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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	27 January 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2021) 371 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 27.1.2021 amending Delegated Regulation (EU) 2020/884 derogating in respect of the year 2020 from Delegated Regulation (EU) 2017/891 as regards the fruit and vegetables sector and from Delegated Regulation (EU) 2016/1149 as regards the wine sector in connection with the COVID-19 pandemic, and amending Delegated Regulation (EU) 2016/1149

Delegations will find attached document C(2021) 371 final.

Encl.: C(2021) 371 final



Brussels, 27.1.2021
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COMMISSION DELEGATED REGULATION (EU) .../...

of 27.1.2021

amending Delegated Regulation (EU) 2020/884 derogating in respect of the year 2020 from Delegated Regulation (EU) 2017/891 as regards the fruit and vegetables sector and from Delegated Regulation (EU) 2016/1149 as regards the wine sector in connection with the COVID-19 pandemic, and amending Delegated Regulation (EU) 2016/1149

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The act is justified by the current situation resulting from the COVID-19 pandemic and the extensive restrictions of movement and contact put in place in the Member States during 2020.

Urgent temporary measures to address the situation in the wine sector have already been taken through several Regulations which temporarily allow, among others, distillation of wine in case of crisis, aid to crisis storage of wine, increase of the Union support to measures of support programmes in the wine sector and increased flexibility in implementing some of these measures. Despite these exceptional measures, the market has not regained its balance. To provide further relief to the wine sector, it is therefore necessary to prolong several of these measures for the duration of financial year 2021.

Under the current rules, beneficiaries who do not fully implement all the actions of an operation under the wine support programme are ineligible for support for the entire operation. In cases where the aim of the operation has nevertheless been reached, this total exclusion from the aid is not proportionate. Therefore, also taking into account the difficult economic situation of many wine producers due to the COVID-19 pandemic, partial payments should be possible if the overall objective of the operation is reached.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultations, involving experts from all the 27 Member States have been carried out by written consultation of the Expert Group for Agricultural Markets under the single common organisation of the markets. This consultation process led to a broad consensus on the draft Delegated Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act is based on Article 53 of Regulation (EU) No 1308/2013.

Article 1: This Article aims to prolong during financial year 2021 the application of the measures laid down in Article 2(1), (3), (4) and (6) of Delegated Regulation (EU) 2020/884.

Article 2: This Article aims to amend Article 54 of Regulation (EU) 2016/1149 to allow for partial payment of support to beneficiaries for partially implemented operations.

Article 3: This Article sets out the entry into force and application of this Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 27.1.2021

amending Delegated Regulation (EU) 2020/884 derogating in respect of the year 2020 from Delegated Regulation (EU) 2017/891 as regards the fruit and vegetables sector and from Delegated Regulation (EU) 2016/1149 as regards the wine sector in connection with the COVID-19 pandemic, and amending Delegated Regulation (EU) 2016/1149

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 485/2008¹, and in particular Articles 62(1) and 64(6),

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 1234/2007², and in particular Article 53(b) and (h) in conjunction with Article 227 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2020/884³ introduced a number of derogations from existing rules *inter alia* in the wine sector, aimed at providing relief to wine operators to help them cope with the impact of the COVID-19 pandemic. However, despite the usefulness of those measures, the wine market has not managed to regain its balance between supply and demand and is not expected to regain it in the short to medium term due to the ongoing pandemic.
- (2) Furthermore, the measures adopted to address the COVID-19 pandemic are being continued in most Member States and across the world. Those measures include imposing restrictions in relation to the size of social gatherings and celebrations, and in relation to the possibilities to eat and drink outside the home. Lockdowns continue to be imposed in some areas, accompanied by the cancellation of public events and private parties. The knock-on effect of these restrictions has resulted in a further decrease in the consumption of wine in the Union and in a confirmed reduction in the

¹ OJ L 347, 20.12.2013, p. 549.

² OJ L 347, 20.12.2013, p. 671.

