

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1007**of 18 June 2021****amending Implementing Regulation (EU) 2018/274 as regards the analytical databank of isotopic data and the checks in the wine sector**

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 485/2008 ⁽¹⁾, and in particular Article 89(6) thereof,

Whereas:

- (1) The Union wine sector is highly vulnerable to fraud as most of the Union production is based on the certified quality schemes, namely protected designation of origin ('PDO') and protected geographical indication ('PGI'), which grant recognition to quality products and which help producers to market their products better. The primary suspected violations relate to the usurpation of origin such as by deliberately and unlawfully marketing and labelling inferior wine as wine that has been granted a PDO or PGI, or by unlawfully diluting wine or adding sugar to wine. The economic impact of fraudulent activity in the Union wine sector is estimated at EUR 1,3 billion per year, which amounts to 3,3 % of the Union wine sector's sales. In addition to the obvious direct economic impact on the wine sector that such cases of fraud create, there would be a potentially even greater risk of reputational damage to the wine sector in the event that a major fraud incident triggered a loss of consumer confidence and restrictions in trade, thereby damaging the overall interests of the Union wine sector.
- (2) Consequently, there is a need to improve and strengthen the fight against fraud in the Union wine sector, in particular as regards the functioning of the analytical databank of isotopic data referred to in Article 39 of Commission Delegated Regulation (EU) 2018/273 ⁽²⁾ and as regards the coordination of the related responsibilities in the Member States and with the European reference centre for control in the wine sector (ERC-CWS). This contributes to the Commission's 'A Farm to Fork strategy for a fair, healthy and environmentally-friendly food system' ⁽³⁾. In particular to one of its priorities which is combating food fraud along the food supply chain, that specifically calls upon the Commission to scale up its fight against food fraud to achieve a level playing field for operators and strengthen the powers of control and enforcement authorities.
- (3) The rules on the analytical databank of isotopic data and specific provisions on checks are laid down in Commission Implementing Regulation (EU) 2018/274 ⁽⁴⁾. It is necessary to adapt the content of the analytical databank of isotopic data in order to better mirror the reality of the Union wine sector. Taking the average of the last 5 years of Union wine production, the share of wines granted a PDO or PGI follows a steady upwards trend, reaching in excess of 60 % of the total production. In the marketing year 2019/20, the share was close to 70 %. Therefore, and given that wines that have been granted either PDO or PGI recognition are at higher risk of fraud, it is necessary to provide for a greater share of those wines, now at 40 % of the total PDO or PGI wines in the Union, in the databank.

⁽¹⁾ OJ L 347, 20.12.2013, p. 549.

⁽²⁾ Commission Delegated Regulation (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 607/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560 (OJ L 58, 28.2.2018, p. 1).

⁽³⁾ COM(2020) 381 final.

⁽⁴⁾ Commission Implementing Regulation (EU) 2018/274 of 11 December 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, certification, the inward and outward register, compulsory declarations and notifications, and of Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks, and repealing Commission Implementing Regulation (EU) 2015/561 (OJ L 58, 28.2.2018, p. 60).

- (4) The sampling of grapes, and the operations and analyses necessary to produce data for the analytical databank of isotopic data require a high level of resources which may result in delays in the supply of this data. In order to overcome the difficulties in supplying timely and complete information, Member States should be allowed to decide that the samples of the grapes cultivated for the production of wines with a PDO or PGI may be taken by the entity managing the PDO or the PGI, in coordination with the designated laboratories, in cases where the designated laboratories do not have enough resources to carry out the sampling themselves. Cooperation between those bodies, the ERC-CWS and the Member States' designated laboratories will be essential in the fight against fraudulent practices impacting wines with a PDO or PGI recognition that make up the majority of Union wine production.
- (5) Missing isotopic data and incomplete datasets may lead to delays in or even frustrate the outcome of investigations into cases of suspected wine fraud, which could result in the release onto the market of counterfeit wine. This absence of data threatens not only the reputation of Union wines but may also have an impact on the amount of excise duties applied. This creates a risk that tax income duties would be applied to incorrectly labelled categories of wines. Therefore, it is necessary to improve the current legal framework for the analytical databank of isotopic data such as to ensure that it is updated within a given time period, and thereby providing better protection against fraud in the Union wine sector. Given some attribution problems in some Member States, there is also a need to clarify which concerned parties have the right to access to the samples and files.
- (6) To improve the procedures governing investigations into suspected fraud concerning a wine consignment, the current rules should be reinforced. Deadlines should be set, at the expiry of which the competent authority of the territory in which the place of unloading is situated should be supplied with all relevant data available necessary to verify whether the suspect wine is compliant with Union rules in the wine sector. The role of the entities in charge of the various stages of the investigation procedure should be further clarified.
- (7) Isotopic measurement data sets and any related outcomes from the analytical databank of isotopic data are not disclosed to the public. This is justified by the concern that making such information public would provide information to fraudsters who could use it to their advantage. Furthermore, the misuse of such information would harm the reputation of certain wines. However, it should be possible to disclose to the public some anonymised data on fraud cases by publishing an annual report containing the most important results of controls in the wine sector based on the use of the databank. The rules relating to the elaboration of the annual report should therefore be further specified.
- (8) Difficulties have been encountered when performing checks and controls on wine products transported in bulk, as these products are more susceptible to fraudulent practices than labelled bottled products fitted with a non-reusable closing device. Therefore, in cases where the competent authority is not informed on time, via a computerised system or information system, of the arrival of a consignment of wine products transported in bulk, measures should be taken to ensure that the competent authority at the place of unloading is in a position to perform the necessary checks before the product leaves the premises of the consignee. Where the competent authority decides not to perform such checks, the consignee should be allowed to dispatch the product from their premises immediately.
- (9) Implementing Regulation (EU) 2018/274 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2018/274 is amended as follows:

