Council Regulation (EC) No 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)

COUNCIL REGULATION (EC) No 491/2009

of 25 May 2009

amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission,

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

Whereas:

(1) In view of simplifying the regulatory environment of the common agricultural policy (CAP), Regulation (EC) No 1234/2007 (Single CMO Regulation)[(2)] repealed, and replaced by one single legal act, all the regulations which the Council had adopted since the introduction of the CAP in the framework of the establishment of common organisations of the markets for agricultural products or groups of products.

(2) As highlighted in the Single CMO Regulation, that act of simplification was not meant to call into question policy decisions that had been taken over the years in the CAP. It therefore did not envisage to provide for any new instruments or measures. The Single CMO Regulation thus reflects the policy decisions taken up to the moment when its text was proposed by the Commission.

(3) In parallel to the negotiations and adoption of the Single CMO Regulation, the Council also started to negotiate a policy reform in the wine sector which has now been finalised by the adoption of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine[(3)]. As specified in the Single CMO Regulation, only those provisions of the wine sector which were not subject to any policy reforms were initially incorporated into the Single CMO Regulation. These substantive provisions which were subject to policy amendments were to be incorporated into the Single CMO Regulation once they had been enacted. Since such substantive provisions have now been enacted, the wine sector should now be fully incorporated into the Single CMO Regulation by way of introducing the policy decisions taken in Regulation (EC) No 479/2008 into the Single CMO Regulation.

(4) The incorporation of these provisions into the Single CMO Regulation should follow the same approach as that taken for the adoption of the Single CMO Regulation, namely by not calling into question the policy decisions taken when those provisions were adopted

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by the Council or the motivation for those policy decisions as expressed in the relevant recitals of the respective Regulations.

(5) The Single CMO Regulation should therefore be amended accordingly.

(6) The Single CMO Regulation incorporated the provisions concerning the applicability of competition rules under the Treaty in respect of the sectors it covered. Such provisions had, until then, been incorporated in Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products[(4)]. The Single CMO Regulation therefore adapted the scope of Regulation (EC) No 1184/2006. Due to the full incorporation of the wine sector into the Single CMO Regulation, and the extension of the competition rules contained therein to that sector, provision should be made to exclude the wine sector from the scope of Regulation (EC) No 1184/2006.

(7) It is appropriate to clarify that any element of State aid that may be included in the national support programmes referred to in this Regulation is to be assessed in the light of the Community's substantive rules on State aid. Since the procedure laid down by this Regulation for the approval of those support programmes enables the Commission to ensure that the Community's substantive rules on State aid, and in particular those contained in the 'Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013'[(5)] are respected, no further notification pursuant to Article 88 of the Treaty or Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty[(6)] should be required.

(8) In the interests of legal certainty, it is appropriate to recall that the repeal of Regulation (EC) No 479/2008 does not affect the validity of any legal acts adopted on the basis of that repealed act.

(9) In order to ensure that the changeover from the provisions of Regulation (EC) No 479/2008 to those provided for in this Regulation does not interfere with the ongoing 2008/2009 marketing year for wine, this Regulation should apply as of 1 August 2009,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1234/2007 is hereby amended as follows:

1. in Article 1, paragraph 2 shall be deleted;

2. the following point shall be inserted in the first paragraph of Article 3:

   (ca) 1 August to 31 July of the following year for the wine sector;;

3. Article 55 shall be amended as follows:

   (a) the heading shall be replaced by the following:
   Article 55

   Quota systems and production potential;

   (b) the following paragraph shall be inserted:

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2a. In relation to the wine sector, rules concerning production potential as regards unlawful plantings, transitional planting rights as well as a grubbing-up scheme shall apply in accordance with the provisions set out in Section IVa.;

4. the Title of Section IV of Chapter III of Title I of Part II shall be replaced by the following:
*Section IV**Procedural rules concerning sugar, milk and potato starch quotas;***

5. in Article 85, the introductory words shall be replaced by the following:

The Commission shall adopt detailed rules for the application of Sections I to IIIa which may relate, in particular, to:;

6. the following Section shall be added to Chapter III of Title I of Part II:

Section IVa

Production potential in the wine sector

Subsection I

Unlawful plantings

Article 85a

Unlawful plantings planted after 31 August 1998

1 Producers shall grub up at their own cost areas planted with vines without a corresponding planting right, where applicable, after 31 August 1998.

