

COUNCIL REGULATION (EEC) No 2048/89

of 19 June 1989

laying down general rules on controls in the wine sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EEC) No 1236/89 ⁽²⁾, and in particular Article 79 (2) thereof,

Having regard to the proposal from the Commission ⁽³⁾,

Having regard to the opinion of the European Parliament ⁽⁴⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁵⁾,

Whereas, for the purposes of uniform application of the wine provisions, there is a need for rules designed to improve the control procedures already in force at Community and national level and to strengthen cooperation between the authorities responsible for the controls in the wine sector provided for until now in Regulation (EEC) No 359/79 ⁽⁶⁾;

Whereas general rules are also required for the introduction and operation of a Community structure comprising a body of officials specialized in controls in the wine sector, responsible, at Community level, for ensuring uniform application of Community rules;

Whereas provisions should be laid down under which the national authorities and the Commission must provide mutual assistance with a view to ensuring proper application of the wine rules, in particular through preventive action and the detection of infringements or behaviour suspected of infringing the rules; whereas those provisions are not an obstacle to the application of specified rules relating to Community expenditure, the downgrading of quality wines, criminal law or administrative penalties; whereas Member States must ensure that application of specific rules on the two latter subjects does not undermine either the aim of this Regulation or the effectiveness of the controls laid down therein;

Whereas the measures adopted by the Member States to ensure compliance with the wine rules have revealed the

limits to their effectiveness, notably on the occasions of fraud which seriously disrupted the wine sector both in 1985 and in 1986; whereas the Member States should therefore be invited to adopt provisions that can ensure proper application of the rules;

Whereas it is appropriate to define particularly sensitive areas in which an improvement of controls is necessary, without excluding the possibility of improving controls in other areas of the wine rules, where called for;

Whereas each Member State must ensure that the work of control agencies is more effective and whereas, for this purpose, it shall designate an authority to liaise between the Member States and the Commission; whereas it is, moreover, essential that the control work is coordinated between the competent authorities in all Member States in which wine control work is carried out by more than one authority;

Whereas all the authorities responsible for control in the wine sector must be aware of the measures, decisions or interpretations relating to the application of the wine rules in a Member State if there is to be proper harmonization of legislation at Community level; whereas a permanent flow of relevant information on this subject must be introduced between the Member States as well as between them and the Commission;

Whereas to help make the application of the rules uniform throughout the Community, the Member States should, in particular, take the necessary action to ensure that the staff of the competent authorities have sufficient technical competence comparable with that of corresponding staff in the other Member States, and that they have the minimum essential investigative powers to ensure compliance with the rules; whereas the powers of the Member States' control officials should be defined;

Whereas the development of trade in wine between the various Member States, in particular the steady expansion in the number of multinational companies in this sector, and the scope provided by the management rules to have carried out or to transfer operations, whether or not aided, to places different from those in which the product has been grown reflect the interdependence of the wine markets; whereas this situation necessitates greater harmonization of control methods and closer cooperation between the various control authorities;

Whereas the immense damage which fraud can cause to consumers and producers, whether as regards health or business operations, therefore makes it imperative to

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 128, 3. 5. 1989, p. 31.

⁽³⁾ OJ No C 24, 29. 1. 1988, p. 8.

⁽⁴⁾ OJ No C 94, 11. 4. 1988, p. 209.

⁽⁵⁾ OJ No C 95, 11. 4. 1988, p. 9.

⁽⁶⁾ OJ No L 54, 5. 3. 1979, p. 136.

improve the cohesion of the authorities responsible for controls, in particular by the creation of a body of officials specifically assigned to this type of work; whereas the cost of setting up a body of specific officials of the Commission and that of the control activities carried out by them must be financed by the Community;

Whereas the work of the specific officials of the Commission responsible for collaborating in controls in the wine sector must comply with the absolute need to ensure uniform application of the rules and effective assistance to the corresponding national staffs; whereas, to this end, their control work could be dovetailed into programmes adopted jointly with the Member States;

