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**COMMISSION REPORT
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

on management of planting rights

(Chapter I of Title II of Council Regulation (EC) No 1493/1999)

TABLE OF CONTENTS

INTRODUCTION.....	3
1. PROHIBITION ON PLANTING VINES.....	4
1.1. Purpose.....	4
1.2. Content of provisions.....	4
1.3. Application of provisions.....	4
2. CHANGES IN PRODUCTION POTENTIAL.....	4
2.1. New planting rights.....	5
2.2. Replanting rights.....	9
2.3. Planting right reserve.....	11
2.4. Changes in production potential since 1 August 2000.....	15
2.5. Commission's conclusion on use of the Community reserve of new planting rights	18
3. REGULARISATION OF ILLICIT PLANTINGS.....	18
3.1. Purpose.....	18
3.2. Content of provisions.....	18
3.3. Application of Community provisions.....	19
3.4. Commission's conclusion on regularisation of illicit plantings.....	20

The tables in this report use the figures that the Member States notify under Commission Regulation (EC) No 1227/2000 of 31 May 2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential. It was last amended by Commission Regulation (EC) No 1841/2003 of 17 October 2003.

INTRODUCTION

Management of viticultural production potential is a primary tool of the common market organisation for wine (CMO). It splits into three parts: restrictions on planting vines, premiums for permanent abandonment of vine-growing on particular areas, and support for restructuring and conversion of vineyards.

Restricting planting rights is a means of controlling the area under vines. The basic principle is that vines cannot be planted unless a right to replant or right to make a new planting is held. The creation and transfer of planting rights are themselves regulated.

These provisions have in their general form been in existence since the end of the 70s. But Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine¹ introduced a number of changes, partly in response to changes in the sector's economic position. The two major ones were quotas of new planting rights for each Member State and creation of reserves of rights.

The Council wanted to be able to look at how these provisions were operating after three years: "*By 31 December 2003, and at three-yearly intervals from the date, the Commission shall submit a report to the European Parliament and the Council on the operation of this Chapter. The report may be accompanied, if appropriate, by proposals for the grant of further newly created planting rights.*"²

The chapter on "Planting of vines" in Regulation (EC) No 1493/1999 has the following provisions:

1. renewal of the prohibition on planting: Article 2(1) and (7).
2. management of production potential:
 - assignment of new planting rights: Articles 3 and 6 (also Article 3 of Regulation (EC) No 1227/2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential³);
 - assignment of replanting rights: Article 4 (see also Article 4 of Regulation (EC) No 1227/2000);
 - introduction of a reserve of planting rights: Article 5 (see also Articles 5 and 6 of Regulation (EC) No 1227/2000).
3. a procedure for regularising illicit plantings made before 1 September 1998 by waiving (if certain requirements are met) the prohibition on marketing wine from illicitly planted vines: Article 2(3) to (6) (see also Article 2 of Regulation (EC) No 1227/2000).

¹ OJ L 179, 14.7.1999, p. 1.

² Article 7(3) of Council Regulation (EC) No 1493/1999.

³ OJ L 143, 16.6.2000, p. 1.

1. PROHIBITION ON PLANTING VINES

1.1. Purpose

A prohibition on planting vines of wine grape varieties has been a basic feature of the CMO since 1976⁴. Its purpose is to maintain a curb on production potential.

It also enables Member States to exercise some degree of quality control over their vineyards by orienting planting to production at the levels of quality demanded by consumers.

1.2. Content of provisions

It is freedom to plant vines that is restricted. There is no blanket ban on planting: replanting is permitted and under certain circumstances so also is new planting. This is why planting and replanting require prior authorisation from the Member States' authorities.

The new provisions since entry into force of Council Regulation (EC) No 1493/1999 is an obligation to grub up unauthorised plantings made from 1 September 1998, i.e. vines planted without a replanting or new planting right. Before this the rules imposed distillation at the grower's expense of the production from the illicit area.

1.3. Application of provisions

The prohibition has been in place for nearly 30 years. The Member States' administrations therefore have mechanisms in place for seeing to its application.

The Member States have taken over into their texts the obligation to grub up vines planted in contravention of the rules. The Commission does not at present have figures for the areas to which this provision has been applied. Member States are however under an obligation to notify cases.

The prohibition on planting also applied to table grapes up to 1996. Since then it is vinification of these grapes that has been prohibited, except in the case of dual purpose varieties, for which there are special compulsory distillation rules.

