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COMMISSION DELEGATED REGULATION (EU) …/...

of 30.4.2020

on temporary exceptional measures derogating from certain provisions of Regulation (EU) No 1308/2013 of the European Parliament and of the Council to address the market disturbance in the fruit and vegetables and wine sectors caused by the COVID-19 pandemic and measures linked to it

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The act is justified by the current situation resulting from the COVID-19 pandemic and the extensive movement restrictions put in place in the Member States. Exceptional difficulties have been encountered by producers of fruit and vegetables and wine producers in all Member States especially as regards the shortage of workforce and logistical problems both for sourcing inputs and for distributing products to consumers. The wine sector has started the season with exceptionally high stocks due to a good harvest in 2019 and the closure of catering establishments due to the COVID-19 pandemic has led to a dramatic fall in demand.

Recognised producer organisations and associations of producer organisations in the fruit and vegetables sector should be allowed to use more than one third of the expenditure under the operational programme for crisis prevention and management measures in 2020 to address the market disturbance caused by measures related to the COVID-19 pandemic.

The Union wine market has been subject to aggravating conditions throughout 2019 and wine stocks are at their highest level since 2009, with demand further reduced by the closure of major export markets around the world and the interruption of all catering activities and the impossibility to supply usual customer in the EU due to the COVID-19 pandemic. It is therefore necessary to take urgent temporary measures to address the situation. These include, among others, temporarily allowing distillation of wine in case of crisis (limited to industrial purposes, including disinfection and pharmaceutical, and to energy purposes), aid to crisis storage of wine, and increasing the Union support to measures of support programmes in the wine sector. For the green harvesting measure already available under the wine support programme, the rules should be adapted to take account of the limited availability of workforce.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Ministers, Members of the European Parliament and representatives of the wine and fruit and vegetables sectors are demanding that the Commission rapidly offer support to help overcome what they consider as serious and dramatic consequences of the COVID-19 pandemic on these sectors. They underline, in particular, the dramatic fall in demand for wine due to the closure of catering establishments and loss in direct sales due to movement restrictions which have eradicated tourism. Both the wine and the fruit and vegetables sectors are very labour intensive and often use seasonal labour, which is widely unavailable due to movement restrictions imposed because of the COVID-19 pandemic. Some relief for the wine sector could come via crisis storage and emergency distillation measures financed in the context of National Support Programmes for wine.

For the fruit and vegetables sector, producer organisations should be given more access to crisis prevention and management measures to address the unforeseen circumstances caused by COVID 19.

Consultations, involving experts from all the 27 Member States have been carried out by written consultation of the Expert Group for Agricultural Markets under the single common organisation of the markets. This consultation process led to a broad consensus on the draft Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act is based on Article 219(1) of Regulation (EU) No 1308/2013. It should be adopted by means of the procedure according to Article 219(1) and Article 228 of Regulation (EU) No 1308/2013.

For imperative grounds of urgency, in particular considering the ongoing market disturbance caused by the COVID-19 pandemic, its severe effects on the fruit and vegetables sector and the wine sector and its continuation and likely deterioration, it is necessary to take immediate action and urgently adopt measures to alleviate its negative effects. Delaying immediate action to address this market disturbance would threaten to aggravate the market disturbance in both sectors and would be detrimental to the production and market conditions in both sectors. In view of this, this Regulation needs to be adopted pursuant to the urgency procedure laid down in Article 228 of Regulation (EU) No 1308/2013.

It will therefore enter into force without delay and will apply as long as no objection is expressed by the European Parliament or the Council within a period of two months (or - if one of the institutions asks for an extension for two additional months - within a period of 4 months).

If objections are expressed, the Commission shall repeal the act without delay following the notification of such objections by the European Parliament or by the Council. The draft Delegated Regulation provides an enhanced flexibility for the application of measures supported under support programmes for wine under Article 43 of Regulation (EU) No 1308/2013, with the exception of the promotion measures for which flexibility is already provided under Commission Delegated Regulation (EU) 2020/419.

