

COMMISSION IMPOSSIBLE:

THE COMMISSION OF THE EUROPEAN COMMUNITIES' ATTEMPT TO REFORM THE COMMON MARKET ORGANIZATION FOR WINE

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INTRODUCTION

“Blood will flow if Nicolas Sarkozy does not act fast to raise the price of wine.”¹ Such violent ultimatums are more commonly associated with religious fundamentalists than with vintners, but this statement came from a group of seven militant vintners wearing ski-masks and demonstrates the dire situation the European wine sector is facing.² This group, called the Crav, has already vandalized local supermarkets and hijacked and destroyed a truck carrying foreign wine.³ The problem facing these and other vintners throughout Europe is that European wines are losing their competitive edge to new world wines resulting in a crippling loss in demand.⁴ This loss in demand is exacerbated by a record-setting wine over-production of almost 12.8 million hectoliters, or 743.6 million gallons, per year, resulting in an inconsumable wine surplus.⁵ Both of these factors have driven the price of wine through the floor, resulting

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1. Caroline Wyatt, *French Wine-Growers Go Guerrilla*, BBC NEWS, ¶ 14 (June 17, 2007), available at <http://news.bbc.co.uk/2/hi/europe/6759953.stm>.

2. *Id.*

3. *Id.* at ¶¶ 16.

4. *Staff Working Document Accompanying Document to the Commission Proposal for a Council Regulation on the Common Organisation of the Market in Wine and Amending Certain Regulations*, EUR. PARL. DOC. (SEC 89) 4 (2007) at 4 [hereinafter *Staff Working Document*]. It should be noted that the trend of declining consumption and loss in demand only concerns table wine and not quality wine produced in specific regions. *Id.* Table wines are wines that are not produced in specific regions and therefore do not contain a geographic indicator. *Id.* For example, a *Chateau Lafite Rothschild Pauillac* would be a type of quality wine because it contains the geographic indicator of Pauillac, which is located in Bordeaux. Table wines are usually considered to be lower quality wines because they are produced in large quantities and come from various regions and therefore lack a strong sense of *terroir*. See generally Matt Kramer, *Terroir Matters*, WINE SPECTATOR MAG., June 15, 2006, at 3, available at http://www.winespectator.com/Wine/Archives/Show_Article/0,1275,5510,00.html.

5. *Staff Working Document*, *supra* note 4, at 12. 1hl = 100 liters = 26 gallons. See on-line conversion calculator, <http://www.onlineconversion.com/volume.htm> (last visited Apr. 1, 2009).

in record losses for vintners.⁶

In an effort to remedy this grim state of affairs, the Commission of the European Communities (“the Commission”) proposed, on July 4, 2007, a Council Regulation to reform the common organization for the market in wine.⁷ The proposal aims to “increase the competitiveness of . . . EU . . . wine, strengthen the reputation of EU . . . wine[,] . . . recover old markets and win new ones in the EU[,] . . . create a wine regime that operates through clear simple rules[,] . . . [and] preserve . . . the best traditions of EU wine production.”⁸ This proposal was created in response to five systemic problems facing the EU wine sector: (1) steady decline in consumption, (2) loss of competitiveness, (3) severe market imbalance, (4) complex wine policies, and (5) environmental concerns.⁹ These problems have helped bring the struggling European wine sector to its knees. While some of these problems can be attributed to external forces, namely the increase in quality of new world wines and the globalization of the wine trade, the majority of the problems faced by the European Community are self-imposed and represent a culmination of years of protectionist, inefficient agricultural policies.

Part II of this Note provides a brief overview of the origins of the European Union’s Common Agricultural Policy (“CAP” or “the policy”), examining its basic political and legal structure. Part III begins by explaining the historical importance of the European wine sector and moves into a more contemporary analysis of the wine market between the years of 1987 and 2003. Part IV provides an overview of the current problems facing the European wine sector, and Part V discusses the various reforms considered by the Commission designed to alleviate the wine sector’s problems. Finally, Part VI presents the Commission’s chosen reform policy and engages in an evaluation of the Commission’s reforms in light of its stated goals.

This Note will demonstrate that the majority of the current regulatory reforms proposed by the Commission are based upon prior successful reforms employed during the 1987-1996 reform period.¹⁰ Furthermore, this Note will

6. Wyatt, *supra* note 1, 28.

7. This Note was written prior to the enactment of Council Reg. (EC) No. 479. EUR. PARL. & COUNCIL REG. 479/2008, 2008 O.J. (L 128/1) (EC). Therefore, the analysis contained herein is based exclusively upon the Commission’s Proposal and the Council Political Agreement made on December 21, 2007. However, since the recent Council Regulation essentially codified the regulations contained in the Commission Proposal and the Council Political Agreement, much of the analysis remains unchanged. While a comparative analysis of the Council Regulation to the original Commission Proposal, identifying measures that were cut from the final regulations as well as measures or concessions that were added based upon political and social pressures from the wine industry, would be interesting, that is beyond the scope of this Note.

8. Commission Proposal for a Council Regulation on the Common Organisation of the Market in Wine and Amending Certain Regulations, EUR. PARL. DOC. (COM 372/2007) at 4 [hereinafter Commission Proposal].

9. Commission Proposal, *supra* note 8.

10. It should be noted that this Note does not address all of the regulatory reforms

demonstrate that even though the effectiveness of these current reforms has been tempered by political concessions, employment of these tempered measures in conjunction with the elimination of other inefficient measures will allow the European Union to repair its crippling market imbalance and restore a sustainable and prosperous wine sector.

I. THE HISTORY OF THE COMMON AGRICULTURAL POLICY

A. Background

The CAP is a “domestically oriented farm policy based on three major principals: (1) a unified market in which there is a free flow of agricultural commodities within the EU; (2) product preference in the internal market over foreign imports through common customs tariffs; (3) financial solidarity through common financing of agricultural programs.”¹¹ CAP seeks to create a free market of agricultural goods among the members of the European Union akin to that in place among the several states in the United States. To analogize, it is the Agricultural Commerce Clause of the European Union.

B. Origins

The CAP originated in post-World War II Europe. World War II left Europe’s agricultural sector in shambles resulting in wide-spread food shortages, famine, and high levels of unemployment.¹² With the aim of providing affordable food supplies, stabilizing food prices, and attaining self-sufficiency in the agricultural sector, the administrations of the original six EU nations provided for the creation of the CAP in the Treaty of Rome.¹³ The following five objectives of the CAP were enumerated in this treaty: (1) to increase agricultural productivity by promoting and ensuring the optimum use of the factors of production, in particular labor; (2) to ensure a fair standard of living of farmers; (3) to stabilize markets; (4) to assure the availability of

embodied in both the Commission proposal and the recent political agreement. This Note focuses on those reforms that will have the biggest impact on reviving the wine sector.

11. UNITED STATES DEPARTMENT OF AGRICULTURE: ECONOMIC RESEARCH SERVICE, COMMON AGRICULTURAL POLICY (CAP), ¶2, <http://www.ers.usda.gov/Briefing/EuropeanUnion/policy.htm> (last visited . 1, 2009).

12. ANTHONY BATTY & CAMERON CARSWELL, GLOBALIZATION INST. GREEN AND PLEASANT LAND: BRITAIN’S COUNTRYSIDE AFTER THE COMMON AGRICULTURAL POLICY 5 (2005), <http://www.emediawire.com/prfiles/2005/09/08/282969/greenandpleasantland.pdf> (last visited Mar. 1, 2009).

13. EUGENE LEGUEN DE LACROIX, E.C. DIR. GEN. FOR AGRIC., THE COMMON AGRICULTURAL POLICY EXPLAINED 6 (2004), http://ec.europa.eu/agriculture/publi/capexplained/cap_en.pdf (last visited Mar. 1, 2009). The Treaty of Rome was signed on March 25, 1957. *Id.* The original six EU countries were France, West Germany, Italy, Belgium, The Netherlands, and Luxembourg. *Id.*

supplies; and (5) to ensure reasonable prices for consumers.¹⁴

The CAP sought to achieve these goals by artificially inflating the price of European-produced agricultural goods while simultaneously placing steep tariffs on foreign agricultural goods, thus eliminating the ability of imports to exploit unusually high domestic prices.¹⁵ The inflated prices paid by European consumers translated into subsidies for struggling European farmers allowing them to stay in business and revitalize the European agricultural sector.¹⁶

CAP's price fixing system found support in the unique nature of the European agricultural identity. First, the agricultural sector in the late 1950's and early 1960's accounted for nearly twelve percent of the GNP of the original six EU countries, and twenty percent of these countries' workforce was employed in the agricultural sector.¹⁷ Moreover, influential national unions formed powerful lobbies and advocated for steep agricultural subsidies.¹⁸ Second, agriculture was a key "trade-off" for both France and Germany during the negotiation of the European Union, with France deeply concerned that the common market would disproportionately benefit industrialized Germany and hurt agrarian France.¹⁹ Finally, the volatile nature of the agricultural sector, specifically in terms of its price fluctuations, was viewed by officials as an economic threat which could be neutralized by the implementation of subsidies.²⁰ Taken together, these economic, social, and political interests paved the way for the creation of the CAP.

The creation of this subsidy-based program in turn necessitated the creation of the European Agricultural Guidance and Guarantee Fund ("EAGGF"), which is responsible for collecting and allocating CAP funds.²¹ The EAGGF collects funds from Member States based upon their economic status, not their population, and then redistributes the funds into two pillars: one for direct market support measures, or direct producer subsidies, and the other for rural development programs.²² Under the first pillar, funds are paid directly to the farmers. Under the second pillar, funds are collected in a community pot and allocated toward the community goals of improving environmental standards or general agricultural conditions.²³

14. BATTY & CARSWELL, *supra* note 12, at 5.

15. Jess Phelps, Note, *Much Ado About Decoupling: Evaluating the Environmental Impact of Recent European Union Agricultural Reform*, 31 HARV. ENVTL. L. REV. 279, 281 (2007).

16. BATTY AND CARSWELL, *supra* note 12 at 5.

17. JOHN MCCORMICK, UNDERSTANDING THE EUROPEAN UNION 188 (Neil Nugent, William E. Patterson & Vincent Wright eds., 4th ed. 2005).

