COUNCIL REGULATION (EEC) No 1439/78

of 19 June 1978

on direct cooperation between the bodies designated by Member States to verify compliance with Community and national provisions 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 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine (1), as last amended by Regulation (EEC) No 2560/77 (2), and in particular Article 39a (2) thereof,

Having regard to the proposal from the Commission,

Whereas, under Article 39a (2) of Regulation (EEC) No 816/70, the necessary measures should be taken to ensure uniform application of Community provisions in the wine sector, particularly as regards controls; whereas this aim can only be achieved by means of direct cooperation between the bodies designated by the Member States to verify compliance with the provisions in the wine sector, as provided for in paragraph 1 of the said Article; whereas rules should be adopted for contacts between those bodies, stipulating the subjects which may form part of such cooperation;

Whereas the Member State on whose territory it is officially established that a product referred to in Article 1 (2) of Regulation (EEC) No 816/70 complies neither with the Community wine provisions nor the national provisions adopted pursuant to the former should, of its own accord, inform the competent body of the Member State from whose geographical territory the product comes and, if it does not originate there, the competent body of the Member State of origin, if non-compliance could be of specific interest to one or more of the other Member States and would be of a nature to give rise to administrative measures or judicial proceedings; whereas in order to stop the marketing of any product which does not comply with the provisions in force throughout the Community, provision should be made for the competent bodies of all Member States concerned to be informed;

Whereas an exchange of any relevant information should be established between Member States so as to render more effective the investigation of any infringements of the wine provisions; whereas, in this context, provision should be made for requesting the assistance of a qualified expert and for cooperation between the competent bodies of the various Member States, particularly if other measures have not made it possible to establish that the product in question complies with the wine provisions;

Whereas, with a view to introducing a simple procedure for this cooperation, provision should be made for regular checks on the genuineness of entries on accompanying documents and in turnover records; whereas for the same purpose it should be possible to send samples for analysis or organoleptic examination directly to the laboratories entitled to perform this task; whereas it is therefore necessary to ensure cooperation between the laboratory to which the samples have been sent and the competent body of the Member State concerned;

Whereas, in this same context, it should be laid down that, where the Commission has reasonable cause for suspecting that irregularities have occurred in connection with the production and marketing of one of the products referred to above, it shall inform the competent body of the Member State concerned and request it to conduct an administrative inquiry; whereas, for the purposes of efficient coordination of cooperation between the competent bodies of the various Member States, duly authorized Commission agents should be able to obtain particulars of an administrative nature of such an inquiry from the competent bodies of a Member State;

Whereas, in an effort to expedite the investigation of fraud, the body to which a request is addressed in the context of cooperation between the competent bodies of the various Member States should take action thereon as quickly as possible;

Whereas under Article 39a of Regulation (EEC) No 816/70 Member States must take the necessary measures to ensure compliance with Community provisions; whereas, however, it is not inconceivable that, in certain particular cases, a Member State may, for reasons of fact or of law, be unable to take action on all or part of a request addressed to it; whereas, in order that cooperation may not be jeopardized by cases of this nature, the reasons for such an attitude should be given;

(1) OJ No L 99, 5. 5. 1970, p. 1.
(2) OJ No L 303, 28. 11. 1977, p. 1.

Whereas, in order to avert the possibility of information being disclosed to non-authorized persons, it is necessary that it be covered by professional secrecy;

Whereas, in order to ensure that the cooperation referred to in this Regulation is effective, the proceedings of the Management Committee for Wine should include a regular discussion between representatives of the competent bodies of all the Member States; whereas this discussion should on the one hand deal with current questions relating to established or suspected infringements of the provisions concerned and on the other hand help to ensure the uniform application of those provisions throughout the Community;

Whereas certain provisions of this Regulation concerning direct cooperation between the competent bodies of the various Member States necessitate the drawing up of the detailed rules for its implementation,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down measures regarding the relations which the bodies (hereinafter called 'competent bodies') designated by Member States to verify compliance with Community provisions in the wine sector shall maintain between themselves and with the Commission for the prevention and investigation of any infringement of the said Community provisions and national provisions adopted pursuant thereto (hereinafter called 'wine provisions').

2. This Regulation shall not affect the application in the Member States of regulations relating to mutual assistance in criminal matters, mutual assistance in customs matters, or tax regulations.

Article 2

1. Where the competent body of a Member State in whose geographical territory one of the products referred to in Article 1 (2) of Regulation (EEC) No 816/70 is found establishes that:

— the product does not comply with the wine provisions, and

— this non-compliance is of specific interest to one or more Member States and is of a nature to give rise to administrative measures or judicial proceedings,

it shall inform:

(a) the competent body of the Member State from whose geographical territory the product comes and, if it does not originate there, the competent body of the Member State of origin;

(b) the competent body of any Member State concerned, should the description or presentation of the product be such as to mislead the consumer.

The competent body of any Member State concerned shall investigate whether batches of the product concerned were sent from its territory to other Member States, in which case it shall provide the competent bodies of those Member States with all relevant information.

