EUROPEAN COMMISSION
Competition DG

COMMISSION OPINION

on the request for opinion pursuant to Article 210a(6) of Regulation (EU) No 1308/2013 by Vignerons Coopérateurs de France

Sustainability agreement in the wine sector in Occitanie

(Courtesy translation, only the FR language version of the opinion is authentic)

Article 210a(6) of Regulation (EU) No 1308/2013
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1. PROCEDURE

(1) In accordance with Article 210a(6) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products[1] ('CMO Regulation'), from 8 December 2023, producers of agricultural products may request an opinion from the Commission concerning the compatibility of agreements, decisions and concerted practices with Article 210a of the CMO Regulation ('Article 210a'). The Commission must issue an opinion within four months of receipt of a complete request.

(2) On 21 March 2025, Vignerons Coopérateurs de France, i.e., the wine section of the trade association La Coopération Agricole, which represents 35,000 small and medium wine producers and 560 wine cooperatives and unions across nine French regions ('VCF' or the 'applicant'),[2] submitted to the Commission a request for an opinion pursuant to Article 210a(6) of the CMO Regulation regarding an envisaged sustainability agreement in the French wine sector (the 'envisaged agreement' or the 'agreement').

(3) The present opinion is based on the information provided by the applicant in its request of 21 March 2025, as well as in subsequent submissions on 14 April 2025 and 18 June 2025.

2. DESCRIPTION OF THE AGREEMENT

2.1. Objective of the agreement

(4) The objective of the agreement is to encourage producers of wine under two sustainability standards, i.e., organic[3] and Haute Valeur Environnementale ('HVE')[4],

[1] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013, p. 671, as amended.

[2] VCF's membership represents approximately 40% of wine production and 60% of wine producers in France.

[3] In accordance with Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, OJ L 150, 14.6.2018, p. 1–92, as well as the delegated and implementing acts adopted on this basis.

[4] In accordance with the relevant national rules. For a description of the HVE standard, see: https://agriculture.gouv.fr/tout-savoir-sur-la-haute-valeur-environnementale-hve.

to maintain their current sustainable production practices and to prevent that they exit sustainable wine production.[5]

(5) Producers of HVE and organic wine are currently facing significantly increased difficulties to continue making the necessary investments to maintain their sustainable production practices. The French wine sector overall, including the Occitanie region, is experiencing, inter alia, significant issues of oversupply[6] and increased consumer price sensitivity linked to the recent grocery inflation, resulting in decreasing revenues. In recent years, and especially as a result of the recent inflationary period, many consumers have switched to lower-priced and less sustainable conventional wine instead of purchasing more sustainable wine or have eliminated wine products from their shopping list altogether. As a consequence of the reduction in demand, sustainable wine producers generate rising quantities of stocks, which they are eventually forced to sell at low prices in order to make space for new harvests. In addition, consumers are not fully aware of the actual environmental benefits and costs linked to the implementation of sustainability standards, which negatively affects their willingness to pay. Finally, according to the data provided in the request for an opinion, conventional wine production is generally more profitable than the production of HVE and organic wine, in particular given the lower costs and higher yields of conventional wine production. In this context, a significant number of producers have no incentives to maintain their sustainable production practices.

(6) There is therefore a risk that a significant number of HVE and organic wine producers will discontinue their sustainable wine production activities in the near future. Many of those producers could be forced by the circumstances to either switch to the production of conventional wine, which is currently more economically attractive,[7] or stop producing wine altogether, which may be favoured by the availability of subsidies to producers that commit not to grow wine for a number of years under a national grub-up programme introduced by the French government to address oversupply of wine[8]. Both scenarios would result in a lowering of the overall level of sustainability in wine production.

(7) The agreement seeks therefore to incentivise sustainable wine producers in Occitanie to maintain their current sustainable production practices until the abovementioned economic conditions improve, in particular a rebalancing of supply and demand for sustainable wine, as opposed to switching to the production of conventional wine or to ceasing wine production activities and possibly receiving grub-up subsidies. In addition, the agreement aims to strengthen the negotiating power of organic and HVE producers vis-à-vis their buyers (traders of wine)[9] and to send a signal to the

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[5] References in this opinion to sustainable wine or sustainable production practices are to be understood as referring to wine produced according to the organic and HVE sustainability standards.

[6] According to data provided by the applicant, overproduction in the French wine sector currently totals between 5 and 6 Mhl.

[7] Once a producer has discontinued its sustainable wine production activities, it is unlikely that it will resume those activities in the medium term, in particular given the significant time and effort needed to obtain the relevant certification.

[8] In October 2024, the Commission approved a French State aid scheme providing for EUR 120 million as direct subsidies for producers. The subsidies provided under the scheme cover a large part of the costs for grubbing up vineyards. The scheme envisaged a subsidy amount of EUR 4 000 per hectare, for a maximum of 30,000 hectares. (Commission decision of 3 October 2024 in Case SA.115943 (2024/N) – France – TCTF: Exceptional aid scheme for the definitive reduction of wine-growing potential following the consequences of Russia's aggression against Ukraine, C(2024) 7010 final).

[9] The notions 'traders' and 'buyers' are used interchangeably in this opinion to refer to operators that buy wine in bulk from producers.

operators in the wine supply chain and to consumers regarding the additional costs and benefits of producing under these standards.

(8) The applicant has decided to limit the scope of the agreement to wine produced under the organic and HVE standards. The reason given by the applicant for this is that these are the two standards that enjoy official recognition at EU and national level (organic being a standard that results from an EU Regulation[10] while HVE is a national standard that has been recognised by the Commission as eligible for eco-schemes under the Common Agricultural Policy ('CAP')), which in turn facilitates access to the necessary economic data. Furthermore, these standards are applied by a considerable number of farms,[11] which the applicant considers a precondition for the agreement to be effective.

(9) The applicant has further decided to limit the scope of the agreement to cover sales of wine in bulk, to the exclusion of sales of bottled wine. The reason provided by the applicant for this is that bulk prices are the standard reference prices for producers, in particular as they are more homogeneous than prices of bottled wine, for which there is a greater variation depending on e.g., marketing investments and brand perception. The applicant further considers that a price agreement at the level of bulk sales is likely to be less distortive of the prices paid by the final consumer than an agreement at the retail level, because any possible price increase resulting from the agreement should either be absorbed by actors at the different levels of the supply chain or would be passed on to final consumers, but would represent a marginal fraction of the retail price. Finally, the applicant indicates that bulk sales represent more than half of all sales (i.e., comprising both bulk and bottled wine).