2. CHANGES IN PRODUCTION POTENTIAL

Production potential can be defined as the area planted with vines plus the areas of replanting and of new planting rights that exist.

Three sets of provisions therefore have an impact on it: those on new planting rights, those on replanting rights and those on reserves of planting rights.

⁴ Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements. The prohibition was introduced as a temporary measure and has been constantly renewed since then. Article 2(1) of Regulation (EC) No 1493/1999 extends it to the end of the 2009/10 wine year.

2.1. New planting rights

2.1.1 Background

The general prohibition on planting vines has always been accompanied by waivers targeted on boosting wine quality by permitting the expansion of "quality wines produced in specified regions" (qwpsr) at the expense of table wines.

Thus in the last years of application of the old CMO, when the price package was issued each year a new planting right area (in hectares) was allocated between the relevant Member States for production of quality wines, i.e. qwpsr and table wines with a geographical indication.

This flexible approach was given backing by the fact that Community wine production from the 1996, 1997 and 1998 crops was markedly lower than in the previous years. This was the background to the discussions that led to the new basic Regulation in 1999 and introduction of quotas of new planting rights for the Member States.

2.1.2 Content of provision

Regulation (EC) No 1493/1999 distinguishes two types of new planting right:

- in Article 3(1) rights (no quantitative limits specified) granted exclusively in certain administrative contexts;
- in Articles 3(2) to (5) and 6, new quantitatively restricted planting rights granted in order to allow production of quality wines to expand.

2.1.2.1 New planting rights (administrative contexts)

This is a provision taken over from the previous CMO. Member States can grant new planting rights in connection with land consolidation or with compulsory purchase of land in the public interest, and also for the purposes of wine-growing experiments and creation of graft nurseries. The Council Regulation added a fifth instance: for production reserved exclusively for family consumption.

The terms of these waivers are further defined in the Commission's implementing Regulation. The extent of new planting rights granted is dictated by the scope of the operation in question, i.e the implementing Regulation seeks to stop any significant increase in production potential occurring.

- In the case of rights granted in the context of land consolidation or compulsory purchase, there is a limit of 105% of the area under vines to which the operation related (Article 3(1)).
- Rights granted for wine-growing experiments are restricted to the experimental period, after which the vines must be grubbed up at the grower's expense (production between the end of the experimental period and grubbing-up must be distilled) or they must be "regularised" by acquisition of a replanting right or of a new planting right under quota (Article 3(2) and (3)).
- Graft nurseries have a limited life span as such, after which the vines can be used for wine production. Accordingly Article 3(4) and (5) provides that after the plantation has ceased to function as a graft nursery the same provisions as in the case of experimental areas apply.

- In the case of assignment of planting rights for family consumption, Article 3(6) to (8) requires Member States to have suitable arrangements for checking that the wine produced is not marketed. If the marketing prohibition is not observed the vines must be grubbed up at the grower's expense. Member States must also stipulate the maximum area per grower for which the right can be granted.

2.1.2.2 New planting rights to meet demand for quality wines

The Council Regulation uses two formulations in identifying these new planting rights: the new planting rights in Article 3(2) and the newly created planting rights in Article 6(1).

The rights spoken of in Article 3(2) are intended for production of geographical indication wines (both qwpsr and table wines) for which there is a growing market. This provision was already in the previous CMO⁵. Granting of rights is conditional on evidence that the production of the vineyards concerned is lower than demand. Article 3(9) of Regulation (EC) No 1227/2000 requires Member States to be able to provide this evidence but prior Commission approval of the grant is not required.

The planting rights spoken of in Article 6 are also intended for production of geographical indication table wines and qwpsr but can also be granted for other uses: regularisation of illicit plantings⁶ and vineyard restructuring⁷. But these uses are generally of restricted scope and the Article 6 rights correspond essentially to those of Article 3(2), which Article 3(5) states are to be counted against the Article 6(1) quotas.

Article 3(2) rights must be assigned before 31 July 2003 (see Article 3(2)). This date was inserted in order to allow the Member States to continue granting new planting rights for qwpsr and geographical indication table wine vineyards pending creation of the planting right reserves (see 2.1.3.2.1).

2.1.3 Application of provisions

2.1.3.1 New planting rights (administrative contexts)

2.1.3.1.1 The figures sent in by the Member States on new planting rights granted under Article 3(1) are:

⁵ Article 6(1) of Council Regulation (EEC) No 822/87.

