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Wine Promotion and the State

EU State Aid Law and its impact on the promotion of wine

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Promotion and advertising essential

to guarantee success in today's wine business.

Two general trends can be identified in this respect:

Demand for wine has changed considerably for much of the last three decades: frequency of consumption is decreasing in traditional wine-drinking countries, although it is still increasing in northern European countries and the US, for instance. More sophisticated consumers more demanding as regards quality.

Competition in the wine industry has become global . Although the European Union, home of the traditional producing countries, is still the leading wine exporter, it is also the world's leading importer. Imports from "New World" producers – mostly Australia, the US, Chile and South Africa – have increased exponentially (from 0.85 M hl in 1993 to 9.5 M hl in 2004).

Governments and Public Bodies play a meaningful role in wine promotion

The traditionally fragmented nature of the wine sector, with most individual producers lacking the resources to invest in wine promotion, means that professional and inter-branch organisations and trade bodies carry out important promotion activities.

Wine being a "vital economic activity" in most producing countries, Governments are active in promotion efforts (with varying degrees of intensity), for instance by:

- **Setting up legal frameworks enabling trade organisations and bodies** to carry out promotion activities, funded by charges or levies imposed on businesses and rendered compulsory by law. This is the case of e.g. **France** (*Organisations interprofessionelles* and *FranceAgrimer*), **Germany** (*Deutsches Weininstitut*), **Spain** (*consejos reguladores*) or **Portugal** (*IVV*, *Viniportugal* and *Comissões Vitivinícolas Regionais*);
- **Granting of government funds to organisations and corporations** (e.g., the US Department of Agriculture funding the export promotional program of California's *The Wine Institute*);
- **Organising promotion campaigns by public bodies themselves**, for instance in Spain (*ICEX*) and Australia (*Australian Wine and Brandy Corporation*).

When Governments are involved, EU State aid rules may apply

State Aid Control. In order to guarantee a level playing field for all companies active in the EU's Internal Market, the EU Treaties subject aid granted to companies by Member States to the control of the European Commission.

- What is State aid: general prohibition if five conditions are met. Measures (i) granting an economic advantage (ii) by States or through State resources (regardless of form), (iii) favouring certain businesses or sectors, if they (iv) distort or threaten to distort competition, and (v) affect trade between Member States.
- Justification: Certain types of aid beneficial to the common interest may be approved, e.g., if they "facilitate the development of certain economic activities or areas". In this case, wine promotion measures should comply with the Commission's detailed *Guidelines on State Aid in the Agricultural and forestry Sector 2007-2013* (see below).
- Procedure: All plans for granting State aid should be previously notified and cleared by the Commission before implementation (except if covered by a "Block Exemption" regulation). Violation of notification and stand-still obligations enforced by National Courts.

"State resources" and the case of Mandatory Levies

For an advantage to be considered State aid, it must be attributable to the State and must be granted by "State resources" (i.e., resources which are *directly or indirectly under State control*, although the case law is not entirely clear).

When charges are fully financed by the sector and where the State has no say or intervention on the use of financial contributions, funding should not be considered State resources. However, this is a controversial issue, and the Commission has a stricter interpretation of the case law.

Safe Harbour: no State Aid when measures are *De Minimis*

- State aid rules do not apply if total *de minimis* aid granted to one company does not exceed € 200,000 per three fiscal years (Reg. (EC) 1998/2006).
- Aid amounts cannot be determined based on price or quantities, or on the basis of exported volumes or on the use of domestic over imported products; cannot fund the creation or the functioning of an export distribution network or other current expenses linked to export activities; cannot fund undertakings in difficulty.

Even if constituting State aid, wine promotion measures can be compatible with EU law

Aid to Advertising activities

(any operation to induce economic operators to buy the relevant product)

Common rules: cannot benefit specific companies & brands; must comply with EU advertising rules

Campaigns in the EU Internal Market

When origin is mentioned, campaign should be earmarked for quality (DO or IG) wines; in case of national/regional quality brands, reference to origin is allowed, if "subsidiary to main message"; 50% contribution by sector, whichever the form (including mandatory levies); campaigns over € 5 M notified individually. **If origin is not mentioned**, should benefit all producers, and 100% of costs may be financed.

Campaigns outside the EU (third-country markets)

Should not endanger sales or denigrate products from other Member States; must be in line with "principles" of Reg. (EC) 3/2008, *inter alia*: messages based on intrinsic qualities of products; origin references only in case of DO and IG, and secondary to central message; third countries selected according to potential demand; sector should contribute with at least 20% of costs, but contribution may come from mandatory charges.

Aid to promotion/ technical support

Dissemination of scientific or trade knowledge between businesses & competitors

Only SME may apply, and within stricter rules (Reg. (EC) 800/2008):

- Intensity of aid limited to 50% of costs;
- Concerning participations in fairs, only *first* participation in any given event can receive aid.

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