2.2. Main features of the agreement

(10) Producers of organic and HVE wine intend to agree with the buyers of bulk wine on the setting of recommended (i.e., non-mandatory) prices ('orientation prices') to guide bulk sales of organic and HVE wine in the Occitanie region, in an attempt to provide to organic and HVE wine producers a perspective and an incentive to continue their more sustainable production practices. If an agreement with the buyers cannot be found, producers would only conclude the agreement between themselves and use the agreed orientation prices in their individual negotiations with individual buyers.

(11) The involvement of the buyers in the agreement upfront would reduce the risk that the terms of the agreement (i.e., the orientation prices agreed upon) might be rejected by the buyers during their individual negotiations with producers due to the resulting difficulty for them to market the products further down the chain and, ultimately, to the final consumer. If such an agreement is reached, the parties to the agreement would include the producers, represented by the 'Organisme de Défense et de Gestion des Pays d'Oc', and the buyers, represented by the regional association of traders. In that scenario, the agreement would therefore be both horizontal and vertical. The Inter-Branch Organisation 'Vins de Pays d'Oc' would facilitate the negotiations, notably by providing to both the Organisme de Défense et de Gestion

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[10] Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, OJ L 150, 14.6.2018, p. 1.

[11] According to a study performed by Agence Bio, in 2023 sales of organic wine in France represented 7% of total sales (https://www.agencebio.org/wp-content/uploads/2024/08/AND-international-pour-AGENCE-BIO-Rapport-complet-2023-VF.pdf). The applicant estimates that HVE wine production represents between 35% and 45% of total French wine production.

des Pays d'Oc and to the regional association of traders the economic data necessary to determine possible orientation prices, and would implement a mechanism to evaluate the effectiveness of the agreement.

(12) If an agreement with the buyers cannot be reached, the producers would conclude the agreement only between themselves and use it as a leverage during their individual negotiations with individual buyers. In that scenario, the agreement would be purely horizontal as only the producers would be party to it. The participating producers would include those that are members of 'Vignerons Coopérateurs d'Occitanie' ('VCO'), i.e., a section of the trade association 'La Coopération Agricole', and possibly also those of other regional trade associations of producers.[12] VCO would facilitate the negotiations and would implement a mechanism to evaluate the effectiveness of the agreement.

(13) The orientation prices will represent the total price that a producer receives for its wine, i.e., encompassing at a minimum all costs incurred and income foregone, and will be set annually for each grape variety (i.e., Merlot, Cabernet-Sauvignon, Grenache, Cinsault, Chardonnay and Sauvignon) and for each sustainability standard (organic and HVE), with the possibility to revise them during the year to adapt to economic developments leading to a change in the underlying costs of production.

(14) The parties to the agreement will set the orientation prices in accordance with the following methodology.

(15) First, the parties will determine the total production costs that are representative for, respectively, organic and HVE wine and for each of the six grape varieties covered by the agreement. Such overall production costs comprise *grape* production costs and *wine* production costs (so-called "vinification" costs). The *grape* production costs for the relevant product category (e.g., organic Chardonnay) per hectolitre of production will be calculated in two steps, based on objective elements and a sufficiently large and representative sample of producers active in the Occitanie region. First, the average grape production costs per hectare for, respectively, organic and HVE wine will be calculated based on the audited accounts of farms. Second, the average yield of each grape variety will be calculated based on the harvest declarations of farms. By applying the average yield to the average grape production costs per hectare, the parties will arrive at the average grape production costs per hectolitre. The *wine* production costs will be estimated based on the costs of the typical vinification infrastructure.

(16) Second, the parties will agree on the orientation prices to be retained, which will in no case exceed the total production cost plus a 20% margin. This margin is intended to ensure that parties to the sustainability agreement are protected against unexpected variations in costs and loss of income and that they find it more profitable to implement the sustainability standard than not to implement any standard or to undertake a different investment that may lead to less sustainable production or trade. The orientation prices will therefore cover at least the average costs of production of the relevant wines.

(17) The agreement will be concluded after the issuance of the present opinion and will have a duration of two years i.e. until July 2027, by when it is expected that consumer demand for sustainable wine will have sufficiently recovered to ensure

[12] In any event, the participating producers would represent at least 70% of the wine produced in Occitanie.

higher demand and, thus, higher revenues for sustainable wine producers. By the end of the two years, the effectiveness of the agreement needs to be evaluated and the need for any possible prolongation would need to be assessed in light of the evolution of the market conditions and, more particularly, the extent to which consumer demand has recovered.

(18) The agreement will thus cover negotiations and sale of wine from the 2025 and 2026 harvests and any outstanding stock from previous years.

3. LEGAL ASSESSMENT

(19) In accordance with Article 210a(1) of the CMO Regulation, Article 101(1) TFEU does not apply to agreements, decisions and concerted practices of producers of agricultural products that relate to the production of or trade in agricultural products and that aim to apply a sustainability standard higher than mandated by Union or national law ('sustainability agreements'), provided that those agreements, decisions and concerted practices only impose restrictions of competition that are indispensable to the attainment of that standard.

(20) Article 210a applies to sustainability agreements of producers of agricultural products to which several producers are party or to which one or more producers and one or more operators at different levels of the production, processing, and trade in the food supply chain, including distribution, are party.

3.1. Personal scope of Article 210a

(21) According to the case law of the Court of Justice, an 'undertaking' is 'any entity of personal, tangible and intangible elements, engaged in an economic activity, irrespective of its legal status and the way in which it is financed'.[13] Accordingly, any natural or legal person is an undertaking if it offers products or services on a market. Wine producers and traders produce, process and/or sell wine, they are thus undertakings within the meaning of EU competition rules. An 'association of undertakings' is, according to the case law of the Court of Justice, an entity, regardless of its form, that consists of undertakings of the same general type and makes itself responsible for representing and defending their common interests in relation to other economic operators, government bodies and the public in general[14]. The Organisme de Défense et de Gestion des Pays d'Oc, the regional association of traders and the VCO section of the association 'La Coopération Agricole' respectively, consist of entities of the same general type and represent their sectoral interests towards other economic operators, public authorities and the general public. They can be thus considered as associations of undertakings in the sense of EU competition rules.

(22) The case law of the Court of Justice defines an agreement as any act in which two or more undertakings express a concurrence of wills to cooperate[15]. The form of such expression is irrelevant. In the envisaged agreement, the orientation prices are set jointly by economic operators through concurrence of their wills and constitute thus an agreement in the sense of Article 101 TFEU. If a horizontal agreement is concluded it will be between wine producers operating at the same level of the

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13 Judgment of 16 June 1987, *Commission v Italy*, Case 118/85, EU:C:1987:283, paragraph 7.

