

## COMMISSION REGULATION (EC) No 702/2009

of 3 August 2009

**amending and correcting Regulation (EC) No 555/2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) <sup>(1)</sup>, and in particular Articles 103za and 85x thereof,

Whereas:

- (1) In order to reduce administrative burden of the Member States, and taking into account the huge amount of information communicated by them in the sets of tables within the framework of Commission Regulation (EC) No 555/2008 <sup>(2)</sup> and the fact that their legislation is often available electronically, it seems appropriate to foresee that the notification to the Commission of their legislation related to the draft support programmes, requested in Article 2(2) of that Regulation, could be done by the notification of the site of the availability of the legislation concerned.
- (2) Article 10(b) of Regulation (EC) No 555/2008 refers, erroneously, to conditions set down in that Article. As no conditions are set in the given Article but they are fixed in that Regulation, the wording of the given point should be corrected accordingly.
- (3) Article 19 of Regulation (EC) No 555/2008 provides for the financial management of the investments measure. To allow better use of the funds, it is appropriate to foresee the possibility of payments after the execution of certain operations of a given measure, while making sure that the measure as a whole, as foreseen in the application concerned, will be completed. Furthermore, in order to ease the realisation of investment projects in the context of the ongoing economic and financial crisis, the maximum ceiling for advance payments should be raised in 2009 and 2010.
- (4) According to Article 103n and Article 180 of Regulation (EC) No 1234/2007, Member States may grant national aid in accordance with the relevant Community rules on State aid for the measures referred to in Articles 103p, 103t and 103u of that Regulation. While Articles 87 and 89 of the Treaty apply to the production of, and trade in, the products referred to in Article 1(l) of Regulation (EC)

No 1234/2007, Article 88 of the Treaty shall not apply to payments made under Article 103n(4) of Regulation (EC) No 1234/2007 by Member States in conformity with that Regulation. Since accordingly, notification of the State aid is not required in the form laid down in Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(3)</sup> and its implementing regulations, for the sake of controllability that such payments correspond to the rules on the State aid, a simplified communication has to be foreseen.

- (5) If producers withdraw their application for the grubbing-up premium or grub up only part or nothing of the area indicated in their application, this jeopardises the efficient use of the Community funds foreseen for this measure. Beyond the sanctions already foreseen in Article 70(2) of Regulation (EC) No 555/2008, it is appropriate to foresee that Member States may decide that no priority should be given to the application of the producers concerned in the subsequent financial years.
- (6) Application of the single percentage for acceptance means a disproportionate administrative burden for Member States where applications for grubbing-up cover only a relatively small area. Therefore, it is appropriate to exempt Member States from the application of this percentage for acceptance if the area concerned by the eligible applications does not reach a certain threshold.
- (7) Annex VI to Regulation (EC) No 555/2008 requests information on the amounts paid in respect of Single Payment Scheme (SPS) payments on vineyards. Annex VII to that Regulation requests information on the area covered by SPS payments on vineyards and the average payment made. However, once the entitlements are allocated, it is no longer possible to distinguish with respect of what land use they were originally allocated nor are claimants be required to indicate if land under vines is being used to support their annual SPS claim. In addition, aggregate SPS information is being supplied to the Commission pursuant to Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers <sup>(4)</sup>. That information will also include land under vines. Therefore, lines requesting information on SPS payments should be deleted from the appropriate tables of Regulation (EC) No 555/2008.

<sup>(1)</sup> OJ L 299, 16.11.2007, p. 1.

<sup>(2)</sup> OJ L 170, 30.6.2008, p. 1.

<sup>(3)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(4)</sup> OJ L 141, 30.4.2004, p. 1.

- (8) Regulation (EC) No 555/2008 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 555/2008 is amended as follows:

1. In Article 2, paragraph 2 is replaced by the following:

‘2. Member States shall notify the Commission their legislation related to the draft support programmes referred to in the first subparagraph once adopted or modified. This notification can be done by informing the Commission about the site where the legislation concerned is publicly available;’

2. In Article 10, point (b) is replaced by the following:

‘(b) the continuation of the measure fulfils, after adaptations if needed, the conditions set down in this Regulation.’;

3. Article 19 is replaced by the following:

*‘Article 19*

**Financial management**

1. Support shall be paid once it is ascertained that either a single operation or all the operations covered by the support application, according to the choice made by the Member State for the management of the measure, have been implemented and controlled on the spot.

