



Universidade do Minho
Escola de Direito

**The Multilevel regulation of Wine Production:
Prospects for the sector in a Green Europe**

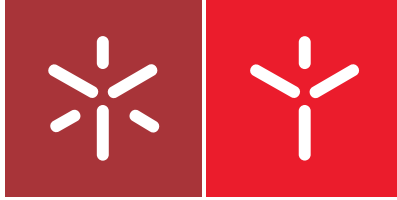
Violeta Tinoco da Cunha Valle

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**The Multilevel regulation of Wine
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Green Europe**

Master Degree Dissertacion

L.L.M European and Transglobal Business Law

The Dissertation was Supervised by

Professor Doutor João Sérgio Antunes Ribeiro

Professor Doutor Ricardo Sousa da Cunha

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Acknowledgments

This research was developed during a difficult year. The year of COVID-19 pandemics. the year that we all stayed at home as long as possible. The year that we couldn't go to our schools, or libraries or meetings.

This added an extra difficulty that no one was prepared to face.

But despite all odds, we are passing through.

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Abstract

The objective of this work is to understand the wine activity in Portugal before and after the accession to the EEC and the European Union and how the community regulations affected and will affect the Portuguese producers.

European integration, when creating an internal and unified market, brought to evidence new concerns at the supra-state level, specifically concerning the fulfillment of the Community Agricultural Policy rules interfering in the limits of the traditional State-based legal systems.

The creation of the World Trade Organization and its regulations as a sub-system, also lead to the necessity to conform European Regulations, International Treaties and national laws. This interaction sometimes can cause regime- collisions and the necessity to an inter-systems relation.

That happens as a consequence of an International Subsystem fragmentation.

Taking that into account, this research analyzes the CAP 2023-2027 programs and objectives and its relations with the “Green Deal”, the European program designed to achieve a 0 emission continent by 2050, conforming to the Paris Agreement on Climate Change.

The program has a definite influence in the wine sector, since agriculture can be an intensive polluter.

This work focus on specific proposals for the implementation of the new CAP to the wine sector, the consequences of program changes and the possible inter-system collisions due to future trade relations.

It also intends to present a perception of the Portuguese wine sector concerning this scenario.

Keywords: CAP; Green Deal; Wine Sector; Climate Change; Sub-system Collision; Environment.

Resumo

O objetivo deste trabalho é compreender a atividade vitivinícola em Portugal antes e depois da adesão à CEE e à União Europeia e como os regulamentos comunitários afetaram e irão afetar os produtores portugueses.

A integração Europeia, ao criar um mercado interno e unificado, trouxe à tona novas preocupações a nível supra estatal, nomeadamente no que diz respeito ao cumprimento das regras da Política Agrícola Comunitária que interferem nos limites dos ordenamentos jurídicos tradicionais de base Estatal.

A criação da Organização Mundial do Comércio e seus regulamentos como um subsistema, também levou à necessidade de adequar os Regulamentos Europeus, Tratados Internacionais e leis nacionais. Essa interação às vezes pode causar colisões de regimes e a necessidade de uma relação entre sistemas.

Isso acontece como consequência de uma fragmentação do Subsistema Internacional.

Tendo isso em conta, esta pesquisa analisa os programas e objetivos do CAP 2023-2027 e a sua relação com o “Green Deal”, o programa Europeu que visa atingir um continente de 0 emissões até 2050, em conformidade com o Acordo de Paris sobre Alterações Climáticas.

O programa tem uma influência definitiva no setor vitivinícola, já que a agricultura pode ser um intensivo poluidor.

Este trabalho centra-se em propostas específicas para a implementação da nova PAC para o setor vitivinícola, as consequências das alterações propostas e os possíveis choques inter-sistemas devido às relações comerciais futuras.

Pretende também apresentar uma perceção do sector vitivinícola português sobre este cenário.

Palavras-chave: PAC; Green Deal; Sector Vinícola; Mudança Climática; Colisões de Subsistemas; Meio Ambiente.

Methodology

The L.L.M. European and Transglobal Business Law necessarily takes a multidisciplinary perspective into increasingly complex and global problems and so does this dissertation. The limits of the traditional State-based legal system under the Constitution have been challenged by the global integration of the socio-economic dwellings of increasingly informed and mobile at the global level individuals. The criteria for legitimacy and validity of public decision-making processes change as the affiliations of individuals also change. The result of this decisions on a global setting are therefore looked upon with different hermeneutic tools other than the traditional legal method of the Nation State. And so happens in this dissertation.

The departing point for a dissertation is naturally that of a Global law where different subsystems interact. If the starting point is the European Union Law, one cannot forget the role played by the global integration on free trade promoted by the WTO, where different normative subsystems have long interacted, most notably the environmental protection promoted by the European Green Deal in agriculture. The relationship between different legal orders is, therefore, the methodological place for this dissertation, following most notably the suggestions of Teubner.

Answering the global challenges identified at the L.L.M. European and transglobal Business law, however, also involves the considerations of the other scientific perspectives over increasingly complex global problems. Therefore, over the text references will be made to economic data relevant for understanding the full effects of the legislation approved, at the national and supra-national level. Considering that the growing normative integration at the global lacks the democratic procedures established by the Constitution domestically, these are much more opened to the political realistic considerations of foreign affairs, which imposes during this academic exercise the consideration of “de facto” and not only “de jure” arguments.

The last point led to the use of qualitative and quantitative methodologies in the research and referred over the text. These included the use of close questionnaires and open questions to the participants of the wine sector in Portugal, in order to assess the perception and the expectations when faced with the normative consequences referred. This exercise was also very useful for the involvement of the researcher in a new subject, even geographically distant.

The methodologies used in the research are reflected over the text and express the complexity of the subject chosen, which is, in effect, that of the variety of subjects covered by the research program for the L.L.M. European and transglobal Business Law.

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1. INTRODUCTION

During the preparation for our task to elaborate the dissertation for the accomplishment of the L.L.M European and Transglobal Business Law, the students were encouraged to choose a subject of investigation that they would have a deep curiosity.

In the process of choosing, as Umberto Eco recommends, the candidate should consider a theme that corresponds to the researcher's concerns, but also consider the accessibility of sources, although belief of accessibility can be deceiving.

1.1 Problem

As a foreign student I had a wide range of subjects concerning Portugal and the European Union that could catch my attention, but the Portuguese Wine culture emerged as number one.

While living in Portugal, I was curious to understand the reasons Portuguese wine didn't have a larger participation in the wine global market.

During my readings for this work I realized that Portugal was not even substantially mentioned in the wine literature.

As an example, the recent academic benchmark on the issue "Wine Law and Policy – From National Terroirs to a Global Market" didn't even mention Portugal.

The fact that Portugal was once known as the producer and exporter of the so called "America's Wine" in the XVIII century but nowadays does not have a more distinguished position in today's global market, behind France, Italy and Spain, intrigued me - The Madeira Wine was served to celebrate the Independence of the United States¹, not to mention the references at Shakespeare's "Henry IV".

It is true that there is an effort to change this current situation, specially through campaigns promoting the Portuguese wine around the world, since the wine sector is an important part of Portuguese agriculture, and this importance reaches also the tourism

¹ Hancock, David. (2017). Oceanos de Vinho: O Vinho da Madeira e a Organização do Mundo Atlântico 1640-1815. Edições 70. p. 28.

sector. It is important to highlight that this work do not pretend to dig in the oenological aspects of wine production, although some aspects of the matter are important to help the better understanding of the work's scope. But here they are exposed by an outsider of the wine industry.

1.2 Research Object

The objective of this work is to understand the wine activity in Portugal before and after the accession to the EEC and the European Union and how the community regulations affected the Portuguese producers and continue to affect, since the recent reform of the CAP will continue to affect the legal order of the Member-States for years to come regarding the regulation of the wine sector.

The regulation of the wine sector, especially for special wines category, has been traditionally national, what leads to specific issues when confronting or conforming to a Community reality. European integration, when creating an internal and unified market, brought to evidence new concerns at the supra-state level, specifically concerning the fulfillment of the Common Agricultural Policy rules, also in attendance to food security matters and environment protection.

Those concerns have also a global dimension, especially after the creation of the World Trade Organization and its regulations, namely the GATT, the Agricultural Treaty and the Technical Barriers to Trade Agreement, what leads to the necessity to conform European Regulations, International Treaties and national laws. This interaction can cause a possible regime - collision and the necessity to an inter-systems relation.

That happens as a consequence of an International Subsystem fragmentation which demand particular attention as stated by Ricardo Sousa da Cunha:

*“Decentralized functioning in a network requires greater inter-systematic mutual observation, whereby the final decisions are replaced by a sequence of decisions in which the “network nodes” limit, control and provoke (...)”*²

² Cunha, Ricardo Sousa da. (2016). *Constituição e Legalidade Administrativa Cosmopolita: O Direito Administrativo Global entre a Constitucionalização e a Fragmentação*. Almedina. p. 270

As an example of this network, the proposals for the MERCOSUR TRADE AGREEMENT disposes:

“In the area of technical regulations, the Parties agreed to go beyond WTO rules on the use of international standards as a basis for domestic technical regulations. They agreed on periodic reviews with a view to increased alignment with international standards. The parties also agreed on ambitious commitments on good regulatory such as carrying out impact analyses, taking into account the needs of small and medium-sized enterprises”³

As seen, the possibility to go beyond WTO regulations is on the table for negotiation between the European Union and the MERCOSUR and in this direction, the European Commission document about the Agreement explains that

“Under the agreement the EU and Mercosur commit to effectively implementing the United Nations Framework Convention on Climate Change and the Paris Agreement on climate change.

They also commit to promoting trade’s positive contribution to the fight against climate change.”⁴

This Agreement has not yet been approved by the European Parliament and suffers resistance from some Member States based in the controversial attitudes and the dismantlement of the environmental agencies promoted by Bolsonaro’s Presidency. Yet, Mercosul is the fifth largest economy outside EU. About 855.000 European jobs relate to exports to Brazil alone, what gives the dimension of the importance of the Agreement.

The traditional understanding on the matter of trade restrictions based on national standards has already been touched by the WTO at the GATT Dispute Panel in the case tuna/dolphin⁵. In this dispute panel, Mexico challenged at the WTO a United States’s

³ European Commission. (July 1st, 2019). New EU-Mercosur trade agreement: The agreement in principle. https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157964.pdf (Accessed July 28th, 2021)

⁴ European Commission. (July 2019). The EU-Mercosur Trade Agreement: Questions and Answers https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157953.pdf (Accessed July 28th, 2021).

⁵ World Trade Organization. (July 28th, 2021). <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/381R.pdf&Open=True>

national law that imposes restrictions on labelling of tuna products imported, exported or sold in the Country.

The United States argued to be particularly interested in the protection of dolphin's preservation, so this is a question that bring environment to the top of concerns. United States national law forbids the label "dolphin-safe tuna" for tuna products that are obtained through harvest in certain conditions. Mexico sustained that those measures are inconsistent with articles 1.1 and 3.4 of GATT/94 and articles 2.1, 2.2 and 2.4 from TBT, representing unnecessary obstacles to trade, representing indirect discrimination against Mexican tuna products. United States sustained that it's not a discrimination of origin, but a measure to protect a species.

Dolphins and tuna are in deep symbiosis, and harvest tuna with vessels engaged in driftnet will necessarily cause harm to dolphins, since tuna swim under and around dolphins. The technique used by those vessels kills the dolphins in the area.

The Panel, which had the help of Humane Society International and American University College of law as *amicus curiae*, and as third Parties European Union, Australia, Argentina, Brazil, Japan, and some other Countries analyzed if labelling is a technical issue, and if American measures were in breach of TBT Agreement. Mexico's concerns consist that adapting the vessels to conform to America's standards would cost too much.

In this research, the case will be made on how the European commitment to reduce greenhouse gases emission has had a definite influence in the wine sector, since agriculture can be an intensive polluter. To face today's challenges concerning climate change, Europe launched the "Green Deal" program. Among the goals and proposals of the Green Deal there were one specific solution that relates to the grapes allowed in the wine production.