14 Opinion of Advocate General Léger of 10 July 2001, *Wouters*, C-309/99, EU:C:2001:390, paragraph 61

15 Judgment of 6 January 2004, *BAI and Commission v Bayer*, C-2/01 P and C-3/01 P, EU:C:2004:2, paragraph 97.

supply chain and organised within the VCO section of the association 'La Coopération Agricole'. The agreement will thus constitute a decision of an association of undertakings. If a vertical agreement is concluded in addition to a horizontal agreement, it will be between, on the one side, wine producers represented by the 'Organisme de Défense et de Gestion des Pays d'Oc' and, on the other side, the regional association of traders, thus, entities operating at a different level of the supply chain. It will thus be an agreement between two associations of undertakings.

(23) In accordance with Article 210a(2) of the CMO Regulation and paragraph 36 of the Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation (EU) No 1308/2013 (the 'Guidelines')[16], wine producers will be party to the agreement in both (vertical and horizontal) scenarios through the relevant associations. Moreover, in both scenarios they will be involved in the negotiation, adoption and implementation of the orientation prices.

(24) The agreement therefore falls within the personal scope of Article 210a.

3.2. Products covered by Article 210a

(25) Under Article 210a(1) of the CMO Regulation, for the exclusion from Article 101(1) TFEU to apply, the relevant agreements, decisions and concerted practices must relate to the production of or trade in agricultural products. The envisaged agreement concerns the trade in "Annex I"[17] agricultural products (i.e., wine of fresh grapes) produced from six grape varieties, namely Merlot, Cabernet-Sauvignon, Grenache, Cinsault, Chardonnay and Sauvignon. The agreement therefore falls within the product scope of Article 210a.

3.3. Material scope of Article 210a - sustainability objective(s) and standard(s)

(26) In accordance with Article 210a(3), to fulfil the conditions of Article 210a, a sustainability agreement must aim to attain a sustainability standard that contributes to one or more of the following sustainability objectives:

(a) environmental objectives, including climate change mitigation and adaptation; the sustainable use and protection of landscapes, water and soil; the transition to a circular economy, including the reduction of food waste; pollution prevention and control; and the protection and restoration of biodiversity and ecosystems;

(b) the production of agricultural products in ways that reduce the use of pesticides and manage risks resulting from such use or that reduce the danger of antimicrobial resistance in agricultural production;

(c) animal health and animal welfare.

(27) The agreement relates to wine production in line with sustainability standards (i.e. HVE and organic production) that aim to achieve environmental objectives. Compliance with these standards is linked to wine production processes and requires continuous investments and efforts. These standards prescribe a variety of measures such as, in the case of organic, limiting synthetic pesticides, herbicides and fertilisers; adopting cover cropping, natural pest control, crop rotation and composting and, in the case of HVE, adopting practices such as crop rotation,

[16] OJ C 1446, 8.12.2023, p. 1.
[17] Annex I to the TFEU and further detailed in Annex I to the CMO Regulation.

targeted treatments of plants instead of widespread pesticide use, cover crops, minimal tillage; preserving hedgerows, woodlands, wildflowers, and insect habitats; maintaining ecological corridors for biodiversity purposes, etc.

(28) The agreement thus aims to contribute to several of the objectives recognised in Article 210a(3), including the sustainable use and protection of landscapes, water and soil, pollution prevention and control, the protection and restoration of biodiversity and ecosystems, and the production of agricultural products in ways that reduce the use of pesticides and manage risks resulting from such use. The agreement therefore complies with Article 210a(3) of the CMO Regulation.

(29) The sustainability standard that a sustainability agreement covered by Article 210a aims to apply must be higher than what is mandated by Union or national law.

(30) In the present case, the envisaged agreement aims to facilitate sustainable production of wine by means of the application of two sustainability standards (i.e., organic and HVE) that are higher than what is mandated by Union and national law.

(31) In terms of mandatory standards (the environmental baseline), wine producers must comply with all environmental and climate rules contained in EU legislation and the national plans deriving from them, and other relevant national regulations. These includein particular the CAP statutory management requirements (‘SMRs’) contained in the CAP Strategic Plan Regulation[18] and the EU environmental acquis. These encompass all the mandatory requirements referring to water quality such as those on the diffusion of pollution by phosphates or concerning the protection of waters against pollution caused by nitrates from agricultural sources, the requirements on biodiversity and landscape protection and quality, and the relevant rules on food safety, as well as the authorisation and use of plant protection products. All these rules are contained in Annex III to the CAP Strategic Plan Regulation and are complemented by explicit references to EU legislation that the CAP Strategic Plans need to respect and be consistent with under Annex XIII to the CAP Strategic Plan Regulation.

(32) Both the organic and HVE standards go beyond what is mandated by the aforementioned legal provisions. First, organic farming is an agricultural method that aims to produce food using natural substances and processes. Organic farming is voluntary for producers to adopt and has a lower environmental impact on the area where it is implemented than conventional production methods as it encourages a responsible use of energy and natural resources, maintenance of biodiversity, preservation of regional ecological balance, enhancement of soil fertility and maintenance of water quality. Specifically, Part VI of Annex II to Regulation 2018/848 contains the detailed production rules for organic wine, including permitted oenological practices, conditions for specific treatments and prohibited practices to produce and label a product as organic in the EU.

(33) Notably, organic farming differs from conventional farming in that it limits the use of chemical products such as synthetic pesticides and artificial fertilisers. Instead, organic farming relies on practices such as crop rotation, green manure, and composting to maintain soil fertility and plant health. As regards the production of

[18] Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435, 6.12.2021, p. 1–186

wine, unlike in conventional production, the following practices are prohibited in organic production: partial concentration by cooling, physical removal of sulphur dioxide, electrodialysis to ensure the tartaric stabilisation of the wine, alcohol content correction, and cation exchanger treatments for tartaric stabilisation of the wine. Some practices are allowed with strict conditions, including heat treatment (up to 75°C), centrifugation/filtration (pore size ≥ 0.2 micrometres), partial vacuum evaporation, and distillation but only for making de-alcoholised wine (≤ 0.5% alcohol) under controlled temperature not exceeding 75 °C, and provided the size of the pores for the filtration is not smaller than 0.2 micrometres.

(34) Accordingly, producers engaging in organic wine production must comply with requirements that are stricter than the requirements for conventional production.

(35) Second, HVE represents the highest level of the voluntary farm environmental certification in the French Rural Code (Article L611.6). This farm environmental certification system has been revised and improved in 2023. In its decision of 18 February 2025, the French Conseil d'État recognised that the new HVE certification system for farms allows to certify the implementation of production processes reaching a level of environmental performance above the minimum that is legally required.