Whereas where the specific officials of the Commission encounter, in carrying out their work, repeated and unjustified difficulties, the Commission must be able to call upon the Member State concerned not only for an explanation but also for the facilities enabling the work to be completed; whereas the Member State concerned must then ensure the execution of its obligations deriving from this Regulation, by facilitating the execution of these officials' tasks;

Whereas, with a view to ensuring that collaboration between Member States for the application of provisions in the wine sector is effective, the competent authority of one Member State must be able to collaborate, on request, with the competent authorities of another Member State, as a general rule, by means of their respective liaison authorities; whereas rules should be established for such collaboration;

Whereas, in view of the complex nature of some cases and the need for urgent action, it is essential that where a competent authority has submitted a request for assistance it should, in agreement with the requested competent authority, be able to involve its own designated officials, where appropriate on the spot, in the execution of the investigations;

Whereas, in cases of serious risk of fraud, or of fraud involving more than one Member State or a single Member State, the various authorities concerned must automatically implement the spontaneous assistance procedure provided for in this Regulation;

Whereas, in order to ensure the objective nature of the controls, it is important that specific officials of the Commission or officials of a competent authority of a Member State may request a competent authority of another Member State to collect samples; whereas the applicant official must be able to hold the samples collected and in particular determine the laboratory where they are to be submitted for examination;

Whereas, in view of the nature of the information exchanged pursuant to this Regulation, it should be covered by the requirements of commercial or professional secrecy;

Whereas, in order to contribute to the harmonization of the analytical controls throughout the Community, it is appropriate for the Commission to be able to participate in the financing of the control instruments necessary to achieve

the objectives pursued by this Regulation and to set up a data bank for the wine-sector products at the Joint Research Centre; whereas the Commission should make reference materials available to the Member States in order to coordinate the calibration of the apparatus used for certain analyses;

Whereas, in view of the importance of ensuring that the organization of the controls referred to in this Regulation is effective, there should be regular discussions, in the context of the Management Committee for Wine, between the representatives of the various national authorities concerned; whereas such discussions should cover topical points relating to actual or presumed infringements and, more generally, the application of this Regulation, in order to contribute to uniform implementation of its provisions throughout the Community;

Whereas Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities of the Member State and cooperation between the latter and the Commission to ensure correct application of the law on customs or agricultural matters ⁽¹⁾, as amended by Regulation (EEC) No 945/87 ⁽²⁾, provides explicitly that in the wine sector the specific rules laid down regarding cooperation in Regulation (EEC) No 359/79 are to apply;

Whereas account should be taken of the experience gained in the field of cooperation between control authorities, and the scope of such cooperation should be extended to cover, in particular, the introduction at Community level of a structure which will henceforth be competent in this field; whereas Regulation (EEC) No 359/79 should therefore be repealed in order to revise the rules governing relations between authorities;

Whereas, as a consequence, new cooperation procedures should be established in the wine sector which, while respecting the sector's special nature, which is linked in particular to the existence of a Community control structure the powers of which should be laid down, must fall within the framework defined in Regulation (EEC) No 1468/81,

HAS ADOPTED THIS REGULATION:

TITLE I

PRELIMINARY PROVISIONS

Article 1

Principles

1. This Regulation lays down rules for the improvement of controls in the wine sector.

It sets up a Community structure enabling specific officials of the Commission to intervene in this sector in cooperation

⁽¹⁾ OJ No L 144, 2. 6. 1981, p. 1.

⁽²⁾ OJ No L 90, 2. 4. 1987, p. 3.

with the authorities instructed by the Member States to carry out controls in the wine sector. It lays down rules for such cooperation.

It also lays down measures regarding relations between the authorities of the various Member States referred to in the second subparagraph and between them and the Commission with a view to preventing and detecting any infringement of the Community provisions in question and of national provisions laid down pursuant thereto.

