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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1144/81

of 24 April 1981

laying down general rules on the distillation of table wines as provided for in Article 15 of Regulation (EEC) No 337/79

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), as last amended by Regulation (EEC) No 3456/80 (2), and in particular Article 15 (1) thereof,

Having regard to the proposal from the Commission,

Whereas Article 15 of Regulation (EEC) No 337/79 provides that provisions concerning the distillation of table wines may be adopted where application of the market support measures provided for in that Regulation is unlikely to be effective in restoring price levels;

Whereas this in the case at present in view of the fact that this year's abundant harvest and the very large stocks from the previous year have created supplies which considerably exceed the normal requirements for the present year; whereas, moreover, all the support measures have already been taken, but they have not yet suceeded in restoring reasonable price levels;

Whereas the conditions under which these distillation operations may take place should be laid down; whereas, in particular, the price of the wines going for distillation should not be such as to encourage the production of wine principally for distillation, although it should be sufficiently attractive for the operation to be effective;

Whereas Article 67 of the 1979 Act of Accession provides that in fixing the level of the various amounts laid down within the common agricultural policy, account shall be taken, for Greece, of the accession compensatory amount, to the extent necessary for the proper functioning of the common agricultural policy; whereas the present situation on the market for red table wines is such that a minimum buying-in price, less the accession compensatory amount, should not be fixed for distillation operations carried out in Greece; whereas any risk of deflection of trade seems ruled out by the fact that the distillation capacity in Greece is limited and that no wine is sent to that country for distillation;

Whereas the marketing of the alcohol produced under this Regulation should not be allowed to have a negative influence on the market for the product;

Whereas the maximum quantity of table wine which may be distilled for each producer should be limited in order to limit the overall cost of the operation;

Whereas, in order to ensure appropriate supervision of distillation operations, distillers should be subject to a system of approval;

Whereas provision should be made for producers to conclude delivery contracts with distillers subject to approval by the intervention agency, in order to facilitate monitoring of the progress of operations and of the observance of the obligations of both parties; whereas this system would have the added advantage of making it easier to monitor the quantitative effects of distillation on the market and, where necessary, to limit the volume of wines which may be distilled;

Whereas, however, the contracts system must be adapted in order to take into account the fact that there are producers who intend to have their wine distilled on their behalf and producers who them-

(1) OJ No L 54, 5. 3. 1979, p. 1.
(2) OJ No L 360, 31. 12. 1980, p. 18.

selves make use of distillation plants ; whereas, in the case of the latter producers, the absence of a contractual obligation necessitates an official analysis of certain characteristics of the wine to be distilled ;

Whereas the price of wine going for distillation is not such as to enable the products obtained from this operation to be marketed normally ; whereas it is therefore necessary to grant aid and to fix the amount of aid, taking into account normal costs, at a level enabling the products obtained to be marketed ;

Whereas provision should be made for the minimum price guaranteed to the producer to be paid to him, as a general rule, within time limits which will enable him to obtain a profit comparable to that which he would have obtained from a commercial sale ;

Whereas provision should be made for producers who have concluded a delivery contract to terminate it where the market situation would enable them to dispose of the wine more profitably ;

Whereas, on the basis of experience gained, a certain margin should be allowed for the quantity of wine specified in the delivery contracts ; whereas, moreover, provision should be made, in the event of chance circumstances or *force majeure,* for aid to be paid in respect of the quantity of wine which has actually been distilled ;

Whereas, in order to allow the distillation measure to achieve its full purpose and in order to take account of the reality of the market of wines intended for distillation, it appears appropriate to allow these wines to be processed into wine fortified for distillation both by distillers and by manufacturers ;

Whereas the manufacture of wine fortified for distillation must take place in the vicinity of the place where the table wine is held, in order to limit transport costs to distilleries a long distance away ; whereas authorization of the manufacture of wine fortified for distillation in a Member State other than that in which the producer's winery is located is not justified economically and is likely to create serious monitoring problems ; whereas it seems appropriate, therefore, to stipulate that the manufacture of wine fortified for distillation may take place only in the country where the table wine has been produced ; whereas it is further appropriate that Member States should be able to restrict the places at which wine fortified for distillation may be processed in order to ensure the most appropriate form of supervision ;