Although tunas and dolphins are a different subject, the debate goes back to the foundation of an actual concern as pointed by Professor Alan Matthews, from the Department of Economics at the Trinity College, Dublin:

*“(…) A joint statement by the Council, Parliament and Commission attached to the political agreement on the next CAP confirmed that it was appropriate to require that imported agricultural products comply with certain production requirements so as to ensure the effectiveness of the health, animal welfare **and environmental standards** that apply to agricultural products in the EU and to contribute to the full delivery of the European Green Deal and Farm to Fork Strategy communications. The Commission has been requested by the Council and Parliament to provide a report by June 2022 outlining the rationale and legal feasibility of applying EU health environmental standards to imported agrifood products”.*⁶

1.3 Research questions

This investigation will hence seek to confront national law and cultural practices with Community Regulations and answer the question if it's possible to integrate the proposals for European legislation, such as the introduction of non-native grape varieties, in the global multilevel regulation of wine production as a tool to fight climate change challenges and how these changes would affect the sector economically and culturally.

This main question can be divided into several other sub-questions.

How deep would those changes affect the European and more specifically the Portuguese production?

Would the European Community challenge third countries production? Would it become a new trade restriction?

Since Consumers choices and expectations are a key element in any economic activity, would European wine support an increased disadvantage compared with other Producer Countries that don't demand such changes in production?

Will EU impose technical restrictions to third Countries products?

Will it lead to new Dispute Panels at the WTO?

⁶ ECA Journal Long Read. https://drive.google.com/file/d/1NDVRRlFM62khflscPO-iruML5iNYF_Oc/view

1.4 Research Plan

To answer these questions this work begins with a brief historical, followed by a brief approach to the Common Agricultural Policy, describing the development of its measures through the years to understand the history of agricultural community regulation.

A second part introduces a historical approach to the GATT 47 agreement, the emergence of the WTO and its influence in the CAP as an example of the subsystems inter-relations.

Continuing the development of events, the work explains a bit more of the Green Deal Program, the European measures to face climate change challenges.

Then, with a better understanding of the European Policy, the work focus in the wine sector and specifically the Portuguese one.

With the intention to have an insider approach to the matter, an enquiry is presented to demonstrate the reach of the EU Commission's concerns and proposals for the new CAP that will regulate European Agriculture for the 2023-2027 period.

The enquiry was proposed for vintners, enologists, commercial and other activities directly related to the wine sector.

After that, a conclusion is presented.

2. THE CAP - COMMON AGRICULTURAL POLICY

To understand today's European Agriculture, we must understand the Common Agricultural Policy.

In the Treaty of Rome, signed in 1957 creating the European Economic Community, Agriculture was a key issue. (Amaro, 1978)

Eugenio Pomarici and Roberta Sardone stand that "*CAP represents de corner stone of the European Union*", being "*the first common policy implemented after the signing of the Treaty of Rome*"⁷.

It is the program that receives the largest part of the EU budget.

In an article of 1978 explaining supposed consequences of the accession of Portugal to the EEC, R. Amaro says:

*"One can resume, as the unsuspected J.S. Marsh (Agricultural economy specialist from Reading University, England) saying that CAP is not an agricultural policy, but a policy for the Community, that means, its primary goal is not the agricultural level production, farmers income, or food products prices, but the creation of the European Community. The agricultural problems are important, but, in essence, they are secondary compared to the total economic union objectives."*⁸ (Our translation)

Article 39 of the Treaty of Rome established the goals to be accomplished by the EEC on Agriculture – to increase the agricultural productivity, stabilize the market, ensure the quality of life of the rural population, safeguard the food supply and guarantee reasonable prices for consumers.

"ARTICLE 39

1. The objectives of the common agricultural policy shall be:

⁷ Pomarici, E., Sardone, R. EU wine policy in the framework of the CAP: post-2020 challenges. *Agric Econ* 8, 17 (2020). <https://doi.org/10.1186/s40100-020-00159-z>

⁸ Amaro, Rogéno Roque. (1978). A Agricultura Portuguesa e a Integração Europeia: A Experiência do Passado (E. F. T. A.) e a Perspectiva do Futuro (C. E. E.). *Análise Social*, 14(54), segunda série, 279-310. Retrieved June 1 (Pomarici & Sardone)⁷, 2021, from <http://www.jstor.org/stable/41010299>

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

(a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

(b) the need to effect the appropriate adjustments by degrees;

(c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.”⁹

Besides the strategy of unification as seen above, the creation of CAP by the founding Member States - Germany, France, Italy, Belgium, Netherland and Luxemburg - was a necessity that emerged from the difficulties of food supply in a post war environment combined with the necessity to harmonize previous national policies and priorities, some of them going on for centuries.

To accomplish these goals, three pillars were formulated:

- The market unicity;
- The Community preference and
- The financial solidarity.

⁹ The Treaty of Rome. https://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf

The market unicity demanded free movement of agricultural products among Member States in a unique EEC market, with the elimination of all considered unfair national practices.¹⁰ This goal would be achieved by the creation of CMOs – Common Market Organizations – for each one of the products regulated by the CAP. Later on during a CAP revision, they would merge into a single CMO¹¹.

The Community preference was intended to assure that the European market was not affected by imports of cheaper products from third countries by giving priority to European Community products to access the EEC market, avoiding competition. This specific pillar would be achieved by the establishment of minimum prices for products of third countries to get to the European market. The chosen mechanism to accomplish this goal was the imposition of flexible levies to be charged to third countries products entering the EEC market or through subsidies.¹²

The income received from the levies imposed to third countries products was one of the sources of income of the CAP, along with the contributions of Member States no matter the weight of agriculture in a Member's economy. This logic provoked discrepancies among Member States in a way that countries that had a big participation in agricultural production, like France, would receive more money than would actually contribute. On the other hand, Germany, that had a smaller participation in the agricultural field, and as consequence, would have to buy more agricultural products, would be sacrificed by the obligation of giving preference to the Member's production despite international market lower prices.

The financial solidarity relates to the compromise of Members to finance the function of the CAP. That would be achieved through two common funds – European Agricultural Guarantee Fund – EAGF and European Agricultural Fund for Rural Development – EAFRD. The first one was intended to support the guarantee aspect of the CAP while the second one to finance orientation programs.

¹⁰ Carvalho, Patrícia Nasser de (apud Sorensen, Anders Thornvig. 2008). A Política Agrícola Comum da Europa: Controvérsias e Continuidade. IPEA - Instituto de Pesquisa Econômica Aplicada.

¹¹ EUR-Lex: Access to European Union Law. (2013). Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1308>

¹² Carvalho, Patrícia Nasser de (apud Sorensen, Anders Thornvig. 2008). A Política Agrícola Comum da Europa: Controvérsias e Continuidade. IPEA - Instituto de Pesquisa Econômica Aplicada.

Although the orientation was a concern, most of the provisions were directed to the guarantee aspect of the policies, meaning price control.

During the creation of the funds, two models were disputing primacy as the best way to ensure the accomplishment of these objectives: the franco-german and the anglo-american.

In the Franco-German model, which was based on the fixation of prices, in a way that the consumers would support higher prices than the ones that would be possible on a free market, the occurrence of surpluses would be supported by public budget, meaning taxpayers would pay for it.

The Anglo-American method of deficiency payments, which previewed that prices would be a result of supply versus demand, and the fund would intervene only if the prices didn't achieve a previous amount established at the beginning of the agricultural campaign. In this case consumers would not be harmed.

All considered, the franco-german model was the one adopted.

Since the common market demanded an equal protection among members, the prices were aligned at the top, which made farmers income increase for most of the members, in an Europe context that was still not self-sufficient in terms of agricultural production, and agriculture was known as the green petroleum.

But the happiness of the beginning of European Union integration ended with the appearance of signs of imbalance that led to the Sicco Mansholt report in 1968.

The report drew attention to the surpluses and its consequences to the costs and made clear that an agricultural policy based only in the price support would not be enough to solve all the problems, but, on the contrary, would create new ones.

Taking this into account, the report suggested changes that came to be known as the Mansholt Plan.

The plan suggested the reduction of prices, so public support would be less needed, the withdraw of the market of the less viable productors and reduction of 5 million acres of productive fields to be used as natural parks.

The reaction was violent with big demonstrations in Brussels on March 1971. It is important to highlight that Europe's agriculture was characterized by small family properties.

To add more variables to the problem, it must be highlighted that the EEC went through enlargements - in 1973 Denmark, Ireland and UK joined the EEC and later in 1981, Greece joined the Community. Portugal joined in 1986.

Along with this, more discrepancies among member States occurred and increased the issue of budget and solidarity discussions, bringing new tensions to the matter.

But still CAP was a key program for the European Community.

In 1988, in order to control surpluses, a stabilizing system was created consisting of the MQG maximum quantities guarantee for certain sectors, and the consequent price decrease in case of overtaking of limits.

But based on the solidarity pillar, penalties were applied for the whole sector as a global quota, so even if a Member State was below its limits of production quantities, if the production taken globally produced surpluses, the Member State would suffer the decrease of price in a global way.

The development of the Policy urged for reforms.

In 1992, during the Brussels summit, despite dissatisfaction by some agricultural organizations all over Europe, especially in Paris, a CAP reform was approved after a reflexive document that pointed imbalances provoked by the policy showed that only 20% of the agricultural producers received 80% of the funds, and that the establishment of maximum quantities did not solve the problem of surpluses and funding. Besides that, the GATT – General Agreement on Tariffs and Trade - discussion was another source of pressure that Member States had to deal with.

The perspective of the reform took into account the goals to preserve Europe's rural area as a viable option for communities, the balance of the market, justice of distribution of funds, and guarantee the European global trade position.

The reduction of guarantees was decided along with a reduction of the production capacity through voluntary fallow and some changes in the farmer's income support. At the end, the concerns highlighted at the *Sicco Mansholt report* had to be taken into account decades later.

In 1997, already as European Union created in Maastricht in 1993, the European Commission discussed ideas about the future of the CAP, encouraged by the enlargement of the EU with the entrance of the countries of central and east Europe as Member States and the proximity of the millennium.

The concerns that encouraged the discussion related to the limitations imposed by the GATT agreements and the foundation of the World Trade Organization in 1995, the dissatisfaction of the public opinion concerning the CAP, especially related to the distributive inequality, pollution concerns and decentralization necessities.¹³

In 2002, the European Commission proposed another discussion (COM(2002)394 final) mainly intending to facilitate multilateral trade negotiations at the WTO and deal with enlargements consequences leading to a 2003 reform.¹⁴

The creation of the WTO was the beginning of a “process of liberation of the agricultural trade”¹⁵ when competitors third countries started to challenge more strongly the range of the 1999 CAP reform, since under the WTO agreements, different subsystems of global trade would have to interact, sometimes colliding¹⁶.

For the purpose of this work, it is relevant to focus on a fragmented global protection of environmental sustainability and the interaction between different legal subsystems under the WTO limited jurisdiction, since this is the purpose of EU Green Deal and the main concern of the future of the CAP. As the decision of the WTO Appellate Body in the Shrimp/Turtle¹⁷ case and the Tuna/Dolphin case, the environment is at the center of discussion on trade. In the case, the AB decided that environmental protection measures are compatible with article XX of GATT. There are opinions that the

¹³ Cunha, Arlindo. (2004). *A Política Agrícola Comum na Era da Globalização*. Almedina. p. 84

¹⁴ Cunha, Arlindo. (2004). *A Política Agrícola Comum na Era da Globalização*. Almedina. p. 136

¹⁵ Cunha, Arlindo. (2004). *A Política Agrícola Comum na Era da Globalização*. Almedina. p. 134

¹⁶ Cunha, Ricardo Sousa da. (2016). *Constituição e Legalidade Administrativa Cosmopolita: O Direito Administrativo Global entre a Constitucionalização e a Fragmentação*. Almedina. p. 261

¹⁷ World Trade Organization. (October 1998). United States – Import Prohibition of Certain Shrimp and Shrimp Products, AB-1998-4. Report of the Appellate Body. Doc. WT/DS58/AB/R.

decision represents judicial activism and given its limited jurisdiction, it would pass along the matter to a political dispute among the State parties, which will be analyzed next.

In 2013 another reform was discussed as a last phase of adaptation of the CAP to a globalized world along with the procedures to decide the budget for the CAP 2014-2020 period.

