Commission Regulation (EC) No 555/2008 of 27 June 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

TITLE II

SUPPORT PROGRAMMES

CHAPTER II

Eligible measures

Section 1

Promotion on third-country markets

Article 4

Eligible operations and markets

Wines referred to in Article 10(2) of Regulation (EC) No 479/2008 shall be eligible for promotion on third-country markets provided that:

- (a) the products are intended for direct consumption, export opportunities or potential new market outlets in the targeted third countries exist for them, and they display high added value;
- (b) the origin of the product is indicated as part of an information or promotion operation in the case of wine with a geographical indication;
- (c) the operation supported is clearly defined, including the specification of which products may be taken into account, the marketing operation and the estimated cost;
- (d) the support for promotion and information lasts no longer than three years for a given beneficiary in a given third-country;
- (e) the information and/or promotion messages are based on the intrinsic qualities of the wine, and comply with the legislation applicable in the third countries at which they are targeted;
- (f) The beneficiaries must have enough capacity to face the specific constraints of trade with third countries and have resources to ensure that the measure is implemented as effectively as possible. Member States shall in particular check that enough products in terms of quality and quantity will be available to ensure answering the market demand in the long run after the promotion operation.

The beneficiaries may be private companies as well as professional organisations, producer organisations, inter-branch organisations or, where a Member State decides

so, to public bodies. In any event, Member States shall not make a public body the sole beneficiary of the promotion measure.

Preference shall be given to micro, small and medium-sized enterprises in the meaning of Commission Recommendation $2003/361/EC^{(1)}$, and to collective brand names.

In order to prevent misuse of the scheme, the elements referred to in paragraphs (a) and (c) shall not in general be permitted to change within the duration of the supported actions unless evidence shows that such changes allow for a better accomplishment.

Article 5

Selection procedure

1 Member States shall lay down the application procedure, which shall in particular provide detailed rules on:

- a verification of the compliance with the requirements and criteria set out in Article 4;
- b deadlines for presentation of applications and for examination of the suitability of each proposed action;
- c the products concerned and their marketing in conformity with the provisions of this Regulation, the national provisions and the relevant specification;
- d conclusion of contracts, including possible standard forms, provision of securities and arrangements for the payment of advances;
- e evaluating any given supported action.

2 The Member States shall select the application in particular against the following criteria:

- a consistency between the strategies proposed and the objectives set;
- b the quality of the proposed measures;
- c their likely impact and success in increasing demand for the products concerned;
- d assurances that any operator involved is effective and has access to the required technical capacity and that the cost of the measure which he plans to carry out himself is not in excess of the normal market rates.

3 Once having examined the applications Member States shall select those offering the best value for money and draw up a list within the limit of available funds and shall communicate them to the Commission using the form set out in Annex VIII in order to allow the other Member States to be informed and to increase coherence of the measure.

4 Two or more Member States may decide to select a joint promotion operation. They shall undertake to contribute to the financing and agree on administrative collaboration procedures to facilitate the monitoring, implementation and checking.

5 Member States shall ensure that any national or regional supported campaign are in agreement with measures financed under Regulation (EC) No 3/2008 or Regulation (EC) No 1698/2005 and measures funded under national and regional campaigns.

6 No support shall be granted under Article 10 of Regulation (EC) No 479/2008 for a given operation supported under Article 20(c)(iii) of Regulation (EC) No 1698/2005 or under Article 2(3) of Regulation (EC) No 3/2008.

7 Member States may provide for support to be advanced before any operation has been implemented, provided that the beneficiary has lodged a security.

8 Where Member States grant national aid for promotion, they shall communicate them in the relevant part of Annexes I, V, VII and VIII to this Regulation.

Section 2

Restructuring and conversion of vineyards

Article 6

Definition

For the purposes of the second subparagraph of Article 11(3) of Regulation (EC) No 479/2008, 'the normal renewal of vineyards which have come to the end of their natural life' shall mean the replanting of the same parcel of land with the same variety according to the same system of vine cultivation. Member States may establish further specifications, especially as regards to the age of the vineyards replaced.