Whereas, in each Member State concerned, a body should be made responsible for implementing the provisions in question ;

Whereas the addition of an indicator to the wine to be distilled is an efficient monitoring method ; whereas it should be stated that the presence of such an indicator must not prevent the movement of these wines or of the products obtained therefrom,

HAS ADOPTED THIS REGULATION :

Article 1

1. Producers wishing to distil table wines produced by them, pursuant to Article 15 of Regulation (EEC) No 337/79, shall conclude contracts for the delivery of table wines with an approved distiller and shall submit them to the intervention agency before 25 June 1981.

It may, however, be decided to change the date referred to in the first subparagraph should the representative prices for all types of table wine, except types A II, A III and R III, be higher than the corresponding activating price for two consecutive weeks.

2. For the purposes of this Regulation, each producer may distil a quantity of table wines not less than 10 hectolitres and not more than 15 % of the total quantity of table wine produced by him during the 1980/81 wine year.

Article 2

1. The delivery contracts shall not be valid under this Regulation unless approved, before 25 July 1981, by the intervention agency of the Member State in which the wine happens to be when the contract is concluded. These contracts shall cover :

(a) the obligation for the distiller to purchase the quantity of table wine entered in the contract and to pay not less than the amount specified in Article 6 (1) for that quantity ;

(b) — either the obligation for the distiller to process the wine into a product with an alcoholic strength by volume of 86 % or more,

— or the obligation for him to process the wine into a product with an alcoholic strength by volume of 85 % or less.

2. Where distillation takes place in a Member State other than that in which the contract is approved, the intervention agency which approved the contract shall forward a copy of it to the intervention agency of the first Member State.

Article 3

1. Producers :

— who themselves make use of distillation plants and who intend to carry out the distillation referred to in Article 1, or

— who intend to have their wine distilled on their behalf in an approved distiller's plant,

shall so inform, before 25 June 1981, the intervention agency of the Member State in whose territory their winery is located by means of a declaration of delivery for distillation, hereinafter called 'declaration'. If the distilling plant is located in another Member State, they shall also inform the intervention agency of that Member State by means of a copy of the declaration.

2. For the purposes of this Regulation, the contract referred to in Article 1 (1) shall be replaced :

— in the case specified in the first indent of paragraph 1, by the declaration,

— in the case specified in the second indent of paragraph 1, by the declaration accompanied by a contract for delivery for distillation on the producer's behalf concluded between the producer and the distiller.

3. The declaration referred to in paragraph 2 shall not be valid under this Regulation unless approved before 25 July 1981 by the intervention agency of the Member State on whose territory the producer's winery is located.

This declaration shall comprise :

— either the obligation for the distiller to process the wine into a product with an alcoholic strength by volume of 86 % or more,

— or the obligation for the distiller to process the wine into a product with an alcoholic strength by volume of 85 % or less.

4. In the case referred to in the first indent of paragraph 1, a sample of the wine to be distilled shall be taken, under the supervision of an official body of the Member State on whose territory the producer's winery is situated, for analysis, by an official laboratory, of its actual alcoholic strength by volume, total acidity, volatile acidity and sulphur dioxide content.

The producer shall forward the results of this analysis, certified be an official body, to the intervention agency of the Member State where the distillation took place.

5. A representative of an official body shall check the quantity of wine distilled and the date of distillation.

6. Producers who have lodged a declaration shall be obliged to distil, or to arrange for the distillation, of the wine covered by that declaration.

Article 4

1. The minimum buying-in price for table wines for distillation shall be fixed at :

— 2·18 ECU per hectolitre per % vol for all red and rosé table wines,

— 2·02 ECU per hectolitre per % vol for all white table wines.

These wines must have an actual alcoholic strength by volume of more than 9·5 %.

2. The prices referred to in paragraph 1 shall apply to bulk merchandise ex producer's premises.

Article 5

1. The intervention agency of the Member State in which the distillation has taken place shall pay aid for the wine distilled.