Article 1: The provision introduces for the year 2020 the possibility to exceed the limit of one third of expenditure for crisis prevention and management measures, laid down in the fourth subparagraph of Article 33(3) of Regulation (EU) No 1308/2013, in the operational programmes of producer organisations in the fruits and vegetables sector.

Articles 2 to 4: These provisions introduce temporarily (until 15 October 2020) the possibility to finance the distillation of wine in case of crisis and the crisis storage of wine under the support programmes for wine. These are derogations from Article 43 of Regulation (EU) 1308/2013 which should help manage the wine market severely disrupted by the COVID-19 crisis.

Articles 5, 6(2), 7 and 8: These provisions aim to increase the Union contribution to the support under the measures restructuring and conversion of vineyards, green harvesting, harvest insurance and investments respectively. These are derogations from Articles 46, 47, 49 and 50 of Regulation (EU) No 1308/2013. These aim to provide relief to operators affected by the crisis due the COVID-19 pandemic.

Article 6(1): this provision allows the destruction or removal of immature grape bunches on part of a holding provided that the green harvesting is carried out on entire parcels. This derogates from Article 47 of Regulation (EU) 1308/2013 which requires the destruction or removal of grape bunches on the total holding. This should help wine growers in case they lack the necessary staff to carry out the operation of green harvesting.

Article 8: This paragraph specifies that the increase in the Union contribution to operations of restructuring and conversion of vineyards, green harvesting, harvest insurance and investments applies to operations selected between the date of application of this Delegated Regulation and 15 October 2020.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[1], and in particular to Article 219(1) in conjunction with Article 228 thereof,

Whereas:

(1) The COVID-19 pandemic is causing a significant disturbance of the fruit and vegetables and wine markets throughout the Union. The measures taken by the Member States to address the COVID-19 pandemic, in particular the extensive movement restrictions and social distancing measures, have resulted in a disruption of supply chains, temporary closure of important outlets for the products of the fruit and vegetables sector and the wine sector, respectively, at the wholesale and retail levels and in the catering sector, such as closures of restaurants, canteens, bars and hotels. The COVID-19 related measures are also leading to logistic problems that are affecting with particular severity perishable fruit and vegetable products and the wine sector. The COVID-19 related measures also cause difficulties in harvesting fruit and vegetables and in all wine production-related tasks due to shortages of workforce and in reaching consumers, due to the disruption of supply chains, logistics and temporary closure of important outlets. These circumstances significantly disturb the fruit and vegetables sector and the wine sector in the Union. The farmers in these sectors experience financial difficulties and cash-flow problems.

(2) Given the duration of the restrictions imposed by Member States to address the COVID-19 pandemic and their likely continuation, the long term disruption of logistics and supply chains, as well as severe economic impact on the main outlets for the products of the fruit and vegetables sector and the wine sector, respectively, at the wholesale and retail levels and in the catering sector, the severe disturbance in both markets and its effects are likely to continue and possibly even deteriorate.

(3) In view of this market disturbance and the unprecedented combination of circumstances, exceptional difficulties have been encountered by farmers in all Member States with the planning, implementation and execution of aid schemes laid down in Articles 32 to 38 of Regulation (EU) No 1308/2013 for the fruit and vegetables sector and in Articles 39 to 54 of that Regulation for the wine sector. It is

[1] OJ L 347, 20.12.2013, p. 671.

therefore necessary to alleviate those difficulties by derogating from certain of those provisions.

(4) Recognised producer organisations and associations of producer organisations may implement, as part of their approved operational programmes, crisis and prevention measures in the fruit and vegetables sector that are intended to increase their resilience to market disturbances. However, pursuant to the fourth subparagraph of Article 33(3) of Regulation (EU) No 1308/2013, these crisis prevention and management measures are not to comprise more than one third of the expenditure under the operational programme. In order to provide greater flexibility for those producer organisations and to enable them to focus the resources under operational programmes to addressing the market disturbance caused by measures related to the COVID-19 pandemic, that rule should not apply in the year 2020.

