COUNCIL REGULATION (EEC) No 349/79

of 5 February 1979

on the distillation of the by-products of wine making

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine [1], and in particular Article 39 (2) and (6) thereof,

Having regard to the proposal from the Commission [2],

Whereas it is necessary to determine the conditions under which producers must fulfil the obligation laid down in Article 39 (2) of Regulation (EEC) No 337/79; whereas the obligations of the distillers must also be laid down;

Whereas, account being taken of the value of the by-products, the price to be paid to the producers for the alcohol contained in the products subject to compulsory distillation must be lower than the price applicable in respect of the distillation provided for in Articles 40 and 41 of Regulation (EEC) No 337/79;

Whereas the fixing of a price to be paid by the distiller to the producer for the products subject to compulsory distillation means that the intervention agencies must buy in the vinous alcohol resulting from this distillation at a price which takes into account the costs of processing the products in question, this price being subject to differentiation according to whether marc, lees or wine is distilled in order to take into account, where necessary, the differing costs and losses;

Whereas in certain regions of the Community, the relation between quantities of marc and those of wine and lees is such that the average distillation costs differ from those used to calculate the fixed price; whereas this situation makes or is likely to make it economically impossible in certain of these regions to achieve the objective of the obligation to distil the by-products of wine making;

Whereas it is therefore essential to provide for the possibility that a fixed price be established at the same time as prices differentiated depending on the origin of the alcohol, while leaving it to the Member States to decide whether to apply the latter in regions where application of the fixed price leads to the difficulties referred to above;

Whereas recourse to this option must not increase the expenditure incurred by the intervention agency and, hence, by the European Agricultural Guidance and Guarantee Fund; whereas it is therefore necessary to correlate the prices differentiated depending on the origin of the alcohol and the fixed price; whereas this correlation must be such that the weighted average of the prices differentiated depending on the origin of the alcohol is not more than the fixed price;

Whereas, in the absence of an organized Community market in ethyl alcohol, the intervention agencies responsible for marketing such alcohol may be obliged to resell it at a price lower than the buying-in price; whereas provision should be made in such an event for the difference between the buying-in price and the selling price for that alcohol to be borne, within a maximum amount, by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, provided that the contribution does not exceed the difference;

Whereas the fixing of the buying-in price for products subject to compulsory distillation, the buying-in price for alcohol and the maximum amount of the contribution from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund towards the expenditure incurred by the intervention agencies is closely linked to the fixing of the guide price; whereas the same timetable and the same deadlines should therefore be adopted for such operations;

Whereas the provisions concerning the financing of intervention laid down in Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [3], as last amended by Regulation (EEC) No 2788/72 [4], must be extended to cover the distillation of by-products of wine making;

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(1) See page 1 of this Official Journal.
(2) OJ No C 276, 20. 11. 1978, p. 1.
(3) OJ No L 94, 28. 4. 1970, p. 31.
(4) OJ No L 295, 30. 12. 1972, p. 1.

Whereas, in accordance with the first indent of Article 39 (4) of Regulation (EEC) No 337/79, the producer may free himself of the obligation to distil by producing potable spirits; whereas paragraph 2 of the same Article requires the distillation of wine in the absence of grape marc or wine lees; whereas, in these circumstances, it is logical to permit, where this option is exercised, the production of both potable spirits of wine and potable spirits other than potable spirits of wine; whereas, however, it should be ensured that potable spirits of wine are not produced by using the by-products of wine making for the purposes prohibited in Article 39 (1) of Regulation (EEC) No 337/79;

Whereas the production of potable spirits must free the producer from the obligation to deliver alcohol only in respect of the quantity of alcohol contained in the by-products or in the wine which are used to obtain the potable spirits;

Whereas, in order to avoid the production of poor quality potable spirits, it should be laid down, in the absence of Community criteria in this matter, that the potable spirits produced must comply with the national provisions in force; whereas, in order to ensure that these provisions are complied with, provision should be made for supervision;

Whereas, in accordance with the second indent of Article 39 (4) of Regulation (EEC) No 337/79, the producer may free himself from the obligation to distil by withdrawing, under supervision, the by-products which he has obtained from wine making; whereas that possibility is justified by the fact that marc and lees can be kept only in large quantities and under certain technical conditions and by the fact that the transport costs could therefore be disproportionate for producers situated at a considerable distance from the distilleries;