Article 7

Procedure and applications

- 1 Member States shall lay down:
 - a time limits for the implementation of restructuring operations, which shall not exceed five years;
 - b bodies or individuals that may submit draft applications;
 - c objective criteria for their prioritisation notably in accordance with Article 104(9) of Regulation (EC) No 479/2008;
 - d the content of the request, which shall include detailed descriptions of the proposed measures and proposed deadlines for their execution;
 - e the procedure for the presentation and approval of request, which shall in particular provide for deadlines for the submission of requests and objective criteria for their prioritisation;
 - f a requirement that all requests shall state, for each financial year, the measures to be implemented in that financial year, and the area concerned by each measure and procedures for monitoring such implementation.

2 Member States may lay down a minimum size of the area which may qualify for support for restructuring and conversion, and a minimum size of area resulting from restructuring and conversion and any derogation from this requirement which shall be duly justified and based on objective criteria.

Article 8

Levels of support

Subject to the provisions of Article 11 of Regulation (EC) No 479/2008 and of this Chapter, Member States shall lay down rules governing the detailed scope and the levels of support to be granted. The rules may provide in particular for the payment of flat-rate amounts, for maximum levels of support per hectare and for the adjustment of support on the basis of objective criteria. In case planting rights used do not result from the

restructuring operation and in order to avoid distortion of competition, the support shall be reduced accordingly to take into account the fact that the used planting rights have not caused any grubbing-up cost.

The support is paid for the area planted, defined in conformity with Article 75(1).

The rules shall be designed to ensure that the objective of the scheme is met.

Article 9

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, support shall nevertheless be paid for single operations implemented if the remaining operations could not be carried out due to *force majeure* or exceptional circumstances within the meaning of Article 40(4) of Regulation (EC) No 1782/2003⁽²⁾.

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 within the meaning of Article 40(4) of Regulation (EC) No 1782/2003, 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.

As an exception to paragraph 1, the Member States may provide for support for a given operation, or for all the operations covered by the support application, to be advanced to producers before that any operation has been implemented, provided that implementation has begun and the beneficiary has lodged a security. For the purposes of Regulation (EEC) No 2220/85⁽³⁾, the obligation shall be to implement the operations concerned by the end of the second wine year following payment of the advance.

That period may be adjusted by the Member State in cases where:

- a areas concerned are part of an area which has suffered a natural disaster recognised by the competent authorities of the Member State concerned;
- b planned operations cannot be implemented because the plant material suffers health problems which have been certified by a body recognised by the Member State concerned.

In order for support to be paid in advance, any previous operation carried out on the same area, for which the producer also received support in advance, must have been fully implemented.

If checks show that the measure covered by the aid application, and for which an advance has been paid, has not been fully implemented, the Member States may decide to apply a penalty.

Article 10

Transitional measures

Member States may authorise the transformation of the ongoing restructuring operations already planned in application to Article 11 of Regulation (EC) No 1493/1999 into a new application under Article 11(3) of Regulation (EC) No 479/2008 provided that:

- (a) any such transformation is funded within the funds made available in the support programme for the measure as referred to in Article 11(3) of Regulation (EC) No 479/2008;
- (b) the continuation of the measure fulfils, after adaptations if needed, the conditions set down in this Article.

Section 3

Green harvesting

Article 11

Definition of green harvesting

For the purposes of Article 12 of Regulation (EC) No 479/2008 and of this Section, leaving commercial grapes on the plants at the end of the normal production cycle (non-harvesting) shall not be considered green harvesting.

In addition, the area of any parcel supported with green harvesting shall not be counted when calculating the yield limits set in the technical specifications of wines with a geographical indication.

