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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 15.12.2014 supplementing Regulation (EU) N° 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings

Delegations will find attached the document C(2014) 9810 final.

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Brussels, 15.12.2014
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COMMISSION DELEGATED REGULATION (EU) No .../..

of 15.12.2014

**supplementing Regulation (EU) N° 1308/2013 of the European Parliament and of the
Council as regards the scheme of authorisations for vine plantings**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (CMO Regulation) empowers the Commission to adopt delegated acts.

The purpose of this delegated act is to lay down rules concerning the new scheme of authorisations for vine plantings, allowing the scheme to become operational from 1 January 2016 as foreseen in Regulation (EU) No 1308/2013 of the European Parliament and of the Council.

This delegated act supplements the above mentioned Regulation by detailing the use of exemptions to the scheme, as well as the application of criteria to the granting of authorisations for new vine plantings including additional criteria. It also details the conditions for the granting of authorisations for anticipated replantings, and provides the grounds for restrictions that Member States may decide to apply regarding replantings in the same farm holding. Finally, it lays down rules in relation to the application of penalties regarding non-authorised plantings.

The adoption of this delegated act does not entail financial implications.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 28 Member States have been carried within the Experts Group for Wine. The first meeting held on 14 October 2013 was organised to launch discussions. The meeting allowed for a first presentation of the Commission's ideas on the scope of this act and a first exchange of views. A second meeting of the Experts Group was held on 27 January 2014. At the meeting the draft text was presented for the first time. The exercise consisted in clarifying the Commission's approach and hearing experts' views. The draft was then refined taking into account the observations and comments made orally in the meeting and/or sent in writing to the Commission after that meeting. A third meeting of the Experts Group was held on 17 February 2014, a fourth meeting took place on 10 March 2014, a fifth meeting on 18 June 2014, a sixth meeting on 15 July 2014 and a last meeting took place on 8 September 2014. The draft progressive versions of the present act were transmitted to the European Parliament and to the Council when convening the Experts Group meetings.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The act contains provisions supplementing certain parts of the CMO Regulation and of Regulation (EU) No 1306/2013 that are necessary to ensure an appropriate implementation of the new scheme.

First of all, Article 1 details the conditions under which the planting of a vine area may be done without the need to apply for an authorisation. Such exemptions cover the cases of vine areas established for experimental purposes or graft nurseries, those that are aimed for the consumption of the wine grower's household, and those resulting from expropriations due to compulsory purchases in the public interest under national law.

Secondly, Article 2 and Annexes I and II lay down the rules and requirements regarding one eligibility criterion, the eight priority criteria listed in the CMO Regulation, and regarding one additional eligibility and two additional priority criteria which are introduced via this act.

Article 2 also establishes the conditions under which priority criteria can be converted by Member States into eligibility criteria, and at what geographical level can eligibility and priority criteria be applied. Finally, it provides for a clause of non-circumvention allowing Member States to introduce additional conditions in relation to the use of eligibility or priority criteria beyond those already included in Annexes I and II for certain of those criteria, if necessary for the purpose of preventing the circumvention of the scheme.

Thirdly, Articles 3 and 4 specify certain requirements that Member States and producers must comply with in relation to the granting of authorisations for replanting. This concerns in particular the situation where an authorisation is granted before the grubbing up of an existing vine area, as well as certain restrictions that may be decided by Member States in relation to the replanting of vines in the same farm holding.

Finally, Article 5 establishes rules for the application of penalties to areas planted with vines which have been planted without an authorisation and do not benefit from an exemption. Those principles include in particular minimum amounts to be charged, as well as the justifications to apply higher amounts.

COMMISSION DELEGATED REGULATION (EU) No .../..

of 15.12.2014

supplementing Regulation (EU) N° 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings

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 1234/2007¹, and in particular Article 69 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 485/2008², and in particular Article 64(6) thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 contains in Chapter III of Title I of Part II rules on a scheme of authorisations for vine plantings which repeal and replace the transitional planting rights regime set out in Subsection II of Section IVa of Chapter III of Title I of Part II of Council Regulation (EC) No 1234/2007 as from 1 January 2016. This Chapter lays down rules concerning duration, management and control of the scheme of authorisations for vine plantings and empowers the Commission to adopt delegated acts concerning the management of the scheme. The transitional planting rights regime set out in Subsection II of Section IVa of Chapter III of Title I of Part II of Regulation (EC) No 1234/2007 remains applicable until 31 December 2015 in accordance with Article 230(1)(b)(ii) of Regulation (EU) No 1308/2013.
- (2) Article 62 of Regulation (EU) No 1308/2013 lays down the general requirement for the Member States to grant an authorisation for vine planting upon submission of an application by producers intending to plant or replant vines. However, paragraph 4 of that Article, provides that certain areas are exempted from the scheme of authorisations for vine plantings and therefore from this general requirement. It is necessary to lay down rules concerning the conditions of application of that exemption. The areas intended for experimental purposes or for graft nurseries should only be used for the specified purposes in order to avoid the circumvention of the new scheme, and grapevine products made from such areas should not be marketed unless

¹ OJ L 347, 20/12/2013, p. 671.