⁶ Article 2(3) of the Regulation. In such cases their use, which is the equivalent of use of a replanting right, does not increase production potential.

⁷ Article 11(3) of the Regulation.

Table 1

(ha)	2000/01	2001/02	2002/03	Total
Germany	3.53	0.93	1.13	5.59
Greece	–	–	–	–
Spain	197.95	141.42	47.02	386.39
France	41.40	29.20	15.68	86.28
Italy	144.72	–	–	144.72
Luxembourg	–	–	–	–
Austria	–	–	–	–
Portugal	8.30	–	14.80	23.10
Total	395.90	171.55	78.63	646.08

Germany and Italy also granted planting rights for family consumption: 0.52 ha in Germany (2000/01 to 2002/03) and 97.16 ha in Italy (2000/01).

2.1.3.1.2 Impact on production potential

A general point to be borne in mind is that new planting rights of the above type have no impact on production potential except those granted for production for family consumption.

The explanation is that rights granted in connection with land consolidation or compulsory purchase offset the withdrawal of vineyards of equivalent area. From the economic point of view these are replanting rights.

Rights granted for experimental purposes or creation of graft nurseries have no impact following termination of the periods of experimental or graft nursery use since if the vines are not grubbed up replanting rights for an equivalent area are used.

It is only in the case of new planting rights for family consumption that there is an impact on production potential. Although the production of these areas cannot be marketed granting of the right entails no reduction in the available volume of replanting rights and so increases production potential. But the increase is insignificant, about 100 ha, and is probably offset by spontaneous abandonment of small family vineyards in the areas where they have been a widespread tradition.

2.1.3.2 New planting rights to meet demand for quality wines

2.1.3.2.1 The figures available for grants under Article 3(2) are:

Table 2

(ha)	2000/01	2001/02	2002/03	Total
Germany	291.82	37.91	141.56	471.29
Greece	–	1 098.00	–	1 098.00
Spain	6 041.33	6 335.52	4 730.00	17 106.85
France	5 016.35	4 360.76	–	9 377.11
Italy	854.50	–	–	854.50
Luxembourg	–	–	–	–
Austria	–	–	–	–
Portugal	3 041.00	–	–	3 041.00
Total	15 245.00	11 832.19	4 871.56	31 948.75

The following points should be noted:

- a) *Greece and Spain, and in lesser degree Portugal and France, have used up a large proportion of the new (newly created) planting right quota allocated to them by Article 6(1):*

Table 3

	New plantings Art. 3(2) (ha)	Article 6(1) quota (ha)	Quota take-up
Germany	471.29	1 534	30.7 %
Greece	1 098.00	1 098	100 %
Spain	17 106.85	17 355	98.6 %
France	9 377.11	13 565	69.1 %
Italy	854.50	12 933	6.5 %
Luxembourg	–	18	0 %
Austria	–	737	0 %
Portugal	3 041.00	3 760	80.9 %
Total	31 948.75	51 000	62.6 %

Leaving out Italy, which has sent no figures for the last two wine years despite the Regulation (EC) No 1227/2000 requirement to do so, the new planting right quotas amount to 38 067 ha and the rights assigned for 31 125 ha (81.7%).

It is also to be noted that Article 6(1) rights that have not been granted by 31 July 2003 for Article 3(2) purposes are transferred to the reserve or reserves of planting rights created by the Member State. They then have a "life" of five wine years (Article 5(5)), i.e. can be granted up to the end of the 2007/08 wine year.⁸

⁸ A grower granted a planting right must use it before the end of the second wine year following that in which it was granted [Article 3(4)]. The terminal date for use of Article 6(1) rights is therefore the end of the 2009/10 wine year.

b) *These rights have been granted primarily for production of qwpsr:*

Table 4

Wine years 2000/01 to 2002/03	qwpsr (ha)	Table wines (with GI) (ha)	Total (ha)	qwpsr share of total
Germany	471.29	–	471.29	100 %
Greece	361.90	736.10	1098.00	32.9 %
Spain	16 125.88	980.97	17 106.85	94.3 %
France	6 875.43	2 501.68	9 377.11	73.3 %
Italy	740.82	113.68	854.50	86.7 %
Luxembourg	–	–	–	–
Austria	–	–	–	–
Portugal	2 456.42	584.58	3 041.00	80.7 %
Total	27 031.74	4 917.01	31 948.75	84.6 %

The lack of Italian figures for 2001/02 and 2002/03 makes the picture less than comprehensive.

