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 programmes in the wine sector and amending Commission Regulation (EC) No 555/2008

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 programmes in the wine sector and amending Commission Regulation (EC) No 555/2008

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 Article 53 thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(2)], and in particular Article 63(4) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 has repealed and replaced Council Regulation (EC) No 1234/2007[(3)]. Section 4 of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013 contains rules on national support programmes in the wine sector and empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the support programmes in the wine sector in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace the relevant implementing rules of Commission Regulation (EC) No 555/2008[(4)].

(2) Apart from adapting the relevant provisions of Regulation (EC) No 555/2008 to Section 4 of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013, this Regulation aims at simplifying and clarifying certain provisions of Regulation (EC) No 555/2008 with a view to reducing the error rate and to adapting them to the reality of the procedures and operations in place. At the same time, this Regulation intends to limit the administrative burden for operators and the national administrations to the maximum extent possible.

(3) Title V of Regulation (EU) No 1306/2013 establishes rules on control systems and penalties and empowers the Commission to adopt delegated acts laying down rules on

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the conditions to withdraw totally or partially the support granted or not to pay a part or all of the support when the beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support. In order to clarify the payment to be made in cases of partial implementation of an approved operation, it is necessary to lay down specific rules in this Regulation.

(4) In the interest of legal certainty, certain terms used in this Regulation and in Commission Implementing Regulation (EU) 2016/1150[(5)] should be defined. In particular, it is appropriate to establish who is eligible for support under each single measure. In order to build synergies, associations of producers that are not formally recognised can be eligible beneficiaries even if they only associate in a temporary form in conformity to the provisions of the applicable national legislation.

(5) In order to guarantee that the support measures are implemented efficiently and effectively, eligibility criteria should be established for each measure as well as priority criteria to give preference to specific beneficiaries or operations aiming at attaining the main objectives of each measure.

(6) Article 45 of Regulation (EU) No 1308/2013 provides for support for promotion. In the interest of legal certainty, the information and promotion operations and the respective eligible actions should be defined. In any case they should not contradict the position of the public health authorities of the Member States and they should be in accordance with the national legislation of the third country where they are implemented.

(7) With a view to ensuring the maximum effectiveness of the information and promotion operations, they should be open to operators and their associations in all their forms. Bodies governed by public law should not be the only beneficiaries in a given Member State. In order to avoid the promotion of individual brands in the Union, single operators should not benefit from support for information measures in Member States.

(8) In order to ensure that the largest number of operators can benefit from support and that information and promotion operations are as diversified as possible, this support should be limited to a maximum period of three years for the same beneficiary in the same third-country or third country market. Where the need for an extension is demonstrated in terms of consolidation of the information operation and of the penetration in that market, Member States should be allowed to authorise an extension for a total maximum period of two years.

(9) With a view to encouraging synergies, as regards support for information in Member States, preference should be given to operations encompassing several Member States or regions or several protected designations of origin or protected geographical indications.

(10) As regards support for promotion in third countries, priority should be given to new promotion operations, in order to support operators who have not benefitted from the scheme before, or operators who want to open new markets in third countries. In order to support the penetration in third countries where imports of Union wine are not yet consolidated, Member States should be allowed to give priority to operators targeting emerging third-country markets.

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(11) The costs that cannot be considered eligible for support for restructuring and conversion of vineyards should be specified, including the costs for grubbing-up and for compensating income loss in the framework of support for replanting for plant-health reasons, which only aims at supporting the costs for replanting after mandatory phytosanitary measures under certain conditions.

(12) As regards support for green harvesting, Member States should be allowed to apply restrictions regarding varieties, specific environmental and phytosanitary risks and the method to be used to carry out that measure in order to be able to adapt the implementation of that measure to the specific needs resulting from their market situation and to the conditions of the areas planted with vines, while taking into consideration the impact of the different green harvesting methods. However, certain conditions for the proper functioning of the measure should be established. In addition, a maximum period of duration of support should be fixed in order to ensure that the measure does not become a permanent alternative outlet for products compared to placing them on the market.

(13) It is necessary to lay down rules concerning support for mutual funds. The rules should aim at preventing abuses and provide for limits in time and in financial terms. Furthermore, in order to encourage the use of the support measure, it is appropriate to provide for the same level of contribution for all Member States.

(14) Certain conditions for support for the harvest insurance should be established. In particular, it is appropriate to derogate from the rule providing for payments to be made in full to beneficiaries and to allow under certain conditions that support is paid to intermediaries in order to avoid undue administrative burden, provided that this does not distort the competition in the insurance market.

(15) The eligible actions and eligible costs for support for investments and innovation should be established. In particular, it is appropriate to allow the participation of research and development centres in the innovation operation and to give priority to the operations where research and development centres participate. Moreover, interbranch organisations should be allowed to be co-beneficiaries of innovation operations. In addition, as regards support for investments and for innovation in the wine sector it is important to specify, for clarity reasons, that simple replacement investments cannot be considered as eligible costs, so as to make sure that the aim of the measure, inter alia, the improvement in terms of adjustment to market demand and increased competitiveness, is met by such support.