In this direction three important Regulations were approved:

- Regulation 1307/2013 – concerning direct payment rules¹⁸
- Regulation 1308/2013 – about single Common Market Organization¹⁹
- Regulation 1305/2013 – rules for rural development during the 2014-2020 period.²⁰

The regulations interfered in the distribution of funds considering sustainability, incentive to young farmers, an easier and simpler channel to funds for smaller producers, and other initiatives.

In 2017 the Commission presented a communication about “the future of food and agriculture” together with a financial plan for the 2021-2027 period, initiating the process of a reform to the post 2020 period culminating with the CAP reform of 2018.

After the 2018 reform, due to covid-19 pandemics, CAP 2021-2027 discussion and approval was delayed, but in September 2020 the European Commission proposed a Strategic Plan for the 2020-2024 period concerning Agriculture and Rural

¹⁸ EUR-Lex: Access to European Union Law. (2013). Regulation (EU) No 1307/2013 of The European Parliament and of The Council of 17th December 2013, establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1307&from=EN>

¹⁹ EUR-Lex: Access to European Union Law. (2013). Regulation (EU) No 1308/2013 of the European Parliament and of The Council of 17th December 2013, establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (ECC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1308&from=EN>

²⁰ EUR-Lex: Access to European Union Law. (2013). Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17th December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005. Official Journal of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1305&from=EN>

Development²¹. In the Document, to implement the European Green Deal which will be explained further, the Commission proposes changes to the CAP towards a “modernized and simplified CAP.

In June 25th 2021 the new CAP Agreement was achieved. But there are concerns that the new CAP will not be audacious enough to achieve 0 emissions of GHG, as will be seen later.

²¹ European Commission. Strategic Plan 2020-2024: Directorate-General for Agriculture and Rural Development. https://ec.europa.eu/info/system/files/agri_sp_2020_2024_en.pdf (Accessed June 26th, 2021).

3. THE GATT, THE REGULATION OF WORLD AGRICULTURAL TRADE AND THE CAP

3.1 The GATT

Continuing with the process to understand the development of the agricultural regulations, a deeper view of the history of the GATT is necessary.

After World War II, free market was an important issue to the relations among nations, but at the same time, agriculture remained a separate strategic field, especially for Europe, for the reasons exposed in the discussion about the CAP.

As an example, we refer the 1938's North American Agricultural Adjustment Act which permitted the USA to establish trade restrictions such as tariffs, quantitative barriers and subsidies to increase national agricultural production.

Parallel to this discussions and national policies, at the meeting of the United nations in Havana 1948 – The Havana Charter - 23 participant Member States discussed the creation of the International Trade Organization to discipline international trade. Along with that, discussions about GATT - General Agreement in Tariffs and Trade occurred as a legally independent document.

But despite the contribution of the United States to accomplish the Havana Chart resolution, the country failed to ratify the treaty at the American Congress, what led to the failure of the intent to create the ITO.

With the failure, the international instrument that gave support to develop and regulate international trade was the GATT 1947 Agreement, which initially was intended to be a transitory agreement until the full establishment of the ITO.

Nevertheless, GATT 47 treated agriculture as an exception, allowing contracting countries to establish different barriers – tariff or not.

Article XI of the Agreement is an example of the escape clause:

“Article XI: General Elimination of Quantitative Restrictions*

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. *The provisions of paragraph 1 of this Article shall not extend to the following:*

(a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;

(b) Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

(c) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate:

(i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or

(ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or

(iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to subparagraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous

representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.”²²

The GATT 47 Agreement did not forbid subsidies.

However, the USA disregarded GATT 47 provisions related to cotton and other products, weakening the agreement. The disrespect led to a 1955 waiver in favor of the USA that represented the effective exclusion of the agriculture of the multilateral trade agreement.

Agriculture remained as an exception field for decades, allowing the implementation of CAP measures as a consequence.

3.2 After the Uruguay Round

The issue remained untouched until the GATT Uruguay Round between 1986-1994 when the countries agreed to discuss agriculture trade and market due to the pressure from developing countries and the intentions of the USA focusing the over protected European market.

Nevertheless, Europe entered into bilateral agreements with the USA to protect the CAP until 1992 when discussions were amplified to culminate with the Agricultural Agreement signed in 1994 at the end of the Uruguay Round. At this moment, participants also agreed with the creation of the World Trade Organization - WTO.

With the Agricultural Agreement, rules became clearer – concepts of subsidies, internal support, market access and other issues were precisely defined.

Concerning subsidies and internal support, the Agriculture Agreement established categories divided in three kind of “boxes” – blue, yellow and green depending on the capacity of a certain given subsidy to influence or distort international market.

To each kind, a different commitment, from avoidance to allowance.

²² World Trade Organization. The General Agreement on Tariffs and Trade (GATT 1947). https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm. (Accessed April 4th, 2021)

Concerning barriers, participants commit to restrain protection through tariffs only and lower them to the point of elimination, establishing a period to implement the measures that coincided with CAP perspectives defined in the 1992 reform.

Despite all this effort, the same Agreement established a temporary “Peace clause” in article 13:

“Part VII: Article 13

Due Restraint

During the implementation period, notwithstanding the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures (referred to in this Article as the “Subsidies Agreement”):

(a) domestic support measures that conform fully to the provisions of Annex 2 to this Agreement shall be:

(i) non-actionable subsidies for purposes of countervailing duties⁽⁴⁾;

(ii) exempt from actions based on Article XVI of GATT 1994 and Part III of the Subsidies Agreement; and

(iii) exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions accruing to another Member under Article II of GATT 1994, in the sense of paragraph 1(b) of Article XXIII of GATT 1994;

(b) domestic support measures that conform fully to the provisions of Article 6 of this Agreement including direct payments that conform to the requirements of paragraph 5 thereof, as reflected in each Member’s Schedule, as well as domestic support within de minimis levels and in conformity with paragraph 2 of Article 6, shall be:

(i) exempt from the imposition of countervailing duties unless a determination of injury or threat thereof is made in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations;

(ii) exempt from actions based on paragraph 1 of Article XVI of GATT 1994 or Articles 5 and 6 of the Subsidies Agreement, provided that such measures do not grant

support to a specific commodity in excess of that decided during the 1992 marketing year;
and

(iii) exempt from actions based on non-violation nullification or impairment of the benefits of tariff concessions accruing to another Member under Article II of GATT 1994, in the sense of paragraph 1(b) of Article XXIII of GATT 1994, provided that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year;

(c) export subsidies that conform fully to the provisions of Part V of this Agreement, as reflected in each Member's Schedule, shall be:

(i) subject to countervailing duties only upon a determination of injury or threat thereof based on volume, effect on prices, or consequent impact in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations; and

(ii) exempt from actions based on Article XVI of GATT 1994 or Articles 3, 5 and 6 of the Subsidies Agreement.²³

Through this rule, participants commit not to challenge given subsidies at the WTO's Dispute Settlement Body from 1995 to 2003. So, as we can see, although having clearer rules was indeed a progress, escape clauses compromised the deal, maintaining agriculture as an international "Achilles tendon".

The raise of the tariffs was a consequence of the restrictions imposed by the Agricultural agreement.

3.3 After the Doha Round

This factor and the safeguards provisions led to the discontentment of developing countries against the protectionism in Agriculture, enabling Agriculture to be the center of debates at the Doha Round meetings, started in 2001.

²³ World Trade Organization. Agreement on Agriculture. https://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm (Accessed April 4th, 2021).

The emergence of the G20 group created another pressure group that contributed to the discussions.

All these elements and circumstances, specifically during the Hong Kong meeting in 2005, sustained the decision to end all subsidies in Agriculture until 2013.

G20 defended a deadline in 2010, but at the end, a deadline for 2013 won. Not by coincidence, 2013 was the end of the programmed CAP budget, meaning that the Doha Agreement complied to CAP.

It is important to highlight those subsidies had to be notified to WTO and among the notifications, 90% were from the EU. Nevertheless, EU actually didn't apply all the notified subsidies. A decrease could be shown in the 1995-2001 period, meaning that the movement was already happening despite the international pressure.

That can be explained by the internal discontentment with the CAP costs inside the EU, as discussed previously.

To conclude, we can relate the development and changes in the European CAP and the unfathomable concerns involving agriculture products international trade.

3.4 Global Conflicts over Wine

In the wine sector, the relationship between the different legal order has been highlighted in different cases.

On 4 September 2002 Argentina requested consultations with the EC regarding several EC regulations and other mandatory provisions on oenological practices and on trade in wine²⁴. Argentina's complaint is in respect of Council Regulation (EC) No. 1493/1999 and Commission Regulation (EC) No. 883/2001, which relate to the administration and the common organization of the market in wine, the establishment of authorized oenological practices and the regulation of trade between the countries of the

²⁴ The case European Communities - Measures Affecting Imports of Wine - Request for Consultations by Argentina G/L/558 G/TBT/D/25 WT/DS263/1 | 12 September 2002 available in https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds263_e.htm.

EU and third countries. Argentina considered that these measures are inconsistent with Articles 2 and 12 of the TBT Agreement, Articles I:1 and III:4 of GATT 1994 and Article XVI.4 of the WTO Agreement.

A different bilateral dispute regarding the relationship of the wine sector of the UE with the implications of global free trade, was found in the Boeing (USA)-Airbus (EU) dispute for four months in the year 2021. After the long-standing dispute, the US decided to suspend the 25% tariffs that had been imposed on French, German and Spanish wines, while the EU will no longer collect 25% tariffs on US products, including whiskey²⁵.

More recently, Australia has threatened to file a formal complaint with the World Trade Organization (WTO) after China imposed up to 218% tariffs on its wine last year, on the grounds that wine products have been sold below production cost (dumping) due to national Australian subsidies²⁶.

These disputes and legal interactions challenge the autonomy of each of the normative regimes involved, under the idea of “self-contained regimes” of International law. The European Union has been discussed as a self-contained regime as the WTO system²⁷

The discussion over the “Self-Contained regime” nature of the WTO regime, was discussed in reference to the EU-US case of U.S.-Foreign Sales Corporations and U.S.-Steel, where the mere threat of sanctions worth \$2 billion seems to have persuaded the US to reduce domestic support to the steel industry after the WTO AB confirmed its illegality²⁸.

²⁵ Farm Europe. (April 2019). Wine Sector: Four Month US-EU Tariffs suspension and Agreement on Planting Rights. <https://www.farm-europe.eu/news/wine-sector-four-month-us-eu-tariffs-suspension-and-agreement-on-planting-rights/>

²⁶ BBC News. (June 2020). Australia takes wine dispute with China to WTO. <https://www.bbc.com/news/world-australia-57536422>

²⁷ Cunha, Ricardo Sousa da. (2016). *Constituição e Legalidade Administrativa Cosmopolita: O Direito Administrativo Global entre a Constitucionalização e a Fragmentação*. Almedina. p. 290

²⁸ World Trade Organization. United States – Definitive Safeguard Measures on Imports of Certain Steel Products, Report of the Appellate Body, 10 November 2003, WT/DS248/AB/R.

SIMMA and PULKOWSKI draw the special nature of the WTO retaliation rules from the countermeasures of general international law. In the absence of compliance with this WTO law guarantee regime, it will nevertheless be of interest to know whether the fallback possibility remains in the general international liability regime²⁹.

²⁹ Simma, Brunno; Pulkowski, (June 2006). *Dirk. Of Planets and the Universe. op. cit.* page 521, on the *U.S.-Section 301* concluded that “*WTO members [are prevented] from unilaterally resolving their disputes in respect of WTO rights and obligations*” (*United States - Sections 301-310 of the Trade Act of 1974*, Report of the Panel, 22nd December 1999, WT/DS152/R, 7.46).

4. THE EUROPEAN GREEN DEAL

Along with the subsidies and taxes concerns, climate change is a definitive issue that all countries have to deal with and these concerns can not be neglected by Europe while building strategies and programs to develop Agriculture and the use of territory. The EU has been a leading party in meeting the goals of the United Nations Framework Convention on Climate Change (UNFCCC), which, as part of the Paris Agreement, is committed to reduce emissions to keep global temperature increase below 2.0.° C and to pursue efforts to limit it to 1.5.° C.