2.1.3.2.2 Impact on production potential

The 51 000 ha of new (newly created) (Article 6(1)) planting rights corresponds to 1.53%⁹ of the total area under vines in the Community when the basic Regulation was adopted. By definition they constitute additional production potential.

Of this nearly 2/3 (31 949 ha) has been granted by the end of the third year of the new CMO but not all of it has already been used and the time lag between utilisation and actual production is two or three years.

Thus it is at present impossible to measure with precision the impact of the 1999 decisions on production since 1 August 2000, the date when the new CMO began.

2.2. Replanting rights

2.2.1 Content of provisions

Article 4 of Regulation (EC) No 1493/1999 and Article 4 of Regulation (EC) No 1227/2000 in essence take over the provisions already in force under the previous CMO:

- automatic creation of a right following grubbing-up¹⁰,
- the possibility of transferring the right from one holding to another in the same Member State,
- a period of up to eight wine years within which to use the right.

⁹ 1.53% on the basis of the Community area under vines according to the inventories notified by the Member States under Article 16. See 2.4.2 below.

¹⁰ Except grubbing-up in the cases indicated in Article 4(1) of Regulation (EC) No 1227/2000 that are regulated by the new provisions on new planting rights (administrative context) (Article 3(1) of Regulation (EC) No 1493/1999).

The main change under the new CMO is that a replanting right can be used in anticipation, i.e. the grower is authorised to plant vines before grubbing up those on an equivalent area. In this way he avoids a loss of income between grubbing-up and the time when the new vines come into production. Detailed rules (Article 4(2) to (5) of Regulation (EC) No 1227/2000) are intended to prevent temporary or permanent increases in production potential:

- a deadline for the grubbing-up,
- a prohibition on simultaneous marketing of the production from the newly planted and the old areas,
- lodging of a security to guarantee that the grubbing-up will be carried out.

Article 4(4) (last subparagraph) of Regulation (EC) No 1493/1999 also stipulates that Member States must ensure that transfers of replanting rights between holdings, particularly when made from non-irrigated to irrigated areas, do not lead to increases in production potential.

It should be remembered that replanting rights are normally used on the holding on which the grubbing up occurs. Transfer between holdings is a possibility open to Member States.

When a replanting right is exercised with no transfer between holdings, there is no regulatory obligation to check its impact on production potential. A change of vine-training method or of variety is bound to affect it.¹¹

A transfer between holdings is accordingly even more likely to entail a radical change in cultivation practice and hence in the yield of the new area.

2.2.2 Application of provisions

All Member States have made use of the two options in the rules: transfers between holdings and an 8-year duration period for rights.

In these circumstances the national provisions for controlling production potential are of great importance. These either ensure that there is no foreseeable increase in yield from the replanted area or restrict its size if an increase is foreseeable. The Member States have put these rules into their national (or regional) texts but at this stage it is difficult to ascertain how they are applied in practice.

2.2.3 Impact on production potential

When the new CMO came into force the replanting rights available for take-up corresponded, on the basis of the inventories provided by the Member States, to 5.9% of the total area under vines. On the assumption of an average Community yield of 50 hl/ha this corresponds in turn to potential production of 10 million hl.

¹¹ The right is to replant an area the same size as that grubbed up. There is no mention of variety. Potential yield varies from one variety to another.

Replanting rights at the end of the 2002/03 wine year amounted to:

Table 5

(ha)	Inventory (1999)	End of 2002/03 wine year	Difference
Germany	3 616	3 900	+284
Greece	–	560	+560
Spain	86 456	83 315	–3 141
France	43 551	47 611	+4 060
Italy	49 870	–	–
Luxembourg	–	44	+44
Austria	5 945	5 313	–632
Portugal	7 498	12 045	+4 547
Total excluding Italy	147 066	152 788	+5 722
Total	196 936		

Austria and Spain show falls of 10% and 4% respectively over the three wine years. The primary reason for the fall in Spain has been use of these rights to regularise illicit plantings.

In the other Member States the movement has been the other way: a 14% increase in the volume of available rights over the last three wine years¹². The increase can only have come from increased grubbing-up entailing the right to replant. Probably at least part of the explanation is that vineyard restructuring has engendered a wave of grubbing-up.

In total (leaving out Italy, for which the change is unknown) the area that there is entitlement to replant has increased by 3.9% in three wine years and now corresponds to 6.1% of the area under vines at the end of 2002/03.