Whereas the obligation to distil represents a considerable constraint for the isolated producer who makes only a small quantity of wine; whereas, as a result of that obligation, he would incur transport costs for his grape marc and wine lees which would be out of all proportion to the return which he could hope to obtain on the alcohol distilled therefrom; whereas such producers should therefore be exempted from the obligation to distil; whereas provision should be made for extending this exemption under conditions to be determined;

Whereas producers who deliver their grape marc for the manufacture of oenocyanine generally supply non-fermented grape marc; whereas the treatment which such marc undergoes for the extraction of oenocyanine makes it unsuitable for fermentation and distillation thereafter; whereas those producers should therefore be exempted in proportion to their production of grape marc; whereas this exemption cannot be calculated exactly; whereas, this being the case, it is preferable to provide for a fixed reduction in the general rate;

Whereas, in accordance with Article 11 (1) of Council Regulation (EEC) No 338/79 of 5 February 1979 laying down special provisions relating to quality wines produced in specified regions [1], a yield per hectare is fixed for each of the quality wines psr, which facilitates observance of the prohibition against the pressing of wine lees and over-pressing of grapes; whereas, moreover, the marcs and lees of quality white wines psr contain little alcohol; whereas, therefore, a reduced rate should be applied to these products;

Whereas supervision of the fulfilment of the obligation specified in Article 39 (2) of Regulation (EEC) No 337/79 requires obligations to be imposed on distillers also; whereas, in order to ensure that those obligations are fulfilled, distillers should be subject to a system of approval,

HAS ADOPTED THIS REGULATION:

Article 1

1. The person subject to the obligation laid down in Article 39 (2) of Regulation (EEC) No 337/79, hereinafter called 'the producer', shall fulfil his obligations by delivering marc, lees and, where applicable, wines to an approved distiller free at distillery.

2. The distiller shall be required:

(a) to furnish the producer with proof that the latter has delivered the products concerned;

(b) to pay the producer at least the price referred to in Article 2;

(c) to process into alcohol the products delivered to him;

(d) to deliver the alcohol to the intervention agencies designated by the Member States. The actual alcoholic strength by volume of the alcohol may not be less than 92% vol.

3. The intervention agencies shall pay to the distillers for the alcohol delivered the price referred to in Article 3.

Article 2

The price to be paid by the distiller to the producer, according to alcohol content for marc, lees and, where applicable, wines delivered for distillation, hereinafter called 'the buying-in price for wine deliveries', shall be

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[1] See page 48 of this Official Journal.

fixed each year per hl/% vol of alcohol before 1 August for the following wine-growing year. It may not be lower than 30% of the guide price for table wine of Type A I applicable with effect from the following 16 December or higher than 40% of this price.

Article 3

1. The price to be paid by the intervention agencies to the distiller, hereinafter called 'the price of the alcohol from wine deliveries', shall be fixed annually by the Council, acting by a qualified majority on a proposal from the Commission, at the same time and for the same wine-growing year as the buying-in price for wine deliveries.

2. The price of the alcohol from wine deliveries shall be fixed as a single price on the basis of:

— the cost of distillation,

— the cost of transport,

— technical losses.

However, it may be differentiated according to whether marc, lees or wine are distilled, in order to take into account, where necessary, the differing costs and losses.

In the case referred to in the second subparagraph above, differentiated prices shall be set at the same time as the fixed price. Member States may decide to apply differentiated prices where application of the fixed price makes or threatens to make it impossible in some regions of the Community to distil one or more of the by-products of wine making. The prices fixed for alcohol derived from the various by-products shall be such that their weighted average does not exceed the price of the alcohol from wine deliveries referred to in paragraph 1 above.

3. The price of the alcohol from wine deliveries shall be fixed per hl/% vol of alcohol. It shall apply to unpacked goods delivered free at the warehouse of the intervention agency.

Article 4

1. The maximum amount of the contribution from the Guarantee Section of the EAGGF towards the expenditure incurred by the intervention agencies shall be fixed annually, at the same time and for the same wine-growing year as the buying-in price for wine deliveries. This amount shall be fixed per hl/% vol alcohol.