Where support is normally payable only after implementation of all the operations, by way of derogation from the first subparagraph, support shall be paid for single operations implemented if the remaining operations could not be carried out due to *force majeure* or exceptional circumstances as referred to in Article 31 of Council Regulation (EC) No 73/2009 (\*).

If checks show that an overall operation covered by the support application has not been fully implemented for reasons other than *force majeure* or exceptional circumstances as referred to in Article 31 of Regulation (EC) No 73/2009, and where support has been paid after single operations which are part of the overall operation covered by the support application, Member States shall decide to recover the aid paid.

2. Beneficiaries of investment support may request the payment of an advance from the competent paying agencies if this option is included in the national support programme.

The amount of the advances shall not exceed 20 % of the public aid related to the investment, and its payment shall be subject to the establishment of a bank guarantee or an equivalent guarantee corresponding to 110 % of the amount of the advance. However, in the case of investments for which the individual decision to grant support is taken in 2009 or in 2010, the amount of the advances may be increased up to 50 % of the public aid related to that investment.

The guarantee shall be released when the competent paying agency establishes that the amount of actual expenditure corresponding to the public aid related to the investment exceeds the amount of the advance.

(\*) OJ L 30, 31.1.2009, p. 16.’

4. In Chapter III of Title II, the following Article 37a is added:

*‘Article 37a*

**Communication related to State aid**

1. Notwithstanding Article 5(8), the third paragraph of Article 16 and the second subparagraph of Article 20(1) of this Regulation, when Member States grant State aid in accordance with Article 103n(4) of Council Regulation (EC) No 1234/2007 (\*), they shall communicate to the Commission the following:

(a) when applicable, the list of aid measures already authorised under Articles 87, 88 and 89 of the Treaty to be used for the implementation of the programmes or the reason why the national aid in question has been exempted from any notification obligations;

(b) in other cases, the elements that are needed for the appraisal under competition rules.

2. If paragraph (1)(a) is applicable, Member States shall fill in Table 1 of Annex VIIIc,

(a) indicating whether support will be granted in respect of Commission Regulation (EC) No 1535/2007 (\*\*) on de minimis support for primary production in the agriculture sector or Commission Regulation (EC) No 1998/2006 (\*\*\*) for processing and marketing of agricultural products; or

(b) providing the registration number and the reference to the Commission exemption Regulation adopted on the basis of Council Regulation (EC) No 994/98 (\*\*\*\*) under which the measure was introduced; or

(c) providing the case number and reference number under which the measure has been declared compatible with the Treaty by the Commission.

3. If paragraph (1)(b) is applicable, Member States shall transmit to the Commission

(a) Table 2 of Annex VIIIc for each of the measures referred to in Articles 103p, 103t and 103u of Regulation (EC) No 1234/2007 for which national aid is granted;

(b) Table 3 of Annex VIIIc in case of national aid granted for the measure promotion on third country markets as referred to in Article 103p of Regulation (EC) No 1234/2007;

(c) Table 4 of Annex VIIIc in case of national aid granted for the harvest insurance measure referred to in Article 103t of Regulation (EC) No 1234/2007;

(d) Table 5 of Annex VIIIc in case of national aid granted for the investments measure referred to in Article 103u of Regulation (EC) No 1234/2007.

4. The elements communicated in form of any of the tables of Annex VIIIc must be valid over the entire life cycle of the programme without prejudice to any subsequent changes of the programmes.

5. Notwithstanding Article 103n(4) of Regulation (EC) No 1234/2007 and without prejudice to Article 3(2) of this Regulation, Member States granting national aid shall modify their support programme for the future, by filling

in the appropriate tables of Annex VIIIb by 15 October 2009 at the latest. Article 103k(2) of Regulation (EC) No 1234/2007 apply to these modifications.

(\*) OJ L 299, 16.11.2007, p. 1.

(\*\*) OJ L 337, 21.12.2007, p. 35.

(\*\*\*) OJ L 379, 28.12.2006, p. 5.

(\*\*\*\*) OJ L 142, 14.5.1998, p. 1.

5. In Article 70, the following paragraph is added:

'3. If, in a given financial year, a producer withdrew his application for the grubbing-up premium or grubbed up only partially or not at all the area indicated in the application, a Member State may decide not to give him priority according to Article 85s(5)(b) of Regulation (EC) No 1234/2007 in any subsequent financial year.'