- (1) Article 27 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. For the establishment of the analytical databank of isotopic data referred to in Article 39 of Delegated Regulation (EU) 2018/273, Member States shall ensure that samples of fresh grapes that are to be analysed by the designated laboratories of the Member States are taken, treated and processed into wine in accordance with the instructions set out in Part I of Annex III to this Regulation.’;

(b) paragraph 3 is replaced by the following:

‘3. The number of samples to be taken each year for the databank is set out in Part II of Annex III. The selection of samples shall take account both of the geographical situation of vineyards in the Member States listed in Part II of Annex III and of the proportion of wines with a PDO or PGI per Member State or region. Each year, at least 25 % of the samples shall be taken from the same plots as in the previous year.’;

(c) the following paragraph is inserted:

‘3a. Member States may decide, where appropriate, that the samples of the grapes cultivated for the production of wines with a PDO or PGI may be taken by the entity managing the PDO or the PGI. In this case, the sampling shall be coordinated by the designated laboratories of the Member States in accordance with the instructions set out in Section A of Part I of Annex III.’;

(d) paragraph 6 is replaced by the following:

‘6. The laboratories shall submit the data collected, together with a copy of the analysis report with the results and interpretation of the analyses along with a copy of the description sheet, electronically, to the ERC-CWS and not later than [31 October] of the year following the grape harvest.’;

(e) in paragraph 7, point (e) is replaced by the following:

‘make files available, without undue delay or cost, to those who generated the information contained in the files so that any inaccuracies can be rectified.’;

(2) Article 28 is amended as follows:

(a) the title is replaced by the following:

‘Communication of information contained in the analytical databank in case of suspected non-compliance with Union rules in the wine sector’;

(b) paragraph 2 is replaced by the following:

‘2. Whenever needed for scientific, statistical, control or judicial purposes in duly substantiated cases, the information referred to in paragraph 1, when representative, may be made available on request to the competent authorities designated by Member States for ensuring compliance with Union rules in the wine sector and to national courts. This information shall be used only for the purposes for which it is requested and shall be treated as confidential.’;

(c) the following paragraph is inserted:

‘2a. In case of a control in a Member State, for which reference data from the analytical databank of isotopic data related to wine produced in another Member State is needed, the competent authority of the Member State shall request the ERC-CWS to contact the designated laboratory of the Member State in which the wine under investigation is produced, in order to verify the suspicion using all relevant data available. That designated laboratory shall, within 1 month from the date of receipt of the request, verify whether the wine in question is compliant with Union rules in the wine sector. Where this deadline cannot be respected for duly justified reasons, the designated laboratory shall inform the ERC-CWS accordingly and the ERC-CWS shall then:

(i) extract the relevant reference isotopic measurement data relating to the wine in question from the analytical databank of isotopic data, and provide them to the requesting body; or

- (ii) if the relevant reference isotopic measurement data cannot be extracted from the analytical databank of isotopic data, but the required samples are made available to the ERC-CWS upon request, provide analytical support, including the results of the relevant isotopic measurement data relating to the wine in question, to the requesting body,

within 1 month from the moment it becomes clear that the initial deadline cannot be complied with. In both cases, the relevant isotopic measurement data shall be interpreted and supplied at the latest within 2 months from the date of receipt of the request by the competent authority of the Member State where the suspect wine was produced.’;

- (d) the following paragraph is added:

‘4. The ERC-CWS shall publish an annual report, in an anonymous way, on the main results of the requests received in accordance with paragraphs 1 and 2 and on the main findings of the checks carried out by Member States in their territory making use of the analytical databank of isotopic data. The ERC-CWS shall ensure that this report does not include any commercially sensitive information. Those findings shall be reported to the ERC-CWS before the end of March of the year following the reporting period, and the ERC-CWS shall publish the report within 2 months.’;

- (e) the following Article is inserted:

‘Article 32a

Controls on unpackaged wine products

In the case of imports of unpackaged wine products not covered by a computerised system or information system referred to in Article 14(1) of Delegated Regulation (EU) 2018/273, to enable checks, the competent authority of the Member State in which the place of unloading is situated may request consignees of consignments of unpackaged wine products to keep those consignments at the place of unloading on their premises for a maximum period of 10 working days. The consignees shall not dispatch, transfer or manipulate a consignment that was sampled by the competent authority during that period until they are informed of the result of the checks.

Upon request from the consignees, the competent authority shall, in cases where it decides not to carry out checks on the consignment in question, allow the consignment to be dispatched before the end of the period referred to in the first subparagraph.’.

Article 2

This Regulation shall enter into force on the seventh 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, 18 June 2021.

For the Commission
The President
Ursula VON DER LEYEN