(36) Under HVE, producers must attain concrete environmental results, all going beyond the minimum requirements mandated under EU and national law, measured by indicators on 4 areas: biodiversity, plant health treatments, fertilisers and irrigation. Through this framework, the HVE approach leads farms to make progress on these objectives for all production. The HVE approach is based on the principles of agroecology and therefore aims to promote nature's resources and mechanisms.

(37) The HVE biodiversity indicator looks at the relationship between biodiversity and production by measuring the diversity and good management of agro-ecological infrastructure (hedges, grass and buffers trips, meadows, etc.), the presence of beehives and agricultural biodiversity (number of cultivated plant and reared animal species, in particular endangered ones, analysis of soil biodiversity). It includes an obligation to have at least 4% of the area of the farm covered by agro-ecological infrastructures.

(38) The HVE indicator linked to plant health treatments includes the ban on use of the most hazardous pesticides, i.e. substances known or presumed as human carcinogen, mutagen or reproductive toxicant (CMR category 1 -H360) based on human evidence. It also contains, among others, elements related to the frequency of treatments, the use of alternative methods, the active monitoring of plant pests, and the share of areas not treated.

(39) The HVE indicator on fertilisation relates, among others, to the supply of organic nitrogen instead of inorganic forms, to soil cover and to the share of area not fertilised. The aim is to limit nitrogen leakage both quantitatively and qualitatively. This is achieved by farms having to balance their nitrogen inputs in relation to expected yields and adjusting their fertilisation strategy as close as possible to the plant's needs through a nitrogen balance.

(40) Finally, the HVE indicator on irrigation relates, among others, to monitoring irrigation practices and the use of efficient tools and equipment for both steering and implementing such practices and it rewards collective management of water resources.

(41) Farmers are certified when they comply with the obligations in the different areas, when they meet a minimum number of conditions throughout the four areas and when each area is assessed at farm level. The cumulation of two obligatory items in terms of biodiversity and plant protection and the need to comply with a certain number of optional items throughout the four areas ensures that environmental certification under this scheme is higher than the standard mandated by EU and national law.

(42) It must be noted that wine producers engaging in the production of HVE wine before the 2023 improvement are still allowed to use a compliance certificate obtained before this date until the end of 2025 when the validity of such certificates expires. This means in practice that these producers are still allowed to produce in the course of the year 2025 pursuant to the HVE standard put in place before 2023. Furthermore, producers can still commercialise within the duration of the agreement under assessment wine produced under the pre-2023 version of the HVE standard. Nevertheless, such production also meets the requirement of going beyond mandatory standards since the requirements under the previous version of the HVE standard exceed the requirements mandated by law. Farms had to cumulate a number of points gained from measures in each of the four areas mentioned in paragraph 36: for example, in the biodiversity dimension, producers could get points from 6 measures, three for which there were national standards (agroecological features, weight of the main crop, number of species cultivated) and three for which there is no legal obligation (number of endangered species and endangered breeds, presence of beehives). A producer that only complied with the standards as regards the three mandated measures would not reach the minimum number of points required to be certified. Therefore, even wine producers relying on a pre-2023 certificate engage in production going beyond the standard mandated by EU or national law.

3.4. Restrictions of competition

(43) The agreement entails three potential restrictions of competition: (i) a price restriction; (ii) a possible exchange of commercially sensitive information; and (iii) a possible indirect limitation of output.

(44) *Price restriction*. The agreement proposes the joint setting of orientation prices at the horizontal level (i.e., between competitors), but also at the vertical level (i.e., between sellers and buyers) instead of having an independent price determination by individual undertakings.

(45) *Exchange of commercially sensitive information*. In the context of the discussions leading to the setting of the orientation prices, there is a risk that an exchange of information on price and possibly other commercially sensitive aspects could take place between producers and/or traders of conventional, organic, HVE and/or other types of wine. This could create an incentive to set the orientation prices at a level that is not objectively justified and is beneficial to either of the operators involved in the determination of the said prices and could as a result reduce competition between the different types of wine.

(46) *Output restriction*. The agreement on orientation prices could lead to an indirect reduction in output to the extent that the agreement seeks to avoid that producers of organic and HVE wine exit sustainable wine production by, among others, switching to producing conventional wine, which typically allows for a higher output per hectare than sustainable wine. In addition, the agreement could potentially incentivise conventional wine producers to convert to organic or HVE wine

production, thus, reducing their output. Accordingly, by agreeing on orientation prices to continue producing in accordance with organic and HVE standards, the parties could indirectly contribute to a limitation of their output.

3.5. Indispensability under Article 210a

(47) Article 210a(1) provides that Article 101(1) TFEU does not apply to agreements that relate to the production of or trade in agricultural products and that aim to apply a sustainability standard higher than mandated by Union or national law, provided that those agreements only impose restrictions of competition that are 'indispensable' to the attainment of that sustainability standard. The indispensability test encompasses two steps. Under step 1, the indispensability of the agreement itself is assessed, i.e., (i) whether it is necessary for the parties to cooperate in order to achieve the sustainability standard instead of doing so individually; and (ii) whether the sustainability standard could be achieved by means of another less restrictive type of provision[19]. Under step 2, the indispensability of the individual restriction(s) of competition that flow from the agreement is assessed, i.e., it is determined, in light of the nature and intensity of the restriction, whether such restriction(s) is/are the least restrictive means available to achieve the sustainability standard.

3.5.1. Indispensability of the sustainability agreement

3.5.1.1. The sustainability standards cannot be equally attained by acting individually

(48) To assess whether a sustainability agreement is reasonably necessary to attain a sustainability standard, it is necessary to assess whether it is possible for the parties to attain the sustainability standard acting individually, rather than through cooperation[20]. It must therefore be assessed why operators need to cooperate and what would prevent them from attaining the standard on their own.

(49) The need for the envisaged agreement as opposed to individual action needs to be assessed both at the horizontal and at the vertical level. At the horizontal level, producers of wine under the HVE and organic labels cannot on their own achieve the sustainability standard, i.e., they cannot continue making the necessary investments and/or incurring losses to maintain their sustainable production practices. This is because individually they do not have the necessary bargaining power to raise the wholesale price, inter alia, because of the difference in terms of volume of wine traded between the individual producers of wine and their customers such as the purchasers of bulk wine. The quantities that each producer sells on its own are low and traders have no incentives to abide by a given wholesale price since they can easily switch to an alternative source of supply. In addition, attempting to address the issue of the potential discontinuation of the sustainable wine production activities through individual action would most likely not be successful as it would give an incentive to producers to undercut each other, i.e., offer the lowest wholesale price possible to traders, and try to sell higher volumes. This incentive would be accentuated by the fact that producers need to quickly sell off the often-accumulated stocks from previous years to find space for wine from the latest harvest. Otherwise, they would incur high costs for stocking their unsold products. As a result, if acting individually, producers would be forced to either sell the stock at a reduced price and/or to destroy the product to make space for the new harvest. This however would

[19] Guidelines, para 90.
[20] Guidelines, para 97.

prevent them from receiving a remuneration for their production that allows them to keep producing in line with the HVE and organic standards.

