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

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)[(1)], 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[(2)] 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

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 702/2009. (See end of Document for details)*

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[(3)] 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[(4)]. 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.

(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[(5)].

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.

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

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 702/2009. (See end of Document for details)*

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[(6)], 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[(7)] on de minimis support for primary production in the agriculture sector or Commission Regulation (EC) No 1998/2006[(8)] 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[(9)] 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.

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