

Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (repealed)

TITLE V

PRODUCTION POTENTIAL

CHAPTER I

Unlawful plantings

Article 85

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 volume of 80 % or less.

3 Without prejudice, where applicable, to earlier penalties imposed by Member States, Member States shall, from 31 December 2008 onwards, 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 Member States shall communicate to the Commission by 1 March each year the areas planted with vines without a corresponding planting right after 31 August 1998 as well as the areas grubbed up in accordance with paragraph 1.

5 The end of the transitional ban on new plantings on 31 December 2015, as provided for in Article 90(1), shall not affect the obligations provided for in this Article.

Article 86

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 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 % vol. 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 Member States shall communicate to the Commission by 1 March of each of the relevant years:

- a the areas planted with vines without a corresponding planting right before 1 September 1998;
- b the areas regularised in accordance with paragraph 1, the fees as provided for in that paragraph as well as the average value of the regional planting rights as provided for in paragraph 2.

Member States shall, for the first time by 1 March 2010, communicate to the Commission the areas grubbed up in accordance with the first subparagraph of paragraph 4.

6 The end of the transitional ban on new plantings on 31 December 2015 as provided for in Article 90(1), shall not affect the obligations provided for in paragraphs 3, 4 and 5.

Article 87

Control of non-circulation or distillation

1 In relation to Article 85(2) and Article 86(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.

Article 88

Accompanying measures

Areas referred to in the first subparagraph of Article 86(1) as long as they are not regularised and areas referred to in Article 85(1) shall not benefit from any national or Community support measures.

Article 89

Implementing measures

The measures necessary for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 113(1).

Those measures may include:

- (a) details on the communication requirements of Member States including possible reductions of the budget allocations referred to in Annex II 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 85, 86 and 87.

CHAPTER II

Transitional planting right regime

Article 90

Transitional prohibition on planting vines

1 Without prejudice to Article 24 and in particular paragraph 3 thereof, the planting of vines of wine grape varieties classifiable according to Article 24(1) shall be prohibited until 31 December 2015.

2 Until 31 December 2015, grafting-on of wine grape varieties classifiable according to Article 24(1) 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 91;
- b a replanting right, as provided for in Article 92;
- c a planting right granted from a reserve as provided for in Articles 93 and 94.

4 The planting rights referred to in paragraph 3 shall be granted in hectares.

5 Articles 91 to 96 shall apply until 31 December 2015.

6 Member States may decide to maintain the prohibition referred to in paragraph 1 in their territory or parts of their territory until 31 December 2018 at the latest. In such case the

rules governing the transitional planting right regime as laid down in this Chapter including this Article shall apply accordingly in the given Member State.

Article 91

New planting rights

- 1 Member States may grant new planting rights to producers in respect of areas:
 - a intended for new plantings carried out under measures for land consolidation or measures concerning compulsory purchases in the public interest adopted under national legislation;
 - b intended for experimental purposes;
 - c intended for graft nurseries; or
 - d whose wine or vine products are intended solely for the consumption by the wine-grower's household.
- 2 New planting rights granted shall:
 - a be exercised by the producer to whom they are granted;
 - b be used before the end of the second wine year after the one in which they were granted;
 - c be used for the purposes for which they were granted.

Article 92

Replanting rights

1 Member States shall grant replanting rights to producers who have grubbed up an area planted with vines.

However, grubbed-up areas for which a grubbing-up premium is granted in accordance with Chapter III shall not generate replanting rights.

2 Member States may grant replanting rights to producers who undertake to grub up an area planted with vines. In such cases, the grubbing-up of the pledged area shall be carried out at the latest at the end of the third year after which new vines for which the replanting rights had been granted have been planted.

3 Replanting rights granted shall correspond to the equivalent of the grubbed-up area in terms of pure crop.

4 The replanting rights shall be exercised on the holding in respect of which they were granted. Member States may further stipulate that such replanting rights may be exercised only on the area where the grubbing-up was carried out.

5 By way of derogation from paragraph 4, Member States may decide that replanting rights may be transferred, in whole or in part, to another holding in the same Member State in the following cases:

- a part of the holding concerned is transferred to that other holding;
- b areas on that other holding are intended for:
 - (i) the production of wines with a protected designation of origin or a protected geographical indication; or
 - (ii) the cultivation of graft nurseries.

Member States shall ensure that the application of the derogation provided for in the first subparagraph does not lead to an overall increase in production potential on their territory, in particular when transfers are made from non-irrigated to irrigated areas.

6 Paragraphs 1 to 5 shall apply *mutatis mutandis* to rights similar to replanting rights acquired under prior Community or national legislation.

7 Replanting rights granted under Article 4(5) of Regulation (EC) No 1493/1999 shall be used within the periods provided for therein.

Article 93

National and regional reserve of planting rights

1 In order to improve management of the production potential Member States shall create a national reserve or regional reserves of planting rights.