2. The information referred to in paragraph 1 shall be accompanied by the relevant documentary or other evidence as well as by an indication of any administrative measures or judicial proceedings and shall concern in particular:

— the composition and organoleptic characteristics,

— the description and presentation,

— compliance with the rules prescribed for the preparation and marketing,

of the product in question.

Article 3

The competent body of the Member State in whose geographical territory one of the products referred to in Article 1 (2) of Regulation (EEC) No 816/70 is found:

(a) shall request the competent body of one or more other Member States to provide it with any relevant information concerning the points mentioned in the first to third indents of Article 2 (2), if there is reasonable cause for suspecting that the product does not conform to the wine provisions.

The competent body so requested shall study in detail the grounds for suspicion brought to its attention and shall forward to the competent body making the request all information, documents or other evidence which may be relevant for clarifying the issue;

(b) may, if there is reasonable cause for suspecting that the product does not conform to the wine provisions, request the competent body of the Member State from whose geographical territory the product comes and, if it does not originate there, the competent body of the Member State of origin:

— to appoint a qualified expert and ensure that he is present at supervisory operations;

— to take part in the concerted and rapid examination of one or more batches of the product.

Article 4

1. The competent body of the Member State in whose geographical territory one of the products listed in Article 1 (2) of Regulation (EEC) No 816/70 is found, shall request :

(a) the competent body of the Member State from whose geographical territory the product comes and, if it does not originate there, the competent body of the Member State of origin, to check the documents and the entries in the records, provided for under Article 29 of Regulation (EEC) No 816/70, where these are open to doubt ;

(b) if it deems it necessary, a laboratory as referred to in the second indent of paragraph 3 situated in the geographical territory of the Member State from which the product comes or, if it does not originate there, in the geographical territory of the Member State of origin, to make an analytical and organoleptic examination of a sample of the product which has been sent to it, where there is reasonable cause for suspecting fraud.

2. When a sample is sent to the laboratory referred to in paragraph 1 (b), the competent body making the request shall at the same time inform the competent body of the Member State in whose territory the laboratory is situated. The results of the tests referred to in paragraph 1 (b) and the interpretations of these tests shall be forwarded to the competent body making the request via the competent body of the Member State in whose territory the laboratory is situated.

3. Each Member State shall communicate to the Commission by 1 September 1978 :

— the names of the competent bodies and laboratories referred to in the second subparagraph of Article 39a (1) of Regulation (EEC) No 816/70 ;

— those of the abovementioned laboratories entitled to carry out analyses in accordance with paragraphs 1 (b) and 2.

Article 5

1. Where the Commission has reasonable cause for suspecting that irregularities have occurred in one or more Member States in connection with the production and marketing of one of the products referred to in Article 1 (2) of Regulation (EEC) No 816/70, it shall inform the competent body concerned, which shall conduct an administrative inquiry.

The Commission may ask the competent body in question to make particulars of an administrative nature of such an inquiry available to duly authorized Commission agents.

2. The Member State shall forward the report prepared and the conclusions reached following the inquiry to the Commission.

3. Paragraph 1 shall be without prejudice to the application of Article 6 of Council Regulation (EEC) No 283/72 of 7 February 1972 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field [1].

Article 6

The competent body or laboratory to which a request of the type mentioned in the preceding Articles is addressed shall take action on it as quickly as possible.

However, if such a request cannot be met, whether wholly or partially, the competent body concerned shall without delay inform the competent body making the request or, where Article 5 is concerned, the Commission, stating the reasons.

Article 7

The content of the exchange of information provided for in this Regulation shall be covered by professional secrecy. It may not be communicated to any persons other than those who, by reason of their duties in the Member States or in the institutions of the Communities, are required to have knowledge thereof for the purposes of carrying out these duties.

Article 8

Representatives of the Member States on the competent bodies referred to in Article 1 shall meet at regular intervals within the Management Committee for Wine set up by Article 6 of Regulation No 24 [2] in order to discuss :

— the problems raised by the application of this Regulation, and in particular to examine procedures for exchanging information and to draw conclusions ;

— any other problem relating to the uniform supervision of Community provisions in the wine sector.

Article 9

If necessary, detailed rules for implementing this Regulation shall be adopted as regards :

— exchange of information, bearing in mind the need to proceed rapidly ;

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[1] OJ No L 36, 10. 2. 1972, p. 1.
[2] OJ No 30, 20. 4. 1962, p. 989/62.

— sampling and dispatch of samples by the competent body making the request and also acceptance of responsibility for their costs of analysis by that body ;

— acceptance of responsibility by the competent body making the request for the expenses incurred by a qualified expert in a Member State other than that in whose service he is employed.

Article 10

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

It shall apply as from 1 September 1978, with the exception of Article 4 (3) which shall apply as from its entry into force.

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

Done at Luxembourg, 19 June 1978.

For the Council

The President

P. DALSAGER