COUNCIL REGULATION (EEC) No 2852/81

of 28 September 1981

derogating from Regulation (EEC) No 343/79 in respect of general rules relating to the distillation of table wines decided upon in accordance with Article 12a 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 12a (4) thereof,

Having regard to the proposal from the Commission,

Whereas the current serious crisis in the market for table wines is causing severe difficulties for producers; whereas, taking into account the importance and the nature of these difficulties, it proves necessary to make provision, by way of derogation from Council Regulation (EEC) No 343/79 of 5 February 1979 laying down general rules governing certain distillation operations in the wine sector [3], as last amended by Regulation (EEC) No 2008/81 [4], for special rules to implement distillation measures decided pursuant to Article 12a of Regulation (EEC) No 337/79 for this marketing year;

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, 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 themselves 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 for wines for distillation normally renders it impossible to market the products of distillation at market prices; whereas it is therefore necessary to determine the criteria for fixing the amount of aid so as to enable the products obtained to be disposed of;

Whereas provision should be made for the minimum price guaranteed to producers to be paid to them, as a general rule, within time limits which will enable them to obtain a profit comparable to that which they would have obtained from a commercial sale; whereas, in these circumstances, it is essential to advance the payment of aid due to them under the distillation measures decided upon pursuant to Article 12a of Regulation (EEC) No 337/79 as far as possible, while guaranteeing that operations are correctly carried out by means of an appropriate system of securities; whereas, in order to allow the measure to realize its goal to its full extent in the Member States, provision should be made for the procedure of payment of advances adapted to the administrative systems of the different Member States;

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;

[1] OJ No L 54, 5. 3. 1979, p. 1.
[2] OJ No L 360, 31. 12. 1980, p. 18.
[3] OJ No L 54, 5. 3. 1979, p. 64.
[4] OJ No L 195, 18. 7. 1981, p. 3.

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

Whereas the quantity of table wine which may be distilled pursuant to Article 12a of Regulation (EEC) No 337/79 is limited for each producer to a certain percentage of his production ; whereas control of compliance with that provision entails detailed checks on producers' harvest declarations and records at the time of approval of delivery contracts ; whereas provision should therefore be made for the competent intervention agency to be that of the Member State where the wine is situated at the time the contract is concluded for the purposes of approval of the above-mentioned delivery contracts ;

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 nor of the products obtained therefrom,

HAS ADOPTED THIS REGULATION :

Article 1

For distillation decided upon pursuant to Article 12a of Regulation (EEC) No 337/79 in the context of measures reserved for holders of long-term storage contracts concluded during the 1980/81 wine-growing year and by way of derogation from Regulation (EEC) No 343/79, the provisions applicable shall be those laid down in this Regulation.

Article 2

1. Producers undertaking the distillation of wine referred to in Article 1 shall conclude contracts for the delivery of wine with an approved distiller and shall submit them to the intervention agency before a date to be fixed.

The contracts shall not be valid under this Regulation unless approved before a date to be fixed by the intervention agency of the Member State where the wine is situated at the time the contracts are concluded.

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 send a copy to the intervention agency of the Member State where distillation takes place.

2. These contracts shall cover :

(a) the purchase by the distiller of the quantity of wine entered in the contract ;

(b) the obligation for the distiller to process the wine into a product with an alcoholic strength of 86 % vol or more, or into a product with an alcoholic strength of 85 % vol or less and to pay for it at least the price referred to in Article 12a (3) of Regulation (EEC) No 337/79, such price being applicable to unpacked goods ex producer's premises.

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 a date to be fixed, 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 the second Member State by means of a copy of the declaration.

2. For the purposes of this Regulation, the contract referred to in Article 2 (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 a date to be fixed 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 by 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 intervention agency shall pay aid for each hectolitre of wine distilled.

2. The amount of the aid shall be fixed on the basis of the minimum buying-in price referred to in Article 2 (2) (b), the standard processing costs and the price of the products obtained by distillation, so as to enable these products to be disposed of.

3. The amount of aid granted shall vary depending on whether the products of distillation have an alcoholic strength by volume of :

— 86 % vol or more, or

— 85 % vol or less.

However, the amount of aid granted for products with an alcoholic strength by volume of 85 % vol or less may not exceed the amount of aid granted for products with an alcoholic strength by volume of 86 % vol or more.