2 Member States which have established national or regional reserves of planting rights under Regulation (EC) No 1493/1999 may maintain those reserves as long as they apply the transitional planting right regime in accordance with this Chapter.

3 The following planting rights shall be allocated to the national or regional reserves if they are not used within the prescribed period:

- a new planting rights;
- b replanting rights;
- c planting rights granted from the reserve.

4 Producers may transfer replanting rights to the national or regional reserves. The conditions of such transfer, where necessary in return for a payment from national funds, shall be determined by the Member States taking into account the legitimate interests of the parties.

5 By way of derogation from paragraph 1, Member States may decide not to implement a reserve system provided that they can prove that an effective alternative system for managing planting rights exists throughout their territory. The alternative system may, where necessary, derogate from the relevant provisions of this Chapter.

The first subparagraph shall also apply to Member States which cease the operation of national or regional reserves under Regulation (EC) No 1493/1999.

Article 94

Granting planting rights from the reserve

1 Member States may grant rights out of a reserve:

- a without payment, to producers who are under 40 years of age, who possess adequate occupational skill and competence, who are setting up for the first time and who are established as the head of the holding;
- b against payment into national or, if appropriate, regional funds, to producers who intend to use the rights to plant vineyards whose production has an assured outlet.

Member States shall define the criteria for setting the amounts of the payment referred to in (b), which may vary depending on the final intended product of the vineyards concerned and on the residual transitional period during which the prohibition on new plantings as provided for in Article 90(1) and (2) applies.

2 Where planting rights granted from a reserve are used, Member States shall ensure that:

- a the location, the varieties used and the cultivation techniques used guarantee that the subsequent production is adapted to market demand;
- b the yields concerned are typical of the average in the region, in particular where planting rights originating in non-irrigated areas are used in irrigated areas.

3 Planting rights granted from a reserve which are not used before the end of the second wine year after the one in which they were granted shall be forfeited and re-allocated to the reserve.

4 Planting rights in a reserve which are not disbursed before the end of the fifth wine year following their allocation to the reserve shall be extinguished.

5 If regional reserves exist in a Member State, the Member State may lay down rules permitting the transfer of planting rights between regional reserves. If both regional and national reserves exist in a Member State, the Member State may also allow for transfers between those reserves.

Transfers may be subject to a reduction coefficient.

Article 95

De minimis

This Chapter shall not apply in Member States where the Community planting right regime did not apply by 31 December 2007.

Article 96

Stricter national rules

Member States may adopt stricter national rules in respect of the award of new planting rights or replanting rights. They may require that the respective applications and the relevant information to be supplied therein be supplemented by additional information necessary for monitoring the development of production potential.

Article 97

Implementing measures

The measures necessary for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 113(1).

Those measures may in particular include:

- (a) provisions to avoid excessive administrative charges when applying the provisions of this Chapter;
- (b) the co-existence of vines pursuant to Article 92(2);
- (c) the application of the reduction coefficient referred to in Article 94(5).

CHAPTER III

Grubbing-up scheme

Article 98

Scope and definition

This Chapter lays down the conditions under which vine-growers shall receive a premium in exchange for grubbing up vines (hereinafter referred to as the grubbing-up premium).

Article 99

Duration of the scheme

The grubbing-up scheme shall apply until the end of the wine year 2010/2011.

Article 100

Conditions of eligibility

The grubbing-up premium may be granted only if the area concerned complies with the following conditions:

- (a) it did not receive Community or national support for restructuring and conversion-type measures within the 10 wine years preceding the grubbing-up request;
- (b) it did not receive Community support under any other common market organisation within the five wine years preceding the grubbing-up request;
- (c) it is tended;
- (d) it is not smaller than 0,1 hectare. However, that minimum size may be 0,3 hectare, if a Member State so decides, for certain administrative regions of that Member State in which the average of the area planted with vines of a wine holding exceeds one hectare;
- (e) it has not been planted in violation of any applicable Community or national provision;
- (f) it is planted with a wine grape variety classifiable according to Article 24(1).

Notwithstanding point (e), areas regularised in accordance with Article 2(3) of Regulation (EC) No 1493/1999 and Article 86(1) of this Regulation shall be eligible for the grubbing-up premium.

Article 101

Amount of the grubbing-up premium

1 Scales for the grubbing-up premiums to be granted shall be fixed in accordance with the procedure referred to in Article 113(1).

2 The specific amount of the grubbing-up premium shall be established by Member States within the scales referred to in paragraph 1 and on the basis of the historical yields of the holding concerned.

Article 102

Procedure and budget

1 Interested producers shall submit applications for the grubbing-up premium to the respective authorities in Member States not later than 15 September of each year. Member States may fix an earlier date than 15 September provided that it is later than 30 June and provided that they take into due account, where applicable, their application of the exemptions provided for in Article 104.

2 Member States shall carry out administrative controls concerning the applications received, process eligible applications and notify to the Commission by 15 October each year the total area and amounts covered by those applications split by regions and by yield ranges.