2. The provisions of this Regulation shall not apply in so far as they overlap with those relating to:

- Community verification of expenditure, in particular that laid down in Article 9 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ⁽¹⁾, as last amended by Regulation (EEC) No 2048/88 ⁽²⁾,
- scrutiny of accounts such as laid down in Council Directive 77/435/EEC of 27 June 1977 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund ⁽³⁾,
- the Community system provided for by Council Decision 89/45/EEC of 21 December 1988 on a Community system for the rapid exchange of information on dangers arising from the use of consumer products ⁽⁴⁾.

This Regulation shall not affect the Community provisions regarding the downgrading of quality wines produced in specified regions, whereby the decision to downgrade a quality wine psr, including such a decision concerning the quality wine psr in question based on an organoleptic test, falls within the competence of the Member State of origin of the quality wine psr in question, without prejudice to the derogations provided for small quantities.

This Regulation shall not affect the application in the Member States of:

- specific provisions governing relations between Member States in combating fraud in the wine sector in so far as they are such as to facilitate the application of this Regulation,
- rules relating to:
 - criminal proceedings or mutual assistance among Member States at judicial level in criminal matters,

— the administrative penalties procedure.

Article 2

Definitions

For the purposes of this Regulation:

- (a) '*rules in the wine sector*' shall mean all the Community wine-sector provisions and national provisions laid down for their application;
- (b) '*competent authority*' shall mean each of the authorities or each of the departments designated by the Member State to ensure compliance with the rules in the wine sector;
- (c) '*liaison authority*' shall mean the competent body or authority designated by the Member State to liaise as appropriate with the liaison authorities of other Member States or with the Commission.

TITLE II

IMPROVEMENT OF CONTROLS TO BE CARRIED OUT BY MEMBER STATES

Article 3

Principles

1. Member States shall take the necessary measures to improve control of compliance with the rules in the wine sector notably in the particular fields listed in the Annex.
2. The controls in the areas referred to in the Annex shall be carried out either systematically or by sampling. In the case of sampling, Member States shall ensure by their number, nature and frequency that controls are representative of the whole of their territory and correspond to the scale of the wine-sector products marketed or held with a view to their marketing.

Member States shall ensure that the competent authorities have a sufficient number of suitably qualified and experienced staff to carry out efficiently the wine controls referred to in the Annex in particular.

Article 4

Control authorities

1. Where a Member State designates several competent authorities, it shall ensure the coordination of the work of those authorities.

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 13.

⁽²⁾ OJ No L 185, 15. 7. 1988, p. 1.

⁽³⁾ OJ No L 172, 12. 7. 1977, p. 17.

⁽⁴⁾ OJ No L 17, 21. 1. 1989, p. 51.

2. Each Member State shall designate a single liaison authority. The authority designated shall:

- forward the applications for cooperation with a view to implementing this Regulation to the liaison authorities of other Member States or, where appropriate, to the Commission,
- receive such applications from the latter authorities or, where appropriate, the Commission, and forward them to the competent authority or authorities of the Member State under which it comes,
- represent that Member State *vis-à-vis* other Member States or the Commission in the context of the cooperation covered by Titles III and IV,
- notify the Commission of the measures taken pursuant to Article 3,
- forward to the Commission national provisions and administrative and judicial decisions of particular relevance to the uniform application of the rules in the wine sector in the Community.

3. The Commission shall establish a documentation centre on the basis of the information described in the fifth indent of paragraph 2 and shall use it in replying to requests for information from the liaison authorities.

Article 5

Powers of control officials

Each Member State shall take all appropriate measures to facilitate the work of the officials of its competent authority or authorities. It shall ensure in particular that such officials, where appropriate in conjunction with officials of other departments which it authorizes for the purpose:

- have access to the vineyards, wine-making and storage installations, installations for processing wine-sector products and vehicles for transporting those products,
- have access to the commercial premises (or warehouses) and vehicles of anyone holding, with a view to sale, marketing or transporting wine-sector products or products which may be intended for use in the wine sector,
- may undertake a survey of wine-sector products and substances or products which may be used for the preparation of such products,
- may take samples of products held with a view to sale, marketed or transported,
- may examine accounts or other documents for the purposes of controls and may take copies or extracts thereof,
- may take appropriate protective measures regarding the preparation, holding, transport, description,

presentation and marketing of a wine-sector product or a product intended for use in the preparation of such a product, if there is reason to believe that there has been a serious infringement of Community provisions, in particular in the case of fraudulent treatment or risks to public health.