2.3. Planting right reserve

2.3.1 Background

As already mentioned at 2.1.1, the discussions leading to Regulation (EC) No 1493/1999 were held after there had been a marked fall in Community wine production and a big reduction in the area under vines had come to light¹³.

One of the major causes of this fall was the disappearance of numerous replanting rights that were not used by their holders. It was to stop these rights disappearing that the idea arose, and was adopted, of an automatic recovery system for expired rights.

2.3.2 Content of provisions

For Member States the reserve is a permanent instrument for the recycling and distribution of planting rights.

¹² In fact the increase is less, since in 1999 rights must have been available in Greece and Luxembourg.

¹³ See Eurostat's statistical survey on areas under vines 1989-1999, which records for that decade a 14.5% fall in the Community's area of vines for wine production.

2.3.2.1 Permanent instrument for recycling planting rights

In addition to replanting rights the reserve was assigned the new (or newly created) planting rights indicated in Article 6(1) of Regulation (EC) No 1493/1999.

The essential feature is that the reserve acquires rights – for both new planting and replanting – not used within the set time limits and also recovers rights granted from it that are not used within the set time limit.

2.3.2.2 Instrument for distributing planting rights

Granting of planting rights recovered or acquired for the reserve is subject to certain constraints.

Article 5(4) of Regulation (EC) No 1493/1999 states: "*Member States shall ensure that the location where planting rights granted from a reserve are used, the varieties used and the cultivation techniques used guarantee that the subsequent production is adapted to market demand and that the yields concerned are typical of the average in the region where such rights are used, in particular, where planting rights originating in non-irrigated areas are used in irrigated areas.*"

Thus the Council text requires Member States to ensure that rights allocated from the reserve serve to produce wine for which there is a market and that no increase in production is involved.

To this end Article 5(1) and (2) of Regulation (EC) No 1227/2000 authorises Member States to reduce planting right areas if they are transferred to a zone where yields are higher than those in the zone where the right arose. The Community rules do not authorise an increase if the transfer is in the opposite direction.

The reserve also gives Member States a means of improving the quantitative adjustment of production potential to changes in demand: they can control planting by slowing down or accelerating the pace of grants from the reserve rights.

Thus under Regulation (EC) No 1493/1999 the planting rights that can appear in a reserve are:

- unused replanting rights that have been recovered (Articles 4(5) and 5(2)),
- replanting rights bought for the reserve from their holders (Article 5(2)(b)),
- unused new planting rights that have been recovered (Articles 3(4) and 5(2)),
- new (newly created) planting rights (Article 5(2)(c)),
- rights that were previously in the reserve but were not used in time by their holders and have reverted to it (Article 5(2) and (6)).

2.3.3 Application of provisions

2.3.3.1 Reserves can be set up by each Member State at national or regional level or at both levels.

Table 6

	National reserve	Regional reserves	"Non-reserve system" ¹⁴
Germany	no	yes	yes
Greece	yes	no	no
Spain	yes	yes	no
France	yes	no	no
Italy	no	yes	no
Luxembourg	no	no	yes
Austria	yes	yes	no
Portugal	yes	no	no

The situation varies by Member State.

Luxembourg is the only Member State not to have adopted the reserve system.

Germany has a mixed system: reserves in certain regions and the "effective system" (see 2.3.5) in others.

Greece, France and Portugal have national reserves but no regional ones.

Italy has regional reserves only. Spain and Austria have both a national and regional reserves.

Article 5(7) of Regulation (EC) No 1493/1999 allows for transfers between regional reserves. It appears however that movement between regions is difficult, since no region wishes its production potential to decline. While this difficulty is on the whole under control in Greece, France and Portugal thanks to their having a national reserve only (which does not however prevent difficulties) it is a problem in Germany and particularly so in Spain and Italy.

The fact is that if transfers between regions within a Member State are restricted differences in vineyard structure between them can mean that some regions are short of planting rights whereas others have a pool of unused or even unusable rights.

2.3.3.2 The requirements in Article 5(4) of Regulation (EC) No 1493/1999 that are intended to stop transfers of rights via a reserve from leading to an increase in production potential are of the same type as those specified for transfers of replanting rights (Article 4(4) of that Regulation).

Member States have taken over the same provisions as indicated in 2.2.1 but as with direct transfers of replanting rights here also it is too early to measure their impact, all the more so since the reserves were actually set up by the Member States in only the 2001/02 or even 2002/03 wine year.

