



European Commission
Directorate-General for Competition – Unit E5
Directorate-General for Agriculture and Rural Development – Unit E1
Place Madou 1, 1210 Saint-Josse-ten-Noode, Belgium
Rue de la Loi 130, 1040 Bruxelles, Belgium

Date	19 April 2023
Reference	HT.6134
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Concerns	Input VBN for consultation EC concerning guidelines for Art. 210a CMO Regulation

Dear Sir, Madam,

Please find below our input for the European Commission's public consultation as regards the guidelines for Art. 210a of the CMO Regulation.

The Association of Dutch Flower Auctions (VBN)¹, transparency register number 60862364841-67, is grateful for the inclusion of Art. 210a in the CMO Regulation (1308/2013) by the European Parliament and the Council. The new derogation for sustainability initiatives addresses an important need.

Like animal husbandry and arable land farming, the ornamentals sector is confronted with numerous challenges in the transition to enhanced sustainability. Reduction of energy inputs, lower greenhouse gas emissions, less input and emissions of plant protection products, less waste from packaging etc. pose substantial challenges to the flowers and plants sector (production as well as trade). At the same time, new quarantine pests and diseases appear, requiring enhanced rather than reduced chemical inputs and often posing a serious threat not only to the crops themselves but also to Europe's trees, nature and biodiversity. The same is true for the entry, establishment and spread of new invasive alien species.

Given these challenges, VBN is of the opinion that sustainability agreements provide important new opportunities to line up with the requirements of the Green Deal and to tackle risks from quarantine pests and invasive alien species. We are interested in the options offered by Art. 210a to our members (being cooperatives of growers with joint selling through the auctions owned by them) for better rewarding sustainable production - e.g. less pesticide inputs - through a price premium, whether on top of the clock prices or otherwise (e.g. when flowers and plants are sold apart from the clock). We also need a clear mandate to conclude agreements concerning behaviour of nurserymen and traders to better prevent the entry, establishment and spread of new quarantine pests and invasive alien species.

¹ VBN = Vereniging van Bloemenveilingen in Nederland (in English: Association of Dutch Flower Auctions).



While the draft guidelines provide a lot of useful information, we nevertheless have the following questions and concerns:

- (1) Would a sustainability price premium on top of the clock price be possible by combining Art. 210a on sustainability initiatives and Art. 172a on value sharing clauses? It would be an important step forward if sustainable production could be rewarded above the usual market prices for flowers and plants. It would be welcomed for the guidelines to affirm this possibility, which would help us a lot to encourage reduction of the use of plant protection products by the growers.
- (2) We are concerned about the emphasis on market shares (15% for horizontal agreements and 30% for vertical agreements). Our opinion is that the derogation to Art. 101 of the Treaty implies that market share percentages should not be applicable. Moreover, the legislator did not want them to apply, because they are part of the conditions for interbranch organisation agreements (Art. 210) but were left out – apparently on purpose – for Art. 210a. A well-functioning system of sustainability agreements should not be restricted by market share limitations, as this will seriously limit the urgently necessary sustainability transition. For example, clock price premiums cannot be combined with a market share approach. Altogether, we request the Commission to entirely drop the market share aspects from the guidelines.
- (3) We are also concerned about the ambivalence in the guidelines about the role of consumer preferences. The tense situation in agriculture and horticulture as regards sustainability issues and the Green Deal is due to the fact that consumers mostly prefer cheap, non-sustainable products to sustainable but more expensive ones. In some parts of the guidelines, consumer preferences are considered subordinate to the need for enhanced sustainability, but later on in the guidelines it is stated that sustainability agreements shall not result in increased prices if the consumer does not want to pay for this. We disagree with the latter logic, which disregards the difficulties that the agriculture and horticulture sectors are in today as regards the sustainability transition. Better prices for growers imply higher prices for consumers, this is unavoidable. We do not see any prospects in sustainability agreements if the guidelines express doubt (or worse) whether consumer prices may go up. Our reading of Art. 39 of the Treaty is that consumer prices must be reasonable, and prices including sustainability costs are simply very reasonable. The guidelines should explicitly support this (current wording of the guidelines is still inadequate).
- (4) We also urge the Commission to include in the guidelines a statement that sustainability agreements under Art. 210a may concern quarantine pests of plants, as governed by the Plant Health Regulation (2016/2031), and invasive alien species, as governed by the Invasive Alien Species Regulation (1143/2014). Their impacts on pesticide use and on biodiversity are out of question. In our response to the initial consultation of 2022, we already brought this to your attention, but nothing has been done with our input in draft guidelines so far. We need explicit reference to this so as to take away uncertainty for the members of our cooperatives (i.e. the growers of flowers and plants) to use Art. 210a at all. As a very minimum, the examples given in the final version of the guidelines should include examples of agreements concerning quarantine pests of plants and of invasive alien species. This is what our sector needs.
- (5) Lastly, the guidelines should clarify that the indispensability concept includes attractiveness to growers to participate at all in sustainability agreements. In this respect, the cost calculation should allow for a certain margin beyond an average calculation of costs incurred and income foregone. Averages imply that part of the growers will not see their costs covered (while some



others gain some profit). This is a powerful disincentive. Like in the State Aid guidelines,² a price premium of 20% of the costs incurred and income foregone should be explicitly permitted in the guidelines. In fact we requested this last year as well, but without seeing anything back in the draft which is now open for consultation. Thanks for taking this on board in the final version.

Finally, we would like to again express our gratitude for the new Art. 210a and the corresponding guidelines, which are a promising new instrument for enhancing sustainable production. We will greatly appreciate for the European Commission to integrate our comments and suggestions in the final version.

Yours truly,

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Management Board Member of the
Association of Dutch Flower Auctions (VBN)

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² See in particular point 555 of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas (C(2022)9120 final, as well as points 430 and 434 (quote from point 555: "In addition to the compensation, an incentive payment, which may not exceed 20 % of the compensation, may be given"). The principle thus is already acknowledged in the State aid guidelines.