TITLE III

COMMUNITY CONTROL STRUCTURE

Article 6

Body of specific officials of the Commission

1. The Commission shall set up a body of specific officials to collaborate with the competent authorities of the Member States in on-the-spot checks in order to ensure the uniform application of the rules in the wine sector and in particular in the areas referred to in Article 3.

The Commission shall ensure that such officials possess the technical expertise and appropriate experience to carry out the checks referred to in the first subparagraph.

2. The Commission shall establish suitable links with the liaison authorities of the Member States to draw up programmes of joint control activities. The Member States shall cooperate with the Commission to assist it in the accomplishment of its tasks.

3. The specific Commission officials may collaborate in controls provided for by the competent authorities of the Member States.

The Commission may request the liaison authorities of the Member States to carry out controls in which its specific officials may collaborate.

The officials of the Member States shall at all times be in charge of carrying out the control operations referred to in the first and second subparagraphs.

The Commission:

- may ask the Member States for information concerning their proposed checks,
- shall, in good time before the start of the joint control operations referred to in the first and second subparagraphs, inform the liaison authority of the Member State on the territory of which these operations will take place.

4. For the purpose of collaborating in the controls referred to in paragraph 3, the Commission's specific officials shall produce written authorization specifying their identity and status.

In carrying out their duties, the Commission's specific officials shall have the rights and powers set out in the first, second, third and fifth indents of Article 5 without prejudice to the limits imposed by the Member States on their own officials in carrying out the controls concerned.

The Commission's specific officials shall, in the course of controls, adopt an attitude compatible with the rules and practices which officials of the Member State must follow.

Where the Commission's specific officials encounter difficulties in the performance of their duties, the Member State concerned shall make available to them the resources necessary to enable them to carry out their work properly.

5. After the execution of each control operation as referred to in paragraph 3, the Commission shall forward a communication on the work of its specific officials to the liaison authority of the Member State concerned; that communication shall record any difficulties encountered or infringements noted of the provisions in force.

Article 7

Financial provisions

Expenditure on setting up the Commission's body of specific officials and on the control activities carried out by them shall be financed by the Community. Appropriations for this purpose shall be set aside within the framework of the budgetary procedure.

TITLE IV

ASSISTANCE BETWEEN CONTROL AUTHORITIES

Article 8

Assistance on request

1. Where a competent authority of a Member State undertakes control activities on its territory, regarding in particular:

- operations involving the marketing of wine-sector products originating in another Member State or a third country, or
- verification by cross-checking of documents or qualities of products held with a view to marketing or marketed,

it may request information from the Commission or from the competent authority of another Member State liable to be involved directly or indirectly in the marketing of such products.

The Commission shall be notified whenever the product which is the subject of the control activities referred to in the first subparagraph originates in a third country, and if the marketing of this product may be of specific interest to other Member States.

The requested party shall provide the applicant competent authority with all such information as may enable the latter to carry out its duties.

2. As the reasoned request of the applicant competent authority, the requested party shall perform or take necessary steps to perform special surveillance or controls enabling the desired objectives to be achieved.

3. The requested competent authority as referred to in paragraphs 1 and 2 shall act as if on its own account or at the request of an authority in its own country.

4. In agreement with the requested competent authority, the applicant competent authority may designate its own officials or officials of another competent authority of the Member State it represents:

- either to obtain, on the premises of the administrative authorities coming under the Member State in which the requested authority has its seat, information relating to the application of the rules in the wine sector or to control activities, including the making of copies of transport and other documents or extracts from the registers,
- or to be present during activities requested pursuant to paragraph 2.

The copies referred to in the first indent may be made only with the agreement of the requested competent authority.

5. An applicant competent authority which wishes to send to a Member State an official designated in accordance with paragraph 4, first subparagraph, to be present at the control operations referred to in the second indent of that subparagraph shall advise the requested competent authority accordingly in good time before the start of those operations.

