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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1952/2005

of 23 November 2005

concerning the common organisation of the market in hops and repealing Regulations (EEC) No 1696/71, (EEC) No 1037/72, (EEC) No 879/73 and (EEC) No 1981/82

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 36 and the third subparagraph of Article 37(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

After consulting the European Economic and Social Committee ⁽²⁾,

Whereas:

(1) Council Regulation (EEC) No 1696/71 of 26 July 1971 on the common organisation of the market in hops ⁽³⁾ has been substantially amended several times, in particular by Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽⁴⁾. For the sake of clarity, Regulation (EEC) No 1696/71 should be repealed and replaced.

(2) Council Regulation (EEC) No 1037/72 of 18 May 1972 laying down general rules for granting and financing aid for hop producers ⁽⁵⁾, Council Regulation (EEC) No

1981/82 of 19 July 1982 drawing up the list of Community regions, in which production aid for hops is granted only to recognised producer groups ⁽⁶⁾, and Council Regulation (EEC) No 879/73 of 26 March 1973 on the granting and reimbursement of aid accorded by the Member States to recognised producer groups in the hop sector ⁽⁷⁾, which have become obsolete following the adoption of Regulation (EC) No 1782/2003, should also be repealed. However, since Slovenia does not plan to apply the single payment scheme until 1 January 2007, provision should be made for Article 7 of Regulation (EEC) No 1696/71 and Regulations (EEC) No 1037/72 and (EEC) No 1981/82 to continue to apply in Slovenia for the 2006 harvest.

(3) Hops and vegetable saps and extracts of hops are products which are generally interchangeable. To enable the objectives of Article 33 of the Treaty to be achieved and ensure that the common agricultural policy has full effect in the hops sector, the measures on trade with third countries and the marketing rules adopted for hops should be extended to vegetable saps and extracts of hops.

(4) To ensure a fair standard of living for producers, Regulation (EC) No 1782/2003 lays down aid schemes for certain sectors, including hops.

(5) A quality policy should be followed throughout the Community by implementing provisions concerning certification together with rules prohibiting, as a general rule, the marketing of products for which a certificate has not been issued or, in the case of imported products, those which do not comply with equivalent minimum quality characteristics.

(6) To stabilise markets and ensure reasonable prices for supplies to consumers, centralisation of supply and the joint adaptation by growers of their produce to the requirements of the market should be encouraged.

⁽¹⁾ Not yet published by the Official Journal.

⁽²⁾ Not yet published by the Official Journal.

⁽³⁾ OJ L 175, 4.8.1971, p. 1. Regulation as last amended by Regulation (EC) No 2320/2003 (OJ L 345, 31.12.2003, p. 18).

⁽⁴⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 118/2005 (OJ L 24, 27.1.2005, p. 15).

⁽⁵⁾ OJ L 118, 20.5.1972, p. 19. Regulation as last amended by Regulation (EEC) No 1604/91 (OJ L 149, 14.6.1991, p. 13).

⁽⁶⁾ OJ L 215, 23.7.1982, p. 3. Regulation as last amended by the 2003 Act of Accession.

⁽⁷⁾ OJ L 86, 31.3.1973, p. 26. Regulation as last amended by Regulation (EEC) No 2254/77 (OJ L 261, 14.10.1977, p. 3).

- (7) To that end the grouping of growers in bodies which require their members to comply with certain common rules should further the achievement of the objectives of Article 33 of the Treaty.
- (8) To avoid any discrimination between producers and to ensure the unity and effectiveness of any action undertaken, conditions should be laid down, for the whole of the Community, with which producer groups must comply in order to be recognised by the Member States. To achieve an effective centralisation of supply, it is necessary in particular that the groups should be of an economically viable size and that the entire output of producers should be marketed either directly by the group or by the producers, according to common rules.
- (9) The measures envisaged should enable an import scheme to be provided for, based solely on application of the common customs tariff.
- (10) These measures should make it possible to waive all quantitative restrictions at the external frontiers of the Community. This procedure may, however, in exceptional cases, be found to be inadequate. In such cases, in order not to leave the Community market defenceless against any disturbances arising therefrom, the Community should be empowered to take all necessary measures quickly. These measures should be in accordance with the Community's international obligations.
- (11) The proper functioning of the internal market would be compromised by the grant of national aid. As a result, the provisions of the Treaty governing State aid should apply to the products covered by this common market organisation.
- (12) The experience gained in the application of Regulation (EEC) No 1696/71 has revealed the need for instruments enabling preventive action to be taken where a risk of structural surpluses or market disturbance arises.
- (13) Adequate information is needed about the present state of the market within the Community and the prospects for its development. Provision should therefore be made for the registration of all contracts to supply hops produced within the Community.
- (14) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (15) The transition from Regulation (EEC) No 1696/71 to this Regulation is likely to create difficulties not envisaged in this Regulation. In order to deal with those difficulties, the Commission should be authorised to adopt transitional measures,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