Taking this into account, the latest European effort to face climate change challenges is a Program named Green Deal, launched in 11th December 2019 by the European Commission through a Communication – COM(2019)640 final, which will affect the CAP and consequently, the wine production. In the document the Commission stands that *“it resets the Commission’s commitment to tackling climate and environmental related challenges that is this generation’s defining task”*³⁰.

The goal is to stop net emissions of greenhouse gases until 2050 along with the guarantee to change Europe into a *“prosperous society, with a modern, resource efficient and competitive economy”* in a way that Europe becomes the first climate-neutral continent.

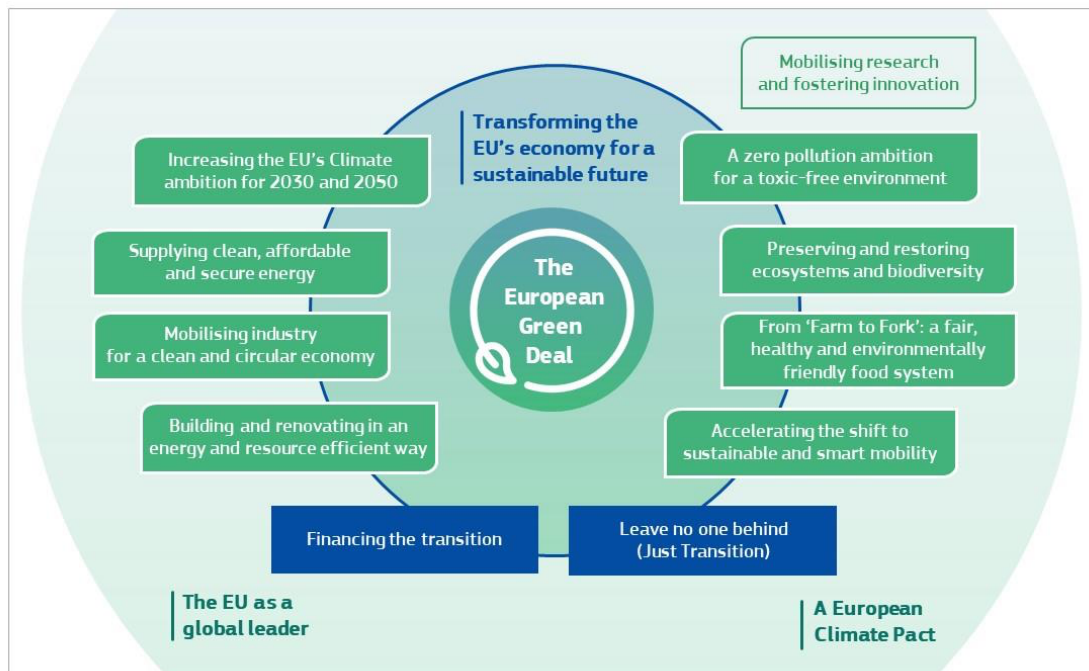
The communication admits that there will be a transition period and that these changes will bring greater challenges to different sectors, but the process must leave no one behind. This highlights that the Green Deal is an open document that can be updated with new inputs.

The Green Deal is Europe’s contribution to the implementation of the United Nation’s 2030 Agenda³¹ and gives political guidelines for the 2019-2024 period at the European Commission.

The document explains the content of the Green Deal through a diagram reproduced below:

³⁰ European Commission. Communication From the Commission to the European Parliament, The European Council, The Council, The European Economic and Social committee and the Committee of the Regions. https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF (Accessed April 19th, 2021).

³¹ United Nations. Transforming our World: the 2030 Agenda for Sustainable Development. <https://sdgs.un.org/2030agenda>



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In the document the European Commission alerts that it will make use of all kinds of actions to accomplish the goals, including regulations and standardization, working together with Member States to “ensure that current legislation and policies relevant to the Green Deal are enforced and effectively implemented”.

In this effort, the Commission submitted a proposal for a European Climate Law.³³

As the figure above demonstrates, one of the strategies consists in the “farm to fork”³⁴ program which intends to “design a fair, healthy and environmentally friendly food system”.

³² European Commission. Communication From the Commission to the European Parliament, The European Council, The Council, The European Economic and Social committee and the Committee of the Regions. https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF (Accessed April 19th, 2021).

³³ European Commission. Regulation of the European Parliament and of the Council. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0080&from=EN> (Accessed

³⁴ European Commission. Farm to Fork Strategy: for a fair, healthy and environmentally friendly food system. https://ec.europa.eu/food/farm2fork_en (Accessed June 26th, 2021).

The program, which departs from the assumption that European food fame resides in the fact of being “safe, nutritive and of high quality” should also be the “global standard for sustainability”.

It recognizes that food production, and wine production is included in this notion, contributes to the pollution of air, water and soil and because of that, Europe has to build a more sustainable food policy. Consequently, CAP remains as a “key tool to support these efforts” through the EAFRD fund.

Bearing this in mind, the Commission proposes that CAP 2021-2027 budget contributes to climate action directing 40% of its budget to the necessary changes, although COVID-19 came as unexpected factor that obliged that CAP revision to be delayed as mentioned previously.

Nevertheless, *Farm to Fork* strategy focuses on reduction of the use of pesticides, which is heavily used in the wine production, and stands for “tailor made” geographic strategies. It is considered “the heart of the Green Deal”, so indeed CAP will focus in the Green Deal as well.

In this effort, The EU Commission developed a document to guide the interaction between “The Green Deal” and the CAP 2021-2027 – Commission Staff Working Document – Analysis of links between CAP Reform and Green Deal³⁵

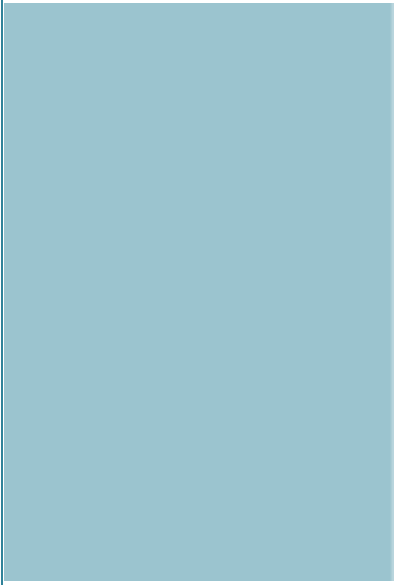
The Document disposes the main targets of the Program as reproduced below:

Table ³⁶1: Indicators in Annex I of the proposed CAP Strategic Plan Regulation associated to Green Deal targets

Green Deal targets related to the agricultural sector ¹⁸	Impact indicators (as laid down in Annex I) or Context indicators (as envisaged in secondary legislation)	Output and result indicators (as laid down in Annex I)
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³⁵ European Commission. (May 5th, 2020). Commission Staff Working Document: Analysis of links between CAP Reform and Green Deal. (Accessed June 26th, 2021).

³⁶ https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/sustainability_and_natural_resources/documents/analysis-of-links-between-cap-and-green-deal_en.pdf

<ul style="list-style-type: none"> • Reducing by 50% the use and the risk of chemical pesticides by 2030 • Reducing by 50% the use of high-risk pesticides 	<p>I.27 Sustainable use of pesticides: reduce risks and impacts of pesticides</p>	<p>R.37 Sustainable pesticide use: share of agricultural land concerned by supported specific actions which lead to a sustainable use of pesticides</p>
<ul style="list-style-type: none"> • Reducing by 50% the sales of antimicrobials for farmed animals and in aquaculture by 2030 	<p>I.26 Limiting antibiotic use in agriculture: sales/use in food producing animals</p>	<p>R.36 Limiting antibiotic use: share of livestock units concerned by supported actions to limit use of antibiotics</p>
<ul style="list-style-type: none"> • Reducing nutrient losses by at least 50% in 2030 	<p>I.15 Improving water quality: Gross nutrient balance on agricultural land</p>	<p>R.21 Sustainable nutrient management: share of agricultural land under commitments related to improved nutrient management</p>
<ul style="list-style-type: none"> • Achieve 25% agricultural area under organic farming by 2030 	<p>C.32 Agricultural area under organic farming</p> 	<p>O.15 Number of ha with support for organic farming</p>
<ul style="list-style-type: none"> • Completing fast broadband internet access in rural areas reach 		<p>R.34 Connecting rural Europe: share of rural population benefitting from improved access to services</p>

		and infrastructure through CAP support
<ul style="list-style-type: none"> • Increasing land for biodiversity, including agricultural area under high-diversity landscape features 	I.20 Enhanced provision of ecosystem services: share of UAA covered with landscape features	R.29 Preserving landscape features: share of agriculture land under commitments for managing landscape features, including hedgerows

The targets are not shy and will demand a big effort by the wine industry specifically.

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5. THE WINE SECTOR

Now that we have a brief understanding of European Agricultural Policy and correlated issues, let's focus on wine.

“Wine is the beverage resulting exclusively from the partial or complete alcoholic fermentation of fresh grapes, whether crushed or not, or of grape must. Its actual alcohol content shall not be less than 8,5% vol.”³⁷

Antonio Rossi and Duilio Cortassa say that:

“The EU wine sector is undoubtedly the most regulated worldwide, where the lawmaker essentially establishes everything: the grape varieties permitted in each designation or geographical indication, the oenological practices as well as the labelling rules. *“Almost half the world’s vineyards are in the European Union (EU), and the EU produces and consumes around 60% of the world’s wine. The EU is not only the largest global wine-producing region and the main importer and exporter of wine but also a highly regulated market.”³⁸*

5.1 Brief History

Wine and vineyards have always been an important sector of European agriculture and as consequence, wine policies have been part of the CAP since the first years.

The European regulations were based mostly in the French experience, developed even before the EEC.

To understand that, a brief historical perspective is useful.

Giulia Meloni and Johan Swinnen explains the historical perspective in the text *“The rise and fall of the world’s largest wine exporter and its institutional legacy”³⁹*.

³⁷ Internacional Organisation of Vine and Wine. Products definition.

<https://www.oiv.int/public/medias/5988/products-definition.pdf> (Accessed June 21st, 2021).

³⁸ Rossi, Antonio; Cortassa, Duilio. (2020). Exploring Italy’s Wine Law Reforms: Experiences, Challenges and Prospects. Koninklijke Brill NV. In *Wine Law and Policy: From National Terroirs to a Global Market*. Ed. Chaisse, Julien; Simões Fernando Dias; Friedmann, Danny. P. 101

³⁹ Jaisse, Julien; Dias, Fernando Simões; Friedmann, Danny. (2020). *Wine Law and Policy: From National Terroirs to a Global Market*. Leiden Boston

Surprisingly it's not about France, but Algeria, annexed by France in 1830.

Wild grape vines were present in Algeria since Phoenician times, but under the Arab rule, the cultivation of vines was not encouraged due to Islam principles towards alcohol consumption.

But unexpected events occurred in France that changed the Algerian reality. It all began with the phylloxera plague from 1863 onwards in Europe.

The plague caused the destruction of 1/3 of total French vine area leaving the rest infected, meaning that the capacity of French production was decreased in 70%, representing very little wine.

As consequence 50.000 ruined French wine producer families migrated to Algeria between 1871 to 1900 with the intention to produce wine.

Wine production in a hot place such as Algeria, became possible because of Pasteur's discoveries about the relation of yeasts in alcoholic fermentation, what led to the use of the Baudelot Cooler to the wine production.

The migration and the new Algerian activity intended to fill the gap between consumption needs and productivity, since France started to use wine "adulterations" and to import wines. Stimulated Algerian production was a strategic measure to confront Spanish and Italian imports by France.

But France did not stay put. To resist phylloxera two strategies were used by producers in France:

- 1- Grafting -consisting in inserting European vines on the roots of phylloxera resistant American vines – a more expensive process, used by the rich Bordeaux and Burgundy producers.
- 2- Use of hybrids – consisting in crossing two or more varieties, which led to lower alcohol levels. (no higher than 9 to 10%)

To compensate this flaw, two methods could be used: sugar addition or blend with Algerian wine.

The second solution made the Algerian production increase rapidly and turned Algeria in the number one export to France by 1900 and the greatest wine exporter by 1905. Wine represented 66% of the colony's exports at that time.

The inflow of Algerian wine in the French market in addition to the recuperation of the French production caused prices to fall, discontenting French producers.