³ Commission Delegated Regulation (EU) 2020/884 of 4 May 2020 derogating in respect of the year 2020 from Delegated Regulation (EU) 2017/891 as regards the fruit and vegetables sector and from Delegated Regulation (EU) 2016/1149 as regards the wine sector in connection with the COVID-19 pandemic (OJ L 205, 29.6.2020, p. 1).

export of wine to third countries. In addition, the uncertainty as to the duration of the crisis, which it is anticipated will likely extend beyond the end of the year 2020, is causing long term damage to the Union wine sector as wine consumption is unlikely to recover and export markets will be lost. This combination of factors is having a significant negative impact on pricing in the Union wine market. Stocks that were already at a record high at the beginning of the marketing year 2019-2020 have been increased. Finally, the upcoming high yielding 2020 harvest, which is expected to exceed the 2019 harvest by approximately 10 million hectolitres of wine, will only serve to further worsen the situation.

- (3) Consequently, given the lengthy duration of the restrictions imposed by Member States to address the COVID-19 pandemic and the need to keep restrictions in place, the severe economic disruption to the main outlets for wine and the ensuing negative effect on the demand for wine are exacerbated.
- (4) In light of this exceptionally severe market disturbance and the accumulation of difficult circumstances encountered in the wine sector, which has its origin in the imposition by the United States of tariffs on the imports of Union wines in October 2019 and which continues now with the fall-out from the on-going restrictive measures due to the worldwide COVID-19 pandemic, exceptional difficulties continue to be encountered by operators in the Union wine sector. Further assistance to the wine sector is therefore warranted.
- (5) The continued implementation of the measures to address the crisis in the Union wine sector which were introduced by Delegated Regulation (EU) 2020/884 is considered essential to provide operators with the necessary flexibilities to implement support programmes in the Union wine sector. In particular, the additional flexibility providing for the implementation of green harvesting on the same parcel for two or more consecutive years, the flexibility to introduce changes to ongoing operations, as well as the possibility to pay for partial implementation of operations supported under Articles 46 and 47 of Regulation (EU) No 1308/2013 whenever full implementation was not possible for reasons due to the COVID-19 pandemic, have ensured that operators in the Union wine sector have suitable instruments to react to the changes brought by the COVID-19 pandemic and the restrictions imposed to control it.
- (6) As the COVID-19 pandemic is expected to continue beyond the end of the year 2020 and thus during a considerable part of the financial year 2021, it is considered necessary to extend the application of the measures laid down in Article 2(1), (3), (4) and (6) of Delegated Regulation (EU) 2020/884 for the duration of the financial year 2021.
- (7) Article 54(1) of Commission Delegated Regulation (EU) 2016/1149⁴ provides that support to beneficiaries is only to be paid if checks show that an overall operation or all the individual actions which are part of the overall operation have been implemented in full. However, experience to date has shown that, based upon a strict application of that provision, where individual actions forming part of the operation have not been implemented in full but the objective of the overall operation has

⁴ Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector and amending Commission Regulation (EC) No 555/2008 (OJ L 190, 15.7.2016, p. 1).

nevertheless been attained, to withhold the entire amount of support for the operation in question has proven, in certain situations, to be unjust and inequitable.

- (8) Feedback provided by the Member States to the Commission indicates that the application of the rule provided for in Article 54(1) of Delegated Regulation (EU) 2016/1149 results in disproportional financial cuts for those beneficiaries who have successfully implemented a large share of the approved operation but who fail to complete individual actions which are not indispensable for the successful outcome of the operation. The non-completion of such individual actions does not jeopardise the objectives of the overall operation, which in certain circumstances can be met despite the partial implementation. In such cases, it does not appear justifiable to withhold the payment of support in full or to require that support paid for duly implemented actions be recovered.
- (9) Withholding the entire support in such cases imposes a financial penalty on those beneficiaries who have largely implemented the complete operation and who have thus invested time, means and effort in the completed actions. This potentially inequitable impact is exacerbated by the COVID-19 pandemic and by the cash flow problems linked to it.
- (10) In order to ensure proportionality as regards the payment of operations under the wine support programmes and to avoid penalising the Union wine sector excessively, that is already weakened by the difficult market situation and the COVID-19 pandemic, partial support should be paid for operations which are not fully implemented, as long as the overall objective of the operation is achieved. Therefore, it is appropriate to provide that fully implemented actions, which are part of such an operation, are eligible for Union support.
- (11) In such cases, the support for the operation should be calculated as the sum of the support for the actions which were fully implemented, reduced by 100 % of the amount of support allocated to the actions which have not been implemented in order to ensure that the beneficiary receives an amount which is proportionate to the effort undertaken with regard to the fully implemented actions.
- (12) Delegated Regulations (EU) 2020/884 and (EU) 2016/1149 should therefore be amended accordingly.
- (13) In order to avoid disruption in the implementation of the measures addressing the crisis in the Union wine sector and to ensure a smooth transition between the two financial years, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*, and the amendments to Delegated Regulation (EU) 2020/884 should apply retroactively from 16 October 2020,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/884