Article 12

Conditions for the implementation of green harvesting

- 1 In relation to the green harvesting measure, Member States shall:
 - a adopt detailed provisions on the implementation of the measure, including:
 - (i) prior notification of green harvesting;
 - (ii) the amount of compensation to be paid;
 - (iii) rules to ensure that the areas concerned will be kept in good vegetative conditions and that no negative impact on the environment nor any negative phytosanitary consequences result from the application of the measure and ensure that it is possible to check that the measure is carried out correctly; in relation to these objectives Member States may apply restrictions to the measure based on objective and non discriminatory criteria, including timing of different varieties, environmental or phytosanitary risks or the method.
 - b set the deadline for applications of green harvesting between 15 April and 31 May of each year;

- c establish by 31 May an expected market situation justifying the application of green harvesting to restore market balance and to prevent crisis;
- d ensure that the measure is carried out correctly by controlling whether a green harvesting operation is performed successfully; areas receiving green harvesting support shall be systematically verified on the spot after the execution; the plots checked shall be those which are the subject of an application for aid.

The control referred to in point (d) of the first subparagraph shall include:

- (i) verification of the existence of the vineyard concerned and whether the given area has been properly tended;
- (ii) that all bunches have been totally removed of destroyed;
- (iii) which method has been used; each farmer applying for green harvesting aid shall keep evidence of the costs of the operation.

In order to ensure that no more marketable grapes are left in the supported parcel, all controls shall take place between 15 June and 31 July of each year and, in any case, they will be complete by the normal time of Veraison (Baggiolini stage M, BBCH stage 83) in any given area.

2 Green harvesting shall not be applied on the same parcel for two consecutive years.

3 In case of complete or partial damage of the crops due to in particular natural disaster within the meaning of Article 2(8) of Commission Regulation (EC) No 1857/2006⁽⁴⁾ before the date of green harvesting, no support shall be granted.

4 In case of complete or partial damage occurring between the payment of the green harvesting support and the harvesting period, no harvest insurance financial compensation of the loss of income may be granted for the area already supported.

Article 13

Application procedure

1 Member States shall lay down the application procedure shall in particular provide for the applicable premium to the producer concerned and the information required to accompany the application. The application shall contain details on the area, the average yield, the method to be used as well as the grape variety and the type of wine produced from it.

2 Member States shall verify whether the applications are well founded. For this purpose, they may foresee that a written undertaking of the producer is lodged upon application. In case the application is withdrawn without duly justified reason they may provide for the producer concerned to bear the costs incurred concerning the treatment of its request.

Article 14

Compensation

1 Each year Member States shall calculate the direct costs of green harvesting according to the different methods manual, mechanical and chemical that they allow in relation to Article 12(1)(a)(iii). In case more than one method is used on the same given area, compensation shall be calculated on the basis of the cheapest method.

2 The Member States shall define the loss of revenue caused by green harvesting on the basis of objective and non-discriminatory criteria.

Subject to Article 12(4) of Regulation (EC) No 479/2008 Member States shall fix the level of support provided for in Article 12(3) of that Regulation on the basis of standard costs and standard assumptions of loss of revenue. Member States shall ensure that the calculations:

- a contain only elements that are verifiable;
- b are based on figures established by appropriate expertise;
- c indicate clearly the source of the figures;
- d are differentiated to take into account regional or local site conditions as appropriate;

The premium is paid for the area planted, defined in conformity with Article 75(1) of this Regulation.

Section 4

Mutual funds

Article 15

Level of the aid

The measure referred to in Article 13 of Regulation (EC) No 479/2008, may be introduced by the Member States in their support programme according to the following rules:

- (a) the support period should not exceed three years;
- (b) support for the administrative cost of setting up mutual funds shall be limited, in the first, second and third year of operation of the mutual fund respectively, to the following proportion of the contribution of the producers to the mutual fund in the first, second and third year of its operation:
 - (i) 10 %, 8 % and 4 % in the Member States which acceded to the Community on 1 May 2004 or thereafter;
 - (ii) 5 %, 4 % and 2 % in other Member States;
- (c) Member States may fix ceilings for the amounts of the administrative costs that may be received for the setting up of mutual funds;
- (d) Member States shall adopt detailed provisions for the implementation of that measure.