2. The amount of the aid shall be fixed, in respect of the wines referred to in the first indent of Article 4 (1), at :

— 1·56 ECU per hectolitre per % vol if the wine was processed into a product with an alcoholic strength by volume of 86 % or more,

— 1·51 ECU per hectolitre per % vol if the wine was processed into a product with an alcoholic strength by volume of 85 % or less.

The amount of the aid shall be fixed, in respect of the wine referred to in the second indent of Article 4 (1), at :

— 1·40 ECU per hectolitre per % vol if the wine was processed into a product with an alcoholic strength by volume of 86 % or more,

— 1·35 ECU per hectolitre per % vol if the wine was processed into a product with an alcoholic strength by volume of 85 % or less.

Article 6

1. When the total quantity of wine in the contract enters the distillery, the distiller shall pay the producer at least the difference between the minimum buying-in price referred to in Article 4 and the aid referred to in Article 5.

2. By way of derogation from paragraph 1, the minimum buying-in price referred to in Article 4 may be paid by the distiller in one single payment, within a specified period, after distillation of the total quantity of wine appearing in the contract.

3. When proof is supplied that the total quantity of wine appearing in the contract has been distilled, the intervention agency shall pay to the producer or, in the case referred to in paragraph 2, to the distiller, the amount referred to in Article 5 (2).

Where the amount is paid to the distiller, the latter shall supply proof that he has paid to the producer the minimum buying-in price referred to in Article 4.

4. The producer or, in the case referred to in paragraph 2, the distiller, may ask for the amount of aid referred to in Article 5 (2) to be paid to him in advance on condition that he has lodged a security equal to 110 % of the amount in the name of the intervention agency. This security shall be given in the form of a guarantee by an establishment meeting the criteria laid down by the Member State to which the intervention agency is responsible.

The advance payment to the producer may not be made until after the date of the approval provided for in Article 2 (1) or Article 3 (3).

The advance payment to the distiller may not be made unless proof is supplied that the whole of the minimum price has been paid to the producer at the latest 30 days following the date on which the total quantity of wine appearing in the contract entered the distillery.

Subject to Article 11, the security provided for in the first subparagraph shall not be released unless, within a specified period, evidence is provided that the total quantity of wine appearing in the contract has been distilled.

When the security is released, the intervention agency shall make the adjustments required to take account of the margins provided for in Article 10.

Article 7

By way of derogation from Article 6 (1), if distillation takes place in a Member State other than that to which the intervention agency which approved the contract is responsible, the distiller shall pay to the producer the minimum buying-in price specified in Article 4 once the total quantity of wine appearing in the contract has entered the distillery.

In this case the aid shall be paid to the distiller in accordance with the rules provided for in Article 6 (3) or (4).

Article 8

Distillation operations may not take place after 15 November 1981.

Article 9

Should the average prices, for not less than 50 % of the quantities quoted of a type of table wine, exceed 90 % of the activating price for that type of wine, it may be decided that delivery contracts for wines of this type may be terminated wholly or in part at the request of the producer.

Termination of the contract shall be permitted only in cases where the amounts paid by the intervention agency are refunded.

Article 10

A margin of 10 % more or less than the quantity of wine indicated in the contracts referred to in Article 1, subject to the maximum and minimum amounts provided for in Article 1 (2), shall be permitted for the quantity of wine actually delivered to the distillery.

The intervention agency shall pay the aid provided for in Article 5 for the quantity of wine which has actually been distilled, within the margin referred to in the first subparagraph.

Article 11

Where, owing to chance circumstances or *force majeure*, all or some of the wine covered by a contract referred to in Article 1 cannot be distilled, the distiller or the producer shall immediately so inform :

— the intervention agency of the Member State in whose territory the distillation plant is located, and

— if the producer's winery is located in another Member State, the intervention agency of that Member State.

In the cases referred to in the first paragraph, the intervention agency shall pay the aid referred to in Article 5 in respect of that quantity of wine which has actually been distilled.

Article 12

The wine intended for distillation as provided for in Article 1 (1) may be processed into wine fortified for distillation by the distiller or by an approved manufacturer other than the producer.