1. A common organisation of the market in hops, including rules on marketing, producer groups and trade with third countries, is hereby established, covering the following products:

CN code	Description of goods
1210	Hop cones, fresh or dried, whether or not ground, powdered or in the form of pellets; lupulin

2. The rules of this Regulation on marketing and trade with third countries shall also apply to the following products:

CN code	Description of goods
1302 13 00	Vegetable saps and extracts of hops

Article 2

For the purposes of this Regulation:

- (a) 'hops' means the dried inflorescences, also known as cones, of the (female) climbing hop plant (*Humulus lupulus*); these inflorescences, which are greenish yellow and of an ovoid shape, have a flower stalk and their longest dimension generally varies from 2 to 5 cm;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (b) 'hop powder' means the product obtained by milling the hops, containing all the natural elements thereof;
- (c) 'hop powder with higher lupulin content' means the product obtained by milling the hops after mechanical removal of a part of the leaves, stalks, bracts and rachides;
- (d) 'extract of hops' means the concentrated products obtained by the action of a solvent on the hops or on the hop powder;
- (e) 'mixed hop products' means a mixture of two or more of the products referred to in points (a) to (d).

Article 3

This Regulation shall apply without prejudice to the measures provided for in Regulation (EC) No 1782/2003.

CHAPTER II MARKETING

Article 4

1. The products referred to in Article 1, harvested or prepared within the Community, shall be subject to a certification procedure.
2. The certificate may be issued only for products having the minimum quality characteristics appropriate to a specific stage of marketing. In the case of hop powder, hop powder with higher lupulin content, extract of hops and mixed hop products, the certificate may only be issued if the alpha acid content of these products is not lower than that of the hops from which they have been prepared.
3. The certificate shall indicate at least:
- (a) the place(s) of production of the hops;
- (b) the year(s) of harvesting;
- (c) the variety or varieties.

Article 5

1. The products referred to in Article 1 may be marketed or exported only if the certificate referred to in Article 4 has been issued.

In the case of imported products referred to in Article 1, the attestation provided for in Article 9(2) shall be deemed to be equivalent to the certificate.

2. Measures derogating from paragraph 1 may be adopted in accordance with the procedure referred to in Article 16(2):

- (a) in order to satisfy the trade requirements of certain third countries; or
- (b) for products intended for special uses.

The measures provided for in the first subparagraph must:

- (a) not prejudice the normal marketing of products for which the certificate has been issued;
- (b) be accompanied by guarantees intended to avoid any confusion with those products.

CHAPTER III

PRODUCER GROUPS

Article 6

For the purposes of this Regulation, 'producer group' means a group consisting exclusively or, where national legislation allows, mainly of hop producers recognised by a Member State under Article 7 and formed on the initiative of the producers, in particular for the purpose of achieving one or more of the following objectives:

- (a) concentrating supply and helping to stabilise the market by marketing all the produce of the members or, if necessary, by purchasing hops at a higher price in accordance with Article 7(4)(a);
- (b) adapting such production jointly to the requirements of the market and improving the product, in particular by converting to other varieties, reorganising hop gardens, carrying out promotion, and conducting research into production, marketing and integrated protection;
- (c) promoting the rationalisation and mechanisation of cultivation and harvesting operations in order to render production more profitable and better protect the environment;
- (d) deciding what varieties of hops may be grown by its members and adopting common rules on production.

Article 7

1. The authority competent to recognise producer groups shall be the Member State within whose territory the producer group has its registered office.