3 The maximum annual budget for the grubbing-up scheme is set out in Annex VII.

4 By 15 November each year, in accordance with the procedure referred to in Article 113(1), a single percentage for acceptance of the amounts notified shall be set if the total amount notified to the Commission by Member States exceeds the available budget resources, regard being had, where applicable, to the application of Articles 104(2) and (3).

5 By 1 February each year, Member States shall accept the applications:

- a for the areas applied for in their entirety if the Commission has not set a percentage as referred to in paragraph 4; or
- b for the areas resulting from the application of the percentage referred to in paragraph 4 based on objective and non-discriminatory criteria and in accordance with the following priorities:
 - (i) Member States shall give priority to applicants whose application for the grubbing-up premium covers their entire vineyard;
 - (ii) Member States shall give second priority to applicants who are not less than 55 years old, or older where Member States so provide.

By 1 March each year, Member States shall notify the Commission of the applications accepted split by regions and by yield ranges and the total amount of grubbing-up premiums paid by region.

6 For the preceding wine year, Member States shall notify the Commission, by 1 December each year, of:

- a the areas grubbed-up split by regions and by yield ranges;
- b the total amount of grubbing-up premiums paid by region.

Article 103

Cross-compliance

Where farmers are found not to have complied on their holding, at any time during three years from payment of the grubbing-up premium, with the statutory management requirements and the good agricultural and environmental condition referred to in

Articles 3 to 7 of Regulation (EC) No 1782/2003, the amount of the payment shall, where non-compliance is the result of an action or omission directly imputable to the farmer, be reduced or cancelled, partially or wholly depending on the severity, extent, permanence and repetition of the non-compliance, and the farmer shall, where applicable, be ordered to reimburse it in accordance with the conditions set out in those provisions.

Article 104

Exemptions

1 A Member State may decide to reject any further applications referred to in Article 102(1) once the accumulated grubbed-up area on its territory reaches 8 % of its area planted with vines as referred to in Annex VIII.

A Member State may decide to reject any further applications referred to in Article 102(1) for a region once the accumulated grubbed-up area in that region reaches 10 % of the region's area planted with vines.

2 It may be decided, in accordance with the procedure referred to in Article 113(1), to stop the application of the grubbing-up scheme in a Member State if, taking into account the pending applications, continued grubbing-up would lead to a cumulated area grubbed-up of more than 15 % of the Member State's total area planted with vines as referred to in Annex VIII.

3 It may be decided, in accordance with the procedure referred to in Article 113(1), to stop the application of the grubbing-up scheme in a Member State for a given year if, taking into account the pending applications, continued grubbing-up would lead to an area grubbed-up of more than 6 % of the Member State's total area planted with vines as referred to in Annex VIII in that particular year of the scheme's operation.

4 Member States may declare vines in mountain and steep-slope areas ineligible for the grubbing-up scheme in accordance with conditions to be determined in accordance with the procedure referred to in Article 113(1).

5 Member States may declare areas ineligible for the grubbing-up scheme where application of the scheme would be incompatible with environmental concerns. Areas thus declared ineligible shall not exceed 3 % of the total area planted with vines as referred to in Annex VIII.

6 Greece may declare areas planted with vines on the Aegean islands and the Greek Ionian islands, with the exception of Crete and Eubia, ineligible under the grubbing-up scheme.

7 The grubbing-up scheme set out in this Chapter shall not apply in the Azores, Madeira and Canary Islands.

8 Member States deciding to make use of the possibility provided for in paragraphs 4 to 6 shall communicate, by 1 August each year and for the first time on 1 August 2008, to the Commission, concerning the grubbing-up measure to be implemented:

- a the areas declared ineligible;
- b the justification for ineligibility in accordance with paragraphs 4 and 5.

9 Member States shall grant producers in the areas ineligible or declared ineligible under paragraphs 4 to 7 priority under other support measures laid down in this Regulation, in particular, where applicable, the restructuring and conversion measure under the support programmes and rural development measures.

*Article 105****De minimis***

This Chapter shall not apply in Member States where wine production does not exceed 50 000 hectolitres per wine year. This production shall be calculated on the basis of the average production during the previous five wine years.

*Article 106***Complementary national aid**

Member States may grant complementary national aid not exceeding 75 % of the applicable grubbing-up premium in addition to the grubbing-up premium granted.

*Article 107***Implementing measures**

The measures necessary for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 113(1).

Those measures may in particular include:

- (a) details on the conditions of eligibility referred to in Article 100, in particular as regards proof that areas were properly tended in 2006 and 2007;
- (b) the premium scales and levels referred to in Article 101;
- (c) the criteria for exemption as referred to in Article 104;
- (d) the reporting requirements of Member States concerning the implementation of the grubbing-up scheme, including penalties in case of delays in reporting and the information which Member States give to producers concerning the availability of the scheme;
- (e) the reporting requirements as regards complementary national aid;
- (f) deadlines for payments.