(5) It is estimated that the closure of hotels, bars and restaurants directly affects 30% of the volumes, corresponding to 50% of the value, of wine consumed in the Union. It is also observed that consumption of wine at home is not compensating for the decrease in consumption outside the home. Moreover, usual celebrations and gatherings where wine is consumed, such as for birthdays or national holidays, are not possible. In addition, summer season tourism and oenotourism activities risk not going to take place. Wine surpluses are therefore growing on the market. Furthermore, the labour shortage, also due to the pandemic, and the logistical difficulties caused by the pandemic are putting pressure on wine growers and the whole wine sector. Wine growers are facing increasing problems for the upcoming harvest: low prices, reduced consumption, transport and sales difficulties.

(6) At the same time, the Union wine market has been already subject to aggravating conditions throughout 2019 and wine stocks are at their highest level since 2009. This development is due primarily to a combination of the record harvest in 2018 and general decreasing wine consumption in the Union. In addition, the imposition by the United States of America, the Union’s main wine export market, of additional import tariffs on Union wines has impacted exports. The COVID-19 pandemic has delivered a further blow to a fragile sector that is no more able to market or distribute its products effectively, due mostly to the closure of major export markets and to the measures taken to ensure a proper confinement and lockdown in particular the interruption of all catering activities and the impossibility to supply usual customers. In addition, the difficulty in supply of key inputs such as bottles and corks required for wine production is putting a strain on the activities of operators in the wine sector by preventing them from putting on the market wine ready for sale.

(7) Removing from the Union’s market some of the quantities of wine that are not being marketed and cannot be stored should help to address the severe market disturbances in the wine sector. Therefore, distillation of wine for reasons related to the crisis due to the COVID-19 pandemic should be introduced temporarily as eligible measure for support under the support programmes in the wine sector to help improve the economic performance of wine producers. In order to avoid distortion of competition, the use of the alcohol obtained should be excluded for the food and drink industry and should be limited to industrial purposes, including disinfection and pharmaceutical, and to energy purposes.

(8) Aid to crisis storage is another measure that should temporarily remove certain quantities of wine from the market and help to manage progressively a return to a more economically viable market situation. Therefore, aid to crisis storage for wine

should be temporarily eligible for support under the support programmes in the wine sector. In order to avoid that support is given twice for a same quantity of wine withdrawn from the market, beneficiaries of aid to crisis storage should not receive aid for distillation of wine in case of crisis under the support programmes in the wine sector nor national payments for distillation of wine in cases of crisis.

(9) To help operators respond to the current exceptional circumstances and address this unpredictable and precarious situation, it is appropriate to allow additional flexibility in implementing certain measures under Regulation (EU) No 1308/2013.

(10) In particular, to enable Member States to support the producers severely impacted by the crisis, it is necessary to derogate from Article 44(2) of Regulation (EU) 1308/2013 in relation to the mutual funds measure as referred to in Article 48 of that Regulation as to allow that expenditure incurred under operations which are implemented in their fourth year in 2020, is eligible even if it was incurred before the submission of the relevant draft support programme by the Member State. This would allow Member States to grant additional aid to the administrative costs of already established mutual funds for another 12 months during the financial year 2020. In order to provide an economically adequate support and by derogation from Article 48(2), the aid granted should be non-degressive and amounting to the financing granted in the third year of implementation.