2. Member States shall recognise producer groups which request recognition and fulfil the following general conditions:

- (a) they have legal personality or sufficient legal capacity to be subject, under national legislation, to rights and obligations;
- (b) they apply common rules for production and placing on the market (first stage of marketing);
- (c) their statutes include an obligation for producers who are members of groups to:
 - (i) comply with the common rules on production and decisions on the varieties to be grown;
 - (ii) market all their produce through the group;
- (d) they provide proof of economically viable activity;
- (e) they exclude throughout their field of activity any discrimination between Community producers or groups in respect of, in particular, their nationality or place of establishment;
- (f) they guarantee all producers who undertake to comply with the statutes, without discrimination, the right to belong to a group;
- (g) their statutes include provisions aimed at ensuring that the members of a group who wish to give up their membership may do so after having been a member for at least three years and provided that they inform the group of their intention at least one year before they leave, without prejudice to the national laws or regulations designed to protect, in specific cases, the group or creditors thereof against the financial consequences which might arise from a member leaving, or to prevent a member from leaving during the financial year;
- (h) their statutes include the obligation to keep separate accounts for the activities in respect of which they have been recognised;
- (i) they do not hold a dominant position in the Community.

3. The obligation provided for in paragraph 2(c) shall not apply to products covered by sales contracts concluded by producers before they joined the producer group, provided that the latter was informed of and approved such contracts.

4. Notwithstanding paragraph 2(c)(ii), where the producer group so authorises and under the conditions it lays down, members of a producer group may:

- (a) replace the obligation to have all their production marketed by the producer group provided for in paragraph 2(c)(ii) with marketing in accordance with common rules incorporated in the statutes, in order to ensure that the producer group has the right to monitor selling prices, which it must approve, failure to do so requiring the group to buy back the hops concerned at a higher price;
- (b) market, through the offices of another producer group chosen by their own group, products which by virtue of their characteristics are not necessarily covered by the commercial activities of the latter.

CHAPTER IV

TRADE WITH THIRD COUNTRIES

Article 8

Save as otherwise provided for in this Regulation, the rates of import duty in the common customs tariff shall apply to the products listed in Article 1.

Article 9

1. The products referred to in Article 1 coming from third countries may be imported only if their quality standards are at least equivalent to those adopted for like products harvested within the Community or made from such products.

2. The products referred to in Article 1 shall be considered as being of the standard referred to in paragraph 1 of this Article if they are accompanied by an attestation issued by the authorities of the country of origin and recognised as equivalent to the certificate referred to in Article 4.

In the case of hop powder, hop powder with higher lupulin content, extract of hops and mixed hop products, the attestation may only be recognised as being equivalent to the certificate if the alpha acid content of these products is not lower than that of the hops from which they have been prepared.

The equivalence of these attestations shall be verified according to the procedure referred to in Article 16(2).

Article 10

1. The general rules for the interpretation of the Combined Nomenclature and the special rules for its application shall apply to the tariff classification of products referred to in Article 1. The tariff nomenclature resulting from the application of this Regulation shall be incorporated in the common customs tariff.

2. Save as otherwise provided for in this Regulation or in provisions adopted under it, the following shall be prohibited in trade with third countries:

- (a) the levying of any charge having equivalent effect to a customs duty;
- (b) the application of any quantitative restriction or measure having equivalent effect.

Article 11

1. If, by reason of imports or exports, the Community market in one or more of the products listed in Article 1 is affected by, or is threatened with, serious disturbance likely to jeopardise the achievement of the objectives set out in Article 33 of the Treaty, appropriate measures may be applied in trade with non-member third countries of the World Trade Organisation until such disturbance or threat of it has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures. The Member States shall be notified of such measures, and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within three working days of receipt of the request.

3. The measures referred to in paragraph 2 may be referred to the Council by any Member State within three working days of the day on which they are notified. The Council shall meet immediately. It may, acting by a qualified majority, amend or repeal the measures in question within one month of the day on which they were referred to the Council.

4. The provisions of this Article shall be applied having regard to the obligations arising from agreements concluded in accordance with Article 300(2) of the Treaty.

CHAPTER V

GENERAL PROVISIONS

Article 12

Save as otherwise provided for in this Regulation, Articles 87, 88 and 89 of the Treaty shall apply to production of and trade in the products referred to in Article 1(1) of this Regulation.

