (...)



Conclusions

- EU wine legislation encourages the establishment and operation of wine IBO's
- This support is done by:
 - formalizing their role in Council Reg. 1234/2007 (**recognition**)
 - making available financial assistance from national support programmes, in particular for **promotion in third countries**
 - granting priority to collective brand names (GI's or other) in this financing
 - allowing MS to **regulate supply** by applying decisions taken by inter-branch organisations (Art. 113 (c) of Reg. 1234/2007)
- Activities of wine IBO's must comply with applicable competition rules



For more information on wine sector in the CAP:

http://ec.europa.eu/agriculture/markets/wine/index_pt.htm



Thank you for your attention!



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