(11) It is further necessary, as an exceptional measure, to provide for a derogation from Articles 46(6), 47(1) and (3), 49(2) and 50(4) of Regulation (EU) No 1308/2013 and temporarily increase the maximum Union contribution to the measures ‘restructuring and conversion of vineyards’, ‘green harvesting’, ‘harvest insurance’ and ‘investments’. These temporary measures are necessary because, due to reasons related to the COVID-19 pandemic, operators are incurring, and will continue to incur, significant losses of income and additional costs arising from the disruptions in the market and in their production. Increasing the Union contribution for the measures in question and consequently decreasing the beneficiary’s contribution would provide beneficiaries with some financial relief.

(12) The flexibility introduced by increasing the Union contribution represents a form of financial support, which, however, does not require additional Union financing since the budgetary limits for the national support programmes in the wine sector laid down in Annex VI to Regulation (EU) No 1308/2013 continue to apply. Member States may thus decide to allocate higher amounts to the measures in question only within the yearly budget provided for in that Annex. The increased financial rates are aimed, therefore, at providing support to the sector in the given unstable market situation without having to mobilise additional funds in the first place.

(13) The preventive instrument harvest insurance is eligible for support under the wine support programmes to encourage a responsible approach to crisis situations. Article 49 of Regulation (EU) No 1308/2013 provides that support for harvest insurance is to contribute to safeguarding producers’ incomes where there are losses as a consequence of natural disasters, adverse climatic events, diseases or pest infestations. In view of the dramatic consequences on wine producers’ incomes as a result of the COVID-19 pandemic due to the sometimes insurmountable difficulties arising at all stages of wine production and marketing, it is appropriate to extend Union support to cover harvest insurance where losses are a consequence of a human pandemic. It is also appropriate to increase temporarily the rate of Union support up to 60% in such cases to provide some financial relief for wine growers.

(14) Green harvesting as provided for in Article 47 of Regulation (EU) No 1308/2013 is used as a market management measure when an excessive production of grapes is expected. That Article requires that grape bunches be destroyed or removed totally on a holding in order to benefit from Union support. Under the current circumstances, wine growers encounter unprecedented difficulties to mobilise the workforce needed to carry out such a complete operation. It is therefore appropriate to derogate from this obligation and allow the destruction or removal of immature grape bunches on part of a holding, provided that this is carried out on entire parcels.

(15) For imperative grounds of urgency, in particular considering the ongoing market disturbance, its severe effects on the fruit and vegetable and wine sectors and its continuation and likely deterioration, it is necessary to take immediate action and urgently adopt measures to alleviate its negative effects. Delaying immediate action to address this market disturbance would threaten to aggravate the market disturbance in both sectors and would be detrimental to the production and market conditions in both sectors. In view of this, this Regulation should be adopted pursuant to the urgency procedure laid down in Article 228 of Regulation (EU) No 1308/2013.

(16) In view of the necessity to take immediate action, this Regulation should enter into force on the day of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS REGULATION:

CHAPTER I

FRUIT AND VEGETABLES

Article 1

Temporary derogation from Article 33(3) of Regulation (EU) No 1308/2013

By way of derogation from the fourth subparagraph of Article 33(3) of Regulation (EU) No 1308/2013, the limit of one third of expenditure for crisis prevention and management measures under the operational programme referred to in that provision shall not apply in the year 2020.

CHAPTER II

WINE

SECTION 1

Crisis support measures

Article 2

Derogations from Article 43 of Regulation (EU) No 1308/2013

By way of derogation from Article 43 of Regulation (EU) No 1308/2013, the measures set out in Articles 3 and 4 of this Regulation may be financed under support programmes in the wine sector during the financial year 2020.

Article 3

Distillation of wine in case of crisis

1. Support may be granted for the distillation of wine in accordance with the conditions laid down in this Article. Such support shall be proportionate.

2. The alcohol resulting from the supported distillation referred to in paragraph 1 shall be used exclusively for industrial purposes, including disinfection or pharmaceutical, or for energy purposes so as to avoid distortion of competition.