2. The contribution from the Guarantee Section of the EAGGF shall be paid, up to the maximum amount referred to in paragraph 1, only where, during a given budgetary year, the overall expenditure of an intervention agency on the buying in of alcohol obtained by the distillation provided for in Article 39 of Regulation (EEC) No 337/79 is greater than the income from the sale of such alcohol.

If the difference referred to in the first subparagraph is less than the maximum amount multiplied by the number of hectolitres of alcohol sold expressed as pure alcohol, the contribution shall be equal to that difference.

3. Articles 4 and 5 of Regulation (EEC) No 729/70 shall apply to the EAGGF contribution referred to in this Article.

Article 5

1. The producer shall be totally or partially freed from the obligation laid down in Article 39 (2) of Regulation (EEC) No 337/79 if an approved distiller manufactures from that producer's own products:

— potable spirits obtained directly from grape marc, wine lees or both those products,

— and, failing this, potable spirits obtained directly from wine.

2. For each administrative unit in which the wine production is traditionally intended for processing into potable spirits of wine, Member States shall determine what minimum percentage of potable spirits (other than potable spirits of wine) must be produced where the option provided for in paragraph 1 is exercised.

That percentage shall correspond to the average quantity of alcohol contained in the marc and lees produced in the administrative unit concerned.

3. The quantity of alcohol, expressed as pure alcohol, contained in the by-products of wine making, or in the wine, which are used for the production of potable spirits pursuant to paragraph 1 shall be deducted from the quantity of alcohol which is required to be delivered pursuant to Article 39 (2) of Regulation (EEC) No 337/79.

4. Where the option provided for in paragraph 1 is exercised, the distiller shall be required:

(a) to furnish the producer with proof that the latter has delivered the products concerned;

(b) to pay the producer at least the price referred to in Article 2;

(c) to inform the intervention agency of the total quantity of potable spirits produced in accordance with this Article, broken down into potable spirits of wine or potable spirits other than potable spirits of wine.

5. The production of potable spirits may have the effect mentioned in paragraph 1 only if:

(a) the quality of the potable spirits obtained satisfies the national provisions on the subject; the distiller shall supply proof thereof to the competent agency;

(b) it is carried out under the supervision of the competent agency; the distiller shall be required to permit such supervision at any time during distillation.

Article 6

For the purposes of this Regulation an approved distiller means a distiller included on a list to be compiled by the competent authorities of the Member States. Under the conditions to be laid down as part of the implementing arrangements, approval may be withdrawn by these authorities from distillers who do not fulfil their obligations under this Regulation.

Article 7

1. Producers shall be freed from the obligation laid down in Article 39 (2) of Regulation (EEC) No 337/79 if the by-products of wine making are withdrawn under supervision.

2. The quantity and the quality of marc and lees withdrawn must be in a ratio, to be determined by the Member States, with the quantity of wine produced in respect of which the obligation to distil the marc and lees is not fulfilled.

3. Only those producers whose vineyards are situated in wine-growing areas where distillation represents a disproportionate financial burden may exercise the option referred to in paragraph 1. The list of the regions concerned shall be drawn up by the competent authorities of the Member States.

Article 8

The obligation laid down in Article 39 (2) of Regulation (EEC) No 337/79 shall not apply to isolated producers who, during the wine-growing year in question, do not make more than 10 hectolitres of wine.

However, it may be decided that the exemption contained in the preceding paragraph shall apply, under conditions to be determined, to isolated producers who, during the wine-growing year in question, make between 10 and 25 hectolitres of wine.

Article 9

Producers who deliver their marc for the manufacture of oenocyanine shall be paid a reduced rate.

Producers of white quality wines psr shall be paid at a reduced rate for that part of their harvest which qualifies for this description.

Article 10

1. Council Regulation (EEC) No 1930/76 of 20 July 1976 on the distillation of the by-products of wine making [1], as last amended by Regulation (EEC) No 1862/78 [2], is hereby repealed.

2. References to the Regulation repealed by paragraph 1 shall be construed as references to this Regulation.

Article 11

This Regulation shall enter into force on 2 April 1979.

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

Done at Brussels, 5 February 1979.

For the Council

The President

P. MEHAIGNERIE

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(1) OJ No L 211, 5. 8. 1976, p. 1.
(2) OJ No L 215, 4. 8. 1978, p. 14.