(16) The disposal of wine by-products is subject to the rules set out in Articles 21, 22 and 23(1) and (2) of Regulation (EC) No 555/2008. Where the disposal is carried out with by-product distillation, certified distillers can benefit from support under Article 52 of Regulation (EU) No 1308/2013. In this respect, it is appropriate to clarify the meaning of ‘raw alcohol’ and to exclude the use of alcohol obtained for the purposes of the food and drink industry to avoid distortion of competition.

(17) Rules should be laid down for all relevant measures to ensure that clear demarcation criteria are introduced in the support programmes to exclude that actions or operations

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financed under the common organisation of the market are also financed under other Funds. Those rules should allow Member States to establish at the level of the support programme any type of demarcation they consider as the most appropriate, provided that it enables to clearly define *a priori* which Fund should finance any given action or operation applied for by a specific operator.

(18) As regards support for restructuring and green harvesting, Member States should have a margin of discretion in deciding on the details of the scope and levels of the support, including in particular simplified cost reimbursement methods, contributions in kind and maximum levels of support, within the constraints laid down in Section 4 of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013 and the provisions adopted in pursuance thereof. Common rules should be laid down in that respect.

(19) In respect of the support for promotion and innovation, it is appropriate to lay down rules on the eligibility and the calculation of personnel and administrative costs, so as to ensure that they are applied in a uniform manner at Union level.

(20) In order to consider the totality of the costs incurred and definitely borne by the beneficiary when implementing an eligible operation, and in line with the rule concerning the award of grants applicable to other Union Funds such as provided for in Article 69(3)(c) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council[6], non-recoverable value added tax should be eligible for support, provided that certain conditions are met. Those conditions should be specified.

(21) In order to ensure the spending of the funds reserved for the support programmes, it is appropriate to provide for advance payments. In particular, it is necessary to lay down in which cases advance payments may be made and to make advance payments conditional on the lodging of a security.

(22) It is appropriate to specify that no support should be paid to producers with unlawful plantings or with areas planted with vines without authorisation.

(23) In order to protect the financial interests of the Union, it should be specified that support may be paid to beneficiaries only after the conclusion of all due final checks, except for advance payments, which are subject to the lodging of a security.

(24) Under certain conditions, changes to the operations submitted by beneficiaries and approved by the competent authority should be allowed. Full flexibility should be granted as regards minor changes, as provided for by the Member State. In any case, financial transfers between the actions covered by an approved operation should be allowed within certain limits without prior approval by the competent authority.

(25) Payment of the support after full implementation of the approved operations should be the general rule. However, it is appropriate to derogate from that general rule for restructuring and green harvesting, which are area-based measures. For those measures, rules should be established on the calculation of the amount to be paid or the amount to recover of the amount already paid in relation to the part that has not been implemented.

(26) As regards restructuring and green harvesting, it should be clarified in which cases the measurement of the surface should comply with specific requirements. In all other

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cases, Member States should be required to lay down appropriate control methods to establish the actual extent of implementation of the operation.

(27) Provisions should be made for resolving cases of *force majeure* and other exceptional circumstances to ensure fair treatment of producers.

(28) In the interest of clarity and legal certainty, the provisions of Regulation (EC) No 555/2008 that are replaced by this Regulation and Implementing Regulation (EU) 2016/1150 should be deleted. Regulation (EC) No 555/2008 should therefore be amended accordingly.

(29) Provision should be made for a smooth transition from the relevant rules of Regulation (EC) No 555/2008 to the new rules set out in this Regulation and Implementing Regulation (EU) 2016/1150,

HAS ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

Scope and use of terms

1 This Regulation lays down provisions supplementing Section 4 of Chapter II of Title I of Part II of Regulation (EU) No 1308/2013 on the support programmes in the wine sector.

2 This Regulation shall not affect the application of:

a specific provisions governing relations between Member States in combating fraud in the wine sector in so far as they are such as to facilitate the application of this Regulation;

b rules relating to:

(i) criminal proceedings or mutual assistance among Member States at judicial level in criminal matters;

(ii) the administrative penalties procedure

3 For the purposes of this Regulation, ‘operation’ means the action or the group of actions that are included in a project or contract submitted by an applicant and selected by the national authorities under a given support programme, corresponding to any of the activities under the measures referred to in Article 43 of Regulation (EU) No 1308/2013.

Article 2

Responsibility for expenditure

Member States shall bear the responsibility for any expenditure effected under their support programme or any changes to that programme submitted to the Commission in accordance with Articles 1 and 2 of Implementing Regulation (EU) 2016/1150 in case they do not become applicable in accordance with Article 41(4) or (5) of Regulation (EU) No 1308/2013.