18. *Id.*

19. *Id.*

20. *Id.*

21. Phelps, *supra* note 15, at 282.

22. *Id.* Phelps argues that this collection scheme results in industrialized nations paying for the modernization of other Member States. *Id.*

23. *Id.*

C. Legal Framework

The three primary actors in the CAP are the European Commission, the Council of Ministers, and the European Parliament.²⁴ The European Commission performs three vital roles: (1) implementation of treaty provisions and legislative measures; (2) “propos[ing] potential reforms to the European Parliament and Council and implement[ing] legislative enactment”; and (3) “administer[ing] money appropriated for [European Community] operations, including the EAGGF.”²⁵ The European Commission has proposed the current reform, which is the subject of this Note.²⁶

The Council of Ministers is the “major decision-making” branch of the European Community and has the authority to amend and ultimately approve proposals made by the Commission.²⁷ Unlike the Commission, which is somewhat shielded from national interests, the Council of Ministers is influenced by its own national political interests and these interests often guide it in its decisions to accept, reject, or amend certain proposals.²⁸

The European Parliament plays an indirect role in the approval of proposed regulatory reforms, as well as an advisory role over the European Commission and the Council of Ministers.²⁹

While there is no doubt that the CAP was successful in revitalizing Europe’s agricultural sector,³⁰ its enduring presence continues to be both costly and burdensome to European and foreign consumers.³¹ Today, Europe’s agricultural sector is among the largest and most productively efficient sectors in the world; however, the price-setting nature of the CAP hampers economic efficiency at a significant cost to the EU taxpayer.³² This Note will not address in depth the problems posed by maintenance of the CAP, as other scholarly articles have.³³ Rather, this Note will focus on the relationship between the

24. *Id.* at 284.

25. *Id.*

26. See Commission Proposal, *supra* note 8.

27. McCORMICK, *supra* note 17, at 89. The Council of Ministers is made up of representatives from Member States, similar to Senators in the United States.

28. *Id.* at 82-84, 93-94.

29. Phelps, *supra* note 15, at 284-85.

30. LEGUEN DE LACROIX, *supra* note 13, at 6-7.

31. See BBC News, *Q&A: Common Agricultural Policy, w Much Does It Cost?* (Dec. 2, 2005), <http://news.bbc.co.uk/2/hi/europe/4407792.stm> (last visited Mar. 1, 2009) (stating that the budget for 2005 was around 49 billion Euros, or 46% of the EU’s budget).

32. McCORMICK, *supra* note 17, at 190 (“The EU is the world’s largest exporter of sugar, eggs, poultry, and dairy products, and accounts for nearly 20 percent of the world food exports.”).

33. See generally, Phelps, *supra* note 15; Dianel Bianchi, Essay, *Cross Compliance: The New Frontier In Granting Subsidies to the Agricultural Sector in the European Union*, 19 GEO. INT’L ENVTL. L. REV. 817, 825 (2007) (discussing the impacts of cross-compliance on the environment); ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *Analysis of the 2003 CAP Reform 6* (2004), <http://www.oecd.org/dataoecd/62/42/32039793.pdf> (last visited

CAP and the European wine sector.

II. THE WINE MARKET OF THE PAST

A. *The Wine Market from 1957-1987*

1. *Overview*

Wine is one of the agricultural markets governed by the CAP. Like many other agricultural markets under the CAP, the wine market has ebbed and flowed over the years from times of loose regulation, causing periods of extremely wasteful surpluses, to periods of strict regulation, resulting in near market equilibrium.³⁴ In order to understand this cyclical nature of the wine market, it helps to first understand the history of the European wine sector and the historical significance of wine to Europeans.

2. *History of Wine in Europe*

Wine carries with it a strong cultural and sociological significance for the European citizenry.³⁵ This cultural importance can be seen through the “mythology, painting, sculpture, poetry, customs, eating habits, trade, medicine, even religion, . . . of the European Mediterranean peoples.”³⁶ While the importance of wine has remained constant, its production has often fluctuated along with major historical periods.³⁷ The wine market is currently experiencing a period of resurgence in both Europe and other rising new world markets.³⁸ This recent wine resurgence in Europe has coincided with the creation and rise of the European Community, and the interplay between the two has been critical.

Prior to the signing of the Treaty of Rome in 1957 and the creation of the CAP, the wine market in Europe could be characterized as a set of independent protectionist national markets.³⁹ Individual countries placed high tariffs on

Mar. 1, 2009).

34. See EUROPEAN COMM'N AGRIC. AND RURAL DEV., COUNCIL POLITICAL AGREEMENT ON THE COMMISSION PROPOSAL, 5 (Dec. 19, 2007), http://ec.europa.eu/agriculture/capreform/wine/presentation_191207/pres191207.pdf [hereinafter COUNCIL POLITICAL AGREEMENT]. “Market equilibrium” equates to times of reduced surpluses. *Id.*

35. ANTONIO NIEDERBACHER, WINE IN THE EUROPEAN COMMUNITIES 5 (European Communities 2nd ed. 1987).

36. *Id.*

37. *Id.* at 15 (discussing the impacts of the fall of the Roman Empire and the Dark Ages in Europe and their negative impact on wine production).

38. *Id.* (illustrating the steady increase of wine production since the 1950s).

39. EUROPEAN COMMISSION – DG AGRICULTURE, EX-POST EVALUATION OF THE COMMON MARKET ORGANIZATION FOR WINE, FINAL REPORT, 6, 42, (2002) available at http://ec.europa.eu/agriculture/eval/reports/wine/fullrep_en.pdf. [hereinafter EX-POST REPORT].

foreign wines, thereby restricting importation, while they simultaneously tried to find foreign markets for their domestic wines.⁴⁰ This protectionist approach is best illustrated by the reciprocal ban on the importation of wine between France and Italy in the late 1970s and early 80s.⁴¹

These strong nationalistic sentiments did not dissipate immediately following the signing of the Treaty of Rome. It would take over twelve years, and a series of proposals and concessions for the Common Organization for the Wine Market, (“CMO for wine”), to come into force.⁴² One of the most important steps toward the deregulation and standardization of the wine market was the creation of the Common Customs Tariffs, (“CCT”), which came into force in 1959. The CCT applied the principle of “Community Preference,” essentially adopting a more expansive continental form of protectionist policies in place of the old nationalistic ones.⁴³ Despite these fundamental alterations to the nature of the European wine market, change did not come quickly. It was not until the 1970s, thirteen years after the signing of the Treaty of Rome and eight years after publication of the first legal texts, that the CMO for wine became operational.⁴⁴ Since its creation, the CMO for wine has been subject to numerous regulatory revisions and amendments.⁴⁵

3. Overproduction and the Regulatory Response in the 1980 Wine Market

The European wine market of the early 1980s was significantly different from that of the early 1960s. During the years of 1979 and 1980, the European Wine market was suffering from a relatively new type of crisis – overproduction.⁴⁶ The CMO for wine proved, like many other agricultural markets, to be highly successful due to its abolishment of national trade barriers, imposition of foreign tariffs, and use of technology in procuring “extraordinarily abundant harvests.”⁴⁷ However, overproduction was placing a strain on the relations between Member States, specifically between Italy and France. These two nations engaged in “wine wars” in which cargo ships and

40. NIEDERBACHER, *supra* note 35, at 44.

41. *See id.* at 49-50; *see also id.* at 46-47 (discussing the difficulties of uniting the French and Italian wine sectors).

42. *Id.* at 47.

43. *Id.* at 48. Community preference allowed for almost unrestricted trade among the Member States, while imposing large tariffs on non-Member producers. *Id.*

44. EX-POST REPORT, *supra* note 39, at 42. The wine market was the last important agricultural product that was still subject to national rule. *Id.*

45. *See* NIEDERBACHER, *supra* note 35, at 48-66 (discussing the various amendments and regulatory changes to the CMO in wine from 1960-1980).

46. *Id.* at 66 (characterizing overproduction as a relatively new problem because it had occurred in the early 1970s, but noting that the community was able to rebound). *See also* COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 5.

47. NIEDERBACHER, *supra* note 35, at 66.

trucks carrying wine were attacked and their cargo destroyed.⁴⁸

In order to curb this problem of overproduction and stem the violence, the CMO for wine introduced three controversial regulatory measures which currently remain in some form to this day. These measures include: (1) Control of Planting Rights, which prohibited new plantings of vineyards and offered subsidies for conversion of vineyards to other agricultural products, also known as "grubbing up"; (2) Aid for Private Storage, which offered vintners subsidies to store excess grape juice in years of overproduction; and (3) Distillation Measures, which offered subsidies to vintners and distillers for converting excess wine into other forms of alcohol.⁴⁹ By 1987, these regulations constituted the CMO's primary arsenal in its fight against over production and market imbalance.⁵⁰

B. Regulatory Measures Explained and Evaluated

Understanding these regulations is the key to understanding the CMO's current proposals for wine. Many of the measures adopted in the current proposal were forged from the failures or successes of these past measures. This section will provide an overview of these three regulatory measures and provide an analysis of their efficacy between the periods of 1987 and 2003 based upon an empirical study published by the European Commission in 2004.⁵¹

1. Planting Rights

The regulation on planting rights was the first regulation implemented by the CMO for wine to curb over-production.⁵² This regulation is comprised of two subparts: the first bans the planting of new vineyards and the second allocates payments for permanent and temporary conversion of vineyards into other crops, also known as "grubbing up."⁵³ Both of these regulations seek to control production through limiting vineyard area.⁵⁴

The ban on planting new vineyards controls production by stopping vintners from expanding their individual vineyards.⁵⁵ Bans were initially introduced for only a two-year period, but have been continually extended for the past thirty-three years.⁵⁶ The current proposal extends the ban for an additional seven years at the EU level, and another ten years at the Member

48. *Id.*

49. EX-POST REPORT, *supra* note 39, at 6, 42.

50. *Id.* at 46.

51. *See generally id.* at 39.

52. NIEDERBACHER, *supra* note 35, at 59.

53. *Id.*

54. EX-POST REPORT *supra* note 39, at 61.

55. *Id.* at 70.

56. *Id.*

State level.⁵⁷ The second policy of permanent and temporary abandonment seeks to limit vineyard areas by offering payments to vintners for grubbing-up or destroying their vineyards.⁵⁸ The premium for permanent abandonment is financed through the EAGGF.⁵⁹ During the period between 1989 and 1997, this policy comprised twenty-five percent of the CMO for wine budget.⁶⁰

Generally, when followed, planting rights regulations are successful. Between the years of 1987 and 1996 the wine market saw a decrease in the structural surplus⁶¹ of the wine sector when planting rights regulations were strictly enforced.⁶² However, between the years of 1996 and 2001, the planting rights regulations were either relaxed or repealed altogether and the annual increase in structural surplus returned.⁶³ In 1996, the European Council passed an amendment which led to the relaxation and eventual elimination of the planting rights measures.⁶⁴ While the Commission was able to obtain a two-year extension of the successful planting rights measures, the European Council under-cut this measure by “introduc[ing] a clause that enabled Member States to exclude . . . part or the totality of their areas [eligible for grubbing-up].”⁶⁵ The inclusion of this amendment was a direct result of strong national political pressure placed upon the Council of Ministers by their Member States and constituents, causing them to step in and put an end to this rather successful regulatory measure.⁶⁶ Providing Member States with this discretionary power severely hampered the planting rights measure because it provided Member States with the opportunity to defect from this politically unpopular, yet successful, measure.⁶⁷

A detailed study of the CMO for wine prepared for the European Commission DG of Agriculture in 2004 (the “2004 Ex-Post Report”) “conclud[ed] that measures related to planting rights limitation and premium for definitive abandonment[,] though not fully effective in controlling

57. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8.