6. In Article 71, the following paragraph is added:

'3. Without prejudice to paragraph 1, the single percentage for acceptance does not apply to Member States which communicated, according to Article 85s(2) of Regulation (EC) No 1234/2007, eligible applications for an area smaller than 50 hectares.'

7. In Annex VI, the line 1, relating to the Single Payment Scheme is deleted;

8. In Annex VII, the line 1, relating to the Single Payment Scheme is deleted.

9. After Annex VIIIb, Annex VIIIc is inserted, the text of which is set out in the Annex to this Regulation.

#### Article 2

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

Article 1(4) and (9) shall apply from 1 August 2009.

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

Done at Brussels, 3 August 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

## ANNEX

## 'ANNEX VIIIc

Table 1

**Information on aid schemes already authorised under Articles 87, 88 and 89 of the Treaty or information on exemption of a given measure from any notification obligation <sup>(1)</sup>**Member State <sup>(2)</sup>: ..... Region(s) concerned (if applicable): .....

Measure code	Name of the aid measure	Indication of the legal basis of the scheme	Duration of aid measure

To indicate respectively:

- for the measures covered by a de minimis Regulation: 'Any aid granted under this measure will be in conformity with the de minimis Regulation (EC) No 1535/2007 (primary production) or Regulation (EC) No 1998/2006' (processing and marketing of agricultural products) <sup>(3)</sup>,
- for approved aid schemes: reference to Commission State aid approval decision, including State aid number and references of approval letter,
- for Block Exempted aid: reference to the individual Block Exemption Regulation (i.e. either Regulation (EC) No 1857/2006 or Commission Regulation (EC) No 800/2008 <sup>(4)</sup>) and the registration number.

<sup>(1)</sup> Communication referred to in Article 37a(2) of this Regulation.<sup>(2)</sup> OP acronym to be used.<sup>(3)</sup> Please indicate which Regulation is applicable.<sup>(4)</sup> Commission Regulation (EC) No 800/2008 of 6 August 2008, declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) (OJ L 214, 9.8.2008, p. 3).

Table 2

General information sheet <sup>(1)</sup>

Member State <sup>(2)</sup>: ..... Region(s) concerned (if applicable): .....

1. Identification of the aid

1.1. Title of the aid (or name of company beneficiary in case of individual aid):

.....

1.2. Brief description of the objective of the aid:

.....

Primary objective (please tick one only):

Promotion third countries (Article 103p of Regulation (EC) No 1234/2007)

Harvest insurance (Article 103t of Regulation (EC) No 1234/2007)

Investment (Article 103u Regulation (EC) No 1234/2007)

1.3. Aid scheme — Individual aid

The communication relates to:

an aid scheme

an individual aid

2. National legal basis

Title of the national legal basis including the implementing provisions:

.....

.....

.....

3. Beneficiaries

3.1. Location of the beneficiary(ies)

in (an) unassisted region(s)

in (a) region(s) eligible for assistance under Article 87(3)(c) EC Treaty (specify at NUTS-level 3 or lower)

in (a) region(s) eligible for assistance under Article 87(3)(a) EC Treaty (specify at NUTS-level 2 or lower)

mixed: (specify) .....

3.2. In case of an individual aid:

Name of the beneficiary: .....

<sup>(1)</sup> Communication referred to in Article 37a(3)(a) of this Regulation.

<sup>(2)</sup> OP acronym to be used.

Type of beneficiary:

SME

Number of employees: .....

Annual turnover: .....

Annual balance-sheet: .....

Independence: .....

large enterprise

3.3. In case of an aid scheme:

Type of beneficiaries:

all firms (large firms and small and medium-sized enterprises)

only large enterprises

small and medium-sized enterprises

medium-sized enterprises

small enterprises

micro enterprises

the following beneficiaries: .....

Estimated number of beneficiaries:

under 10

from 11 to 50

from 51 to 100

from 101 to 500

from 501 to 1 000

over 1 000

4. Form of the aid and means of funding

Form of the aid made available to the beneficiary (specify; where appropriate, separately for each measure) (e.g. direct grant, soft loan ...):

.....

.....