Section 5

Harvest insurance

Article 16

Conditions of eligibility

The measure referred to in Article 14 of Regulation (EC) No 479/2008, may be introduced by the Member States in their support programme according to the following rules:

- (a) in relation to harvest insurance measures, Member States shall adopt detailed provisions on the implementation of those measures, including those necessary to ensure that harvest insurance measures do not distort competition in the insurance market;
- (b) producers applying for the scheme shall make their insurance policy available to the national authorities in order to allow the Member States to comply with the condition referred to in Article 14(2) of Regulation (EC) No 479/2008;
- (c) member States shall fix ceilings on the amounts that may be received for the support in order to respect the conditions referred to in Article 14(3) of Regulation (EC) No 479/2008. Where appropriate, Member States may fix the level on the basis of standard costs and standard assumptions of income loss. Member States shall ensure that the calculations:
 - (i) contain only elements that are verifiable;
 - (ii) are based on figures established by appropriate expertise;
 - (iii) indicate clearly the source of the figures;
 - (iv) are differentiated to take into account regional or local site conditions as appropriate.

For the purposes of Article 14 of Regulation (EC) No 479/2008, an 'adverse climatic event which can be assimilated to a natural disaster' shall have the same meaning as in Article 2(8) of Commission Regulation (EC) No 1857/2006.

Where Member States grant national aid for harvest insurance, they shall communicate them in the relevant part of Annexes I, V and VII to this Regulation.

Section 6

Investments

Article 17

Eligible measures

The supported investments shall respect the Community standards applicable to the investment concerned.

Eligible expenditure shall be:

- (a) the construction, acquisition, including leasing, or improvement of immovable property;
- (b) the purchase or lease-purchase of new machinery and equipment, including computer software up to the market value of the asset; other costs connected with the leasing contract, such as lessor's margin, interest refinancing costs, overheads and insurance charges, shall not be eligible expenditure;
- (c) general costs linked to expenditure referred to in points (a), and (b), such as fees of architects and engineers and consultation fees, feasibility studies, the acquisition of patent rights and licences.

By way of derogation from point (b), and only for micro, small and mediumsized enterprises within the meaning of Commission Recommendation 2003/361/EC⁽⁵⁾, Member States may, in duly substantiated cases, establish the conditions under which the purchase of second-hand equipment may be regarded as eligible expenditure.

Simple replacement investments shall not be eligible expenditure so as to make sure that the aim of the measure, i.e. the improvement in terms of adjustment to market demand and increased competitiveness, is met by these investments in the processing chain measure.

Article 18

Eligible measures for the development of new products

Costs for the development of new products, processes and technologies as referred to in Article 15(1)(b) of Regulation (EC) No 479/2008, shall concern preparatory operations, such as design, product, process or technology development and tests and tangible and/or intangible investments related to them, before the use of the newly developed products, processes and technologies for commercial purposes.

Simple replacement investments shall not be eligible expenditure so as to make sure that the aim of the measure, i.e. the improvement in terms of adjustment to market demand and increased competitiveness, is met by these supports.

Article 19

Financial management

Except in case of *force majeure* or exceptional circumstances within the meaning of Article 40(4) of Regulation (EC) No 1782/2003, occurring during the period in which the investments have to be undertaken, the support shall be paid once it is ascertained that all the investments covered by the support application, have been implemented and controlled on-the-spot.

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.

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.

Article 20

Compatibility and consistency

No support shall be granted for marketing operations which received support under Article 10 of Regulation (EC) No 479/2008.

Where Member States grant national aid for investments, they shall communicate them in the relevant part of the forms set out in Annexes I, V and VII to this Regulation.

Section 7

Disposal of by-products

Article 21

Fixing a minimum percentage of alcohol

1 Subject to point 1 of Annex VI.D to Regulation (EC) No 479/2008, Member States shall establish the volume of alcohol that must be contained in the by-products in relation to that contained in the wine produced. Member States may modulate the minimum percentage of alcohol on the basis of objective and non-discriminatory criteria.

2 Should the relevant percentage fixed by Member States in application of the first paragraph not be reached, those subject to the obligation shall deliver a quantity of wine from their own production, thus ensuring attainment of that percentage.

3 For the purpose of determining the volume of alcohol contained in the by-products in relation to that contained in the wine produced, the standard wine natural alcoholic strengths by volume to be applied in the different wine-growing zones shall be:

- a 8,0% for zone A;
- b 8,5% for zone B;
- c 9,0 % for zone C I;
- d 9,5 % for zone C II;
- e 10,0 % for zone C III.