¹⁴ Article 5(8) of Regulation (EC) No 1493/1999: *By way of derogation from paragraphs 1 to 7, a competent authority of a Member State may choose not to implement the reserve system provided that the Member State can prove that an effective system for managing planting rights exists throughout its territory.* See 2.3.5 below..

The following table shows that at the end of 2002/03 the rights put into the reserves amounted to a very small area and that in Greece, France and Italy none had been put in.

Table 7

(ha)	qwpsr	Table wines with GI	Total
Germany	64.61	–	64.61
Greece	–	–	–
Spain	6 792.00	665.00	7 457.00
France	–	–	–
Italy	–	–	–
Luxembourg	–	–	–
Austria	50.00	–	50.00
Portugal	–	–	208.00
Total			7 779.61

2.3.4 Impact on production potential

The reserve system is a basic requirement for controlling production potential.

Quite apart from dealing with the effects of transferring rights from regions with low yields to regions with high yields, whether the difference in yield is a matter of vine varieties or cultivation practices¹⁵, the reserve system brings into play a mechanism for automatically stopping non-use of a planting right from entailing its extinction. An unused right will always be put back into the distribution channel.

Accordingly the area that provides a Member State's production potential (area planted with vines plus available replanting rights) cannot diminish if the Member State is managing the rights efficiently.

2.3.5 "Effective system" of planting right management

It is not compulsory to use the reserve system: see Article 5(8) of Regulation (EC) No 1493/1999.

2.3.5.1 Content of provisions

Generally speaking, if a Member State chooses not to use the reserve system it has no legal means of systematically recycling unused planting rights within the set time limits. On the other hand, distribution of new planting rights and checking on the use and transfer of replanting rights are carried out under the national provisions in force before the new CMO came into operation.

Member States who choose not to introduce a reserve system must show the Commission that they manage planting rights in an effective way.

The Council Regulation also sets additional rules in connection with replanting rights:

- they are valid for ten years;

¹⁵ Also a problem in the case of direct transfers of replanting rights between holdings. The last subparagraph of Article 4(4) is a catch-all for dealing with it..

- the Member State can extend this to thirteen years.

Their purpose is to make up in part for the absence of indefinite recycling of planting rights that the reserve system affords.

2.3.5.2 Application of provisions

Luxembourg is the only Member State that has chosen an "effective system" for its entire vineyard area. She plans to raise the period of validity of the rights to thirteen years.

Germany has a mixed system (see 2.3.3.1). In the "effective system" areas replanting rights are valid for thirteen years.

2.3.5.3 Impact on production potential

Luxembourg and Germany were the only two Member States to maintain, with the regulatory tools then available, their production potential through the period 1989 to 1999 covered by the surveys published by Eurostat.

The CMO put in place in 1999 offered the Member States new ways of counteracting the downward trend of production potential. Luxembourg and part of Germany have chosen not to use them.

It is too early to judge the real impact of the "effective system" on production potential but it is reasonable to think that there will be no significant change given that the new CMO has not resulted in any real modification of the rights management system in either Member State.

2.4. Changes in production potential since 1 August 2000

2.4.1 Areas

The Commission has three sources of information on areas under vines.

The first is that provided by application of Council Regulation (EEC) No 357/79 of 5 February 1979 on statistical surveys of areas under vines. The last basic survey was for 1999.

The second is that provided by application of Article 16(1) of Regulation (EC) No 1493/1999. Member States are required to notify an inventory of their areas under vines for the purpose of application of certain provisions of the new CMO, notably the vineyard restructuring and conversion policy.

The third is the vineyard register or reference chart, use of which is compulsory under Article 5 of Commission Regulation (EC) No 2729/2000 of 14 December 2000 laying down detailed implementing rules on controls in the wine sector.

The available data is:

Table 8

	Date of survey	Survey area (ha)	Date of inventory	Inventory area (ha)	Inventory excess over survey (ha)	Inventory excess over survey (%)
Germany	1999	104 233	31/08/2000	105 530	1 297	+1.24 %
Greece	1999	50 878	01/09/1999	77 466	26 588	+52.25 %
Spain	1999	1 144 354	31/07/2000	1 141 986	-2 368	-0.02 %
France	1999	940 478 ¹⁶	31/08/1998	901 412	-38 624	-4.15 %
Italy	1999	636 662	01/09/1999	792 440	155 778	+24.46 %
Luxembourg	1999	1 348	15/11/1999	1 348	0	0
Austria	1999	48 496	31/12/1999	52 226	3 730	+7.70 %
Portugal	1999	205 003	01/09/1999	252 709	47 706	+23.27 %
Total		3 131 452		3 325 117	193 665	+6.18 %

Some variations between the dates of the two sources may explain the very small differences between the areas reported (Germany, Spain) but apart from this the differences found, except for Luxembourg, are particularly revealing.