² OJ L 347, 20/12/2013, p. 547.

Member States consider there are no risks of market disturbance. Existing wine-growing experiments and graft nurseries should be allowed to continue, subject to the existing rules in order to ensure a smooth transition between the plantings rights regime and the new scheme of authorisations for vine plantings. The areas whose wine or vine products are intended solely for the consumption by the wine grower's household should benefit from such exemption since, under certain conditions, they do not contribute to market disturbances. For the same reason, such exemption should also be extended to organisations without a commercial activity complying with the same conditions. The areas established by a producer having lost a certain area planted with vines due to compulsory purchases in the public interest under national law should also benefit from the exemption given that the loss of the land planted with vines in such cases is independent from the will of the producer. A condition as regards the maximum surface of the new area should however be laid down, so as to avoid undermining the general objectives of the scheme of authorisations for vine plantings.

- (3) Article 64(1) and (2) of Regulation (EU) No 1308/2013 lays down rules concerning the granting of authorisations for new plantings and sets out eligibility and priority criteria that Member States may apply. Specific conditions associated to some of the eligibility and priority criteria should be established in order to establish a level playing field for their implementation and to avoid the circumvention of the system of authorisations by producers being granted authorisations. In addition, three new criteria should be added: a new eligibility criterion on the misappropriation of reputation of protected geographical indications; a new priority criterion favouring those producers that comply with the rules of the scheme and do not have abandoned vineyards in their holding; and a new priority criterion favouring non-profit organisations with a social purpose having received lands confiscated in case of terrorism and other types of crime. The new eligibility criterion responds to the need of protecting the reputation of specific geographical indications in a similar manner as the reputation of specific designations of origin, ensuring that they are not threatened by new plantings. The first new priority criterion favours certain applicants on the basis of their background that shows their respect for the rules of the authorisations scheme and that they are not applying for authorisations for new plantings while having areas planted with vines out of production which could generate authorisations for replanting. The second new priority criterion aims at favouring non-profit organisations with a social purpose having received lands confiscated in case of terrorism and other types of crime, in order to promote the social use of land that could risk otherwise being out of production.
- (4) Taking into account Article 118 of Regulation (EU) No 1306/2013 and in order to address natural and socio-economic differences and different growth strategies by the economic actors in those different areas within a particular territory, Member States should be permitted to apply the eligibility criteria and priority criteria referred to in Article 64(1) and (2) of Regulation (EU) No 1308/2013, as well as the new eligibility and priority criteria to be added by this Regulation, differently at regional level, for specific areas eligible for protected designation of origin, for specific areas eligible for protected geographical indication or for areas without a geographical indication. Such differences in the application of those criteria in the different areas of a particular territory should always be based on the differences between those areas.