58. NIEDERBACHER, *supra* note 35, at 63-64. *See also* Commission Regulation 1163/76, 1976 (EC), and Commission Regulation 777/85, 1985 (EC).

59. NIEDERBACHER, *supra* note 35, at 63-64.

60. EX-POST REPORT, *supra* note 39, at 74.

61. One item worth noting is that the term “structural surplus” refers to overproduction of wine due to the man-made characteristics of the wine market, and not the naturally occurring large harvests (“bumper harvests”).⁶¹ In other words, the European report found that the overproduction problems that have plagued and continue to plague the European wine sector were not caused by bumper harvests, but were rather a result of regulatory measures and market intervention on the part of the CMO for wine. *See* EX-POST REPORT, *supra* note 39, at 6, 42.

62. *Id.* at 65.

63. *Id.*

64. EUROPEAN COMMISSION – DG AGRICULTURE, ANNEX TO EX-POST EVALUATION OF THE COMMON MARKET ORGANIZATION FOR WINE, FINAL REPORT 6, at 71 [hereinafter ANNEX TO EX-POST].

65. *Id.*

66. *Id.*

67. *Id.*

production levels nor preventing continuing surpluses, have helped rather than hindered adjustment.”⁶⁸ Specifically, the Commission found that premiums for permanent abandonment were effective in reducing the area of low quality vineyards and promoting adaptation by vintners to changing consumer demands.⁶⁹

The 2004 Ex-Post Report further found that the cost-effectiveness of the planting rights program could be boosted through more careful administration.⁷⁰ It noted that often table-grape vineyards were being paid subsidies for permanent abandonment instead of wine-grape vineyards, resulting in misappropriation of over fifteen percent of planting rights funds.⁷¹ The 2004 Ex-Post Report also found that recordation was an area plagued with inefficiency.⁷² The Report concluded that the major problem associated with implementation of the planting rights scheme was the unreliability of the vineyard data.⁷³ This lack of reliable data combined with the lack of a coherent recordation scheme allowed for dishonest vintners to claim subsidies for permanent abandonment, and then simply replant their vineyards.⁷⁴ It cautioned that “[w]ithout an effective market management information system efficiency will be severely hampered by dishonest vintners.”⁷⁵

2. Distillation Measures

Distillation measures were first initiated in 1980 as a temporary measure to control bumper harvests.⁷⁶ In 1982, this temporary status was shed and distillation measures became the fundamental instrument for regulating the wine market and eliminating surpluses.⁷⁷ While there are many different distillation measures, such as preventative distillation, obligatory distillation, and crisis distillation, the basic idea is that the CMO for wine sets a price for excess wine stocks, buys the surplus from vintners, and then sells this surplus at a discount to alcohol distillers, internalizing any losses.⁷⁸ Excess wine stocks are then distilled into other forms of alcohol and sold.⁷⁹ This process is paid for by the CMO for wine through the EAGGF.⁸⁰ Three different costs are

68. EX-POST REPORT, *supra* note 39, at 71.

69. *Id.* at 78.

70. *Id.* at 74.

71. *Id.* Table-grape vineyards are vineyards used for producing grapes meant to be eaten, whereas wine grape vineyards are vineyards used specifically for the production of wine. *Id.*

72. *Id.* at 75.

73. *Id.*

74. *Id.* at 76.

75. NIEDERBACHER, *supra* note 35, at 64-65.

76. EX-POST REPORT, *supra* note 39, at 42.

77. NIEDERBACHER, *supra* note 35, at 67.

78. *Id.* at 69-71; *see also* EX-POST REPORT, *supra* note 39, at 80.

79. *Id.*

80. Annexes to 29th Financial Report on the European Agricultural Guidance and Guarantee Fund (E.A.G.G.F.) – Guarantee Section, at 10-12 (1999), COM (2000) 882 final

associated with the process of distillation: (1) payments made to distillers to recoup their losses; (2) costs to the vintners, including shipping costs and documentation; and (3) costs associated with disrupting the distilled alcohol markets.⁸¹ In 1999 the total cost of wine distillation measures was 247.7 million Euros.⁸²

In contrast to planting rights, distillation measures, as studied during the years of 1987-2003, were largely inefficient in their attempts to decrease structural surpluses.⁸³ The fundamental problem with distillation measures is that “[i]t is inefficient to transfer market disturbances from the wine market to the alcohol market, or to accept monetary losses, without ensuring a reduction in production.”⁸⁴ Distillation of wine into alcohol is a more costly process than distillation of wheat or barley.⁸⁵ Therefore, the process of distilling excess wine stocks into usable alcohol imposes additional costs on the alcohol market, thereby lowering efficiency.⁸⁶

Moreover, distillation measures do not ex-ante reduce the overall quantity of wine in the market; rather, these measures merely create an artificial outlet or demand for wine.⁸⁷ Imposition of this artificial demand leads to an artificial increase in wine prices, which benefits both domestic and foreign vintners at the expense of the European taxpayers who are left to shoulder the financial burden of the distillation measures.⁸⁸

In addition to taxpayers footing the bill for distillation measures, constant use of this measure as an ex-post means of controlling overproduction has reinforced inefficient growing practices and led to a race to the bottom for many poor-quality vintners.⁸⁹ Poor-quality producers have exploited distillation subsidies by growing very low-quality wine with high alcoholic content specifically intended for alcohol distillation.⁹⁰ In this case, the distillation measures have created a new market for wine distillation that would otherwise not exist in the absence of heavy subsidization. Continuous use of these distillation measures has influenced wine-maker behavior by leading them to expect and rely on distillation measures, resulting in a new industry of wine produced specifically for distillation.⁹¹ This new industry exists at an estimated cost of five-hundred million Euros per year.⁹²

(Dec. 27, 2000), available at http://ec.europa.eu/agriculture/fin/finrep99/index_en.htm [hereinafter *29th Financial Report*].

81. EX-POST REPORT, *supra* note 39, at 83.

82. *See 29th Financial Report, supra* note 82, at 10.

83. EX-POST REPORT, *supra* note 39, at 93. Distillation of wine was not found to be an efficient measure in the elimination of structural surpluses. *Id.* at 97.

84. *Id.* at 98.

85. *Id.* at 12.

86. *Id.*

87. *Id.* at 95.

88. *Id.* at 97.

89. *Id.* at 96.

90. *Id.*

91. *Id.*

92. Finfacts Team, *European Commission Proposes Reform of Wine Industry in EU25*,

3. *Aid for Private Storage*

As with many other crops, grape harvests vary from year to year. In order to provide vintners with security against years of abundant (bumper) harvests, the CMO for wine instituted aid for storage measures in 1988.⁹³ During years of bumper harvests, vintners were able to enter into storage contracts financed by the CMO for wine to store portions of their stock, thereby curbing market surplus and supporting market price stabilization by reducing supply.⁹⁴ The stored wine was then sold during subsequent years of low wine production.⁹⁵ Storage measures account for roughly five percent of the annual CMO for wine budget, and seventy-five percent of the wine put into storage is table wine.⁹⁶

Between the years of 1988 and 2003, aid for private storage was viewed as a relatively successful measure having “met the [policy] objectives for which it was conceived.”⁹⁷ The 2004 Ex-Post Report found that vintners did not use this measure to store poor quality wine with plans on distilling the wine in subsequent years.⁹⁸ Rather, the vintners stored wine stocks that they planned to eventually sell in the wine market.⁹⁹ Efficiency was maximized under this program because surplus production was not transferred into another market, but was merely set aside for sale in years when supply was low, demand was high, and producer profits were maximized.¹⁰⁰ Given the cost of this measure, and the opportunity it provided vintners in maximizing potential profits, the report found this regulatory measure to be efficient in meeting its objective at a reasonable cost to the European Community.¹⁰¹

4. *Aid for Must*

One of the most controversial regulatory measures employed by the CMO for wine was the issuance of subsidies to vintners who chaptalized their wines. Chaptalization is the process of adding sucrose or wine musts to grape juice which artificially increases the alcoholic strength and quality of lower quality wines.¹⁰² There are three methods of chaptalization: (1) adding sugar or sucrose to wine; (2) adding concentrated grape must (CM); or (3) adding

June 22, 2006, available at http://www.finfacts.com/irelandbusinessnews/publish/article_10006317.shtml [hereinafter *EU25*].

93. NIEDERBACHER, *supra* note 35, at 68.

94. *EU25*, *supra* note 94.

95. EX-POST REPORT, *supra* note 39, at 116. 90% of the stored wine is sold on the market the following year. *Id.*

96. *Id.* at 102-04. See *supra* note 4 of this Note for an explanation of the difference between table and quality wine.

97. *Id.* at 117.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. Wine Spectator Online, *Inside Wine: Chaptalization*, Mar. 31, 2002, available at http://www.winespectator.com/Wine/Archives/Show_Article/0,1275,3567,00.html.

rectified concentrated grape musts (RCM).¹⁰³ Using CM and RCM is more expensive than using simple sugar because the wine-maker must have large quantities of leftover musts, or grape by-products such as skins to use either method.¹⁰⁴ In the past, the CMO for wine offered subsidies to vintners who used either of the two latter methods in wine-making in order to level the playing field and eliminate the incentive to use simple sugar.¹⁰⁵

The 2004 Ex-Post Report found that the aid for the use of CM and RCM was “an effective measure to ensure the competitiveness of different methods of enrichment.”¹⁰⁶ Supporting producers who used RCM and CM to increase the alcoholic strength of their wine led to higher quality wines than wines strengthened in alcohol content through the use of simple sugar.¹⁰⁷ Furthermore, the use of grape musts provided an alternative outlet for wine grapes, which led to an overall reduction in supply.¹⁰⁸

III. CURRENT PROBLEMS IN THE WINE SECTOR

Understanding the background of these various regulatory measures in the European wine market makes it possible to analyze the current problem facing the wine sector and the proposal set forth by the CMO for wine. The Commission’s proposal highlights five problems that are currently crippling the European wine sector: (1) structural imbalance; (2) decline in consumption; (3) increased competition; (4) environmental concerns; and (5) complex wine policies.

A. Structural Imbalance

The first and most fundamental problem facing the current wine sector is the continued presence of a structural surplus in the wine market.¹⁰⁹ Even with the various regulatory measures implemented by the Commission over the past thirty years, overproduction and structural surpluses have continued to increase year after year, and the situation is getting worse.¹¹⁰ The Commission forecasts a surplus of just under fourteen percent for the end of 2011, compared to a surplus of just under seven percent in wine year 2005-06.¹¹¹ Considering that the current level of overproduction costs the EU around a half a billion Euros

103. EX-POST REPORT, *supra* note 39, at 119.

104. *Id.* at 123-24.