Table 3

**Supplementary information sheet on aid for the promotion on third country markets (Article 103p of Regulation (EC) No 1234/2007) <sup>(1)</sup>**Member State <sup>(2)</sup>: ..... Region(s) concerned (if applicable): .....**Hereby it is confirmed that:**

- the advertising campaign is not granted towards specific enterprises;
- the advertising campaign does not risk endangering sales of or denigrate products from other Member States;
- the advertising campaign is in line with the principles of Regulation (EC) No 3/2008, including the requirement that the advertising campaign is not granted towards brand names. (To demonstrate this statement, elements have to be provided about the compliance with the principles of Regulation (EC) No 3/2008).

<sup>(1)</sup> Communication referred to in Article 37a(3)(b) of this Regulation.

<sup>(2)</sup> OP acronym to be used.

Table 4

**Supplementary information sheet on aid towards the payment of harvest insurance premia (Article 103t of Regulation (EC) No 1234/2007) <sup>(1)</sup>**

Member State <sup>(2)</sup>: ..... Region(s) concerned (if applicable): .....

**1. Hereby it is confirmed that:**

- the aid measure does not foresee payment of insurance premiums in favour of large companies and/or companies active in the processing and marketing of agricultural products
- the possibility of covering the risk is not linked to only one insurance company or group of companies
- the aid is not conditional on the insurance contract being concluded with a company established in the Member State concerned.

**2. The following losses will be covered by the insurance for which the premium will be partly financed under the aid measure concerned:**

- a) only losses caused by adverse climatic events which can be assimilated to natural disasters, as defined in Article 2 point 8 of Regulation (EC) No 1857/2006,
- b) the losses referred to above plus other losses caused by climatic events,
- c) losses caused by animal or plant diseases or pest infestations (whether in combination with other losses mentioned in this point or not).

**3. Aid intensity proposed:** .....%

NB: If only the first case (under 2 a) above applies, the maximum aid rate is 80 %, in all other cases (i.e. where box b) and/or c) under point 2 above has been ticked), it is 50 %.

These conditions relate to the maximum intensities of the cumulated amount of both the national and the community contribution, in accordance with Article 103n(4) of Regulation (EC) No 1234/2007.

<sup>(1)</sup> Communication referred to in Article 37a(3)(c) of this Regulation.

<sup>(2)</sup> OP acronym to be used.



Table 5

**Supplementary information sheet on aid for investments (Article 103u of Regulation (EC) No 1234/2007) <sup>(1)</sup>**Member State <sup>(2)</sup>: ..... Region(s) concerned (if applicable): .....**1. Scope and beneficiaries of the aid**

1.1. The support is granted for the following tangible or intangible investments, which improve the overall performance of the enterprise (please tick as appropriate):

- in processing facilities,
- winery infrastructure,
- marketing of wine.

1.2. The aid concerns (please tick as appropriate):

- the production or marketing of products referred to in Annex Xlb of Regulation (EC) No 1234/2007;
- the development of new products, processes and technologies related to the products referred to in Annex Xlb to Regulation (EC) No 1234/2007.

1.3. Hereby it is confirmed that the aid is not granted to an enterprise in difficulty in the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty:

- yes

1.4. This communication is meant to fall under the following provision of the Agricultural Guidelines — and as a consequence, as appropriate, the following is confirmed:

1.4.1.  point IV.B.2. (a) [Article 15 of Regulation (EC) No 800/2008]; in this case, it is hereby confirmed that:

- the aid fulfils the conditions set out in Regulation (EC) No 800/2008, Article 15 (State aid to small and medium-sized enterprises)

1.4.2.  point IV.B.2. (b) [Article 13 of Regulation (EC) No 800/2008]; in this case, it is hereby confirmed that:

- the aid fulfils the conditions set out in Regulation (EC) No 800/2008, Article 13 (regional investment aid)

1.4.3.  point IV.B.2. (c) [Commission guidelines on national regional aid for 2007–2013 <sup>(3)</sup>]; in this case, it is hereby confirmed that

- the aid fulfils the conditions set out in Commission guidelines on national regional aid for 2007–2013 (in this case, the assessment of such aid is to be carried out on the basis of the Guidelines on National Regional aid. The relevant part of the general notification form (Annex of Commission Regulation (EC) No 1627/2006 <sup>(4)</sup>) has to be completed.

1.4.4.  point IV.B.2. (d) [aid for intermediate companies in regions not eligible for regional aid]; in this case:

there are beneficiaries which are SMEs:

- yes  no

If yes, point 1.4.1. above applies [point IV.B.2 (a) of the Agricultural guidelines].