3. The beneficiaries of the support referred to in paragraph 1 shall be wine enterprises producing or marketing the products referred to in Part II of Annex VII to Regulation (EU) No 1308/2013, wine producer organisations, associations of two or more producers, interbranch organisations or distillers of grapevine products.

4. Only the costs of the supply of wine to distillers and of the distillation of this wine shall be eligible for support.

5. Member States may establish priority criteria by indicating them in the support programme. Such priority criteria shall be based on the specific strategy and objectives set out in the support programme and shall be objective and not discriminatory.

6. Member States shall lay down rules on the application procedure for the support referred to in paragraph 1, which shall include rules on:

   (a) the natural or legal persons that may submit applications;

   (b) the submission and selection of applications, which shall include at least the deadlines for the submission of applications, for the examination of the suitability of each proposed action and for the notification of the results of the selection procedure to the operators;

   (c) the verification of compliance with the provisions on eligible actions and the costs referred to in paragraph 4 and priority criteria where priority criteria are applied;

   (d) the selection of the applications, which shall at least include the weighting attributed to each priority criterion where priority criteria are applied;

   (e) arrangements for the payment of advances and the provision of securities.

7. Member States shall fix the amount of support to beneficiaries on the basis of objective and non-discriminatory criteria.

8. By way of derogation from Article 44(3) of Regulation (EU) No 1308/2013, Member States may grant national payments in accordance with the Union rules on state aid for the measure referred to in this Article.

9. Articles 1 and 2, Article 43 and Articles 48 to 54 and Article 56 of Commission Delegated Regulation (EU) 2016/1149[2] and Article 1, 2 and 3, Articles 19 to 23,

[2] Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support

Articles 25 to 31, the second subparagraph of Article 32(1) and Articles 33 to 40 of Commission Implementing Regulation (EU) 2016/1150[3] shall apply *mutatis mutandis* to the support for distillation of wine in case of crisis.

Article 4

Aid for crisis storage of wine

1. Aid for crisis storage may be granted in respect of wine in accordance with the conditions laid down in this Article.

2. To avoid that support is given twice for the same quantity of wine withdrawn from the market, beneficiaries who receive aid for crisis storage for a quantity of wine may not receive aid for this same quantity of wine for distillation in case of crisis under Article 3 of this Regulation nor national payments for distillation of wine in cases of crisis under Article 216 of Regulation (EU) No 1308/2013.

3. The beneficiaries of the aid referred to in paragraph 1 shall be wine enterprises producing or marketing the products referred to in Part II of Annex VII to Regulation (EU) No 1308/2013, wine producer organisations, associations of two or more producers or interbranch organisations.

4. Member States shall lay down rules on the application procedure for the aid referred to in paragraph 1, which shall include rules on:

   (a) the natural or legal persons that may submit applications;

   (b) the submission and selection of applications, which shall include at least the deadlines for the submission of applications, for the examination of the suitability of each proposed action and for the notification of the results of the selection procedure to the operators;

   (c) the verification of compliance with the conditions for support set out in this article and the provisions on priority criteria where priority criteria are applied;

   (d) the selection of the applications, which shall at least include the weighting attributed to each priority criterion where priority criteria are applied;

   (e) arrangements for the payment of advances and the provision of securities.

5. Member States may establish priority criteria so that preference can be given to certain beneficiaries by indicating them in the support programme. Such priority criteria shall be based on the specific strategy and objectives set out in the support programme and shall be objective and not discriminatory.

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programmes in the wine sector and amending Commission Regulation (EC) No 555/2008 (OJ L 190, 15.7.2016, p. 1).

[3] Commission Implementing Regulation (EU) 2016/1150 of 15 April 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector (OJ L 190 15.7.2016, p. 23).

6. Member States shall examine applications against the detailed description of the proposed actions by the applicant and the proposed deadlines for their implementation.

7. By way of derogation from Article 44(3) of Regulation (EU) No 1308/2013, Member States may grant national payments in accordance with the Union rules on state aid for the measure referred to in this Article.