The officials of the requested competent authority shall at all times be in charge of carrying out control operations.

The officials of the applicant competent authority shall:

- produce written authorization specifying their identity and status,
- have, without prejudice to the limits imposed by the Member State of the requested competent authority on its own officials in carrying out the controls concerned:
 - the rights of access provided for in the first and second indents of Article 5,

- the right to be informed of the results of controls carried out by the officials of the requested competent authority pursuant to the third and fifth indents of Article 5,
- adopt, in the course of controls, an attitude compatible with the rules and practices which must be followed by officials of the Member State within the territory of which the control operations are carried out.

6. The reasoned requests referred to in this Article shall be forwarded to the requested competent authority of the Member State in question via the liaison authority of that Member State. The same shall apply for:

- the answers to those requests, and
- communications concerning the application of paragraphs 2, 4 and 5.

By way of derogation from the first subparagraph and in the interests of quicker and more effective cooperation between them, Member States may, in certain appropriate cases, permit a competent authority to:

- make its reasoned request or communication directly to a competent authority of another Member State,
- reply directly to reasoned requests or communications received from a competent authority of another Member State.

Article 9

Spontaneous assistance

1. Where a competent authority of a Member State has grounds for suspicion or learns:

- that a product listed in Article 1 (2) of Regulation (EEC) No 822/87 does not comply with the wine-sector rules or has been the subject of fraudulent action to obtain or market such a product, and
- that such failure to comply with the rules is of specific interest to one or more other Member States and is such as to lead to administrative measures or legal action,

that competent authority shall, via the liaison authority under which it comes, notify the liaison authority of the Member State concerned and the Commission without delay.

2. Where the Commission has grounds for suspicion or has knowledge of the facts referred to in paragraph 1, it shall inform the liaison authorities of all the Member States without delay.

Article 10

Common provisions

1. The information referred to in Article 8 (1) and Article 9 shall be accompanied by documents or other evidence and

details of any administrative measures or legal action and shall relate in particular to:

- composition and organoleptic characteristics,
- description and presentation,
- compliance with the rules laid down for preparation and marketing of the product in question.

2. The Commission shall, when informed of the cooperation between Member States referred to in Articles 8 and 9, provide where appropriate the necessary coordination for the proper organization of the action planned, in particular by making available to the national authorities all the rapid-access information facilities available to it.

3. The liaison authorities concerned by a case for which the mutual assistance procedure referred to in Articles 8 and 9 is initiated shall inform each other without delay of:

- the progress of investigations, particularly in the form of reports and other documents or information media, and
- any administrative or legal action taken subsequent to the operations concerned.

4. Travel costs incurred in the application of Article 8 (2) and (4) shall be borne by:

- the Member State which has appointed an official for the measures referred to in the aforementioned paragraphs, or
- the Community budget at the request of the liaison authority of that Member State if the Commission has formally recognized in advance the Community interest of the control activity in question.

5. This Article shall not prejudice national provisions concerning the secrecy of legal proceedings.

TITLE V

GENERAL PROVISIONS

Article 11

Coordination of control activities

The Commission may convene representatives of the liaison authorities of several Member States, together, if appropriate, with representatives of the competent authorities, in order to coordinate a control activity which concerns them.

*Article 12***Collection of samples**

In the context of the application of Titles III and IV the specific officials of the Commission or the officials of the competent authority of a Member State may request the competent authority of another Member State to collect samples in accordance with the relevant provisions in that Member State.

The applicant official shall hold the samples collected pursuant to the first subparagraph and shall determine *inter alia* the laboratory to which they are to be submitted for examination.

*Article 13***Analyses**

The laboratories designated to carry out analyses pursuant to this Regulation shall be chosen from those referred to in Article 79 (1) of Regulation (EEC) No 822/87.

The methods of analysis shall be those referred to in Article 74 of the same Regulation.