- (5) In order to respond to cases of circumvention not anticipated by this act, Member States should adopt measures to avoid the circumvention of eligibility or priority criteria by applicants of authorisations where their actions are not already covered by the specific anti-circumvention provisions laid down in this Regulation with regard to the specific eligibility and priority criteria.
- (6) Article 66(2) of Regulation (EU) No 1308/2013 provides for the possibility of co-existence of vines that the producer has undertaken to grub up with newly planted vines. In order to prevent irregularities, Member States should have the possibility to ensure by the appropriate means that the undertaking to grub up is carried out, including the requirement to lodge a security accompanying the granting of an authorisation for anticipated replanting. In addition it is necessary to specify that in case the grubbing up is not carried out within the four-years deadline set out by that provision the vines planted in the pledged area should be considered as non-authorised.
- (7) Article 66(3) of Regulation (EU) No 1308/2013 allows Member States to restrict the replanting in areas eligible for the production of wines with protected designations of origin or protected geographical indications, on the basis of a recommendation from recognised and representative professional organisations. The grounds or reasons for such decisions of restriction should be defined in order to clarify the limits of their scope, while ensuring the coherence of the scheme and avoiding its circumvention. In particular it should be ensured that the automaticity in granting authorisations for replantings established in Article 66(1) of Regulation (EU) No 1308/2013 does not hinder the possibility of Member States to limit the issuing of authorisations for specific areas in accordance with Articles 63(2)(b) and 63(3). Nevertheless it should be clarified that certain specific cases may not be considered as a circumvention of the scheme.
- (8) Article 64 of Regulation (EU) No 1306/2013 provides for administrative penalties in cases of non-compliance in relation to eligibility criteria, commitments and other obligations resulting from the application of sectoral agricultural legislation. In order to ensure the deterrent effect, Member States should be able to graduate these penalties according to the commercial value of the wines produced in the vineyards concerned. In accordance with Article 71(4) of Regulation (EU) No 1308/2013 administrative penalties should be provided for in relation to non-authorised plantings, in order to provide a deterrent effect. The minimum value of those penalties should correspond to the average yearly income per hectare of vine areas at Union level, measured in gross margin per hectare of vine areas. A progressive graduation should be established from this minimum value, depending of the time of non-compliance. Member States should also be given the possibility to apply higher minimum penalties to producers in a certain area, where the minimum value established at Union level represents less than the estimated average yearly income per hectare of the area concerned. Such increase in the minimum value of penalties should be proportional to the estimated average yearly income per hectare for the area where the non-authorised vine area is located,

HAS ADOPTED THIS REGULATION:

Article 1

Areas exempted from the scheme of authorisations for vine plantings

1. The scheme of authorisations for vine plantings laid down in Chapter III of Title I of Part II of Regulation (EU) No 1308/2013 shall not apply to the planting or replanting of areas referred to in Article 62(4) of that Regulation fulfilling the relevant conditions set out in paragraphs 2, 3 and 4 of this Article.
2. The planting or replanting of areas intended for experimental purposes or for graft nurseries shall be subject to a prior notification to the competent authorities. The notification shall include all relevant information in respect of those areas and the period during which the experiment will take place or the period during which the graft nursery will be in production. Extensions of such periods shall also be notified to the competent authorities.

Where no risks of market disturbance are considered to exist, Member States may decide that during the periods referred to in the first subparagraph the grapes produced in those areas and the grapevine products obtained from those grapes may be marketed. At the end of such periods, the producer shall either:

- (a) obtain an authorisation in accordance with Articles 64 or 68 of Regulation (EU) No 1308/2013 for the area concerned, so that the grapes produced in that area and the grapevine products obtained from those grapes can be marketed; or
- (b) grub-up such an area at his own cost in accordance with Article 71(1) of Regulation (EU) No 1308/2013.

Any areas intended for experiments or graft nurseries planted before 1 January 2016 following the granting of new planting rights shall continue to comply after that date with any conditions defined for the use of such rights until the end of the period of the experiment or the period of production of the graft nursery for which they were granted. After the expiry of such periods, the rules laid down in the first and second subparagraphs shall apply.

3. The planting or replanting of areas whose wine or vine products are intended solely for the consumption by the wine grower's household shall be subject to the following conditions:
 - (a) such area does not exceed 0,1 ha;
 - (b) the wine grower concerned is not involved in commercial wine production or in the commercial production of other grapevine products.

For the purpose of this paragraph, Member States may consider certain organisations without a commercial activity as equivalent to the wine grower's household.

Member States may decide that the plantings referred to in the first subparagraph are subject to a notification.

4. A producer having lost a certain area planted with vines due to compulsory purchases in the public interest under national law shall be entitled to plant a new area provided that such newly planted area does not exceed 105% in terms of pure crop of the area lost. The newly planted area shall be registered in the vineyard register.
5. The grubbing up of areas benefiting from the exemption referred to in paragraphs 2 and 3 shall not give rise to an authorisation to replant under Article 66 of Regulation (EU) No 1308/2013. However, such authorisation shall be granted in the event of grubbing up of areas newly planted under the exemption referred to in paragraph 4.

Article 2

Criteria for granting authorisations

1. Where Member States apply the eligibility criterion listed in Article 64(1)(c) of Regulation (EU) No 1308/2013, the rules laid down in part (A) of Annex I to this Regulation shall apply.

Member States may also apply the additional objective and non-discriminatory criterion that the application shall not pose a significant risk of misappropriation of the reputation of specific protected geographical indications, which shall be presumed unless the existence of such risk is demonstrated by the public authorities. The rules in relation to the application of this additional criterion are laid down in part (B) of Annex I.