As a reaction, France raised tariffs on wine coming from Spain and Italy, but Algeria was part of France and was benefited by tax exemption since 1867.

This situation made organized French vintners' campaign against "cheap wine" and protect their brands. The action by French producers was increased by a commercial dispute when a Londonian businessman advertised Algerian wine as being "the wine French drank".

As a result of the organized pressure, a series of laws were promulgated in France intending to regulate the wine policy. Law about fraud in the sale of wine (Law 189130 of 11th July), a Law penalizing blending, the process consisting of mixing several wines of different origins, a 1905 law about the obligation of certification of origin to avoid misleading commercial practices like the one intended by the Londonian businessman.

Right after this, a 1908 law introduced the notion of "terroir" and in 1919 a law defined the consequences of misuse of the "appellation" criteria.

Finally, in 1935 a law created the notion of "*Appellations d'origine contrôlées – AOC*" – which determined grape varieties, alcohol level and maximum vineyards yields. Wines produced with hybrid varieties would not be able to belong to an "appellation d'origine".

Those rules were the base for the EEC and later on, the EU regulations on wine policy, which began with a 1962 Regulation about collecting information on geographical origin among Member States producers as a first step to regulate the sector.

In 1970 other regulatory aspects were introduced while French and Italian production were overpassing consumption and export wine was a key issue to maintain the sustainability of viticulture activity for producer Member States. Rules on quality requirements, labelling, ban on new planting, remuneration for abandonment and other aspects like distillation were imperative for the sector.

5.2 *The CAP after 2008*

CAP reform in 2008 brought changes to the wine sector. Among different measures, a focus on keeping up with preserving the best traditions of European wine production and the respect to the environment.

As Pomarici and Sardone⁴⁰ highlights, those changes were consistent and anticipatory of the 2013 CAP reform objectives, when vineyards owners could benefit from income support as a Member State's choice of intervention, and incentives from the Rural Development Policy became available.

Wine producers were encouraged to improve sustainability, not only by actions related to techniques, but also about choosing sites and grape varieties. Among those measures, conversion of vineyards represented more than half of the budget of the wine sector.

With this framework, Pomarici and Sardone stand that there was no equivalent regulation in any other sector of CAP as in viticulture. This reality came to a point to the manifestation of two quite opposite forces. On the one side, the traditional producing countries that would support control and preservation of tradition. On the other side, the European Commission oriented to the liberation of the sector, aiming Green Deal goals.

Despite this dispute, European exports experienced a continuous grow from 2000 to 2018, together with an increase in the unit value of the wine.

But one specific aspect of the viticulture activity was shining through: the fact that the activity is an intensive user of pesticides.

To adjust to the agenda 2000 compromise and the Green Deal signed at the end of 2019, changes would have to occur in the wine sector.

The changes were already in process by 2018. The CAP reform highlighted nine specific objectives:

- a) Ensure a fair income to farmers
- b) Increase competitiveness

⁴⁰ Pomarici, Eugenio; Sardone, Roberta. (2020). EU Wine Policy in the Framework of the CAP: post-2020 challenges. *Agricultural and Food Economics*. Vol. 8, Ed. 1. DOI:10.1186/s40100-020-00159-z

- c) Rebalance the power in food chain
- d) Climate change action
- e) Environmental care
- f) Preserve landscapes and biodiversity
- g) Support generational renewal
- h) Vibrant rural areas
- i) Protect food quality and health.

The proposals for CAP review of 2018 will be mandatory to wine producers Member States.

After debates, the new framework for the wine sector CAP budget will have to be used by each producing Member State to achieve at least one of the sector's objectives.

One controversial proposal concerned rules about the classification and allowance of use of grape varieties with higher resistance to diseases and better adapted to climate change conditions.

As we saw through the historical perspective, grape varieties were a sensitive issue to the development of French regulations even before the EEC and was embraced by the EEC and EU through decades of wine policy.

The grape variety element was the core of the legislation and justified the struggle of French producers for the preservation of their market share, up to the point of destroying Algerian production and market position.

It is not unnecessary to highlight that the IWO- International Wine Organization – discipline grape processing to make wine only through permitted practices and technological solutions and authorized grape varieties, meaning that it is a very strict field.

The *vitisvinifera* genus has always been a landmark of European wine through the years of regulation and market position. EU wines had to use *vitisvinifera* only. An exception for non PDO wines – protected designation origin – was tolerated, but only from a cross between *vitisvinifera* and other species from the genus *vitis*.

The rules forbid the use of the species Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont.

The 2018 proposals authorize the use of *vitislambrusca* or cross between *vitisvinifera* and *vitislambrusca* or even other from the genus *vitis* without restrictions in the non- PDO production.

For the PDO wines, the reform also authorizes the cross between *vitisvinifera* and other species of the genus *vitis*.

That means that proposals considered to allow Member States to use grape varieties belonging to the genus *vitis lambrusca* and the species Noah, Othello, Isabelle, Jacquez, Clinton and Herbemont, forbidden until then.

The Portuguese Minister of Agriculture at that time, Luís Capoula Santos, in an interview by the “Observador”⁴¹ stated that Portugal manifested against the proposal “*to permit the reintroduction at the EU wine production, grapes of low quality, although more resistant to plagues*”. He sustained that “*after so much investments at the vineyards restructure for the last 20 years, which permitted the achievement of quality high standards, to open the possibility to introduce other varieties different from the traditional could compromise the effort that helped Portuguese wines and European ones at the top in the world.*”⁴² (our translation)

The proposal was also contested by other eleven Member States, representing 90% of the European wine production.

But Pomeraci and Sardone consider that, “*these changes in regulation, combined with the confirmed measures concerning the support for restructuring and conversion of vineyards, open a potentially significant evolution of production potential composition, more consistent with sustainability goals.*”⁴³

The point is that climate action and environmental care are concerns that achieved a strategic relevance in the European Green Deal scenario. But as we saw, the specifics

⁴¹ Jornal Observador. Portugal contra a reintrodução na EU castas de vinho de baixa qualidade. <https://observador.pt/2019/01/28/portugal-contra-reintroducao-na-ue-castas-de-vinho-de-baixa-qualidade/>

⁴² Jornal Observador. Portugal contra a reintrodução na EU castas de vinho de baixa qualidade. <https://observador.pt/2019/01/28/portugal-contra-reintroducao-na-ue-castas-de-vinho-de-baixa-qualidade/>

⁴³ Pomarici, Eugenio; Sardone, Roberta. (2020). EU Wine Policy in the Framework of the CAP: post-2020 challenges. Agricultural and Food Economics. Vol. 8, Ed. 1. DOI:10.1186/s40100-020-00159-z. p.31

of European wine, the quality defended through all these years, the edited rules, do not comply with the idea of such a change in the core of production, the grape.

Pomeraci and Sardone also consider the problem as follows:

*(...) “In particular, the use of these new varieties in PDO wine production raises many doubts, at least in Mediterranean countries, as the use of only grapes from *Vitis vinifera* is one of the main elements which historically has defined the concept of designation of origin (Meloni and Swinnen 2016; Meloni and Swinnen 2018). Moreover, also when one or more of these new varieties are allowed in PDO and PGI wine production by competent national or regional authorities, their actual use requires a change in the product specification, which can happen only after a thorough evaluation of the oenological potential in the specific cropping conditions of the geographical area concerned.”⁴⁴*

At this point is important to remark that the purpose of this work is not technical in the means of the specifics of wine production, although to a better understanding, a little bit of grape issues has to be clarified.

Resolution IWO-VITI564-B-2019⁴⁵ explains that “ancient grapevine varieties would have been originally a homogeneous genotype”. This ancestral genotype generated diversity through generations.

The immense varieties diversity became to be limited with the viticulture, because the selection of varieties interrupted the natural development and preservation of diversity due to economic purposes. As the IWO document says “*the process by which created variability in each year was accumulated and transmitted has been reduced*” in *specialized vineyards*”.

That means that the criteria of varietal selection are another factor that contributes to the decrease of variety, and yet, it is a crucial part of the wine industry to the point of the immense regulations that we looked through before and justified regulations, denominations and markets.

⁴⁴ Pomarici, Eugenio; Sardone, Roberta. (2020). EU Wine Policy in the Framework of the CAP: post-2020 challenges. Agricultural and Food Economics. Vol. 8, Ed. 1. DOI:10.1186/s40100-020-00159-z

⁴⁵ Internacional Organisation of Vine and Wine. Resolution OIV-VITI 564B-2019. <https://www.oiv.int/public/medias/6939/oiv-viti-564b-2019-en.pdf> (Accessed June 20th, 2021)

IWO alerts that this phenomenon could cause a genetic freezing and the end of intra-varietal diversity.

Eurasia is the region where *vitisvinifera* species have more variety and *vitisvinifera* is the pillar of Europe's wines.

But as we also saw European vines suffered with plagues and solutions had to be found to rebuilt Europe's wine production.

But today Europe has to face different challenges – climate change and climate compromises towards 0 emissions. That demands a reduction of 50% in the use of pesticides and the growth of biological agriculture in 25%.

5.3 The Discussion of the CAP Reform

As seen before, because of COVID 19 pandemics the new CAP discussions were delayed and finally approved in June 2021. But during the process of approval, discussions were pointing to specific directions.

As we saw, a great change would be the acceptance of the use of hybrids in order to find species that are more resistant and dismiss the use of pesticides. IG and DO wines will be allowed to use hybrids in their composition at their own choice with total flexibility, as stated by João Onofre⁴⁶ during the European videoconference event “Agricultura 4.0 – Promoção da Sustentabilidade para o Setor Europeu do Vinho” promoted by ADVID through CoLab Vines&Wines, under the Portuguese Presidency of the European Union Council.

At the same event, Antonio Graça⁴⁷ answering a question about the use of hybrids in Portugal stated that the *“discussion is being conducted in Portugal as elsewhere.”*

For him, the measure has the downside of promoting genetic erosion. He remarks that Portugal is on a secondary center for grapevine domestication and it has a very wide natural genetic diversity in its native varieties.

⁴⁶ João Onofre – Member Head of Unit European Commission – Directorate- General for Agriculture and Rural Development. Deputy Director-General, in charge of Directorates G,H,I – Markets and Observatories- Wine, spirits and horticultural products (AGRI. DDG3.G.2)

⁴⁷ Antonio Graça – Head of Research and Development at SOGRAPE VINHOS S.A.

He mentioned that in SOGRAPE, where he works, they are looking into how that diversity can provide a similar level of protection when deployed in vineyards and gives as an example polyclonal grapevine selection.

As another important initiative he mentions the importance of *“working with surrounding biodiversity measuring how the level of key protective ecosystem services can reduce significantly the level of protection products that are needed to ensure economic viability for vineyards.”*

He ensures that *“according to EUROSTAT⁴⁸, Portugal has been the second country to decrease more its use of pesticides per agricultural surface unit .”* He attributes this achievement to the fact that IPM rules (Integrated Pest Management) *“became widely applied overall since 2014.*

Despite that, answering a question if the introduction of new species would interfere with consumer preferences and expectations about quality and taste of wine, he recognizes that *“that concern exists, especially there are well-known lessons from the past where the introduction of foreign species (and varieties) affected the taste of wines and brought new diseases with them.”*

In the same discussion, Mario de la Fuente⁴⁹ agreed saying that *“the real perception of the consumers and the wine expectations should be preserved, and this is one of the common reasons/fears for those who are skeptical with the hybrids wines”.*

Asked about if the use of hybrids could interfere in the Portuguese wine market position, Mr. Antonio Graça answered that *“there’s not yet enough information and hindsight that allows any clear answer to that question.”*

It’s important to mention that there is not yet national legislation about the use of hybrids in the vineyards in Portugal.

During this webinar Maria do Céu Antunes, the Portuguese Minister of Agriculture, who opened the event, stated that Portugal has to be updated with the improvements of the Precision Agriculture and the contributions of the digital technology to achieve a sustainable production as intended by the UN.

⁴⁸ Eurostat: Your key to European statistics. <https://ec.europa.eu/eurostat> (Accessed July 9th, 2021).