2.4.2 Changes in inventory areas

After two years of the new CMO the area under vines has fallen by 1.3%.

Table 9

(ha)	Area under vines (inventory)	Area under vines (end of 2002/03 wine year)	Difference
Germany	105 530	104 211	-1 319
Greece	77 466	80 794	+3 328
Spain	1 141 986	1 115 322	-26 664
France	901 412	907 669	+6 257
Italy	792 440	-	-
Luxembourg	1 348	1 298	-50
Austria	52 226	51 136	-1 900
Portugal	252 709	241 119	-11 590
Total (excluding Italy)	2 532 677	2 501 549	-31 128

This fall is essentially the outcome of the vineyard restructuring and conversion programmes under which grubbing-up is occurring prior to replanting with varieties better adapted to the demands of the wine market. The Member States with the biggest falls are those most engaged in restructuring.

¹⁶ The survey distinguishes areas of vines producing grapes for wine production and areas of vines producing grapes for production of spirits, a distinction applicable only in France and there only to the vineyards of the regions producing Cognac and Armagnac. Management of these vineyards, which also produce wine, falls within the scope of the wine CMO and they must therefore be included in the French vine area.

The areas under vines of all Member States apart from Greece and France are lower. They are the two Member States that delayed longest in taking up the restructuring policy.

Overall it appears that production potential (considered as the sum of the area under vines and the replanting rights available for granting) continued¹⁷ to fall over the first three years of the new CMO but very slowly¹⁸.

Table 10

(ha)	Production potential 1999	Production potential 2003	Difference
Germany	109 146	108 111	-1 035
Greece	77 466	81 354	+3 888
Spain	1 228 442	1 198 637	-29 805
France	944 963	955 280	+10 317
Italy	not notified	not notified	
Luxembourg	1 348	1 342	-6
Austria	58 171	56 449	-1 722
Portugal	260 207	253 164	-7 043
Total (excluding Italy)	2 679 743	2 654 337	-25 406

Italy excluded, the Community's viticultural potential fell by less than 1% over the first three years of the new CMO. As in the case of areas, this figure masks divergent movements among the Member States, linked to both regularisation of illicit plantings (see 3 below) and vineyard restructuring and conversion policy.

New (newly created) planting rights (Article 6(1) of Regulation (EC) No 1493/1999) that have not yet been granted are not included in the production potential figures.

31 949 ha out of the 51 000 ha has been granted (see Table 3 above).

Italy excluded, there accordingly remain 6 943 ha of new planting rights not yet granted that fall to be deducted from the 25 406 ha reduction (see Table 10). Further, out of the 31 125 ha of new plantings already granted, an unknown but probably sizeable fraction has not yet been used by the growers, i.e. was not planted at the end of the 2002/03 wine year.

The fall in production potential would therefore be at worst (i.e. on the supposition that all the new planting rights granted are included in the Table 10 figures) 0.65% at the end of the first three years of the CMO. This figure is too small to be genuinely significant.

Generally speaking, the regulatory tools exist for maintaining the Community's viticultural production potential, which had fallen substantially in the 90s (and even more in the previous decade). Even if it is still too soon to verify the impact of the new CMO, the figures now available appear to confirm that potential has remained roughly stable for three years.

¹⁷ See Eurostat study (Theme 5-25/2003) showing that areas for wine production fell by 14.5% between 1989 and 1999.

¹⁸ Again Italy, which did not send the Commission figures, has to be left out of the calculation.

Lastly, it should be remembered that this is a finding from the data provided by the Member States to update the viticultural inventory required by Council Regulation (EC) No 1493/1999, but that these figures do not correspond to those notified under other regulatory provisions.

2.5. Commission's conclusion on use of the Community reserve of new planting rights

Article 6(1) of Regulation (EC) No 1493/1999 assigned 17 000 ha to a Community reserve.

Italy and Greece have officially requested additional planting rights.