Article 2 of Delegated Regulation (EU) 2020/884 is amended as follows:

(1) paragraph 1 is replaced by the following:

‘1. By way of derogation from Article 22 of Delegated Regulation (EU) 2016/1149, during the years 2020 and 2021, green harvesting may be applied on the same parcel for two or more consecutive years.’;

(2) paragraph 3 is replaced by the following:

‘3. By way of derogation from Article 53(1) of Delegated Regulation (EU) 2016/1149, Member States may, in duly justified cases related to the COVID-19 pandemic, allow changes that occur not later than 15 October 2021, to be implemented without prior approval provided that they do not affect the eligibility of any part of the operation and its overall objectives and provided that the total amount of approved support for the operation is not exceeded. Such changes shall be notified to the competent authority by the beneficiaries within the deadlines set by the Member States.’;

(3) paragraph 4 is replaced by the following:

‘4. By way of derogation from Article 53(1) of Delegated Regulation (EU) 2016/1149, Member States may, in duly justified cases related to the COVID-19 pandemic, allow beneficiaries to submit changes that occur not later than 15 October 2021 and that modify the objective of the overall operation already approved under the measures referred to in Articles 45, 46, 50 and 51 of Regulation (EU) No 1308/2013, provided that any ongoing individual actions which are part of an overall operation are completed. Such changes shall be notified to the competent authority by the beneficiaries within the deadline set by the Member States, and shall require the prior approval of the competent authority.’;

(4) paragraph 6 is replaced by the following:

‘6. By way of derogation from the third, fourth, fifth and sixth subparagraphs of Article 54(4) of Delegated Regulation (EU) 2016/1149, for payment claims submitted not later than 15 October 2021, where operations supported under Articles 46 and 47 of Regulation (EU) No 1308/2013 are not implemented on the total surface for which support was requested for reasons related to the COVID-19 pandemic, Member States shall calculate the support to be paid on the basis of the area determined by the on-the-spot checks following implementation.’.

Article 2

Amendments to Delegated Regulation (EU) 2016/1149

Article 54 of Delegated Regulation (EU) 2016/1149 is amended as follows:

(1) paragraph 2 is replaced by the following:

‘2. Where support is normally payable after implementation of the overall operation, support shall nevertheless be paid for the individual actions implemented if checks show that the remaining actions could not be carried out due to *force majeure* or exceptional circumstances within the meaning of Article 2(2) of Regulation (EU) No

1306/2013 or if checks show that, even if the remaining actions were not carried out, the overall objective of the operation has nevertheless been achieved.’;

(2) the following paragraph is inserted:

‘2a. If checks show that an overall operation covered by the support application has not been fully implemented but the overall objective of the operation has nevertheless been achieved, Member States shall pay support for the individual actions which have been implemented in accordance with paragraph 2 and apply a penalty amounting to 100 % of the amount initially allocated to those actions in the support application which have not been fully implemented.

In cases where the amount of support which has been paid after implementation of individual actions is higher than the amount determined as due after checks have been carried out, Member States shall recover the support paid unduly.

In such cases, if an advance has been paid, Member States may decide to apply a penalty.’;

(3) in paragraph 3, the first subparagraph is replaced by the following:

‘3. If checks show that an overall operation covered by the support application has not been fully implemented in cases other than the ones laid down in paragraph 2, and where support has been paid after individual actions which are part of the overall operation covered by the support application, Member States shall recover the support paid.’.

Article 3

Entry into force and application

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

Article 1 shall apply from 16 October 2020.

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

Done at Brussels, 27.1.2021

For the Commission
The President
Ursula VON DER LEYEN