2. Where Member States decide to apply one or more of the eligibility criteria referred to in Article 64(1)(a) to (c) of Regulation (EU) No 1308/2013 and the additional criterion referred to in paragraph 1 of this Article, in the granting of authorisations for new plantings, they may apply such criteria at national level or at a lower territorial level.

3. Where Member States apply one or more of the priority criteria listed in Article 64(2) of Regulation (EU) No 1308/2013, the rules laid down in parts (A) to (H) of Annex II to this Regulation shall apply.

Member States may also apply the additional objective and non-discriminatory criteria of the prior behaviour of the producer and non-profit organisations with a social purpose that have received lands confiscated in cases of terrorism and other types of crime. The rules in relation to the application of these additional criteria are laid down in part (I) of Annex II.

4. Where Member States decide to apply one or more of the priority criteria referred to in Article 64(2)(a) to (h) of Regulation (EU) No 1308/2013 and the additional criteria provided for in paragraph 3 of this Article, in the granting of authorisations for new plantings, they may apply such criteria uniformly at national level or with varying degrees of importance in different areas of the Member States.

5. The use of one or more of the criteria listed in Article 64(2) of Regulation (EU) No 1308/2013 as eligibility criteria at one of the geographical levels mentioned in Article 63(2) shall be considered duly justified for the purposes of point (d) of paragraph 1 of Article 64 if the use aims at addressing a specific problem affecting the

wine growing sector at that specific geographic level which can only be addressed by such a restriction.

6. Without prejudice to the rules laid down in Annexes I and II with regard to specific eligibility and priority criteria, Member States shall adopt additional measures, where necessary, to avoid that applicants of authorisations circumvent the eligibility and priority criteria included in those Annexes.

Article 3

Authorisations for anticipated replanting

Member States may make the granting of an authorisation to a producer undertaking to grub up an area planted with vines in accordance with Article 66(2) of Regulation No 1308/2013 subject to the requirement to lodge a security.

In any case, if the grubbing up is not carried out by the producers by the end of the fourth year from the date on which new vines were planted, Article 71 of Regulation (EU) No 1308/2013 shall apply in respect of the the pledged area which has not been grubbed up.

Article 4

Replanting restrictions

Member States may restrict the replantings on the basis of Article 66(3) of Regulation (EU) No 1308/2013, where the specific area to be replanted is located in an area for which the issuing of authorisations for new plantings is limited in accordance with Article 63(2)(b) of Regulation (EU) No 1308/2013 and provided that the decision is justified by the need to avoid a well-demonstrated risk of significant devaluation of a specific protected designation of origin or protected geographical indication.

The risk of significant devaluation referred to in the first paragraph does not exist if:

- (a) the specific area to be replanted is located in the same area of protected designation of origin or geographical indication as the area grubbed up and the replanting of vines complies with the same protected designation of origin or geographical indication specification as the area grubbed up;
- (b) the replanting is aimed at the production of wines without a geographical indication provided that the applicant undertakes the same commitments as those laid down in point (2) of Part A and B of Annex I to this Regulation in relation to new plantings.

Article 5

Penalties and cost recovery

Member States shall impose financial penalties on producers who do not comply with the obligation laid down in Article 71(1) of Regulation (EU) No 1308/2013.

The minimum amount of the financial penalty shall be:

- (a) EUR 6 000 per hectare, if the producer grubbs up the totality of the non-authorised planting within the four months from the date on which he is notified of the irregularity, as referred to in Article 71(2) of Regulation (EU) No 1308/2013;
- (b) EUR 12 000 per hectare, if the producer grubbs up the totality of the non-authorised planting during the first year following the expiry of the four-month period;
- (c) EUR 20 000 per hectare, if the producer grubbs up the totality of the non-authorised planting after the first year following the expiry of the four-month period.

Where the yearly income obtained in the area where the vineyards concerned are located is estimated to exceed EUR 6 000 per hectare, Member States may increase the minimum amounts set in the second subparagraph proportionally to the average yearly income per hectare estimated for that area.

If the Member State ensures the grubbing up of the non-authorised planting by its own means, the relevant cost charged to the producer pursuant to Article 71(2) of Regulation (EU) No 1308/2013 shall be calculated in an objective way taking into account the costs of labour, use of machinery and transport or other costs incurred. Such cost shall be added to the applicable penalty.

Article 6 **Entry into force**

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15.12.2014

For the Commission
The President
Jean-Claude JUNCKER