Article 22

Disposal of by-products

Producers shall be required to withdraw the by-products of wine-making, or any other processing of grapes, under supervision subject to the following conditions:

(a) the by-products shall be withdrawn without delay and no later than the end of the wine year in which they were obtained; Member States may fix an earlier deadline; withdrawal, together with an indication of the estimated quantities, shall be either

entered in the registers kept in accordance with Article 112(2) of Regulation (EC) No 479/2008, or certified by the competent authority;

(b) withdrawal shall respect applicable Community legislation, in particular as regards the environment.

The withdrawal of the wine lees in question shall be regarded as having taken place once the lees have been denatured to make their use in winemaking impossible and where the delivery of the denatured lees to third parties has been entered in the registers kept in accordance with Article 112(2) of Regulation (EC) No 479/2008. Member States shall take the measures necessary to ensure that such transactions are checked. They may have a system of prior recognition of the concerned third parties.

Member States may decide that producers who, during the wine year in question, do not produce more than 25 hectolitres of wine or must themselves on their own premises are not required to withdraw their by-products.

Article 23

Disposal with by-product distillation

1 Producers may fulfil the obligation of disposal for a part or for the entirety of the byproducts of wine-making or any other processing of grapes, by delivering the by-products to distillation.

2 Member States may require that the delivery to distillation of a part or of the entirety of the by-products of wine making or of any other processing of grapes is made compulsory for a part or for the entirety of their producers, on the basis of objective and non-discriminatory criteria. This obligation can be also fulfilled by the delivery of wine to the vinegar industry.

3 The relevant Member States may introduce a system of certification of distillers according to a procedure that they lay down.

Article 24

Purpose of the aid

1 The aid referred to in Article 16 of Regulation (EC) No 479/2008 shall be paid, subject to the condition referred to in paragraph 3 and within the limit of the second subparagraph of paragraph 1 of the same Article, to distillers that process the products delivered to distillation into raw alcohol with an alcoholic strength of at least 92 % vol.

2 The relevant aid shall include a lump-sum amount destined to compensate the costs of collection of these products which shall be transferred from the distiller to the producer, if the relevant costs are borne by the latter.

3 Member States may provide for support to be advanced provided that the beneficiary has lodged a security.

4 Member States shall adopt detailed rules for applying the measure provided for in this Article.

Article 25

Amount of the aid

1 The maximum amount of the aid referred to in Article 16 of Regulation (EC) No 479/2008 to be paid to distillers is established by % volume alcohol and by hectolitre in the following manner:

- a for raw alcohol obtained from marcs: EUR 1,1/%vol./hl;
- b for raw alcohol obtained from wine and lees: EUR 0,5/%vol./hl.

2 Member States shall fix, within the limits provided for in paragraph 1 on the basis of objective and non-discriminatory criteria, the amount of aid and the lump-sum compensation for the collection costs referred to in Article 24(2), and communicate them to the Commission in the relevant part of Annexes I, V and VII forms. These amounts may be adjusted according to different production typologies, on the basis of objective and non-discriminatory criteria.

Section 8

Potable alcohol distillation

Article 26

Purpose of the aid

1 The aid referred to in Article 17 of Regulation (EC) No 479/2008 shall be granted, subject to the conditions referred therein on the basis of objective and non-discriminatory criteria, to producers whose production has as a final use the production of wine distillates for the potable alcohol sector.

2 The aid may be paid to wine producers who are not themselves grape producers.

3 Member States may provide for support to be advanced provided that the beneficiary has lodged a security.

4 Member States shall adopt detailed rules for applying the measure provided for in this Article.

Article 27

Amount of the aid

Member States shall establish the amounts of per-hectare aid and communicate it to the Commission, in the relevant part of Annexes I, V and VII. These amounts may be adjusted, notably in accordance with production region and production conditions, on the basis of objective and non-discriminatory criteria.