105. *Id.*

106. *Id.* at 125.

107. *Europe Launches Wine Reform by Proposing a New Council Regulation*, http://www.thewineblog.net/wine/archives/2007/07/13/europe_launches_wine.html#more (last visited Apr. 1, 2009) [hereinafter *Wine Blog*].

108. EX-POST REPORT, *supra* note 39, at 125.

109. *Staff Working Document*, *supra* note 4, at 5.

110. *Id.*; see also Commission Proposal, *supra* note 8, at 13.

111. *Staff Working Document*, *supra* note 4, at 43.

per year, this forecasted doubling of surplus could cost the EU well over one billion Euros per year beginning in 2011.¹¹²

B. Decline in Consumption

The second problem, possibly the most offensive to European vintners, is the continued decline in consumption of table wine within the European community.¹¹³ Research demonstrates that European consumption of red table wine has been falling around a half a percent per year, and has fallen eleven percent over the last twenty years.¹¹⁴ The largest decline has occurred in the highest wine-consuming nations of France and Italy, while consumption is on the rise in the United States and, especially, Australia.¹¹⁵ The outlook for the table wine sector continues to look grim with the Commission forecasting a drop of more than 400,000 hl per year over the next five years.¹¹⁶

C. Increased Competition

In addition to this steady drop in consumption, European wines have continued to lose their competitive edge over their new world rivals, thus facing increased competition in an already shrinking market.¹¹⁷ New world wines, a common term for wines originating in Australia, New Zealand, and the Americas, have been steadily increasing in popularity and quality over the past ten years.¹¹⁸ As a result, new world producers have slowly been taking over foreign markets that previously belonged almost exclusively to European table wines, even elbowing their way into the European market itself.¹¹⁹ This increase in competition, coupled with the domestic decline in consumption, is narrowing the consumer pool and forcing European producers to either exceed consumer expectations by producing a higher quality wine or risk going out of business.

D. Environmental Concerns

Finally, environmental issues impact the wine sector. Common problems among all agricultural markets are the intensification of farming practices, the fundamental focus on quantity over quality, and the use of "agro-

112. *Id.* at 4.

113. *Id.*

114. *Id.*

115. *Per-Capita Wine Consumption Declines Worldwide*, WINE SPECTATOR, <http://www.winespectator.com/Wine/Free/0,3739,87,00.html> (last visited Apr. 1, 2009). Australia "reached an all-time high of 21.7 liters per person in 2004." *Id.*

116. *Staff Working Document*, *supra* note 4, at 4.

117. *Staff Working Document*, *supra* note 4, at 4.

118. *See id.*

119. *See id.*

chemical[s].”¹²⁰ Under the 2003 CAP reform, the European Commission tied Community subsidies to environmental reforms through a process called cross-compliance.¹²¹ Cross-compliance implicitly requires environmental reforms by conditioning subsidy payments on compliance with environmental reforms.¹²² The 2003 reform, however, did not apply to the wine market and presently there continues to be no “environmental baseline” for a large portion of the wine sector.¹²³

Many of the aforementioned problems are not new. Two of the fundamental problems, the structural imbalance and the decline in consumption, have been present in wine markets since the early 1980s.¹²⁴ It appears, however, that the Commission has recognized its past mistakes and is currently taking steps to correct them.

IV. FOUR DIFFERENT PROPOSALS

In a 2006 communication, the European Commission concluded that:

[A] fundamental reform of the [CMO] for wine is necessary in order to replace cost-inefficient policy tools by a more sustainable and coherent legal framework. The aim is to ensure a better value for money using the current budget allocated (around EUR 1.3 billion), which is about 3% of the total for agriculture.¹²⁵

The European Commission adopted this proposal on July 4, 2007, hoping to pass it through the European Parliament and Council of the European Union by the end of the year.¹²⁶ The proposal chosen, titled the “profound reform” option, was one of four distinct options the Commission considered.¹²⁷ In addition to the “profound reform” option, the Commission considered the following options: (1) a status quo option with limited adjustments; (2) complete deregulation of the wine market; and (3) full integration of the wine sector into

120. Thilo W. Glebe, *The Environmental Impact of European Farming: How Legitimate Are Agri-Environmental Payments?*, 29 REV.OF AGRIC.ECON.No. 1, 87, 94, available at <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1467-9353.2006.00331.x>.

121. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ANALYSIS OF THE 2003 CAP REFORM 13 (2004), <http://www.oecd.org/dataoecd/62/42/32039793.pdf> [hereinafter ANALYSIS OF 2003 REFORM].

122. *Id.*

123. *Staff Working Document, supra* note 4, at 5.

124. *See generally*, NIEDERBACHER, *supra* note 35, at 64-68.

125. Commission Proposal, *supra* note 8, at 2.

126. European Commission, *Reform of the Wine Sector: Commission Proposal* (July 4, 2007) http://ec.europa.eu/agriculture/capreform/wine/index3_en.htm (last visited Apr. 1, 2009). The reform passed April 29, 2008. *Id.*

127. *Staff Working Document, supra* note 4, at 8.

the 2003 reform framework.¹²⁸ While four policy options were considered by the Commission, only two, the “profound reform” and “full integration” options, were given any real consideration. The full integration into the 2003 CAP reform option was considered at length by the Commission, but was passed over in the end.¹²⁹

The major highlight of the third option was its quick and effective means of decoupling producer subsidies from production through the Single Farm Payment scheme.¹³⁰ The Single Farm Payment would have replaced past production-based subsidies in favor of a single yearly allotment of subsidies, providing farmers with the choice of how to best allocate their subsidy thereby eliminating incentives to overproduce.¹³¹ The 2003 Reform encompassed many agricultural markets but did not apply to the wine market, leaving producer subsidies tied to production.¹³² Incorporation of the wine market into the 2003 reform would have severed this subsidy-production tie and resulted in long-term benefits of market stabilization and enhanced environmental protection through the process of cross-compliance.¹³³

A major shortcoming with incorporating the wine market into the 2003 CAP reform, however, was the inability of the Single Farm Payment to meet the short term needs of the wine market.¹³⁴ Use of the Single Farm Payment would have no immediate effect on correcting the structural imbalance in the wine sector.¹³⁵ Under the Single Farm Payment, lump sum payments would be made to wine producers who would use that money to meet their own needs, whether it be hiring more labor for harvest, or improving cellaring conditions. The money would not be focused on rapidly improving the market balance by providing help with structural adjustments.¹³⁶ Since the wine market’s most imminent threat was the presence of a profound structural imbalance, it was more efficient for the Commission to focus monetary resources on correcting this structural imbalance, rather than relying on individual farmers to fix the structural imbalance after having ensured their own economic prosperity.¹³⁷

Another reason the Commission did not adopt the 2003 CAP reform for the wine market was because of its inability to meet the financial needs of smaller vintners.¹³⁸ As stated earlier, the continued use of distillation measures

128. *Id.* at 7-9.

129. *Id.* at 8.

130. ANALYSIS OF THE 2003 REFORM, *supra* note 124, at 10-11.

131. *Id.*

132. *Staff Working Document, supra* note 4, at 5.

133. *Id.* at 8; see generally Daniel Bianchi, Essay, *Cross Compliance: The New Frontier in Granting Subsidies to the Agricultural Sector in the European Union*, 19 GEO. INT'L ENVTL. L. REV. 817 (2007) (providing a detailed discussion on the cross-compliance program).

134. *Staff Working Document, supra* note 4, at 8.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

has created a new industry of wine makers focused on producing large amounts of poor quality wine with high alcoholic content destined for distillation.¹³⁹ Abolition of production-based subsidies under the Single Farm Payment would immediately eliminate the need for many of these distillation measures and force many of these producers out of business.¹⁴⁰ The profound reform proposal provides for a more gradual elimination of these distillation measures thereby allowing producers the time to adapt to their eventual elimination.¹⁴¹

Additionally, vintners would not be the only ones hurt by strict adherence to a Single Farm Payment. In the 2004 Ex-Post Report, Dr. Dieter Hoffmann, Dr. Karal-Heinz Bock, and Dr. Jana Seidemann noted that due to many years of employing distillation measures, a substantial part of the distillation infrastructure has come to rely on the wine market. As a result, any political decision to abandon distillation measures would require a certain political responsibility to help distillers adapt to the new situation.¹⁴² Rejection of the Single Farm Payment might have signified the Commission's acknowledgement of this political responsibility and represented a conscious decision to help the distillation industry.

V. THE PROFOUND REFORM

For the forgoing reasons the Commission decided to adopt the "profound reform" option and to repeal the current wine regulation.¹⁴³ The "profound reform" option intends to achieve stabilization of the wine market through a two-step process:¹⁴⁴ first, the reform will concentrate all of its budgetary resources on the economic issue of market imbalance,¹⁴⁵ and second, it will work to build improved competitiveness through implementing or modifying existing regulatory measures.¹⁴⁶ Thus, the difference between phase one and phase two of the reform is the distinction between the goals of the regulatory measures.¹⁴⁷ Phase one will implement or abolish measures with the goal of restoring market balance, while phase two will modify or implement regulatory measures with the goal of improving the competitiveness of EU wines.¹⁴⁸

139. EX-POST REPORT, *supra* note 39, at 96.

140. *Staff Working Document*, *supra* note 4, at 8 (discussing the loss of market support for many growers).

141. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8.

142. EX-POST REPORT, *supra* note 39, at 98 n.82.

143. Commission Proposal, *supra* note 8, at 14.

144. *Staff Working Document*, *supra* note 4, at 9.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

A. *Phase One: Restoration of Market Balance 2008-2013*¹⁴⁹

Many of the regulatory measures employed during the first step of the wine reform conscript recommendations proposed in the 2004 Ex-Post Report.¹⁵⁰ The only new measure in the first phase of the regulatory reform is the use of national envelopes.¹⁵¹

1. *National Envelopes*

The national envelope measure is similar to an allowance given by the CMO for wine to each nation, providing each Member State with the opportunity to decide how much of their allowance they wish to direct towards an array of regulatory measures.¹⁵² The goal of the national envelope measure is to increase efficient expenditure of community funds by allowing Member States to decide the amount of money they wish to spend on an array of different regulatory measures.¹⁵³ Acceptable measures fund allocation include: “new support for promotion in the third countries; the vineyard restructuring/conversion scheme; new support for green harvest; [and] new crisis management measures, i.e. insurance against natural disasters and administrative costs of setting up a sector-specific mutual fund.”¹⁵⁴ The Commission will maintain oversight of national expenditures through “common rules,” which ensure compliance with environmental standards,¹⁵⁵ as well as by requiring nations to submit their specific national support program to the Commission.¹⁵⁶

Adoption of the national envelope measure delegates responsibility and control to the individual Member States, allowing them to tailor regulatory measures to their own unique situations.¹⁵⁷ This measure recognizes the problems faced by the Commission in trying to create overarching regulations that fail to address the unique characteristics of Europe’s wine-producing regions. The Commission hopes that increased subsidiarity will result in more efficient expenditure of funds.¹⁵⁸

149. Commission Proposal, *supra* note 8, at 5.

150. See EX-POST REPORT, *supra* note 39 (discusses the use of planting rights scheme, green harvesting, and abolition of distillation measures); see also COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 9.

151. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 9.

152. See *id.*

153. See *id.*

154. Commission Proposal, *supra* note 8, at 7. See Europa – The EU at a glance – Eurojargon, “Third Country,” available at http://europa.eu/abc/eurojargon/index_en.htm (third countries include countries outside the EU, not third-world countries in particular).

155. Commission Proposal, *supra* note 8, at 7.

156. *Id.* at 17.

157. European Commission, Agriculture and Rural Development: *Reform of the EU Wine Market*, http://ec.europa.eu/agriculture/capreform/wine/index_en.htm (last visited Apr. 1, 2009).

158. COUNCIL POLITICAL AGREEMENT, *supra* note 34. The principle of subsidiarity “is

Use of the national envelope measure does raise issues concerning the responsible use of funds, especially in relation to program favoritism. For instance, it is unlikely for nations to focus a large portion of their national envelope budget on measures targeted outside their own country, like promotion in Third-World countries.¹⁵⁹ This might lead to the effective elimination of certain measures through a conscious lack of funding.¹⁶⁰ Another potential problem associated with the national envelope measure is the inadequate management or misappropriation of funds. The 2004 Ex-Post Report noted that the majority of the European wine nations had very weak administrative frameworks for the reporting and management of regulatory measures.¹⁶¹ It concluded that:

A significant problem is that, whilst Member States are obliged to collect and submit to the European Commission a wide range of information relevant to policy issues, a number of Member States have been rather dilatory and inconsistent in supplying this data. The data collection process was further burdened by the lack of an appropriately organized reporting process at the national level. In fact, some national statistical agencies do not seem to have a complete overview of data available in their country . . . what is needed is renewed co-operation on CMO data monitoring and reporting between existing Member States and the Commission.¹⁶²

These reporting problems indicate that many of the nations will face a difficult task of simply registering and accounting for vineyards within their nations.¹⁶³ Giving Member States a collective budget of over half a billion dollars per year could result in serious misappropriation of Commission resources.¹⁶⁴ Therefore, Commission oversight must be a fundamental part of the national envelope initiative, not just in terms of approving national programs and ensuring compliance with environmental standards, but in terms of administration as well. If Member States cannot successfully manage the administration of community funds, it is likely that the national envelope program will suffer from the same inefficiency problems as the former planting

defined in Article 5 of the Treaty establishing the European Community. It is intended to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at Community level is justified in the light of the possibilities available at national, regional or local level.” EUROPA Glossary, *Subsidiarity*, http://europa.eu/scadplus/glossary/subsidiarity_en.htm (last visited Apr. 1, 2009).

159. See *infra* Part VI.B.2 for further discussion on possible use of publicity measures.

160. *Id.*

161. EX-POST REPORT, *supra* note 39, at 76 & 193.

162. *Id.* at 193.

163. *Id.*

164. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 25 (stating that the agreement allocates seventy-eight percent of the 1.4 billion Euro budget to the national envelope measure).

rights regulations.¹⁶⁵ However, if the Commission and the Member States can find a successful and efficient administrative process, the potential gains realized from tailoring Commission funds to the specific needs of the individual Member States could far outweigh those seen during the previous eras of the union-wide management of funds.

2. *Grubbing Up*

The second measure the Commission proposes to help restore market balance is the revitalization of the controversial grubbing-up measure.¹⁶⁶ Parameters for the grubbing-up measure are set forth in Chapter two, Articles 88 through 98 of the Commission Proposal.¹⁶⁷ Eligible vintners who choose “the complet[e] elimination of all [of] [their] vine stocks on a parcel planted with vines” shall be eligible for compensation.¹⁶⁸ Areas that are grubbed up will be immediately eligible for the Singe Farm Payment, meaning that cross-compliance with environmental regulations will be compulsory.¹⁶⁹ Payments will be made on a declining scale, with vintners who choose to grub up in the first year receiving the highest payments, and those grubbing-up during the last, or fifth year, receiving the least amount per acre.¹⁷⁰ This measure will restore market balance by “helping those who cannot compete . . . leave the sector with dignity.”¹⁷¹ The Commission believes that revitalization of the grubbing-up scheme will lead to a reduction of 2.3 million hectoliters of surplus in the first year of the reform, and a subsequent reduction of 1.9 million hectoliters in the second year.¹⁷²

From a strictly economic standpoint, grubbing-up is not the most efficient process. Imposition of a free market that eliminates artificial demand and producer-based subsidies, thereby forcing inefficient vintners out of the market, would result in market balance at a minimal cost to the CMO for wine.¹⁷³ However, this solution is not possible because of social considerations. It

165. See *supra* Part III.B.2 of this Note for a discussion of the problems associated with administering the planting rights measures due to the lack of a reliable market management information system during the years of 1988-2003. See also EX-POST REPORT, *supra* note 39, at 193.

166. See Commission Proposal, *supra* note 8, at 62.

167. *Id.* at 62-65.

168. *Id.* at 62-64.

169. *Id.* at 9.

170. *Id.*

171. *Id.* at 5.

172. *Staff Working Document*, *supra* note 4, at 16. These surplus reduction figures came from the original proposal and will likely be significantly reduced after the recent political agreement because the area eligible for grubbing-up was reduced from 400,000 hectares to 175,000 hectares. See COUNCIL POLITICAL AGREEMENT, *supra* note 34.

173. See EX-POST REPORT, *supra* note 39, at 55. It should be noted, however, that bankruptcy and unemployment might shift the cost onto the EU taxpayers through other means, namely social programs.

would be socially irresponsible for the Commission to let market forces drive producers out of business when it is the very regulations of the Commission itself that are responsible for this market's existence in the first place. Furthermore, the Commission must abide by the objectives of the CAP provided for in the Treaty of Rome, specifically that the Commission must ensure a fair standard of living for farmers.¹⁷⁴ Forcing numerous producers out of an agricultural sector where they have worked for decades would violate this provision.

In contrast to a free market option, the regulatory measure of grubbing-up is consistent with the objectives set forth in the Treaty of Rome in that grubbing-up provides a dignified option for inefficient vintners to leave the market with a sizeable severance package.¹⁷⁵ Therefore, this measure attempts to provide "a fair standard of living for farmers", though not necessarily in the wine market, and embodies the best way of achieving the intrinsically contradictory goals of the CAP.¹⁷⁶

However, many do not see this regulatory measure as a socially acceptable option.¹⁷⁷ Instead, many vintners interpret this measure as the Commission forcing them to give up their livelihoods and exit the wine market.¹⁷⁸ The Commission has even received threats of violence from small vintners vowing to shed blood before they would grub up their vineyards.¹⁷⁹ In response to this contentious reaction, the Commission has conceded to some of the demands from the top wine producing nations by scaling back the total number of acres originally allotted for the grubbing-up scheme, from 400,000 to 175,000 hectares over three years.¹⁸⁰ It has also increased the percentage of land exempted for environmental reasons, as well as placing a cap on the total percentage of land allowable for grubbing up.¹⁸¹

In the end, grubbing-up is the most economically efficient and socially acceptable way of achieving market balance in the wine sector. The success of this measure has been demonstrated by expert analysis of the planting rights scheme during the 1987-1996 period, which has concluded that grubbing-up was the best possible way to achieve market balance.¹⁸² The 2004 Ex-Post Report noted that the use of permanent abandonment "had a positive impact on

174. BATTY & CARSWELL, *supra* note 12, at 5.

175. Commission Proposal, *supra* note 8, at 62.

176. BATTY & CARSWELL, *supra* note 12, at 5 (discussing author's opinion that the CAP's goals are inherently contradictory).

177. See generally Constand Brand, *Germany, France Lead Appeal for Changes to EU Wine Reform Plans*, BEVERAGE WORLD, July 16, 2007, available at http://www.beverageworld.com/index2.php?option=com_content&do_pdf=1&id=33420; see also Wyatt, *supra* note 1 (discussing the social and political opposition to this regulatory measure).

178. See Brand, *supra* note 182.

179. Wyatt, *supra* note 1.

180. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8.

181. *Id.* at 15.

182. See EX-POST REPORT, *supra* note 39, at 77-78.

the adaptation to market requirements," and that "[t]he area of low quality vineyards decreased significantly."¹⁸³ The result was not only a reduction in the overall surplus of wine, but a reduction in primarily low-quality wine.¹⁸⁴ Given that the demand for quality wine is on the rise, this prospective measure will cause a concentrated reduction in the supply of the less desirable table wine while maintaining the supply of the more desirable quality wine. This represents another advantage of the grubbing-up scheme. In sum, grubbing-up represents both a surplus management measure and a quality measure, thus accomplishing two of the stated goals of the wine reform.¹⁸⁵

The only drawback to the employment of the grubbing-up scheme is the lack of attention paid to environmental concerns in the Commission's proposal. Paying farmers to destroy vineyards raises concerns regarding the methods that will be employed to eliminate their crops and the corresponding impact that wide-spread destruction of vineyards could have on the countryside.

The first area of concern is Article 94 of the proposal which affords Member States the opportunity to limit the prospective areas eligible for grubbing-up based on environmental concerns.¹⁸⁶ For example, vineyards on hillsides and other mountainous terrain, which could be prone to mudslides from the loss of vital root systems, may be exempted from the grubbing-up scheme.¹⁸⁷ Article 94(3), however, limits these environmentally protected areas to only two percent of a nation's total vine planted area, meaning that if a country has more than two percent of its countryside covered with vineyards then it cannot apply the environmental protection afforded in clause three to those areas exceeding this two percent cap.¹⁸⁸ This leaves the door open for environmental disasters in many countries with mountainous vineyards.

Another environmental issue concerning the proposal is the lack of procedural guidelines for the grubbing-up measure. The proposal does not set forth any environmental standards for the practice of grubbing up, except stating that "a minimum environmental requirement will be attached to the grubbing-up premium to avoid land degradation . . ."¹⁸⁹ Article 98 states that "[d]etailed rules for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 104(1)," which effectively defers environmental concerns regarding the implementation of the grubbing-up scheme to the Management Committee.¹⁹⁰ There continues to be a lot of

183. *Id.* at 78.

184. *Id.*

185. Commission Proposal, *supra* note 8, at 4. ("[O]bjectives of this reform are to: increase the competitiveness of the EU's wine producers . . . [and] create a wine regime that operates through clear, simple rules – effective rules that balance supply and demand . . ."). *Id.*

186. *Id.* at 64.