*Article 14***Information obtained pursuant to this Regulation —
conclusive force**

1. Information forwarded pursuant to this Regulation, in whatever form, shall be confidential. Information shall be covered by professional or commercial secrecy and shall qualify for the protection conferred by the national law of the Member State which received it on information of the same type and by the corresponding provisions applying at Community level.

The information referred to in the first subparagraph may not in particular be transmitted to persons other than those who, in the Member State or Community institutions, need to know such information for the purposes of their work. Nor may it be used for purposes other than those provided for by this Regulation, unless the authority which provided it has given explicit consent and provided that the provisions in force in the Member State where the authority which received it has its seat do not prevent such notification or utilization.

2. This Regulation shall not prevent the use, in the course of court proceedings or prosecutions started subsequently for failure to comply with agricultural or financial requirements, of information obtained pursuant to this Regulation.

3. The findings of the specific officials of the Commission or of the competent authorities of a Member State in the

course of application of this Regulation may be invoked by the competent authorities of the other Member States or by the Commission. In such cases, they shall have no less value because of the fact that they do not come from the Member State in question.

*Article 15***Persons subject to controls**

Natural or legal persons and groups of such persons whose activities may be the subject of the controls referred to in this Regulation shall not obstruct such controls and shall be required to facilitate them at all times.

*Article 16***Control instruments**

1. The Commission may participate in the financing of the control instruments necessary for the achievement of the objectives of this Regulation.

2. The Commission shall set up an analytical data bank for wine-sector products at the Joint Research Centre, with the aim of coordinated and uniform application of the methods of analysis referred to in Article 74 of Regulation (EEC) No 822/87, in particular those based on nuclear magnetic resonance.

Each Member State shall forward to the Joint Research Centre the samples and analysis reports to be determined for the establishment of this data bank.

3. The Commission shall make reference materials available to the Member States in order to coordinate the calibration of the apparatus used to carry out certain analyses in the wine sector.

*Article 17***Information regarding application of this Regulation**

1. Each quarter until 31 December 1990 and at least once a year thereafter, the Commission shall, in the context of the Management Committee for Wine, organize meetings with representatives of the liaison authorities, together if appropriate with representatives of the competent authorities, with a view to implementing this Regulation.

These meetings shall in particular concern themselves with:

- carrying out a general review of the way in which mutual assistance between competent authorities operates,
- an exchange of views on the conclusions to be drawn from experience relating to the implementation of cooperation in the wine sector,

— the organization of seminars to increase the knowledge of officials of the Member States and of the Commission with respect to the implementation of this Regulation.

2. Once a year the Commission shall forward to the European Parliament and to the Council a brief report summarizing the communications provided for in Article 6 (5), together, where appropriate, with suggestions for improving the system of controls.

This report shall record any comments by Member States on those communications.

Article 18

Regulation (EEC) No 359/79 is hereby repealed.

Article 19

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

It shall apply from 1 January 1990.

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

Done at Luxembourg, 19 June 1989.

For the Council

The President

C. ROMERO HERRERA

ANNEX

AREAS OF CONTROL PROVIDED FOR IN ARTICLE 3 (1)

- Harvest, production and stock declarations.
 - The holding and marketing of wine-sector products which are not put up, including the establishment and use of the documents accompanying their transport, and the keeping of registers.
 - The destination and use of concentrated grape musts, whether or not rectified, qualifying for aid.
 - Grubbing, replanting and new planting.
 - The natural alcoholic strength by volume of grapes used for wine-making.
 - Verification of the raw materials used for wine-making.
 - Oenological practices, including the holding and marketing of products used for the processing of wine-sector products.
 - The use of wine obtained from grapes of vine varieties classified as other than wine grape varieties.
 - The enrichment of grapes, musts and wine and the holding and marketing of sucrose, concentrated grape must and rectified concentrated grape must.
 - The preparation of concentrated grape must and rectified concentrated grape must including the production of the basic material employed.
 - The holding, marketing, distillation and destruction of the by-products of wine-making.
 - The distillation and storage of products on which aid is paid.
 - The verification of the composition of wine products.
 - The updating of the vineyard register.
 - Description and presentation of wine-sector products.
-