⁴⁹ Mario de la Fuente Lloreda – Manager at PTV, researcher at UPM

5.4 Precision Agriculture

Precision Agriculture relates to the use of Novel Digital Technologies - robotics and sensors – to facilitate and guide the field work in a way that helps optimize water management, improves communications solutions and helps control the use of pesticides and other aspects of the production. It's called Agriculture 4.0 and it's a key element to achieve sustainability.

According to the participants of the webinar, the Agriculture 4.0 can also be a contribute to the lack of working force in the fields which was said that is an actual problem in Portugal and Italy as well.

Jorge Dias, director of Gran Cruz, stated that *“for more than 20 years there has not been a single Italian working in the Italians vineyards,”* just to give an example.

That is also a problem for Portugal, specially at the Douro Region where according to Antonio Marquez Filipe, from the Symington Family Estates, Douro population is becoming old. Even 50% older than national average.

He also highlights that it is necessary 100 million hectoliters to irrigate the Douro Region and water management is crucial in a global warming environment.

On the other hand, the common concern at the meeting was that if the digital changes would eliminate small farmers of the scenario. Would it be a new way to put aside small farmers that don't have the funds to benefit from new technologies?

Along with the discussion brought by the Green Deal and the new CAP, IWO, in its 19th General Assembly held on 12th July 2021 also manifested about the discussion approving new resolutions.

Among them there is resolution OIV-VITI655-2021 which gives recommendations concerning the selection and breeding of grapevine varieties for their adaptation to the effects of climate change.

The document recognizes that *“in general, grapevines and rootstock varieties have different tolerance capacities and different adaptability to all types of climatic and environmental constraints”*.⁵⁰

It also states that *“in the future, new varieties of grapevines and rootstocks of the appropriate choice of plant material from the existing germplasm better adapted to new constraints, should significantly contribute to the improved sustainability of the sector”* and recommends *“exploitation of recent obtentions of hybridization (...) as a starting point for further selection and new breeding approaches”*.

At the same General Assembly IWO approved a resolution concerning grapevine decline, meaning the loss of genetic diversity, what limits the resilience and adaptability of vines and can lead to a catastrophic scenario.⁵¹

⁵⁰ International Organisation of Vine and Wine. Resolution OIT-VITI 652-2001.
<https://www.oiv.int/public/medias/8094/en-oiv-viti-652-2021.pdf> (Accessed July 28th, 2021)

⁵¹ International Organisation of Vine and Wine. Resolution OIV-VITI 653-2021.
<https://www.oiv.int/public/medias/8095/en-oiv-viti-653-2021.pdf> (Accessed July 28th 2021)

6. THE WINE SECTOR IN PORTUGAL

Narrowing our research, the next part of the work focuses in the Portuguese wine sector.

Vines grow better between parallels 30 to 50. Portugal is located between parallels 37 to 42 where vines find excellent conditions to grow.

6.1 Brief History

According to Veiga Ferreira, the first reference to vines in Portugal comes from Estrabão who mentioned the use of wine by the rich families.⁵²

During the Middle Ages wine was an important element for Portuguese commercial relations, but a great expansion occurs in the XVII and XVIII centuries becoming the agricultural product with greater expansion in the Portuguese territory.

The Methuen Treaty signed with United Kingdom benefited Portuguese Port wine by lowering import taxes compared with French wine. The deal increased production and because of the consequent expansion, it became necessary for the State to regulate the activity.

In 1754 the vitntners in the north complained about the wine market in Portugal blaming the productions costs and the behavior of “taberneiros” from the city of Porto who they accused of adultering the wine damaging the product’s image and harming consumer’s health.⁵³

To deal with the matter, by the guidance of Marquis de Pombal, the “alvará régio” from semptember 10th 1756 created the Companhia Geral da Agricultura das Vinhas do Alto Douro, with mercantilists principles establishing a monopoly in the production, with the intention to support the vineyards activity, control production quality, promote trade and national commerce and guarantee the population’s health. The Company assumed the exclusivity of the Aguardente sales to permit the Porto production and the

⁵² Ferreira, O. Veiga. (1974). “Algumas notas acerca da cultura da vinha na Antiguidada”, Separata de “Estudos Italianos em Portugal” n36, Lisboa p179-186, cited by João Carlos Farinha Leitão.

⁵³ Serrão, Joaquim Veríssimo. (1987). O Marquês de Pombal: O Homem, o Diplomata e o Estadista. Câmaras Municipais de Lisboa, Oeiras e Pombal. P.132

transportation of wine from the Douro Region to Lisbon was forbidden. That forced producers to sell all the wine to the Company.⁵⁴

Other measures were the alienation of vineyards, such as the ones in the Tagus, Vouga and Mondego areas. The monopoly also determined the closing of countless taverns in Porto city, that led to a popular manifestation in 1757 demanding the end of the Royal Company. Protesters didn't achieve success and were severely punished.

On December 16th 1773, Alvará 16 determined the alienation of illegal vineyards and established a previous authorization to plantation given by the Real Companhia das Vinhas do Alto Douro.

By the end of the XVIII century Portuguese wine represented circa 70% of Great Britain's imports of wine. But it was supplanted by Spanish ones during the XIX century, although it represented one third of the Portuguese's exports.⁵⁵

In the middle of the XIX century a more liberal regulation allowed the expansion of vineyards since the profits were easier, although it was not accompanied with production techniques improvements. By then, the Port Wine exports represented 2/3 to 3/4 of total of Portuguese exports according to Albert Silbert.⁵⁶

By the years of 1881 to 1887 another great expansion on vineyards occurred, encouraged also by the phloxera and oídio plague in the Douro region, and when the profitability of the vineyards was two to three times greater than cereals.

The plagues motivated the introduction of new cultural practices and techniques, such as the introduction of new varieties and changes in the methods of production.

The oídio plague caused the reduction of production around 50% during the 1840 decade while the phloxera was first noticed in Portugal in 1865 in the Douro Region, although some researches diverge about this date, affecting most the Cimo Corgo area.

⁵⁴ Leitão, João Carlos Farinha. A cultura da vinha em Portugal e as consequências da adesão à União Europeia. Caso de estudo: A Região Demarcada do Douro. P. 78

⁵⁵ Leitão, João Carlos Farinha. A cultura da vinha em Portugal e as consequências da adesão à União Europeia. Caso de estudo: A Região Demarcada do Douro. P. 20

⁵⁶ Silbert, Albert in "Do Portugal do Antigo Regime ao Portugal oitocentista" Lisboa, Livros Horizonte 2º Ed. Cited by João Carlos Farinha Leitão.

This factor, together with French decreased production caused by the phylloxera plague as seen earlier, encouraged new plantations and the development of the vineyards in the Douro Superior, redesigning the cultivating areas.

To combat the plague, sulfur was widely used without any security measures. The indiscriminate use of sulfur damaged the wine quality causing the abandon of vineyards for countless producers.

At the end the use of “enxertias” using American resistant varieties to support European ones was the way found to deal with the problem.

By the beginning of the XXth Century, the production without restriction led to surpluses and the competition with other producer countries such as Spain and France provoked the decrease of exports to the United Kingdom creating a crisis in the sector.

The crisis led to a Manifesto from the “Real Associação de Agricultores” demanding measures to be taken concerning the production surpluses leading to the search of new markets and the foundation of the Vintners Union Cooperative with the objective to establish price control.

The XXth Century consolidated State intervention in the sector with the interference of institutions intended to organize the market and avoid conflicts. To accomplish the task, Administration edited rules to discipline production:

- a) The 1901 regulations intended to solve producers demands related to distillation stations and community adegas.⁵⁷;
- b) The 1907 May 10th Decreto nº1 establishes regulation for production, commerce, export and supervision of the Portuguese wine,
- c) The 1907 December 2nd Decree suspends for three years new plantations in certain areas.

With the advent of the first World War, Portuguese production benefited because of the difficulties faced by European countries deeply involved in the conflict. As consequence, from the twenties onwards an increase in exports happens.

⁵⁷ Leitão, João Carlos Farinha. A cultura da vinha em Portugal e as consequências da adesão à União Europeia. Caso de estudo: A Região Demarcada do Douro. P. 32

But it all changed in the great depression years until the Decree nº 19253 from December 17th1930 which gives the base for the general organization of the wine Administration in Portugal, creating divided regions with regional administrations named by the Government. The initiative started to change the wine sector in Portugal, Decree 21086 from April 13th1932 forbid new plantations until the creation of a clear and effective legislation, turning the plantation of vines an extremely controlled activity.

Later the Estado Novo considered the wine sector an important part of the economy and a way to keep the population in the rural areas which was accomplished through legislation and corporative organizations.

In a contradictory direction, new decrees such as Decreto – lei nº 513-D/79 and Decreto – lei nº 504-I/85 allowed new plantations and regularization of existing vineyards without proper authorization.

The wine production faced an increase until the sixties when surpluses were dealt with the intervention of the Junta Nacional do Vinho, a national organization, created in 1937, which helped to centralize the actions to regulate the sector. This mechanism remained the same beyond 25th of April 1974 until 1986, with the exception of the Port wine production, which “escaped” its authority⁵⁸

With the entrance of Portugal in the EEC the “Junta Nacional do Vinho” was substituted by the “IVV- Instituto da Vinha e do Vinho”, created by the Decree nº 304/86. This institution absorbs the old entity functions and deals with the new demands of the European Community and represents Portugal at the international organizations, including the IWO an Intergovernmental Entity which regulates the wine policy among its members.

It is important to say that until 1986, at the Douro Region, the law authorized production restricted to Port Wine only for commerce purposes. At this point trade had to be made through Vila Nova de Gaia warehouses, what made the activity impossible outside the big corporations.

⁵⁸ Leitão, João Carlos Farinha. A cultura da vinha em Portugal e as consequências da adesão à União Europeia. Caso de estudo: A Região Demarcada do Douro. P. 34

6.2 Portugal in the EU

It was the accession to the EEC that made the law change allowing table wines for commercial purposes to be produced in the Douro Region.⁵⁹ The Decreto -lei 86/86⁶⁰ also ended the restriction about Gaia's warehouses enabling different producers to sell their own Port wine. That could also explain why Portugal remained behind other European countries that did not have those limitations.

When Portugal entered the EEC in 1986, the country imported 60% of its food necessities and at the same time dealt with surpluses in the wine sector.

At that time, Portuguese vineyards were old, properties were small, vintners were also old, transportation was problematic, and vine species weren't always the best for the terroir, what caused great competition disadvantage.

To become part of the EEC Portugal received pre-adhesion funds to help the Country prepare for the Community integration, and wine was one of the sectors that benefited from these funds. Abandonment of cultivation and restructuration of vineyards was widely encouraged through EEC n° 1442/88. By that time 21.789 acres were abandoned.

A big concern, while entering the EEC, was the recognition by the Community of the Port and Madeira wines, and the integration of the market for the quality wines, together with the restructuration of the vineyards, objective accomplished with the help of Regulation 2239/86 EEC, of 14 July, transposed for national regulation through Decreto-Lei 259-A/87. The categories of DO and IG wines are regulated in Portugal through article 299 et seq. of the Industrial Property Code.⁶¹ The difference between the two categories is the level of demands to achieve the grade.

⁵⁹ Ministério da Indústria e Comércio. Decreto Lei n° 517/85 de 31 de dezembro. https://www.igf.gov.pt/leggeraldocs/DL_517_85.htm (Accessed July 4th, 2021).

⁶⁰ DRE Tretas. Decreto Lei 86/86 de 7 de maio. <https://dre.tretas.org/dre/17705/decreto-lei-86-86-de-7-de-maio> (Accessed July 6th, 2021).

⁶¹ Instituto Nacional da Propriedade Industrial. (2019). Código da Propriedade Industrial 2018. <https://inpi.justica.gov.pt/Portals/6/PDF%20INPI/Legislação%20e%20outros%20documentos/CPI%20-%202018.pdf?ver=2019-06-28-153157-733>

So as mentioned before, Portugal's agriculture was in a very different level compared with other Members and yet received one of the lowest participations of the EAGF fund – only 0,56% of total amount distributed among 12 Members.

It is important to remark that illegal vineyards could not be favored by EU funds. Under the EU regulations the vineyards were able to be legalized until August 31st 1998, according to Regulation EC n° 479/2008.

In the process of entering the EEC, Portugal was able to guarantee a transitional clause to adapt to the Community rules, but the Rules edited by the wine CMO became applicable in Portugal what led to a change in nomenclature. The licenses became plantation rights.