187. *Id.*

188. *Id.* See also COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 15 (which increased the area protected from two percent to three percent).

189. Commission Proposal, *supra* note 8, at 9.

190. See *id.* at 65-66.

rhetoric concerning the imposition of “strict environmental restrictions on grubbing up,” but there has yet to be any written standards announced.¹⁹¹

It is disconcerting that the Commission would enumerate environmental regulations for some aspects of the grubbing-up scheme but defer others to the Management Committee, especially an aspect as important as the procedure for grubbing up. The Commission should have enumerated environmentally acceptable procedures for the act of grubbing-up in its proposal from the outset, thereby foreclosing the opportunity for later conflict and the possibility of bargaining-down environmental standards to “minimum environmental requirement[s].”¹⁹² It will be important for the Commission and the Member States to give these environmental concerns proper attention in order to ensure that economic efficiency does not come at the cost of environmental degradation.

3. Green Harvesting

Another interesting regulatory measure is green harvesting. Article 11 of the reform defines green harvesting as “the total destruction or removal of grape bunches while still in their immature stage, thereby reducing the yield of the relevant parcel to zero.”¹⁹³ Through this process the Commission intends to maintain market balance by engaging in an ex-ante elimination of supply in years that are forecasted to large harvests.¹⁹⁴

Green harvesting, known in French as *vendange en vert*, is an old technique where vintners remove a portion of the immature grapes on the vines in order to produce higher quality wines with the remaining grapes.¹⁹⁵ The idea is that the vines will be able to put more resources into the few remaining grapes on the vine resulting in higher quality grapes for wine-making.¹⁹⁶

It appears that the Commission again has paid deference to the 2004 Ex-Post Report in adopting this regulatory measure. Green harvesting was one of the recommendations made in the 2004 Ex-Post Report to control occasional surpluses.¹⁹⁷ It proposed the use of premiums for green harvesting as a way to reduce surplus production before it was made into wine.¹⁹⁸ Its strengths were explained as follows:

191. European Commission: Agriculture and Rural Development, *The Reform of the EU's Wine Sector: Unleashing Its Potential* 5 (2007), available at http://ec.europa.eu/agriculture/capreform/wine/potential/leaflet_en.pdf.

192. Commission Proposal, *supra* note 8, at 9.

193. *Id.* at 28.

194. *See Staff Working Document, supra* note 4, at 15.

195. James Laube, *Making The Cut*, WINE SPECTATOR MAG., Sept. 30, 2000, available at http://www.winespectator.com/Wine/Archives/Show_Article/0,1275,2854,00.html.

196. *Id.*

197. EX-POST REPORT, *supra* note 39, at 99.

198. *Id.*

First, unlike distillation measures for crisis situations, which tend, according to our analyses and expert interviews, to have a lagged impact on the market situation, green harvest of grapes fights against surpluses in advance, at the very early stage of probably high yield vintages. Second, the quality of the wine may be improved by reducing the quantity of production. Third, the harvested green grapes may remain or be brought back to the producer's vineyard as green fertilizer and no alcohol produced, which would have to be sold later with monetary losses. Fourth, the producer may do the work of green harvesting himself, and the aid paid for the measure would completely support his income.¹⁹⁹

The only problem with the Commission's adoption of the green harvesting measure is that Article 11 of the reform calls for "reducing the yield of the relevant parcel to zero" leaving no grapes behind for wine-making.²⁰⁰ This legal definition frustrates the purpose of the green harvesting method and results in an inefficient and wasteful policy.²⁰¹ If the Commission is concerned with producing higher quality wines while simultaneously reducing supply, then adoption of the traditional method of green harvesting successfully accomplishes these two goals.²⁰² However, the Commission's definition tackles only one side of the wine problem, the supply side, by completely eliminating a wine-maker's crop. It is perplexing why the Commission would adopt a policy that only accomplishes one of its stated goals when there is another traditional policy that would clearly accomplish both of its stated goals.

Traditional green harvesting is an effective means of eliminating surplus while simultaneously improving wine quality.²⁰³ The Commission should eliminate the last clause of Article 11 which states, "thereby reducing the yield of the relevant parcel to zero," in order to enact a more successful and efficient regulatory measure.²⁰⁴

4. Distillation, Aid for Must Enrichment, and Private Storage Contracts

In the past, wine-producers have been enticed to overproduce because of market measures like support for distillation and aid for private storage.²⁰⁵ The original Commission proposal stated that it would "[abolish] from day one, all

199. *Id.*

200. Commission Proposal, *supra* note 8, at 28.

201. *Wine Blog*, *supra* note 109.

202. Commission Proposal, *supra* note 8, at 4 (stating that two of the goals of the reform are to increase the quality of EU wines and reduce the occurrence of overproduction).

203. EX-POST REPORT, *supra* note 39, at 99.

204. Commission Proposal, *supra* note 8, at 28.

205. *See supra* Part IV.B.3.

the measures which have proved to be inefficient, namely support for by-product distillation, potable alcohol and dual-purpose grape distillation as well as private storage support and export refunds.”²⁰⁶ These proposed regulatory measures reinforce the Commission’s conclusion that “market . . . measures, such as crisis distillation, have proved cost-inefficient to the extent that they have encouraged structural surpluses without requiring improvement in the relevant competitive structures.”²⁰⁷

This move marks a drastic shift in policy for the Commission, but, similar to the green harvesting and grubbing-up measures, it is not a new concept.²⁰⁸ Since the early 1980s, support for distillation and aid for private storage have been in place in one form or another.²⁰⁹ Years of reliance on these measures have proved to be very expensive, costing the European Community around a half a billion Euros per year, and these measures are projected to increase in cost²¹⁰ as they become more commonplace.²¹¹ Today these measures are entrenched in the market to the point that suppliers are consistently using them, with some even exploiting them.²¹²

a. Phasing Out Distillation Measures

The 2004 Ex-Post Report concluded that distillation measures were both superfluous and costly, and recommended that the Commission ban their use.²¹³ It appears that the Commission agrees with this conclusion, calling for the phasing out of distillation measures.²¹⁴ However, as with the controversial scheme of grubbing up, strong political and economic interests seem to have influenced the Commission into tempering its complete ban on distillation measures.²¹⁵ In a recent political agreement the Commission was successful in upholding the ban on distillation measures on a union-wide level, but allowed for optional use of distillation measures on the Member State level.²¹⁶ While this is not as successful as a complete elimination of all distillation measures, forcing Member States to finance these measures will hopefully lead them to the same conclusion reached by the experts in the Ex-Post Report and the

206. Commission Proposal, *supra* note 8, at 5.

207. *Id.* at 13.

208. See EX-POST REPORT, *supra* note 39, at 97-99 (arguing that distillation measures, especially crisis distillation, should be abandoned).

209. NIEDERBACHER, *supra* note 35, at 65 (discussing the use of distillation measures used in the 1980s to combat the market surplus).

210. *EU Reform of the Wine Sector*, EUBUSINESS, July 4, 2007, available at <http://www.eubusiness.com/Agri/wine-reform-guide/>.

211. EX-POST REPORT, *supra* note 39, at 84.

212. *Id.* at 96.

213. *Id.* at 98.

214. See COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 9.

215. See *id.*

216. See *id.*

Commission – that distillation measures must go.

b. Banning Private Storage Contracts

In contrast to the maintenance of distillation measures, the Commission was successful in upholding the complete ban on the use of aid for private storage at the EU level with an eventual ban at the Member State level set to take effect in 2015.²¹⁷ Unfortunately, the Commission might have bargained for the wrong measure. Aid for private storage, unlike the distillation measures, was not considered a complete failure by the 2004 Ex-Post Report.²¹⁸ Instead, the Report determined that aid for private storage met the policy objectives of removing surplus from the market with rather high efficiency.²¹⁹ Therefore, the Commission has departed from the conclusions in the 2004 Ex-Post Report by banning this practice.

On the other hand, since private storage contracts do nothing more than temporarily withdraw production from the market ex-post,²²⁰ successful elimination of the structural surplus ex-ante might eliminate the need for private storage contracts in the first place. Therefore, the Commission has ultimately taken the more sensible path in regards to this market measure by addressing the fundamental problem of structural surpluses instead of trying to deal with the problem after it has already occurred.

c. Phasing Out Aid for Must Enrichment

Another area where the Commission has departed from the recommendations in the 2004 Ex-Post Report is in the area of aid for must enrichment.²²¹ The Report concluded that the aid for must enrichment was helpful in leveling the playing field for those producers who wanted to use must enrichment for boosting the alcohol content of their wine, and that it also led to a small decrease in the annual surplus through use of grapes instead of sugar.²²² The recent political agreement has abolished the aid for must enrichment measure at the EU level with the eventual phasing out of the subsidy at the Member State level, but unfortunately, the agreement did not uphold the ban on the use of sugar as a method of chaptalization.²²³

Allowing chaptalization by means of sugar enrichment increases the attractiveness of the less efficient and inferior means of boosting the alcohol

217. *Id.* at 9-11.

218. EX-POST REPORT, *supra* note 39, at 117.

219. *Id.*

220. *See id.* at 101.

221. *See supra* Part III.B.4.

222. EX-POST REPORT, *supra* note 39, at 125.

223. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8 (continuing the use of sugar enrichment in reduced amounts). *See infra* Part VI.B.2 (discussing in greater detail the decision to continue to use the method of sugar enrichment as an oenological practice).

content of wine.²²⁴ This decision is inconsistent with both the Commission's goals of increasing quality and decreasing structural surplus.²²⁵ The same reasoning used in relation to private storage contracts, namely that ex-ante elimination of structural surplus will eliminate the need for storage contracts, does not render the same result in relation to the aid for must enrichment measure. Use of must enrichment is more of a quality-boosting tool than a production-based tool; therefore, elimination of an ex-ante structural surplus does not mean that vintners will no longer want to artificially increase the quality of their wine.²²⁶ In other words, because private storage contracts are one-dimensional and strictly quantity driven, and must enrichment is two-dimensional, driven by goals of quality and quantity, elimination of structural surpluses will not inevitably lead to the abandonment of must enrichment. Vintners will continue to boost the quality of their wine regardless of the quantity they produce. All the Commission has done by eliminating the aid for must enrichment and retaining the use of sugar enrichment is to ensure that the vast majority of vintners will use cheaper, inefficient, and substandard practices to enrich their wine.