(50) By cooperating instead, producers will increase their bargaining power and their ability to raise the wholesale price charged to traders, which, due to the accumulated quantities that the group of producers would represent, will not be able easily to switch to an alternative source of supply. Cooperation will also prevent a scenario where producers have a strong incentive to offer individually low prices to traders to avoid accumulating unsold stocks.

(51) At the vertical level, the inclusion of traders, in addition to producers, in the agreement would be necessary as it would provide certainty as to the attainment of the relevant sustainability standards. Even though the cooperation by producers horizontally increases their bargaining power and increases the chances that traders will be willing to purchase at the orientation price, traders are nevertheless restricted in terms of the price at which they can place their products on the market given consumers' price sensitivity, in particular in the recent inflationary context. If traders are unable to effectively sell or can only sell limited amounts of the products at the orientation price agreed upon solely between producers, the agreement's objective will only be achieved to a limited extent. The involvement of traders in the agreement and therefore in the determination of the orientation price is as a consequence indispensable to ensure that the wholesale orientation price is fixed at a level that not only remunerates producers for maintaining their efforts to produce in line with the HVE and organic standards, but also provides a realistic opportunity to traders to resell the products to their own customers without incurring significant losses. All of this must be done bearing in mind the rules on intensity of the restriction discussed below.

(52) The envisaged agreement foresees that if the attempt at concluding an agreement with the buyers of sustainable wine fails, the agreement will proceed solely on the basis of horizontal cooperation between producers. In this case and provided that an agreement with the buyers at the vertical level has not been found, proceeding solely by way of a horizontal agreement would be indispensable to increase the bargaining power of producers vis-à-vis traders and prevent situations whereby producers are forced to apply low prices to avoid accumulating unsold stocks. Once a purely horizontal agreement is concluded, it is more likely that the group of producers forming part of that agreement would be able to conclude also an agreement vertically with the traders, even if only after the orientation prices have been agreed upon. Even though there is a risk that certain traders might not accept the agreed orientation prices, the scale and increased bargaining power of producers should ensure that at least some of the traders will accept the agreed orientation prices, thus, ensuring the achievement of the sustainability standard for the relevant producers.

(53) In light of the above, it appears that the envisaged agreement, which foresees an agreement at the vertical level between producers and traders, as well as, in case such a vertical agreement cannot be achieved, an agreement at the horizontal level only between producers, is indispensable to attain the sustainability standard. Indeed, an agreement at the vertical level between producers and traders constitutes the most appropriate and effective means to attain the sustainability standard and must therefore be considered as indispensable to that effect. The possibility for producers to eventually conclude an agreement among them at the horizontal level only is expected to incentivise traders to eventually find a common ground with producers in order to conclude an agreement at the vertical level as well. Therefore, if an

agreement at the vertical level cannot ultimately be achieved due to a failure to find consensus with traders on the level of orientation prices, an agreement at the horizontal level only between producers can be considered indispensable given that it increases the likelihood that individual purchasing agreements concluded with traders are based on the orientation prices resulting from the horizontal agreement, thereby contributing to the achievement of the sustainability standard.

3.5.1.2. The provisions of the sustainability agreement are indispensable

(54) Under step 1 of the indispensability test, it must also be examined whether the different provisions of the agreement, for example relating to price, output, innovation and distribution, restrict competition and, if so, whether they are indispensable to attaining the relevant sustainability standard[21]. This requires a comparison between the types of provisions on which they intend to agree with possible alternative provisions that may be less restrictive of competition whilst at the same time achieving the sustainability standard. A practical way to assess this is by identifying the issue(s) that prevent the parties from attaining that standard and what suitable provision(s) may effectively address the issue(s) in question[22]. If a choice between two or more such provisions exists, parties should opt for the least restrictive provision.

(55) The issue that the parties aim to address with the envisaged agreement is the impossibility for many producers to obtain wholesale prices for their products that ensure sufficient return to continue producing in line with the HVE and organic standards. This makes it increasingly difficult for these producers to continue making the necessary investments and/or incurring losses to maintain their sustainable production practices and incentivises them to discontinue their sustainable wine production activities, either by stopping wine production as a whole or by switching to the more profitable conventional production.

(56) There is also a related secondary issue of informing consumers and raising their awareness about the added value of the two sustainability labels, and in particular HVE,[23] and the additional costs that sustainable production methods imply. Providing such information could in principle help producers ensure sufficient return for their sustainable wine production. It does not appear that this issue can be effectively addressed in the short term due to various reasons described further below.

(57) The objective of ensuring higher profitability for sustainable wine producers may generally be addressed by various alternative provisions, namely: (i) an agreement on commitments by traders to purchase a minimum amount of products or to purchase exclusively their requirements for products from the relevant producers, (ii) an agreement on capping yields, (iii) an agreement on the promotion of HVE and organic labels aimed at raising consumer awareness of the benefits and costs of sustainable wine production, or (iv) an agreement on payments or price commitments by traders vis-à-vis producers.

(58) While an agreement whereby traders commit to purchase a minimum amount of products or even purchase the products exclusively from the relevant producers may

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21 Guidelines, para 108.

22 Guidelines, para 109.

23 According to the information submitted by the applicant it seems that there is a general lack of understanding by consumers of the added environmental value of the HVE label, which is often misconceived as equivalent to conventional production.

guarantee producers the marketability of their wine, this does not ensure that the price at which the producers would be able to sell their products would be sufficient to provide them with the necessary incentives to maintain their sustainable production practices. Based on the information submitted by the applicant, it appears that the issue faced by producers is not the impossibility to market sustainable wine (which may very well be marketed at a price providing low profitability or below production costs, thus, leading to losses), but rather the possibility to market it at a level which would be sufficient for producers of sustainable wine to maintain their sustainable production activities and not switch to a more economically beneficial, yet less sustainable, activity. While a commitment on quantities or an exclusivity commitment by the traders may bring about some economies of scale potentially raising the profitability of the products for some producers, this would most likely be for the producers that are able to produce at the lowest average price and would not ensure that sustainable wine production is profitable as a whole. In addition, given the current market environment where consumer demand for sustainable wine is on a declining trend, it would be difficult to require from traders to commit to certain volumes, i.e., this would most likely result in minimum commitments in terms of quantities or exclusivity arrangements that benefit only a few producers. It appears therefore that commitments to purchase a minimum amount or exclusively products from certain producers would not ensure the achievement of the sustainability standard.