8. Articles 1 and 2, Article 43 and Articles 48 to 54 and Article 56 of Commission Delegated Regulation (EU) 2016/1149 and Article 1, 2 and 3, Articles 19 to 23, Articles 25 to 31, the second subparagraph of Article 32(1) and Articles 33 to 40 of Commission Implementing Regulation (EU) 2016/1150 shall apply *mutatis mutandis* to the aid for crisis storage of wine.

SECTION 2

Derogations from specific support measures

Article 5

Derogation from Articles 44(2) and 48(2) of Regulation (EU) No 1308/2013

1. By way of derogation from Article 44(2) of Regulation (EU) No 1308/2013, in the financial year 2020, support for the setting up of mutual funds as referred to in Article 48 of that Regulation may be granted for expenditure incurred before the submission of the relevant draft support programmes in relation to operations which in 2019 have completed their third year of implementation.

2. By way of derogation from Article 48(2) of Regulation (EU) No 1308/2013, support for the setting up of mutual funds in relation to operations which in 2019 have completed their third year of implementation may be provided in the form of a non-degressive aid to cover the administrative costs of the funds and shall be equal to the financing granted in the third year of implementation.

Article 6

Derogation from Article 46(6) of Regulation (EU) No 1308/2013

By way of derogation from Article 46(6) of Regulation (EU) No 1308/2013, the Union contribution to the actual costs of the restructuring and conversion of vineyards shall not exceed 60%. In less developed regions, the Union contribution to the costs of restructuring and conversion shall not exceed 80%.

Article 7

Derogation from Article 47(1) and (3) of Regulation (EU) No 1308/2013

1. By way of derogation from Article 47(1) of Regulation (EU) No 1308/2013, during the year 2020, "green harvesting" means the total destruction or removal of grape bunches while still in their immature stage, on the whole holding or on part of the holding provided that the green harvesting is carried out on entire parcels.

2. By way of derogation from the second sentence of Article 47(3) of Regulation (EU) No 1308/2013, the support granted for green harvesting shall not exceed 60% of the sum of the direct costs of the destruction or removal of grape bunches and the loss of revenue related to such destruction or removal.

Article 8

Derogation from Article 49(2) of Regulation (EU) No 1308/2013

By way of derogation from point (b) of Article 49(2) of Regulation (EU) No 1308/2013, the Union financial contribution to the support for harvest insurance shall not exceed 60% of the cost of the insurance premiums paid for by producers for insurance:

(a) against losses referred to in point (a) of Article 49(2) of Regulation (EU) No 1308/2013 and against other losses caused by adverse climatic events;

(b) against losses caused by animals, plant diseases or pest infestations;

(c) against losses caused by human pandemics.

Article 9

Derogation from Article 50(4) of Regulation (EU) No 1308/2013

By way of derogation from Article 50(4) of Regulation (EU) No 1308/2013, the following maximum aid rates concerning the eligible investment costs shall apply to the Union contribution:

(a) 60% in less developed regions;

(b) 50% in regions other than less developed regions;

(c) 80% in the outermost regions referred to in Article 349 of the Treaty;

(d) 75% in the smaller Aegean islands as defined in Article 1(2) of Regulation (EU) No 229/2013 of the European Parliament and of the Council[4].

Article 10

Application of the temporarily increased Union contribution

Article 6, 7(2), 8 and 9 shall apply to operations selected by the competent authorities in the Member States as of the date of entry into force of this Regulation and not later than 15 October 2020.

CHAPTER III

FINAL PROVISIONS

[4] Regulation (EU) No 229/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in favour of the smaller Aegean islands and repealing Council Regulation (EC) No 1405/2006 (OJ L 78, 20.3.2013, p. 41).

Article 11

Entry into force

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

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

Done at Brussels, 30.4.2020

For the Commission
The President
Ursula VON DER LEYEN