Article 5

1. When the total quantity of wine covered by the delivery contract enters the distillery, the distiller shall pay the producer at least the difference between the minimum purchase price and the aid laid down.

2. By way of derogation from paragraph 1, the minimum purchase price shall be paid by the distiller within the time limits to be laid down :

— when distillation takes place in a Member State other than that where the wine was subject to a long-term storage contract, or

— where provision to this effect is made in the delivery contract.

3. Where proof is furnished that the total quantity of wine appearing in the contract has been distilled the intervention agency shall pay the aid laid down to the producer or, in the circumstances referred to in paragraph 2, to the distiller.

Where the aid is paid to the distiller, the latter shall provide proof that he has paid the minimum purchase price to the producer.

4. The producer or, in the circumstances referred to in paragraph 2, the distiller may request that the aid be advanced on condition that a security of 110 % of the amount of the aid is provided for the benefit of the intervention agency. The security shall take the form of a guarantee provided by an establishment which complies with criteria fixed by the Member State to which the intervention agency is responsible.

The advance may be paid only after the date of the approval referred to in Article 2 (1) or Article 3 (3).

5. For the payment of the advance to the distiller, the Member States shall use one or other of the following procedures :

(a) the advance shall be paid when proof is furnished that the total minimum price has been paid to the producer not later than 30 days after the date on which the total quantity of wine appearing in the contract entered the distillery ;

(b) the advance shall be paid to the distiller on condition that the distiller undertakes to pay the producer :

— at least 65 % of the minimum purchase price not later than 30 days after the date when he receives the advance,

— the difference between the minimum purchase price and the amount referred to in the first indent not later than 30 days after distillation of the total quantity of wine appearing in the delivery contract.

6. Subject to Article 8, the security referred to in paragraph 4 shall be released only if, within a time limit to be determined, proof is provided that :

— the total quantity of wine appearing in the delivery contract has been distilled,

— and, in cases covered by paragraph 5 (b), the minimum purchase price has been paid to the producer within the time limits set.

At the time of release of the security, the intervention agency shall make the necessary adjustments to take account of the margins referred to in Article 7.

Article 6

Distillation shall take place during periods to be fixed.

It may, however, be decided to bring forward the completion date for these operations, should the economic situation of the market require it, with due consideration for *inter alia* :

— the weighted average price level,

— market availability,

for the types of wine concerned.

Article 7

A margin of 10 % more or less than the quantity of wine indicated in the contracts referred to in Article 2 shall be permitted.

The intervention agency shall pay the aid provided for in Article 4 (3) for the quantity of wine actually distilled within the margins referred to in the first paragraph and within the margins of the maximum amount which may be distilled.

Article 8

Where, due to chance circumstances or for reasons of *force majeure,* all or some of the wine covered by a contract referred to in Article 2 cannot be distilled, the distiller or the producer shall immediately so inform :

— the intervention agency of the Member State in whose territory the distillation premises are located and,

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

In the cases referred to in the preceding paragraph the intervention agency shall pay the aid referred to in Article 4 (3) in respect of that quantity of wine which has actually been distilled.

Article 9

The wine intended for distillation as provided for in Article 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 2, 4, 5, 7 and 8 shall apply subject to the provisions of the following Articles.

Article 10

1. In the case referred to in the second paragraph of Article 9, the contracts referred to in Article 2 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 2 (2) (b).

Article 11

1. In the case referred to in the second paragraph of Article 9, 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 12

In the case referred to in the second paragraph of Article 9, the price specified in Article 2 (2) (b) shall be paid by the manufacturer when the total quantity of wine appearing in the contract has entered his premises.

Article 13

In the case referred to in the second paragraph of Article 9, 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 14

1. The intervention agency of the Member State where the wine fortified for distillation has been manufactured shall pay to the manufacturer the amount fixed as provided for in Article 4, according to the procedure laid down in Article 5 (3), (4) and (5) (a).

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 7 shall apply to the quantities of table wine delivered to the manufacturer's premises.

The aid shall be paid for the quantity of table wine which, after being fortified for distillation, has actually been distilled.

Article 15

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 16

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

2. Without prejudice to Articles 2 (1), 3 (3) and 14 (1), the competent intervention agency shall be that of the Member State in whose territory distillation takes place.

Article 17

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 18

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

It shall apply with effect from 16 September 1981.

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

Done at Brussels, 28 September 1981.

For the Council

The President

P. WALKER