Within the EEC the prohibition for new vineyards dated from 1976 and was originated by an imbalance between production and consumption. An EEC regulation, which is maintained by the EU, imposes the restructure of a vineyard which concerns the replacement of vines in the same field, experimental fields and rights obtained from the National reserve, meaning the use of unused rights into a certain given time. This National reserve is organized by the IVV. An exception is the plantation for family consumption which cannot exceed 1000 m² of the total amount the entity vineyard.

In 1997 it was created the ViniPortugal with the purpose to promote Portuguese wine around the world.

6.3 The Perception of the Wine Sector In Portugal

In the effort to understand the debate from within, particularly important for a foreigner, an small enquiry was proposed to many participants involved with the sector.

The enquiry allowed the participation of different contributors to the sector, meaning producers and commercials. It allowed reaching people in almost all regions, although not many elements agreed to participate, as the wine sector appears to be a very closed one. At least for “outsiders”.

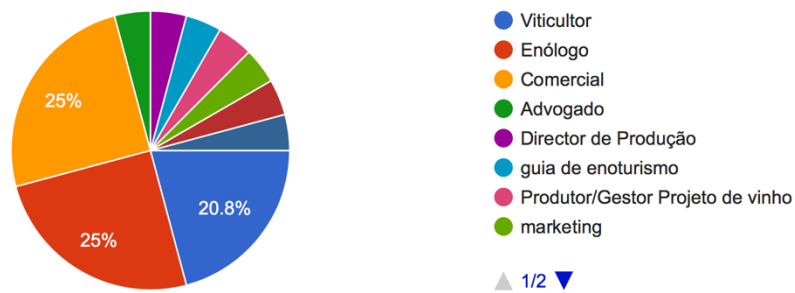
The methodology used was that of submitting an enquiry using the technology available by Google-forms, which was submitted to select participants by e-mail and in person at an event on July 3rd. The questions were a closed enquiry followed by an open

question to better include the feedback of the participants. The questions ranged from the more general, regarding the role of the participants in the wine sector to the changes introduced by the Green Deal in the CAP reform and the use of European Union funds. In the case of these more particular questions the closed enquiry was followed by an open question to include the participants suggestions on measures to implement the EU's Green Deal into the CAP reform at a time when this was still being negotiated.

The answers were voluntarily submitted by the participants and are identified as follows and conclusions are drawn at the end.

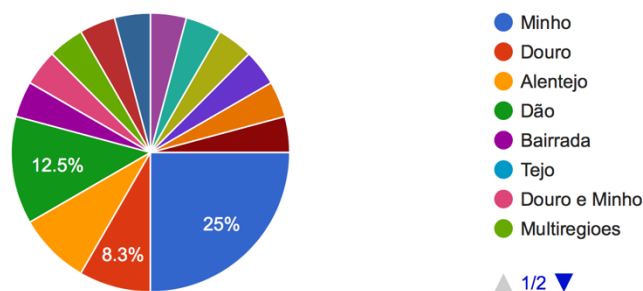
So, concerning the activity of participants we had as follows:

Qual é a sua relação com o setor do vinho?
24 responses



Concerning the regions participants work

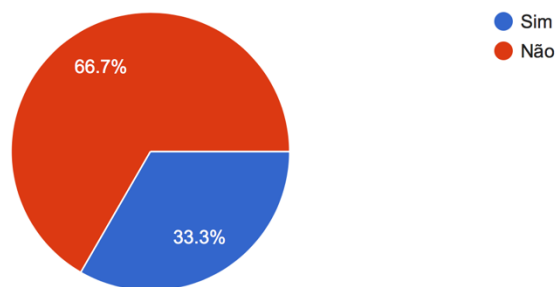
Em que região você atua?
24 responses



Asked about the knowledge of the proposals to the use of hybrids in the DO and IG wine production, more than half of the participants had no acquaintance to the matter.

Tem conhecimento do debate sobre permissão de uso de híbridos na produção de vinhos DO e IG?

24 responses

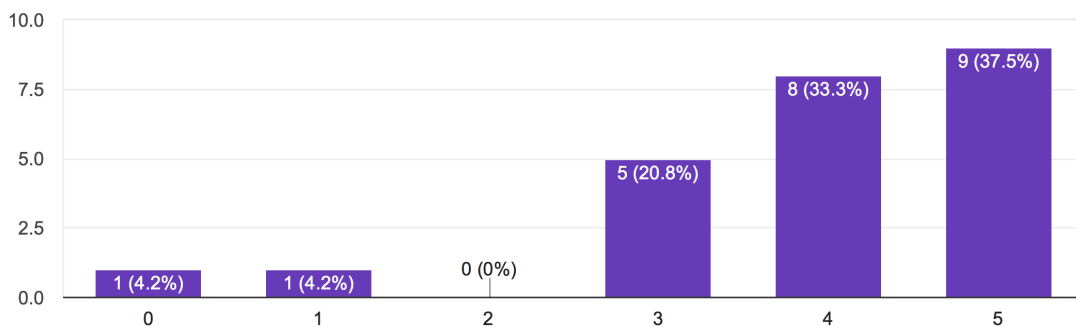


When asked about their opinion concerning the use of Hybrids for such wine categories, the participants responded against (3) have no opinion (2) need more studies (2) in favor with conditions (1) need regulation (1)

About the influence of Consumers taste an opinion in the process of wine making and selling the participants showed a great influence in the sector

De 0 a 5 (onde 0 é pouco importante e 5 muito importante), qual a importância das exigências dos consumidores para a padronização do produto vinho no seu trabalho?

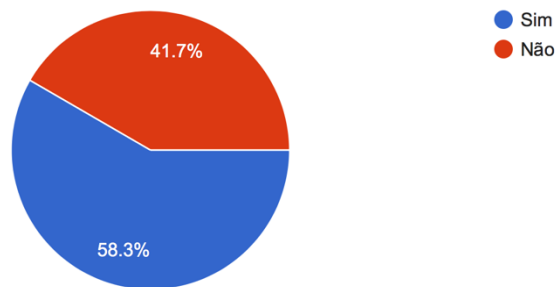
24 responses



When asked about the access to Community funds the ones that actually used this fund found it easy (3) difficult (2) need the intervention of a consultant (1) to have proper access.

Você já recebeu algum incentivo ou financiamento comunitário?

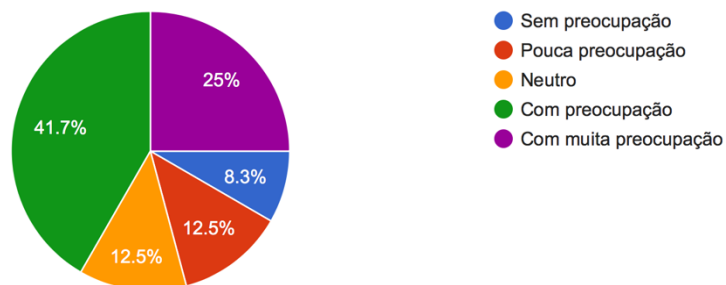
24 responses



About the use of pesticides in the production only 25% of participants showed great concern with the matter along with 20,8% that have little concern or none.

Qual o seu nível de preocupação com a diminuição de pesticidas na produção?

24 responses

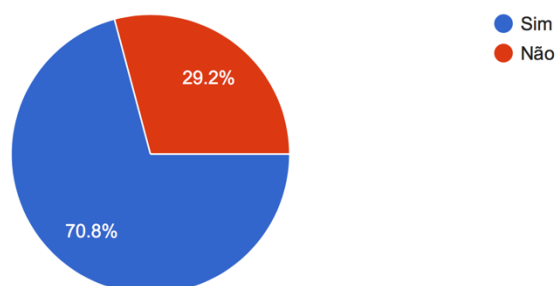


When asked what measures are being taken to deal with pesticides reduction, participants divided answers among development of biological Agriculture, precision agriculture, integrated production or no measures at all.

When asked about the acquaintance with the European commitment to GHG emission reduction, 29,2% revealed no knowledge about the matter.

Tem conhecimento do compromisso da EU de emissão 0 de gás estufa até 2050?

24 responses



Asked about which initiatives the wine sector could encourage to conform with European commitments and Programs related to climate change, participants suggested the use of non-diesel tractors, biodiversity, sustainable practices, “green deal”, sub products, forest areas close to the vineyards.

When asked about initiatives to implement Portuguese wine in the world market, participants were unanimous to affirm that marketing is the necessary way. But also a concern about diversity was mentioned and to make the Portuguese wine a more expensive product.

“Portuguese wine cannot appear at the global market by the quantity as it happens with some other producer countries, but through diversity, either by unique grape varieties, or differentiated regions, and yet by the fantastic diversity of fortified wines”.

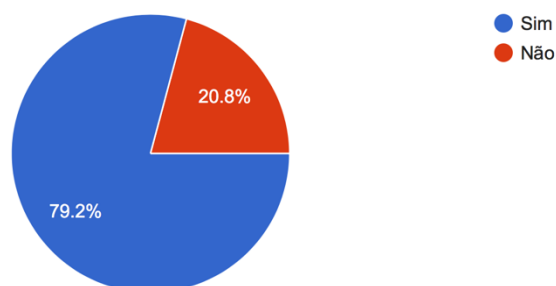
“Increase the commercial value. To make the Portuguese wine more expensive”

Another highlight was given to Portuguese vines suggesting the *“recuperation of old vine varieties”*.

When asked about the knowledge concerning precision agriculture, the majority of the participants answered positively

Você já ouviu falar em agricultura de precisão?

24 responses



But when asked if precision agriculture would be viable in Portugal, participants had divided opinions. Concerns about costs and geography aspects were pointed

Carrying out these enquiries allowed for very important insights into the wine sector in Portugal. It was a very useful tool for the researcher to learn about the sector in Portugal, assessing the knowledge and expectations of the participants in the sector facing the changes announced. This first result is present throughout the text in many references.

The conclusion drawn also allow us to perceive that a big discussion of CAP concerning the use of hybrids is not yet common knowledge in the Portuguese wine sector as the EU compromise to the reduction of GHG emission. It is also worrisome that still 1/3 of the participants have none or little concern about the reduction of the use of pesticides in the production. Consumers demands still remains as the driving force of the sector, and until consumers demand are not closely linked with climate change challenges, the sector has little market pressure to change.

Concerning the precision agriculture as a contributor for the accomplishment of the Green Deal goals, participants showed that the idea seems very unrealistic for Portugal's agriculture stage. The use of robots demands a great amount of investment and training and seems to be far away from the capacity of small producers. As said by one of the participants at the European videoconference event Agricultura 4.0 – Promoção da Sustentabilidde para o Setor Europeu do Vinho promoted by ADVID through CoLab Vines&Wines, Portugal discuss an Agriculture 4.0 while lives an agriculture 1.0 reality.

7. THE NEW CAP

The Portuguese presidency of the European Council has reached an agreement with the European Parliament and the European Commission on June 25⁶² on the CAP reform for 2023-2027. The new CAP will represent the allocation of 31.95% of the total EU budget for the period 2021-2027, with up to 386.6 billion euros in funds supporting almost 7 million European farms⁶³. Until the end of 2021 Member States will have to present strategic plans to the European Commission to be enforced by 2023. Until then a transitional disposition will be the guideline for the Agriculture in Europe.

The new CAP involves new dimensions into the agricultural regulations in Europe, namely environmental and social protection clause, which consequences will, necessarily, be felt in the relationship with the domestic law of the Member-States and that of other international law subsystems.

The new CAP reform disposes up to 1.1 billion per year to the wine sector. Through the agreement, the vine plantings permit scheme remains the same until 2030 and can be extended until 2045.⁶⁴

A revision of the CAP is scheduled for 2028 and 2040.

The new CAP brings some changes in labelling regulation. National and regional interbranch organizations were authorized. De-alcoholised wines, under certain conditions, were allowed as a new category to achieve new markets, what directly interferes with the traditional definition of the product as stated by the IWO.

The long discussion about the grape varieties ended by Parliament and Council rejecting proposals to introduce *vitis lambrusca* species into EU wine production maintaining the prohibition for the varieties Noah, Othello, Isabelle Jacquez, Clinton and

⁶² Council of the European Union. (July 23rd, 2021). Proposal for a Regulation of The European Parliament and of The Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by European Agricultural Guarantee Fund (EAGF) and by European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council.