B. Phase Two: Improved Competitiveness

The second stage of the profound reform focuses on improving European wine's competitive edge in the world market.²²⁷ Ideally, increased competitiveness will be achieved through renewed, simplified, and more straightforward regulatory measures, as well as strong publicity campaigns promoting European wines.²²⁸ Some of the regulatory measures employed in phase two of the proposal are closely related to the regulatory measures stated above in phase one, specifically modifications to oenological practices and the allowance of chaptalization.²²⁹ However, measures in phase two of the proposal focus primarily on improving competition and are less concerned with restoring market balance.²³⁰

The Commission seeks to increase competitiveness through the simplification of three existing regulatory measures: (1) oenological practices;

224. See *supra* Part III.B.4 for a discussion of how RM and RCM were found to be superior methods of enriching wine.

225. Commission Proposal, *supra* note 8, at 4 (stating that two of the goals of the reform are to increase the quality of EU wines and reduce the occurrence of overproduction).

226. EX-POST REPORT, *supra* note 39, at 125.

227. Commission Proposal, *supra* note 8, at 5.

228. *Id.* at 5-8. The publicity campaign is included in the national envelope measure under the new political agreement. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 9. However, this Note will discuss the publicity campaign in the section titled Oenological Practices and Exportation, *infra* Part VI.B.2.

229. See *supra* Part VI.A.1.c for a discussion of the elimination of the aid for must enrichment measure and its implications on producer decisions.

230. Commission Proposal, *supra* note 8, at 5.

(2) geographic indications (GIs) or quality policies;²³¹ and (3) labeling.²³² The regulatory measures relating to geographic indicators and labeling implicate long-standing issues of intellectual property as well as world trade law and have spawned numerous publications.²³³ Because these two measures implicate diverse political and legal frameworks, this Note will not address these issues.²³⁴ Rather, this Note will consider only the regulatory changes concerning oenological practices.

1. Oenological Practices and Chaptalisation

Changes in oenological practices aim to create “clearer, simpler, and more transparent rules” by allowing more flexible wine-making practices and reduced limits for enrichment.²³⁵ Perhaps the most controversial change to oenological practices will be the reduced limits for enrichment.²³⁶ As stated earlier, the original proposal by the Commission called for the complete ban on the use of sugar as a method of chaptalization,²³⁷ but the recent political agreement rejected this ban, opting instead for a mere reduction in the total amount of wine allowed to be enriched.²³⁸

Similar to the grubbing-up and distillation measures, this proposal was the subject of heavy debate among wine interests.²³⁹ The first, and probably most influential, criticism came from France and Germany, two of the top wine-producing nations.²⁴⁰ Because northern European countries have significantly less sunshine, wines derived from grapes grown in these countries are usually subjected to sugar enrichment in order to boost their alcohol content, making this method of chaptalization a common occurrence.²⁴¹ Additionally, foreign

231. Quality policies are referring to the specific policies of quality wines produced in specific regions, not to the overall quality of European wine.

232. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 10.

233. See generally Eva Guterrez, *Geographical Indicators: A Unique European Perspective on Intellectual Property*, 29 HASTINGS INT'L & COMP. L. REV. 29 (2005) (discussing the unique nature of European geographic indicators). See also Michelle Agdomar, Note, *Removing the Greek From Feta and Adding Korbel to Champagne: The Paradox of Geographical Indicators in International Law*, 18 FORDAHL INTELL. PROP. MEDIA & ENT. L.J. 541 (2008).

234. It will be interesting to see how the changes to the geographic indicators and the labeling formats impact intellectual property and international trade law.

235. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 18.

236. See generally Brand, *supra* note 182 (discussing how countries see themselves subject to a double standard of not being able to engage in chaptalisation, while their new world competitors regularly employ this technique to artificially improve their wines).

237. Commission Proposal, *supra* note 8, at 5.

238. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 18.

239. Brand, *supra* note 182.

240. *Id.*

241. Lucia Kubosova, *Brussels Could Give on Wine Reform*, BUS.WK., Sept. 28, 2007, available at http://www.businessweek.com/globalbiz/content/sep2007/gb20070928_190686.htm.

competitors, like the United States, consistently use sugar enrichment in their own wine production.²⁴² These facts left a sour taste in the mouths of Agricultural Ministers like Horst Seehofer, who wondered why this previously acceptable technique would now be off limits to European producers, but would still be employed by overseas competitors.²⁴³

This proposed ban was not only seen as a technical barrier to competition, but it also sparked a strong social debate regarding viticulture in Europe. France's Agricultural Minister Michel Barnier believes the prohibition on the use of sugar, along with the allowance of New World practices, "will directly lead to a loss of identity and authenticity of Europe's viticulture. . . . The strength of this viticulture is the quality, the color, the taste."²⁴⁴ Minister Barnier, along with many others, saw this change in oenological practices as a cultural attack, illustrating the inextricable bond between Europeans and wine.²⁴⁵

While some wine producers viewed the proposed ban as both an economic and social barrier, wine advocates attacked from the opposite direction arguing that in their view the Commission did not go far enough.²⁴⁶ Their argument was that while the initial proposal sought to ban the use of sugar in the enrichment process, it did not put an end to the enrichment process altogether.²⁴⁷ Under Section 19 of the original proposal, "the politically sensitive areas of enrichment and acidification" were allocated to the Council, while the Commission controlled all of the other aspects of oenological procedures.²⁴⁸ Annexes IV and V of the original proposal permitted the process of enrichment and acidification, allowing nations to enrich their wines through the use of RM and RCM but not through the use of sucrose.²⁴⁹ Wine advocates contended that "quality wines made from healthy grapes do not need acidification or enrichment, and inferior wines do not become better wines through such corrections."²⁵⁰ Wine advocates wondered why "the higher body, the Council, ha[d] entrenched the practice of allowing inferior or defective or unbalanced wines to be corrected."²⁵¹ These advocates lobbied for the complete elimination of the wine enrichment program, and initially were met

242. Brand, *supra* note 182.

243. *Id.*

244. *Id.* Other oenological practices included use of adding woodchips to the distillation process. *Id.*

245. NIEDERBACHER, *supra* note 35, at 5.

246. *Wine Blog*, *supra* note 109.

247. *Id.*

248. *Id.*

249. Commission Proposal, *supra* note 8, at 15 & 81; *but see* COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8-9 (allowing the use of sucrose to enrich wines but lowering the amount allowed).

250. *Wine Blog*, *supra* note 109.

251. *Id.*

half way with the ban on chaptalization by means of sugar enrichment.²⁵² In the end, however, wine advocates lost when the political agreement allowed for all methods of chaptalization.²⁵³ These competing social interests were merely placated by the 2004 Ex-Post Report's economic analysis. The 2004 Ex-Post Report gave little deference to these social considerations and approached the issue of oenological practices from an economic standpoint, stating that "in the interests of competitiveness, all the methods used in third countries²⁵⁴ should be allowed in the EU if they are both completely harmless to consumer health and are accepted by consumers."²⁵⁵ The Report essentially gave the power to decide issues regarding oenological practices to the consumer.²⁵⁶

While this position might make sense from an economic standpoint, it does not adequately address the quality goals of the proposal.²⁵⁷ Allowing vintners to adopt sub-par oenological practices so long as they are acceptable to consumers and meet basic health requirements will hardly result in a dramatic improvement in the quality of European wines. Furthermore, the cultural implications of wine and its traditions will not allow vintners to abandon traditional winemaking techniques in exchange for a small increase in profits.²⁵⁸

Instead of "dumbing down" their standards, the EU should maintain them and support further innovation that does not negatively impact quality or tradition. The complete ban on chaptalization would have represented a step in the right direction because it would have eliminated a cheap and easy way for vintners to artificially improve the "quality" of their wines. In addition to an improvement in quality, the ban on chaptalization would have represented a market-balancing tool. Changing the definition of wine to exclude the practice of adding sugar to wine would force vintners to use wine musts and other wine byproducts to increase their alcohol content.²⁵⁹ This would incorporate the use of more grapes in the wine making process thereby further reducing production surpluses by an estimated 3.7 million hectoliters.²⁶⁰

Regulations attempting to ban or permit long-standing oenological practices will always solicit heavy scrutiny. In the present case, scrutiny by various Member States has led to the elimination of the ban on chaptalization.²⁶¹ Intense bargaining has resulted in merely a reduction in the

252. Commission Proposal, *supra* note 8, at 5.

253. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8-9.

254. EX-POST REPORT, *supra* note 39, at 133.

255. *Id.*

256. *See id.*

257. Commission Proposal, *supra* note 8, at 4 (stating that one of the goals of the reform is to increase the quality of EU wines).

258. *See* NIEDERBACHER, *supra* note 35, at 5 (discussing how the traditions of winemaking are central to the European identity).

259. *See* Commission Proposal, *supra* note 8, at 81.

260. *Staff Working Document*, *supra* note 4, at 15.

261. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8.

amount of wine permitted to be chaptalized.²⁶² The Commission's attempts to improve the quality of European wines have been sidelined by political and social interests. While the current political agreement still reduces the total amount of sugar enriched wines, it fails to make any significant strides in the area of competition because it permits, and even encourages,²⁶³ a low quality measure of enrichment.

2. *Oenological Practices and Exportation*

The ban on chaptalization is not the only oenological practice augmented by the proposal. Article 21 of the original proposal provides for an unsettling loophole in regards to the exportation of European wines.²⁶⁴ The second goal of the Commission in adopting this proposal is to "strengthen the reputation of the EU quality wine as the best in the world; [and] recover old markets and win new ones."²⁶⁵ Article 21 states that "oenological practices and restrictions recognised by the International Organization of Vine and Wine (OIV), and not the authorised Community oenological practices and restrictions, shall apply to products covered by this Regulation which are produced for export."²⁶⁶ This statement creates a loophole for exportation of European wines, allowing wineries to defect from the Community's oenological practices when exporting wines, and frustrating the Commission's goal of strengthening the reputation of EU wines.²⁶⁷

Allowing wineries to use shortcuts when making wines for export will result in substandard European wines in foreign markets and will not result in the recapture of any lost markets. As one wine enthusiast aptly put it, "[t]his [provision] would appear to be a double-standard whereby [the] health concerns and expectations of [non-]European consumers can be waived in order to help European vintners do business outside the EU."²⁶⁸ The Commission should require that all wine produced within the EU be subject to the same oenological standards and restrictions.²⁶⁹

The Commission also plans to increase competition both within the EU and abroad by engaging in a substantial publicity and informational campaign.²⁷⁰ Article 9 of the proposal sets forth the various publicity and promotional campaigns the European Community would engage in to improve

262. *Id.*

263. The elimination of the aid for must enrichment will induce vintners to use the cheaper and easier method of sugar enrichment. *See supra* Part VI.B.1.

264. *See* Commission Proposal, *supra* note 8, at 4.

265. *Id.*

266. *Id.* at 33.

267. *See Wine Blog*, *supra* note 109.