Article 13

In cases where there is a danger of creating surpluses or of a disturbance in the supply structure of the market, the Council, acting by a qualified majority on a proposal from the Commission, may take appropriate measures to prevent market imbalance. Such measures may, for instance, take the form of action affecting:

- (a) the production potential;

(b) the volume of supply;

(c) the marketing conditions.

Article 14

1. Any contract to supply hops produced within the Community concluded between a producer or an association of producers and a buyer shall be registered by the bodies designated for that purpose by each producer Member State concerned.

2. Contracts relating to the supply of specific quantities at agreed prices for a period covering one or more harvests and concluded before 1 August of the year of the first harvest concerned shall be known as 'contracts concluded in advance'. They shall be registered separately.

3. The data on which registration is based may be used only for the purposes of this Regulation.

Article 15

The Member States and the Commission shall send each other such information as is necessary for the implementation of this Regulation.

Article 16

1. The Commission shall be assisted by a Management Committee for Hops (hereinafter the Committee).

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

Article 17

The rules for applying this Regulation shall be adopted in accordance with the procedure referred to in Article 16(2), in particular those concerning:

- the minimum quality characteristics referred to in Article 4(2),
- the placing on the market within the meaning of Article 7(2)(b),
- the provisions laid down in Article 7(2)(g),
- the registration of contracts to supply hops as referred to in Article 14,
- the rules for sending the information referred to in Article 15.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS*Article 18*

1. Regulation (EEC) No 1696/71 is hereby repealed with effect from 1 January 2006.

However, in the case of Slovenia, Article 7 shall continue to apply up to and including the 2006 harvest.

References to Regulation (EEC) No 1696/71 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

2. Regulations (EEC) No 1037/72, (EEC) No 879/73 and (EEC) No 1981/82 are hereby repealed with effect from 1 January 2006.

However, in the case of Slovenia, Regulations (EEC) No 1037/72 and (EEC) No 1981/82 shall continue to apply up to and including the 2006 harvest.

Article 19

1. Producer groups recognised under Regulation (EEC) No 1696/71 shall be deemed to be recognised under this Regulation.

2. Transitional measures to facilitate the transition from Regulation (EEC) No 1696/71 to this Regulation may be adopted in accordance with the procedure referred to in Article 16(2).

Article 20

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 November 2005.

For the Council
The President
M. BECKETT

ANNEX

Correlation table

Regulation (EEC) No 1696/71	This Regulation
Article 1(1) and (2)	Article 1
Article 1(3)	Article 2
Article 1(4)	—
—	Article 3
Article 2(1), (2) and (3)	Article 4
Article 2(4)	—
Article 2(5)	Article 17
Article 3	Article 5
Article 4	—
Article 5(1) and (2)	Article 9
Article 5(3)	Article 17
Article 6	—
Article 7(1)(a), (b), (c) and (d)	Article 6
Article 7(1)(e)	—
Article 7(1a) and (2)	—
Article 7(3)(a)	Article 7(2)(b)
Article 7(3)(b), first subparagraph	Article 7(2)(c)
Article 7(3)(b), second subparagraph	Article 7(3)
Article 7(3)(b), third subparagraph	Article 7(4)
Article 7(3)(c) to (f)	Article 7(2)(d) to (g)
Article 7(3)(g)	Article 7(2)(a)
Article 7(3)(h) and (i)	Article 7(2)(h) and (i)
Article 7(4)	Article 7(1)
Article 7(5)	Article 17
Article 12	—
Article 13	—
Article 14	Article 8
Article 15	Article 10
Article 15a(1), first subparagraph	Article 11(1)
Article 15a(1), second subparagraph	—
Article 15a(2), (3) and (4)	Article 11(2), (3) and (4)
Article 16	Article 12
Article 16a	Article 13
Article 17	—
Article 18, first subparagraph, first sentence	Article 15
Article 18, first subparagraph, second sentence	Article 17
Article 18, second subparagraph	—
Article 20	Article 16
Article 21	—
Article 22	—
—	Article 18
—	Article 19(1)
Article 23, first paragraph	Article 19(2)
Article 23, second paragraph	—
Article 24	Article 20