Section 9

Crisis distillation

Article 28

Definition of the measure

1 Subject to the condition referred to in paragraph 1 of Article 18 of Regulation (EC) No 479/2008, and within the limit of the available budget, referred to in paragraphs 4 and 5 of the same Article, Member States which open a crisis distillation on a part or on the entirety of their territory, for one or more wine categories, on the basis of objective and non-discriminatory criteria, shall inform the Commission through a modification of their support programmes.

2 Member States may require that this distillation is made compulsory for a part or for the entirety of their producers, on the basis of objective and non-discriminatory criteria.

3 Member States shall adopt detailed rules for applying the measure provided for in this Article.

Article 29

Modalities of the aid

1 The aid referred to in Article 18 of Regulation (EC) No 479/2008 is paid, subject to the condition referred to in paragraph 3 of the same Article, to distillers, which process wine into raw alcohol with an alcoholic strength of at least 92 % vol.

2 The aid may include a minimum price, which shall be transferred by the distillers to the wine producers.

3 Member States may provide for support to be advanced provided that the beneficiary has lodged a security.

Article 30

Amount of the aid

1 Member States shall establish the amount of aid and, where relevant, the minimum price for the wine producers referred to in Article 29 hereto and communicate them to the Commission in the relevant part of the forms set-out in Annexes I, V and VII. These amounts can be adjusted, notably by production region and wine category, on the basis of objective and non-discriminatory criteria. In any event, the aid shall be fixed in such a way that the price paid to wine producers does not exceed the market price for the corresponding production region and wine category.

2 Where relevant, Member States shall correspondingly reduce the minimum price to producers for wines, whose alcoholic strength has been increased by adding sucrose or must having benefited from the aid referred to in Article 19 of Regulation (EC) No 479/2008.

Article 31

National aid

Where Member States grant national aid for crisis distillation, they shall record details of each application and its outcome. They shall communicate this in the corresponding line set out in Annexes II, III and IV.

Section 10

Use of concentrated grape must

Article 32

Purpose of the aid

1 Aid as referred to in Article 19 of Regulation (EC) No 479/2008 shall be granted to wine producers who use concentrated grape must and rectified concentrated grape must produced in the Community to increase the natural alcoholic strength by volume of the products referred to in Annex V, point A, to Regulation (EC) No 479/2008.

2 Member States may provide for support to be advanced provided that the beneficiary has lodged a security.

3 Member States shall adopt detailed rules for applying the measure provided for in this Article.

Article 33

Amount of the aid

1 The maximum amount of the aid referred to in Article 19(1) of Regulation (EC) No 479/2008 shall be fixed as follows, by potential alcoholic strength by volume (% vol.) per hectolitre, for the following categories of products:

- a concentrated grape must: EUR 1,699/%vol/hl,
- b rectified concentrated grape must: EUR 2,206/%vol./hl.

2 Member States shall establish, within the limits provided for in paragraph 1 on the basis of objective and non-discriminatory criteria, the amount of aid for each category of product and communicate it to the Commission in the relevant part of the forms set-out in Annexes I, V and VII. These amounts may be modulated by region or vine-growing area, on the basis of objective and non-discriminatory criteria.

3 The potential alcoholic strength of the products listed in paragraph 1 shall be determined by applying the figures in the table of equivalence in Annex I of Regulation (EC) No 1623/2000 to the readings at 20° C from a refractometer used in accordance with the method laid down in the Annex to Commission Regulation (EC) No 558/93⁽⁶⁾. A tolerance of 0,2 %vol. shall be allowed in checks by the competent authorities.

Article 34

Checks

The competent authorities of the Member States shall take all necessary steps to ensure the checks needed in order to verify in particular the identity and volume of the product used to increase the alcoholic strength and compliance with points A and B of Annex V to Regulation (EC) No 479/2008.

- (**1**) OJ L 124, 20.5.2003, p. 36.
- (**2**) OJ L 270, 21.10.2003, p. 1.
- (3) OJ L 205, 3.8.1985, p. 5. Regulation as last amended by Regulation (EC) No 1913/2006 (OJ L 365, 21.12.2006, p. 52).
- (4) OJ L 358, 16.12.2006, p. 3.
- (5) OJ L 124, 20.5.2003, p. 36.
- (6) OJ L 58, 11.3.1993, p. 50.