268. *Id.*

269. Commission Proposal, *supra* note 8, at 33.

270. *See id.* at 27.

their competitiveness in foreign and domestic countries.²⁷¹ The goal of these campaigns is to stimulate consumers into buying European wines and to dissuade them from buying new world wines.²⁷²

On the domestic front, the Commission believes that an "internal information scheme [can] contribute to informing EU consumers about the domestic wine quality policy, which might reasonably persuade them to turn their preferences increasingly to domestic European wines rather than to competing wines."²⁷³ The Commission has borrowed the idea for a publicity campaign from new-world wine producers, acknowledging that "new-world wines have shown that a strong promotional policy is the key for successful marketing of wines worldwide."²⁷⁴ The adoption of this internal domestic informational campaign brings the EU up to par with the rest of its competition, and will could increase market share within the EU, the extent of which is yet unknown.

In regards to the publicity campaign, Article 9 of the proposal originally allocated 120 million Euros for "promotion measures concerning Community wines in third countries."²⁷⁵ The proposal went on to state that "[f]unds . . . reserved [in Annex II for promotion of measures in third countries] shall not be available for other measures," ensuring that countries would spend money on promotion in third countries.²⁷⁶ The newly revised campaign, however, fundamentally changed the foreign publicity campaign, eliminating its 120 million Euro budget.²⁷⁷ Instead, promotion in third markets is now placed entirely within the national envelope expenditure,²⁷⁸ which essentially eliminates the previous goal of mandating promotion in third countries.²⁷⁹

By subsuming both the foreign and domestic publicity campaigns into the national envelope measure, nations now have the choice on how much they are willing to contribute to both domestic and foreign promotional campaigns.²⁸⁰ Publicity campaigns will now have to compete with other domestic concerns like vineyard restructuring, conversion, modernization of the production chain, innovation, support for green harvest, and new crisis management measures.²⁸¹ It is unlikely that nations will spend millions of dollars of taxpayer money on

271. *Id.*

272. *See id.* at 13.

273. *Staff Working Document, supra* note 4, at 13.

274. *Id.*

275. Commission Proposal, *supra* note 8, at 27.

276. *Id.*

277. *See* COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 8.

278. *See id.* at 21.

279. *See* European Commission: Agriculture and Rural Development: *Reform of the EU Wine Market*, http://ec.europa.eu/agriculture/capreform/wine/index_en.htm (last visited Apr. 2, 2008) (national envelopes are yearly stipends that will allow Member States to "adapt measures . . . to their particular situation.").

280. *See id.*

281. *See* COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 17.

promotional campaigns, especially in foreign nations when there are potentially more pressing domestic issues at hand. Political accountability will likely deter national officials from spending money on promotional campaigns, especially foreign campaigns. It appears that this change embodied in the Council's Political Agreement might have effectively written out the foreign publicity campaign measure from the proposal.²⁸²

Assuming *arguendo* that nations were to engage in strong promotional campaigns in third markets, there would still be a fundamental inconsistency between the publicity section and other sections of the proposal. Article 9, section 3(a) states that publicity measures will be used "in particular [to] highlight . . . the advantages of the Community products, especially in terms of quality, food safety, or environmental friendliness."²⁸³ The problem is that this goal is contradicted by Article 21 of the proposal where exporters of European wines are exempted from rigorous oenological standards applied within the community.²⁸⁴ Foreign consumers are left to wonder if the Commission is simply trying to trick them into thinking that they are buying a higher quality wine because it came from the EU when these exported wines are not subject to the same rigorous quality control standards applied within the Community.

While there is no inherent problem with subsidizing a publicity campaign in order to boost sales, such a campaign cannot be considered "responsible" if it seeks to deceive consumers into buying a lower-quality product.²⁸⁵ Clause 5 of Article 21 should be eliminated from the proposal, and all wines produced within the EU should be subject to the same Community oenological standards and restrictions.²⁸⁶ By doing this, any increase in markets will truly be the result of an increase in the competitive nature of EU wines and not the result of a promotional trick.

CONCLUSION

The above-mentioned regulatory measures compromise a substantial part of the Commission's new arsenal in eliminating the structural surplus and improving the overall character of the European wine sector.²⁸⁷ Built into every measure is a delicate balance between various economic, social, and environmental interests. As a result of these competing interests, compromise has forged a more tempered and socially acceptable proposal. While the political agreement reached in December 2007 diluted the Commission's

282. *See id.* at 8.

283. Commission Proposal, *supra* note 8, at 27.

284. *See id.* at 33.

285. *See id.*

286. *See id.*

287. This Note did not address all of the aspects of the Commission's revised proposal. Furthermore, there have been even more changes to the Commission's proposal since the adoption of the Council Regulations (EC) No 479/2008 by the Council of Ministers in April of 2008. However, this Note did not conduct an analysis of this new legislation.

original proposal, the agreement still embodies the overarching goals of "economic viability, social acceptability, and environmental integrity."²⁸⁸ Often, however, economic interests have been tempered, and even undermined, by social interests. Sadly, the environmental interests have come in a distant third to either of the other two interests.

Revitalization of the controversial grubbing-up scheme has pitted potential economic gains against strong social interests. In order to reach a socially acceptable compromise, the economic gains of the grubbing-up scheme have been hampered through limitations on eligible areas from an original 400,000 hectares to only 175,000 hectares along with more expansive national exemptions.²⁸⁹ Even with this reduction, this measure embodies the most viable regulatory measure in achieving the diminution and eventual elimination of the structural surplus in the wine market. Grubbing-up will maximize efficiency by inducing ineffective vintners to move out of the wine sector and pursue more robust ventures. The measure satisfies social concerns by providing vintners an honorable means of exiting the wine sector to those who are currently struggling to maintain a living within it.²⁹⁰ National limitations provide environmental integrity,²⁹¹ but procedural matters remain a concern because delegation to alternative agencies has left the door open to later environmental problems.²⁹²

Elimination of distillation subsidies at the EU level represents the Commission's determination that these measures are not only inefficient for the wine and alcohol industries, but also, and perhaps more importantly, that they are ineffective in eliminating the structural surplus. This shift in policy represents a fundamental change in policy for the Commission and will be integral in achieving economic viability by eliminating the most expensive and inefficient crutch in the wine sector. However, social discord has tempered the economic viability of this measure by retaining the possibility of distillation measures at the Member State level.²⁹³ In the end, support for distillation among Member States will likely fade as they realize the shortcomings of distillation measures and eventually eliminate these measures altogether. Environmental integrity will benefit from the elimination of distillation because vintners will likely employ less intensive farming practices as they focus more on quality than quantity.

Similar to elimination of distillation measures, the ending of support for private storage contracts will aid in achieving economic viability by inducing vintners to produce only those quantities they can sell in a particular year. The implications for this measure will not be as far-reaching as the measures for

288. COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 2.

289. *See id.* at 8; *but cf. Staff Working Document*, *supra* note 4 at 11.

290. *See* Commission Proposal, *supra* note 8, at 9.

291. *Id.* at 9 (discussing the national exemption for hillsides and steep terrain).

292. *Id.* at 66.

293. *See* COUNCIL POLITICAL AGREEMENT, *supra* note 34, at 9.

grubbing-up or phasing-out of distillation measures because of the limited use of this measure.²⁹⁴ Similarly, due to its limited use, support for this measure will not be as contentious.²⁹⁵ Environmental integrity will benefit from this measure because the loss of this safety net will induce vintners to focus more on quality than quantity and employ less intensive farming practices.

Elimination of aid for must enrichment will achieve economic viability only by eliminating subsidy payments. This small improvement in viability comes at a high cost to quality though, because vintners will have an even bigger incentive to use lower quality means of sugar enrichment. Social interests seem to have won out over the more economically sound measure of a complete ban on chaptalization. Further, there appears to be no significant environmental benefits to the ban on aid for must enrichment, which suggests the shortcomings of this regulation.

Support for green harvesting will have a positive impact on the elimination of the structural surplus by fighting against the structural surplus ex-ante.²⁹⁶ This measure also contains environmental advantages because vintners can use the green harvested grapes as green fertilizer on their own vines,²⁹⁷ eliminating the need to purchase additional artificial alternatives.²⁹⁸ The only drawback to this measure is the poorly worded definition supplied in the proposal. The Commission should eliminate the last clause of Article 11, thereby allowing for the traditional method of green harvesting.²⁹⁹

Creation of national envelopes will likely achieve economic viability only if the proper administrative oversight and implementation is employed. Unlike other regulatory measures, there is no pedigree for this venture.³⁰⁰ The Commission and the Member States should learn from the lessons of the past, specifically in regard to the inadequacies of planting rights registries,³⁰¹ and create strong administrative frameworks for the recordation and management of national envelope funds. Failure to do so could lead to widespread misappropriation and inefficient management of community funds.

It is unlikely that the sector will see any major improvements in competitiveness through the current changes to oenological practices or publicity campaigns.³⁰² Failure to retain the ban on the practice of

294. See EX-POST REPORT, *supra* note 39, at 116. A national average of only eight percent of table wine was put into private storage contracts during the years of 1985-2003. *Id.*

295. See *id.*

296. *Id.* at 99.

297. *Id.*

298. See generally Glebe, *supra* note 123 (discussing the use of pesticides and other non-organic fertilizers in European agriculture).

299. Commission Proposal, *supra* note 8, at 28.

300. This measure was not part of previous wine reforms and therefore has not been analyzed for efficiency by the 2004 Ex-Post Report. See generally EX-POST REPORT, *supra* note 39.

301. See *supra* Part III.B.1.

302. It should be noted that this Note did not analyze all of the Commission's proposed measures.

chaptalization, coupled with the elimination of aid for must enrichment, will likely lead to the increased use of sugar enrichment. This, consequently, will result in a degradation of quality and a missed opportunity for reducing the overall surplus. Additionally, the commitment of the foreign publicity campaign inside the national envelope measure will likely have the affect of writing out the measure entirely. For those Member States that do engage in publicity campaigns in third markets, the contradiction between Article 21 and Article 9 will likely impede any large increase in market share.³⁰³ The only promotional measure that will likely have any impact on improving competition will be the internal informational campaigns.

Taken together, the most important result of the original proposal and the recent political agreement is not the success or strength of one measure in particular, but the Commission's overall shift in policy. The Commission's adoption of many of the Ex-Post's Report's recommendations into its original regulatory proposal evidences its willingness to put an end to the structural surplus and increase both efficiency and quality of European wines. The Commission seems to have learned from its past mistakes and is currently taking appropriate steps to correct them. Progression towards this goal would not be possible without the driving force of the Commission.

Wine is and always will be deeply rooted in European culture, and because of this, any regulatory changes to its production will elicit strong sentiments. The current reform is no exception. Proponents of the reform should not be discouraged by the recent agreement. Major reform does not happen quickly, and this agreement, while tempered, demonstrates a fundamental step towards a more sustainable and prosperous wine sector.

303. See Commission Proposal, *supra* note 8, at 27 & 33 (comparing how Article 9 allows for nations to engage in publicity campaigns, but Article 21 allows for nations to depart from the normal oenological standards when selling outside the European Union).