(59) An agreement on capping yields would effectively reduce the output of sustainable wine, which may lead to overall lower supply on the market and, as a result, an increase of the wholesale price that producers receive for their products. This might thus allow most if not all producers of HVE and organic wine to maintain their activities by producing lower quantities albeit at a higher margin. However, capping yields is a measure which has longer-term effects and would limit the possibility of producers to readapt to new market conditions (e.g., an increase in consumer demand for sustainable wine in the near future) once and if those arise. In addition, capping yields would limit the quantities produced, which on its own will lead to lower economies of scale and, thus, a reduction of profitability. It would also particularly affect those producers that are most efficient and have managed to achieve such economies of scale to the largest extent. Finally, capping yields would also lead to inefficiencies in terms of production as the land available to producers would not be fully utilised and lower amounts of crops would be planted.

(60) An agreement on the promotion of HVE and organic labels (e.g., in the form of a consumer campaign) could in principle serve to explain and raise awareness by consumers of the added environmental value and additional costs of these labels, thus, dealing with the issue of lack of consumer understanding of their benefits compared to conventional products. Such an agreement could ultimately serve to convince consumers to pay a higher price for HVE and organic products, but on its own would be unlikely to suffice to counterbalance consumer's increased price sensitivity. Moreover, for a consumer campaign to be effective, it would need a certain amount of time to have real and lasting effects on consumers, which in the current context of higher consumer price sensitivity, notably as a result of the recent inflationary crisis, and existing grub-up programme might not be able to deal on time with the risk that producers of HVE and organic wine might discontinue their sustainable production activity. This is particularly the case because there is a variety of different labels with varying levels of sustainability offered on the French and EU

markets, the understanding of which for consumers would be quite complex in the short timeframe concerned.

(61) Finally, an agreement on payments or price commitments such as the one suggested in the envisaged agreement will ensure that producers of HVE and organic wine are able to sell at a wholesale price that remunerates them for their higher costs and make them more profitable compared to conventional wine production. It will thus prevent them from discontinuing their sustainable production activities by switching to conventional production or stopping wine production altogether.

(62) In light of the above, it appears that an agreement on payments or price commitments such as the envisaged agreement on orientation prices is the least restrictive provision through which the sustainability standard in question can be attained. The envisaged agreement therefore can be considered as indispensable within the meaning of Article 210a. It remains to be seen whether such an agreement is sufficient to address all underlying issues in the current situation of sustainable wine producers, notably, the issue that consumers are not fully aware of the actual environmental benefits and costs linked to the implementation of sustainability standards, which negatively affects their willingness to pay. The conclusion of a price agreement might in the longer term have to be combined with an agreement on raising awareness of the added environmental value and additional costs of wine produced under the HVE and organic labels to provide a more comprehensive solution to the issues faced by the sustainable wine producers.

3.5.2. *Indispensability of the restriction(s) of competition*

(63) Having concluded under step 1 that cooperation both at the horizontal and vertical as well as a provision on payments or price commitments are indispensable, it must be determined whether each individual restriction of competition that flows from the agreement is indispensable to attain the sustainable standard in question[24]. There are two main dimensions to such assessment: the nature and the intensity of the restriction[25].

3.5.2.1. Nature of the restriction

(64) The nature of a restriction of competition relates to the parameter of competition which is affected by the provision or provisions of the sustainability agreement, such as price, output, quality, choice or innovation. Assessing the 'nature' of a restriction requires a consideration of (i) the way in which a specific parameter of competition is affected by an individual provision; and (ii) whether a realistic alternative to that provision exists, that is less restrictive of competition[26]. Parties to a sustainability agreement must choose the restriction that has the least negative effect on competition while attaining the sustainability standard.

(65) In this specific case, having concluded under step 1 that a provision on payments or price commitments is indispensable to ensure that producers of HVE and organic wine continue to be able to attain the relevant standards, what needs to be assessed is the nature of the agreement on payments or price commitments and whether there is another, less restrictive agreement on payments or price commitments that may attain the standard. Given that the parties to the sustainability agreement have opted for an agreement on fixing an orientation price, such agreement needs to be compared with

[24] Guidelines, para 113.
[25] Guidelines, para 115.
[26] Guidelines, para 117.

other possible price agreements. In this case, possible alternatives to the agreement on an orientation price could be agreements fixing either (i) a full, complete price, (ii) a minimum price or (iii) a price premium.

(66) While both in the case of an agreement on a full, complete price and of an agreement on a minimum price, the achievement of the sustainability standard would be ensured, i.e., the producers would be sufficiently remunerated for the higher costs of producing under the HVE and organic labels in order for them to maintain production of sustainable wine, such agreements are in principle more restrictive of competition than an agreement on an orientation price. The orientation price constitutes a recommended price, which producers can choose to apply or not. In contrast, in the case of an agreement fixing a complete or minimum price, producers would be forced to apply the said price in their sales to traders, thus, restricting competition more severely.

(67) As regards the comparison of the agreement on an orientation price and an alternative agreement on a price premium, what needs to be firstly assessed is whether the latter is a realistic alternative to the former, based on the market realities and specificities of the case. The difference between an orientation price and a price premium is that the orientation price would encompass the totality of costs incurred and income foregone (as well as an additional margin as an incentive payment as further described below) while a premium would relate only to that part of production that is specific and attributable to the sustainability label, i.e., it would give a price to the additional efforts and costs that sustainable production implies above what is done conventionally. The premium would effectively represent a fraction of the total price that producers would receive for producing sustainably while leaving scope for case-by-case negotiation on the other components of the price by each producer.

(68) In terms of comparison between the two, a price premium applied on top of the market price of conventional wine would hardly be representative of the additional costs incurred and income foregone, as organic and HVE wine production imply a completely different cultivation method compared to conventional wine. The costs incurred for this alternative cultivation method are therefore intrinsically different than those for conventional wine (e.g., in the case of conventional farming, synthetic chemicals and fertilisers are commonly used to, respectively, control pests and weeds and boost vine growth while in the case of organic farming their use is limited, and in the case of HVE farming, the use of synthetic pesticides and fertilisers is reduced and alternatives are encouraged; under conventional farming there are no specific requirements relating to biodiversity, unlike for organic and HVE; under conventional farming GMOs are allowed while in the case of organic they are prohibited and in the case of HVE they are restricted). An attempt by HVE and organic producers to differentiate and split up their costs based on whether they relate to conventional and HVE/organic production methods to calculate an exact price premium would be extremely burdensome in this particular case. Furthermore, given that the nature of the orientation price implies the maintenance of freedom by operators whether to adopt such price or not, this can in principle be considered as a less restrictive alternative to a price premium, even if the calculation of a premium were considered possible and necessary. It therefore appears that the agreement on an orientation price is the least restrictive alternative that achieves the sustainability standard in question.