The new CMO introduced regulatory tools to maintain the Community's viticultural production potential. It has apparently been maintained since 2000. The impact of the 51 000 ha allocated to the Member States cannot yet be measured.

Thus it would be premature to add a further 17 000 ha to the area under vines in the Community.

3. REGULARISATION OF ILLICIT PLANTINGS

3.1. Purpose

The new CMO has a penalty not found in the old: areas planted from 1 September 1998 in contravention of the planting prohibition must now be grubbed up. The old penalty was merely that the production from them be distilled.

This change led to introduction of regularisation procedure for plantings made in contravention before 1 September 1998, the aim being to reach a stage where no illicit plantings exist and the Community vine area inventory therefore corresponds to reality.

3.2. Content of provisions

Article 2(2) to (6) of Council Regulation (EC) No 1493/1999 set out the procedure for regularisation of illicit plantings predating 1 September 1998.

The procedure is set out in the form of waiver provisions.

- 1) Once the procedure has commenced the grower may market the production from the illicit area instead of delivering it for distillation. Thus he already benefits from waiving of the obligation to have it distilled at his own cost.
- 2) The Member State's competent authority examines the application. If it is refused the grower must revert to having the production of his illicit area distilled and pay a penalty as specified in Article 2(4) of Regulation (EC) No 1227/2000. If it is accepted the waiver is confirmed.

There are four means available to growers for securing regularisation of their illicit plantings. They can be used only within the Member State's administrative framework.

"The derogation shall be granted:

- a) where the producer had previously grubbed-up other vines on an equivalent area in terms of pure crop except in cases where the grower concerned has received a premium for grubbing-up under Community or national legislation in respect of the area concerned;*

and/or

- b) by permitting the use of replanting rights where a producer has obtained them within a period to be fixed subsequent to the planting of the area concerned; Member States may also use the newly created rights for this purpose under Article 6(1);*

and/or

- c) where the Member State can prove (to the satisfaction of the Commission) that it has unclaimed replanting rights which would still be valid if they had been applied for; such rights may be used and reallocated to producers for an area equivalent in pure crop;*

and/or

- d) where the producer concerned had undertaken to grub up an area equivalent in terms of pure crop, within a period of three years, where that area has been entered in the vineyard register of the Member State concerned."*

Some of these means are subject to imposition of certain requirements set in the basic Regulation or in the Commission's implementing Regulation. The main purpose is to penalise the growers concerned.

3.3. Application of Community provisions

At the end of the 2002/03 wine year the cumulated areas (2000/01 to 2002/03 wine years) for which regularisation applications had been made were¹⁹:

¹⁹ These figures are calculated from those sent by the Member States (Table 1 in the Annex to Regulation (EC) No 1227/2000). The Italian figures cover only the period to the end of 2001/02.

Table 11

(ha)	Regularised	Refused	Under examination by Member States	Total
Germany	2	2	3	7
Greece	6 575	–	5 681	12 256
Spain	36 534	9 834	36 697	83 065
France	128	–	7	135
Italy	753	6	51 845	52 604
Luxembourg	–	–		–
Austria	–	–		–
Portugal	9	–	8	17
Total	44 001	9 842	94 241	148 084

Luxembourg and Austria state that they received no applications for the 2000/01 to 2002/03 wine years.

The other Member States have been involved in regularisation work.

Large areas have been dealt with in Greece, Spain and Italy.

Article 2(3) of Regulation (EC) No 1493/1999 required regularisation procedures to be terminated by 31 July 2002 but some Member States have on a number of occasions encountered difficulty in making the necessary checks on the applications lodged by growers. Under Article 80 of the Regulation the Commission, in response to Member States' requests, has several times deferred the final date. It is now by Regulation (EC) No 1841/2003 of 17 October 2003 set at 31 July 2004.

Italy has also drawn attention to another difficulty, that of locating illicitly planted parcels. She states that without an operational tool such as the vineyard register it is impossible to know whether an area is illicit or not, and therefore impossible to regularise plantings made before the register was created. Areas may have been illicit since the time when the Community rules withdrew freedom of planting, i.e. since 1976.

3.4. Commission's conclusion on regularisation of illicit plantings

This business should be completed as quickly as possible in the interests of sound operation of the market and accurate determination of the Community's viticultural potential.

It should be noted that the problem of regularising illicit plantings can be resolved only by amendment of Regulation (EC) No 1493/1999. Consequently, the Commission foresees the presentation of an appropriate proposal in 2004.