<https://data.consilium.europa.eu/doc/document/ST-11004-2021-ADD-1-REV-2/en/pdf> (Accessed July 28th, 2021).

⁶³ Vinitaly Internacional Wine and Spirits Exhibition. Reform of the Common Agricultural Policy 2021-2027 The main innovations for the wine sector. <https://www.vinitaly.com/en/news-archive/world-wine-news/reform-common-agriculture-policy>

⁶⁴ News European Parliament. How will the rules change for the wine sector?.

<https://www.europarl.europa.eu/news/en/press-room/20201019BKG89682/eu-farm-policy-reform-as-agreed-by-the-parliament-and-council/6/how-will-the-rules-change-for-the-wine-sector>

Hebermont in order to protect production quality. On the other hand, it will be possible to use hybrid vine varieties to produce all wines with a geographical indication. Those varieties can continue to be planted where they already are, but not for wine purposes.

But there are concerns that the new CAP is not “green” enough. Critics have pointed the shortcoming for sustainable transition⁶⁵, which may fall short of the ambitious European Green Deal.

Greenpeace Belgium protested outside the European Parliament⁶⁶, also against the flexibility granted to Member States climate and environmentally friendly practices, under the supervision of the European Parliament, which gives a transitional period that may compromise the efforts to 0 emission by 2050.

According to WWF Europe, soil erosion costs for European farmers account to \$1.49 billion a year, but efforts within the provisional CAP deal are not enough to protect farmland soils. Not prioritizing crop rotation won't help achieve the target for decreasing the use of pesticides by 2030, one of the concrete objectives of the European Commission's Farm-to-fork strategy. According to Greenpeace, “the CAP’s destructive impact on nature, the climate and public health remains unchanged. “Politicians will try to sell this farm policy as a green reform, but it’s nothing but greenwashing,” said Marco Contiero, agriculture policy director at Greenpeace EU, in a video filmed outside the European Parliament.”⁶⁷

Another concern is the lack of protection for seasonal workers in the deal, although social dimension is one of the novelties of the CAP.

In Portugal, the NCA- National Confederation of Agriculture – indicates that CAP “will continue to have a policy that encourages very low prices to the production and that will lead to bankruptcy lots of small Portuguese producers”.⁶⁸

⁶⁵ Forbes. EU’s Common Agricultural Policy Falls Short of Sustainability Expectations.

<https://www.forbes.com/sites/danieladelorenzo/2021/06/26/eus-common-agricultural-policy-deal-still-doesnt-place-the-future-of-eu-farming-on-the-right-path-for-sustainable-transition/?sh=68b198b37634>

⁶⁶ Forbes. Here is Why Environmental Groups Protest the Eu’s Common Agricultural Policy. <https://www.forbes.com/sites/danieladelorenzo/2021/05/26/greenpeace-protests-the-negotiations-on-the-eus-common-agricultural-policy/?sh=12d4b4a75795>

⁶⁷ Forbes. Here is Why Environmental Groups Protest the Eu’s Common Agricultural Policy. <https://www.forbes.com/sites/danieladelorenzo/2021/05/26/greenpeace-protests-the-negotiations-on-the-eus-common-agricultural-policy/?sh=12d4b4a75795>

⁶⁸ Expresso Journal. July 2nd, 2021. P. 4

Pedro Santos, NCA president, states that 7% of the properties “*will continue to receive 70% of available funds*”.

So, despite the audacious targets, CAP remains in the center of great criticism by environmental activist sector and farmers associations.

On a different direction, Tomas Garcia Azcarate, an agricultural economist specialized in Common Agricultural Policy, member of the Scientific Committee of Agronomists, explaining about the “fairness” of the CAP, saying that it is true that until now 80% of the CAP support is received by 20% of the farmers, but he argues that this percentage is proportional to the production, meaning the 20% represents 80% of the entire cultivation fields.⁶⁹

He also highlights that the limit of support for sustainability will be decided by Member States and that if farmers do not comply, they will have to face Administration or National Courts. He still sustains that environmental conditionality of the basic aid for sustainability was strengthened in the new CAP, but not desirably enough as European Commission asked for and Environmental Organizations wanted.

He reminds that the “eco-schemes” have to be planned by Member States according to their strategic plans and that CAP alone will not be able to ensure that the European Commission’s strategies for the Green Deal, such as Farm to Fork will be fulfilled.

About imported products, he reminds that “Council and the European Parliament have agreed on statement that import products have to meet the same health and environmental standards than the European products.” and the legal feasibility of the demand under WTO rules will be discussed, since Europe “cannot impose its own rules on third countries but it can request that imported products do not have products residues prohibited in Europe”.

The debate and new environmental rules are already shaking things in the field. As an example thousands of New Zealand’s farmers organized a nationwide protest against new environmental regulations.⁷⁰ Despite a 2019 government report that shows that four

⁶⁹ Tomas Garcia Azcarate. (July 5th, 2021). New capsule of the CAP 54 questions and answers about the recent agreement on the CAP 2023-2027. <https://tomascarciaazcarate.chil.me/post/new-capsule-of-the-cap-54-questions-and-answers-about-the-recent-agreement-on-t-354900> (Accessed July 28th, 2021).

⁷⁰ The Guardian. (July 16th, 2021). New Zealand and farmers stage huge protest over environmental rules. <https://www.theguardian.com/world/2021/jul/16/new-zealand-farmers-stage-huge-protest-over-environmental-rules> (Accessed July 28th, 2021).

thousand native species were under risk of decline or extinction, two thirds of the country's rare ecosystems are threatened with collapse, and irrigation from farming along with other factors has shrunk wetlands to 10% of their original area, farmers are concerned about losing rights to make decisions.

A local farmer stated that *“we're all for helping environment, but it's got to be doable (...)” they say regulations “punishes the landowners who have already been proactive in conservation (...) and that is essential to protect landowners property rights”*.

About Member States strategic plans that have to be held to the Commission by January 1st 2022, DG-AGRI encourages bilateral informal contacts to guarantee coherence to national plans and Green Deal goals, because Commission will ask Member States to review their draft plans if they don't deliver effective measures to face strategic challenges.

The CAP dismisses the idea of “on size fits all” and gave Member States the opportunity and duty to develop eco-schemes tailored to their own demands and realities.

Some Member States are organizing consultations to stakeholders and the big public in the process to design their strategic plan⁷¹.

Besides this concern, the Joint Research Center, “the scientific arm from the European Union”, developed possible strategies for Member States to conform with Green Deal Strategies for the different sectors of the Agricultural field using a CAPRI model to Impact Assessment studies.

In the JRC report they highlights that *“the upcoming proposal for a legislative framework for sustainable food systems will require a comprehensive impact assessment. This impact assessment will have to evaluate the ambition laid down for enhanced environmental, climate and health performance of the EU's agricultural sector as part of the broader food system”*⁷².

⁷¹ <https://www.gov.ie/en/publication/cf1c0-irelands-cap-strategic-plan-2023-2027-public-consultation-on-proposed-interventions/>

⁷² <https://op.europa.eu/en/publication-detail/-/publication/65064349-f0dd-11eb-a71c-01aa75ed71a1/language-en>

8. CONCLUSION

As seen, CAP and environmental debate is a top matter for our days. It is, therefore, early for final conclusions on the matter. However, some preliminary conclusion may be drawn.

Climate change is real and our society will have to face the consequences of bad choices or we will come, if we have not yet arrived at, the point of no return.

The wine sector is appreciated by part of the consumer market that desires exclusivity, elegance, uniqueness, status, glamour and sophistication.

As an example Flavia Marisi⁷³ says that *“in present Chinese people still consider wine as an upmarket good and high-profile product. (...) Chinese people regard wine-drinking as an elegant behavior revealing style, grace and discernment so much that wine has even been equated to a “trophy drink”.* For sure wine is a product that has a very specific market.

Considering this factor, it doesn't come as a surprise the idea of a participant of the enquiry that said that it would be good to *“increase the commercial value. To make the Portuguese wine more expensive”* as a strategy to improve Portuguese's position in the international wine market.

In such a competitive market, disregard consumers expectations about finding exclusivity, elegance and so on in one product, is a difficult move. It is understandable that 70,8% of participants of the enquiry find of great importance consumers demands at the activity.

It is also useful to remind, Mario de la Fuente's⁷⁴ remark during the European videoconference event Agricultura 4.0 – Promoção da Sustentabilidade para o Setor Europeu do Vinho, saying that *“the real perception of the consumers and the wine expectations should be preserved, and this is one of the common reasons/fears for those who are skeptical with the hybrids wines”.*

Change is a threat for a winning sector.

To guarantee all the pleasures that the consumers desire, the production has to be really controlled, and this level of control sometimes do not comply with nature and

⁷³ Marisi, Flavia. EU and Chinese Policies in Support of Wine Production: Jaisse, Julien; Dias, Fernando Simões; Friedmann, Danny: WINE LAW AND POLICY: from national terroir to a global market: Illbroihffjn, Leiden Boston 2020

⁷⁴ Mario de la Fuente Lloreda – Manager at PTV, researcher at UPM

preserved environment. But for Europe's strategies to achieve the status of 0 emission continent by 2050 will demand a stronger effort from the wine sector to comply to environmental standards.

Member States, although free to develop their own paths will not be able to avoid the final truth – changes are necessary. Portugal will have to comply to the new standards and promulgate national laws on the matter, possibly by 2023.

But the supra-State regulation that is being built through the new CAP regulations and the “Green Deal” Program are part of the development of a European Union self – contained regime that will necessarily collide with third countries regulations concerning the wine sector.

The perspective of collision is already on the table, since, as seen, European Council and Parliament have agreed that import products have to meet the same health and environmental standards than the European products and as consequence, demanded a report about legal feasibility of the measures under WTO rules.

We have seen that WTO have already touched the matter in different occasions as in the Tuna/ Dolphin case when a consensus position was not achieved.

Europe's wine sector is already facing competition from third countries, namely wines from the “new world” that are gaining space in the market share. New world, new vineyards, more productivity, less restrictions to the production, more flexibility in methods.

Imposing more strict rules to the sector can jeopardize the European wine sector's position in the market, opening up to trade disputes in the wine sector or that affect wine products, as seen this year between Australia and China or the EU (Airbus) and the USA (Boeing).

A more rigid environmental global legal regime is therefore necessary. After all it is one sole Planet. But yet, not one sole Law system.

Sustainability is the name of the game since the report of the da Brundtland Commission “Our Common Future”, where present-day human development may not impair that of future generations, involving the fight against poverty, access to water, demographic development.

More recently, the Agenda 2030 for Sustainable Development was adopted by the UN, in September 2015, under Resolution A/RES/70/1. The set of 17 objectives Sustainable Development Goals (SDG's) focus on social, economic and environmental development and constitute a "plan of action" for people, the planet and prosperity, as a way to promote peace, environmental sustainability, justice and equality, by the eradication of all forms of poverty, inequality and climate change.

The possibility of the SDG's unifying the global dialogue between the different sub-systematic legal orders involved in social, economic and environmental Human Development, where studied for the wine sector, is yet to be discussed.

It is, therefore, still too soon to guess where the fragmentation / confrontation will lead. Will it be solved through WTO rules, or the possible lack of compliance to the WTO sub-system will lead to a fallback to the general international regime?

And if so, where will the scale weight fall?

Truth be told that only when environmental concerns become a collective moral value it will be profitable to the industry to comply.

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Abbreviations

EEC- European Economic Community

CAP- Community Agricultural Policy

CMO – Common Market Organization

EAGF- European Agricultural Guarantee Fund

EAFRD - European Agricultural Fund for Rural Development

MQG - Maximum Quantities Guarantee

GATT – General Agreement on Tariffs and Trade

WTO – World Trade Organization

TBT- Technical Barriers to Trade Agreement

ITO – International Trade Organization

AOC – Apellation D’Origine Controlée

IWO- International Wine Organization

PDO – Protected Designation of Origin

IG -Geographic Indication

DO – Designation of Origin

ADVID

EUROSTAT - European Statistical

GHG- Green House Gases