3.5.2.2. Intensity of the restriction

(69) Determining the intensity of a restriction involves assessing the quantitative level of the restriction on price, output and possibly quality, choice and innovation and the duration of the restriction[27].

(70) As regards the quantitative level of the restriction, a given level is considered indispensable if agreeing on a lower level of the restriction makes it less likely for the parties to attain the sustainability standard[28]. In the case of price agreements, an assessment must be carried out as to whether the calculation of the price set under the agreement has been properly carried out. Elements that may be taken into account for such calculation are: (i) the estimated costs incurred and estimated income foregone; (ii) the level of certainty that the expected costs incurred and income foregone will materialise; and (iii) the likely return on investment relative to other alternatives. While the first element (i) serves to compensate parties to an agreement for producing in line with a sustainability standard, the second and third elements (ii) and (iii), (jointly called "incentive payment") serve to, respectively, ensure that parties to the sustainability agreement are protected against unexpected variations in costs and loss of income and ensure that they will find it more profitable to implement the sustainability standard than to not implement any standard or to undertake a different investment that may lead to less sustainable production or trade[29]. In line with the Guidelines on Article 210a[30], incentive payments that do not exceed 20% of the value of the additional costs incurred and income foregone by the implementation of the sustainability standard are likely to satisfy the quantitative part of the indispensability test. Incentive payments exceeding 20% of the additional costs incurred and income forgone by the implementation of the standard may also satisfy the quantitative part of the indispensability test where it can be shown, on the basis of the specific elements of the case, that a lower level of incentive payment would not be sufficient to incentivise the parties to enter into the sustainability agreement and would therefore not ensure the attainment of the sustainability standard.

(71) In the case at hand, the parties to the sustainability agreement envisage an orientation price resulting from the sum of the costs incurred and income foregone for the production and vinification of each grape variety in the Occitanie region and an additional value of up to 20% of such costs incurred and income foregone (i.e. total costs) serving as an incentive payment. The calculation of the costs incurred and income foregone is based on a formula encompassing the average grape production costs of each label (HVE or organic) per hectare and the yields that each grape variety (e.g. Chardonnay) generates. The data used for the formula is planned to be based on the audited costs and harvest declarations of a sufficiently large and representative sample of producers in the region. Other expenses that producers incur, i.e., vinification, are then added to the average grape production costs.

(72) Vinification costs are planned to be calculated based on average figures per hectolitre across a number of years for different grape varieties in the region of Occitanie, bearing in mind the need for an adjustment due to an increase in labour costs, investment and amortisation costs and inflation.

[27] Guidelines, para 122.
[28] Guidelines, para 123.
[29] Guidelines, para 126.
[30] Guidelines, para 127.

(73) After summing up all the average costs relating to grape production and vinification, the parties will arrive at an overall figure of average production costs per hectolitre, per label and grape variety (e.g. Chardonnay produced under the HVE label).

(74) The methodology presented by the applicant appears to satisfy the indispensability test. To the extent that the exact figures that the parties will reach for establishing an orientation price abide by the said formula and are based on data ensuring representativeness of the average costs of producers in the region, the indispensability test can be considered fulfilled.

(75) The parties will agree on an incentive payment representing up to 20% of the average *total* production costs (i.e., encompassing both conventional and sustainable cost elements), thus exceeding 20% of the *additional* costs incurred and income foregone by the implementation of the sustainability standard.

(76) The Commission finds that, in the circumstances of the present case, an incentive payment of up to 20% of the average total costs incurred and income foregone by the implementation of the relevant standards satisfies the indispensability test as a lower level of incentive payment would likely be insufficient to incentivise the parties to enter into the sustainability agreement and therefore to ensure the attainment of the standards. A lower level of the incentive payment would not sufficiently protect the producers from unexpected variations in costs and loss of income arising from, among others, a rise in labour[31] and certification costs[32]. In addition, a lower level of the incentive payment would make it more likely that producers find it more profitable not to implement the sustainability standards or to undertake a different investment that may lead to less sustainable production. As the applicant has submitted, conventional wine production is generally more profitable than sustainable wine production,[33] which creates strong incentives for producers to exit sustainable wine production. In addition, given the uncertainty as to whether and when consumer demand for sustainable wine will recover, producers might redirect their efforts and investment towards other business opportunities. Finally, given the risks incurred by such more sustainable production (e.g., the possible significant reductions in yields due to pests that cannot be treated with chemical pesticides under the sustainability standard, whereas it would be possible to treat them under conventional production), the producers may face a very significant reduction of yields that ultimately put at stake most of their costs of production under these standards. As a result, in the specific case at issue, providing a margin of up to 20% of total costs of production constitutes a reasonable approximation of the additional costs created by the sustainability standard for such production.

(77) In conclusion, given the risk of unexpected variations in costs and the strong incentives for producers to exit sustainable wine production, an incentive payment of 20% of the average total costs incurred and income foregone by the implementation of the standards can be considered as indispensable.

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[31] E.g. organic viticulture requires manual weed control instead of the employment of herbicides, pest control, canopy management, etc., resulting in high labor costs, which are increasing in recent years due to the wage inflation that followed the recent inflationary crisis. Data shows that organic viticulture requires on average 30 hours of manual work per hectare annually.

[32] Certification costs are also rising due to stricter EU regulations, rising inspection fees and greater documentation requirements.

[33] According to a French government study (France Stratégie, 2022), HVE farms earn less net income per hectare than comparable conventional farms, due to additional environmental costs not being offset by market premiums.

(78) In principle, organic and HVE producers are eligible to benefit from the so-called "eco schemes" under the CAP. The applicant indicated that the number of producers that benefit from this is limited and the amount of the support is very limited compared to the overall costs that the production of e.g. HVE wine implies. This appears to be confirmed by data available at the European Commission[34]. Nevertheless, individual producers need to ensure that they are not overcompensated by the orientation price for implementing the HVE and organic standards, bearing in mind any additional revenues they receive for this purpose.[35]

(79) Moreover, the agreement on an orientation price could lead to two additional, indirect restrictions of competition, namely, an exchange of commercially sensitive information and a possible output limitation. These two restrictions form an inherent part of the overall agreement. The exchange of commercially sensitive information is a constituent element of the price agreement without which an agreement on a price level cannot be reached. It must, however, be ensured that such exchange is limited to what is strictly necessary for the attainment of the sustainability standard. The output limitation, if present, would be an indirect consequence of the application of the sustainability standard. It must nevertheless be assessed whether, absent the agreement, the output would have been higher and what the likelihood of a net reduction is.