<sup>(1)</sup> Communication referred to in Article 37a(3)(d) of this Regulation.<sup>(2)</sup> OP acronym to be used.<sup>(3)</sup> OJ C 54, 4.3.2006, p. 13.<sup>(4)</sup> OJ L 302, 1.11.2006, p. 10.

If no, it is hereby confirmed that aid will only be granted to intermediate companies (i.e. less than 750 employees and/or less than EUR 200 million turnover):

yes

In this case, the relevant part of the general notification form (Annex of Regulation (EC) No 1627/2006) regarding the eligible expenses has to be completed.

## 2. Individual aid

The eligible investments can exceed EUR 25 million or the aid amount EUR 12 million:

yes  no

If yes, hereby is all the information allowing for an individual assessment of the aid:

.....

## 3. Aid intensity

NB: The conditions relate to the maximum intensities of the cumulated amount of both the national and the community contribution, in accordance with Article 103n(4) of Regulation (EC) No 1234/2007.

3.1. If the beneficiaries are SMEs (Article 15 of Regulation (EC) No 800/2008), the maximum aid intensity for eligible investments is the following in:

3.1.1. outermost regions: ..... (max. 75 %)

3.1.2. smaller Aegean Islands <sup>(1)</sup>: ..... (max. 65 %)

3.1.3. regions eligible under Article 87(3)(a): ..... (max. 50 %)

3.1.4. other regions: ..... (max. 40 %)

3.2. For aid falling under Article 13 of Regulation (EC) No 800/2008 (regional investment aid) or the Commission guidelines on national regional aid for 2007–2013, the maximum aid intensity is the following:

3.2.1. for SMEs:

3.2.1.1. regarding eligible investments in regions under Article 87(3)(a) of the Treaty: ..... (max.: 50 % or maximum amount determined in the regional map approved for the Member State concerned for the period 2007–2013)

3.2.1.2. regarding eligible investments in other regions eligible for regional aid: ..... (max.: 40 % or maximum amount determined in the regional map approved for the Member State concerned for the period 2007–2013)

3.2.2. for intermediate enterprises in the meaning of Article 28(3) of Regulation (EC) No 1698/2005 (not SME but with less than 750 employees or less than EUR 200 million turnover):

3.2.2.1. regarding eligible investments in regions eligible under Article 87(3)(a) of the Treaty: ..... (max.: 25 % or maximum amount determined in the regional map approved for the Member State concerned for the period 2007–2013)

3.2.2.2. regarding eligible investments in other regions eligible for regional aid: ..... (max.: 20 % or maximum amount determined in the regional map approved for the Member State concerned for the period 2007–2013)

<sup>(1)</sup> Council Regulation (EEC) No 2019/93 (OJ L 184, 27.7.1993, p. 1).

- 3.2.3. There are beneficiaries that are larger than the intermediate enterprises mentioned under point 3.2.2. (i.e. large enterprises):

yes  no

If yes, it is hereby confirmed that the maximum aid intensity is equal to or below the maximum amount determined in the regional aid map approved for the Member State concerned for the period 2007-2013:

yes

In this case, the maximum aid intensity has to be mentioned in the aforementioned regional aid map.

The relevant maximum aid intensity in the corresponding regional aid map is: ..... %.

- 3.3. For investment aid in favour of intermediate companies in regions not eligible for regional aid, the maximum aid intensity is: ..... (max.: 20 %).

#### 4. Eligibility criteria and expenses

- 4.1. Hereby it is confirmed that:

that the aid does not support investments for which a common market organisation, including direct support schemes, financed by the EAGF places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants which would increase production beyond those restrictions or limitations;

that the aid does not concern the purchase of second-hand equipment in case of aid to intermediate or large companies.

- 4.2. For aid for investments in regions not eligible for regional aid:

The eligible expenses for investments correspond fully to the eligible expenses listed in the Commission guidelines on national regional aid for 2007-2013:

yes  no

If no and if the beneficiaries are SMEs, hereby it is confirmed that the eligible expenses are in conformity with Article 15(3) of Regulation (EC) No 800/2008:

yes

#### 5. Other information

The communication is accompanied by documentation showing that that support is targeted on clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages:

yes  no

If yes, that documentation has to be provided in an Annex to this supplementary information sheet.

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