2 Pending grubbing-up in accordance with paragraph 1, grapes and products made from grapes from areas referred to in that paragraph may be put into circulation only for the purposes of distillation at the exclusive expense of the producer. The products resulting from distillation may not be used in the preparation of alcohol having an actual alcoholic strength by 80 % volume or less.

3 Without prejudice, where applicable, to earlier penalties imposed by Member States, Member States shall impose penalties on producers who have not complied with this grubbing-up obligation graduated according to the severity, extent and duration of the non-compliance.

4 The end of the transitional ban on new plantings on 31 December 2015, as provided for in Article 85g(1), shall not affect the obligations provided for in this Article.

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Article 85b

Obligatory regularisation of unlawful plantings planted before 1 September 1998

1 Producers shall, against the payment of a fee and not later than 31 December 2009, regularise areas planted with vines without a corresponding planting right, where applicable, before 1 September 1998.

Without prejudice to any proceedings under clearance of accounts, the first subparagraph shall not apply to areas regularised on the basis of Article 2(3) of Regulation (EC) No 1493/1999.

2 The fee referred to in paragraph 1 shall be determined by Member States. It shall be equivalent to at least twice the average value of the corresponding planting right in the region concerned.

3 Pending regularisation under paragraph 1, grapes or products made from grapes from areas referred to in that paragraph may be put into circulation only for the purpose of distillation at the exclusive expense of the producer. The products may not be used in the preparation of alcohol having an actual alcoholic strength of 80 % volume or less.

4 Unlawful areas referred to in paragraph 1 which are not regularised in accordance with that paragraph by 31 December 2009 shall be grubbed up by the producers concerned at their own expense.

Member States shall impose penalties, graduated according to the severity, extent and duration of the non-compliance, on producers who do not comply with this grubbing-up obligation.

Pending the grubbing-up referred to in the first subparagraph, paragraph 3 shall apply *mutatis mutandis*.

5 The end of the transitional ban on new plantings on 31 December 2015, as provided for in Article 85g(1), shall not affect the obligations provided for in paragraphs 3 and 4.

Article 85c

Verification of non-circulation or distillation

1 In relation to Article 85a(2) and Article 85b(3) and (4), Member States shall require proof of non-circulation of the products concerned or, where the products concerned are distilled, the submission of distillation contracts.

2 Member States shall verify non-circulation and distillation referred to in paragraph 1. They shall impose penalties in case of non-compliance.

3 Member States shall notify the Commission of the areas subject to distillation and the corresponding volumes of alcohol.

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Article 85d

Accompanying measures

Areas referred to in the first subparagraph of Article 85b(1), as long as they are not regularised and areas referred to in Article 85a(1) shall not benefit from any national or Community support measures.

Article 85e

Implementing measures

Detailed rules for the implementation of this Subsection shall be adopted by the Commission.

Those rules may include:

(a) details on the communication requirements of Member States, including possible reductions of the budget allocations referred to in Annex Xb in case of non-compliance;

(b) details on the penalties to be imposed by Member States in case of non-compliance with the obligations laid down in Articles 85a, 85b and 85c.

Subsection II

Transitional planting right regime

Article 85f

Duration

This Subsection shall apply until 31 December 2015.

Article 85g

Transitional prohibition on planting vines

1 Without prejudice to Article 120a(1) to (6) and in particular paragraph 4 thereof, the planting of vines of wine grape varieties classifiable according to Article 120a(2) shall be prohibited.

2 Grafting-on of wine grape varieties classifiable according to Article 120a(2) to varieties other than wine grape varieties referred to in that Article shall also be prohibited.

3 Notwithstanding paragraphs 1 and 2, plantings and grafting-on as referred to in those paragraphs shall be allowed if covered by:

a a new planting right, as provided for in Article 85h;

b a replanting right, as provided for in Article 85i;