(80) As regards the exchange of commercially sensitive information, a risk of a restriction infringing the indispensability test arises at the moment of deciding on the exact level of the orientation price. Such a decision will in principle be made between representatives of both producers and traders in order to effectively ensure both the horizontal and vertical aspects of the agreement. The risk that could arise is that the same operators might have access to a series of meetings discussing the price of wine under the two sustainability labels. Such operators might also possibly be involved in production and/or price setting of conventional and/or sustainable wine under labels other than HVE and organic. More specifically, the risk is that such operators might use the information acquired during said meetings to collude and decide on the wholesale price for a given type of wine in reference to the price of other types of wines as opposed to basing themselves on competitive market mechanisms. Such values of the price might be set at a level reducing competition between the different types of wine or might provide an unfair advantage to one type over another. Another risk that may arise is that operators discuss and exchange information on aspects other than the price components of the two sustainability labels such as information on customer base, production capacity, or business strategies, which are not relevant

[34] According to data available at the European Commission, approximately 18% of participating farmers across all agricultural sectors (not limited to wine production) in France have applied for eco-scheme support through the certification pathway, which includes recognised certifications such as organic farming, HVE, and CE2+. While there is no specific data on the share of producers choosing HVE certification alone, it can be inferred that this represents less than 16% of all direct payment beneficiaries in France. As such, although HVE is an acknowledged route to access eco-scheme support, the number of producers who benefit from it remains relatively limited compared to the overall number of applicants. In terms of financial support, farmers in all sectors certified under the HVE scheme are eligible for the second-tier payment level under the eco-scheme, which is set at around €80 per hectare in the CAP Strategic Plan of France. However, due to higher-than-anticipated uptake, the actual payment rate for the 2024 campaign was adjusted to €62.05 per hectare.

[35] According to the information available to the Commission, the number of producers that benefit from support under the eco-schemes is limited and the amount of the support varies across producers and is limited compared to the overall costs that the production of wine under the HVE and organic labels implies. It therefore does not appear necessary for the parties to the agreement to deduct these amounts.

for the implementation of the agreement and would thus be prohibited under Article 101(1) TFEU. In order to limit these risks, the applicant commits that the discussions for the setting of the orientation prices will be limited to essential price components to determine the orientation price and split in two separate meetings: one on HVE and another one on organic production. In addition, representatives of both producers and traders that deal with the specific type of wine in question will be invited to each meeting and participation of the same representatives in meetings on the other type of wine will be limited to the extent possible. Finally, participants to meetings on the topic of the orientation price will draft an internal report on the topics discussed and the decisions made in order to make information available for checks of compliance with competition rules. Ultimately, in any case it is incumbent on the parties to the agreement to ensure that risks of exchange of commercially sensitive information and, thus, the likelihood of influence of the price setting of either HVE or organic wine on each other or on other types of wine is limited.

(81) As regards the indirect output limitation, the continued application of the relevant sustainability standards by producers could possibly lead to a reduction of output as producers that might otherwise, absent the agreement, have switched to conventional production may, due to the existence of the agreement, maintain their sustainable production practices, which typically lead to lower yields. The reduction of output linked to the application of the organic and HVE standards is in principle intrinsic and indispensable to the application of the standard. In addition, absent the agreement, producers could, instead of switching to conventional production, opt for stopping wine production, which would reduce their output to a greater extent. The latter scenario appears more likely than the former given that the wine market suffers from oversupply and sustainable wine producers would most likely look for an alternative business opportunity rather than continue producing wine in a context of lower demand and increased consumer price sensitivity.

(82) In addition, another possible dimension of a potential reduction of output is that the existence of the agreement may not only incentivise current producers of HVE and organic wine to maintain their sustainable production activities but may also provide incentives for producers of conventional wine to convert to HVE and/or organic wine due to the economic incentive derived from the orientation price. In principle, this could also potentially lead to a reduction of output. It needs to be however recognised that the likelihood of new entrants in the market of HVE and organic production seems remote given the current market conditions. Moreover, a conversion from conventional to sustainable wine production would also take a significant amount of time (around 3 years in case of organic and 3-6 months in the case of HVE), while the duration of the agreement to be put in place is of two years only, thereby, providing no certainty to wine producers that a conversion to sustainable wine would be profitable. Therefore, it appears unlikely that a restriction of competition in terms of output will materialise on the market in that regard.

(83) Finally, as part of the intensity of the restriction, the parties must also assess the duration of the restriction[36]. The envisaged duration of the agreement of two years appears to be indispensable, given the aim of the agreement to ensure that producers of HVE and organic wine do not discontinue their sustainable production activity until consumer demand for such wine recovers following the end of the inflationary crisis and total wine production capacity is reduced as a result of the grub-up

[36] Guidelines, para 129.

programme. If consumer demand and thus willingness to pay for sustainable wine recover within the two-year period, then in principle cooperation to ensure the maintenance of sustainable production practices by HVE and organic producers may be no longer indispensable since producers would be able to, individually, market their products at sufficiently high wholesale prices. In such a case, the agreement would need to be terminated. If consumer demand does not recover within the two-year period, a further assessment of the indispensability to cooperate and enter into a price agreement will need to be made at that point in time by the applicant before any prolongation takes place.

3.6. Temporal scope of Article 210a

(84) Article 210a applies to sustainability agreements concluded after the entry into force of the provision on 8 December 2021[37]. Agreements concluded before that date only fall under Article 210a from 8 December 2021 onwards.

(85) The applicant indicates that the envisaged agreement will be concluded upon the issuance of the present opinion. The agreement therefore falls within the temporal scope of Article 210a.

4. CONCLUSION

(86) Based on the information provided by VCF, the Commission is of the opinion that the envisaged agreement as described in this opinion is compatible with Article 210a of the CMO Regulation.

(87) The present opinion of the Commission assesses exclusively the compatibility of the envisaged agreement as described in this opinion with Article 210a of the CMO Regulation and has no bearing on the compatibility of the agreement with other provisions. It is based on the information submitted by the applicant and conditioned on the truthfulness and accuracy of such information.

(88) The present opinion does not cover any other agreements than the envisaged agreement as described in this opinion.

(89) In accordance with Article 210a(6) of the CMO Regulation, second and third subparagraphs, the Commission may declare Article 101(1) TFEU applicable to the agreement if the conditions of Article 210a of the CMO Regulation are no longer met, or change the content of the present opinion at its own initiative or at the request of a Member State, in particular if VCF has provided inaccurate information or misuses the opinion.

Done at Brussels, 15.7.2025

For the Commission

Signed

Teresa RIBERA
Executive Vice-President

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[37] Guidelines, para 134.