If the operation is carried out by a manufacturer, Articles 1, 2, 4, 5, 6, 9, 10 and 11 shall apply subject to the provisions of the following Articles.

Article 13

1. In the case referred to in the second subparagraph of Article 12, the contracts provided for in Article 1 shall be concluded between a producer and a manufacturer.

2. These contracts shall involve the manufacturer in the obligation :

(a) to purchase the quantity of wine appearing therein and to process all of it into wine fortified for distillation ;

(b) to deliver the wine fortified for distillation to an approved distiller ;

(c) to pay to the producer not less than the price specified in Article 4.

Article 14

1. In the case referred to in the second subparagraph of Article 12, wine fortified for distillation may be produced only in the territory of the Member State where the producer's winery is located and within a specified period of time.

2. The manufacture of wine fortified for distillation, as referred to in paragraph 1, shall be subject to official supervision. For this purpose :

— the document(s) and the register(s) provided for in Article 53 of Regulation (EEC) No 337/79 shall state the increase in actual alcoholic strength by volume, expressed as % vol, giving the strength before and after the addition of the distillate to the wine ;

— before the wine is processed into wine fortified for distillation, a sample shall be taken under the supervision of an official body for analysis by an official laboratory, or by a laboratory operating under official supervision, of the actual alcoholic strength by volume. Two copies of the results of this analysis shall be sent to the manufacturer of the wine fortified for distillation, who shall forward one copy to the intervention agency of the Member State where the wine fortified for distillation was produced.

3. Member States may restrict the places at which wine fortified for distillation may be processed to the extent that such restriction is necessary to ensure the most appropriate form of supervision.

Article 15

In the case referred to in the second subparagraph of Article 12, the price specified in Article 4 shall be paid by the manufacturer when the total quantity of wine appearing in the contract has entered his installations.

Article 16

In the case referred to in the second subparagraph of Article 12, wine fortified for distillation shall be distilled before a specified date. The product obtained from the distillation of wine fortified for that purpose shall have an alcoholic strength by volume of 85 % or less.

Article 17

1. The intervention agency of the Member State where the wine fortified for distillation has been manufactured shall pay to the manufacturer the amount referred to, as the case may be, in the second indent of the first subparagraph of Article 5 (2) or the second indent of the second subparagraph of Article 5 (2), according to the procedure provided for in Article 6 (3) or (4).

2. The aid shall be calculated by hectolitre and by % vol of the actual alcoholic strength of the wine before it is fortified for distillation.

3. The margin provided for in Article 10 shall apply to the quantities of table wine delivered to the manufacturer's installations. The aid shall be paid for the quantity of table wine which, after being fortified for distillation, has actually been distilled.

Article 18

For the purposes of this Regulation, 'an approved distiller' shall mean a distiller included on a list to be compiled by the competent authorities of the Member States.

A person on whose behalf distillation is carried out shall be treated in the same way as a distiller within the meaning of the first paragraph.

Such distillation must be carried out by an approved distiller.

For the purposes of this Regulation 'an approved manufacturer' shall mean a manufacturer included on a list to be compiled by the Member States.

Approval of a distiller or of a manufacturer may be withdrawn by the competent authority if he does not satisfy the obligations incumbent upon him, pursuant to Community provisions.

Article 19

1. The intervention agencies responsible for implementing this Regulation shall be those appointed by the Member States in accordance with Article 8 of Regulation (EEC) No 343/79.

2. Without prejudice to Article 2 (1), Article 3 (3) and Article 17 (1), the competent intervention agency shall be that of the Member States in whose territory distillation takes place.

Article 20

Member States shall take the measures necessary to ensure that this Regulation and, in particular, checks to prevent the deflection of table wine from its end-use of distillation, are implemented. To this end Member States may stipulate that an indicator may be used.

Member States may not prevent the movement within their territory of a table wine intended for distillation or of distilled products obtained from such wine, because of the presence of an indicator.

Article 21

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

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

Done at Brussels, 24 April 1981.

For the Council

The President

G. BRAKS