COMMISSION REGULATION (EEC) No 2261/85

of 29 July 1985

laying down, for the 1985/86 wine-growing year, detailed implementing rules for the distillation referred to in Article 40 of Regulation (EEC) No 337/79

THE COMMISSION 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 798/85 (2), and in particular Articles 6 (3), 40 (6) and 65 thereof,

Whereas the distillation operations referred to in Article 40 of Regulation (EEC) No 337/79 must be carried out in accordance with the provisions of Council Regulation (EEC) No 2179/83 of 25 July 1983 laying down general rules for distillation operations involving wine and the by-products of wine-making (3), as amended by Regulation (EEC) No 2687/84 (4);

Whereas it is necessary to determine both the conditions for the fulfilment by producers of the obligations laid down in Article 40 of Regulation (EEC) No 337/79 and the conditions for the fulfilment of the obligations incumbent on distillers;

Whereas each producer should be exempted from the obligation to deliver for distillation in respect of a standard quality representing family consumption and any quantities exported; whereas it should therefore be provided that any export of wine must take place before a date which will allow the remaining quantities to be distilled, as laid down, before the end of the wine-growing year;

Whereas, under Article 40 (2) of Regulation (EEC) No 337/79 the obligation to distil does not apply to quantities of wine normally produced; whereas these quantities should be defined for each of the different types of wine produced from grapes classed for two purposes; whereas for wine produced from grapes of varieties classed as both wine-grape and table-grape varieties the rule laid down in Commission Regulation (EEC) No 2078/76 (5) should be followed, but with a different reference period for Greece; whereas, however, for wine produced from grapes of varieties classed as both wine-grape varieties and varieties for special uses, the obligation to distil was first included in the rules in the 1982/83 wine-growing year; whereas application thereof has given rise to difficulties; whereas, in order that a proper solution may be found to these difficulties whilst ensuring equal treatment of all those concerned, the adoption of criteria for determining the quantity of wine normally produced per hectare in each administrative unit should be postponed to a later date;

Whereas the quantity to be distilled by each producer should be determined on the basis of the total quantity produced; whereas this is derived from the declarations provided for by Commission Regulation (EEC) No 2102/84 on harvest production and stock declarations relating to wine-sector products (6), as amended by Regulation (EEC) No 2459/84 (7), and from the particulars appearing in the records provided for by Commission Regulation (EEC) No 1153/75 of 30 April 1975 prescribing the form of accompanying documents for wine products and specifying the obligations of wine producers and traders other than retailers (8), as last amended by Regulation (EEC) No 3203/80 (9);

Whereas it is necessary to avoid any risk that the product of the distillation of certain wines that must be distilled pursuant to Article 40 of Regulation (EEC) No 337/79 may disturb the market in wine spirits with a registered designation of origin; whereas to this end, in accordance with Article 3 (2) of Regulation (EEC) No 2179/83, provision should be made that a product obtained from distilling such wine should not have an alcoholic strength less than 92 % vol;

Whereas, in order to ensure that the arrangements are as effective as possible, provision should be made for placing certain time limits on the operations to be carried out by producers and distillers;

Whereas distillers may, in accordance with Article 40 (4) of Regulation (EEC) No 337/79, either receive aid for the product to be distilled or deliver the product obtained from distillation to the intervention agency; whereas the amount of the aid must be fixed on the

(1) OJ No L 54, 5. 3. 1979, p. 1.
(2) OJ No L 89, 29. 3. 1985, p. 1.
(3) OJ No L 212, 3. 8. 1983, p. 1.
(4) OJ No L 255, 25. 9. 1984, p. 1.
(5) OJ No L 233, 24. 8. 1976, p. 20.
(6) OJ No L 194, 24. 7. 1984, p. 1.
(7) OJ No L 231, 29. 8. 1984, p. 5.
(8) OJ No L 113, 1. 5. 1975, p. 1.
(9) OJ No L 333, 11. 12. 1980, p. 18.

basis of the criteria referred to in Article 16 of Regulation (EEC) No 2179/83 ; whereas, in order to avoid the production of poor-quality potable spirits, it should be laid down, in the absence of Community provisions on this matter, that the potable spirits produced must comply with the national provisions in force ;

Whereas, to qualify for the aid, the parties concerned must lodge an application accompanied by a number of supporting documents ; whereas, to ensure that the system operates uniformly in all Member States, time limits should be laid down for the lodging of applications, for the payment of aid to distillers and for the submission of proof that the buying-in price has been paid ;

Whereas the price to be paid by the intervention agencies for products delivered to them should be fixed on the basis of the criteria referred to in Article 18 (2) of Regulation (EEC) No 2179/83 ;

Whereas, in the absence of an organized Community market in ethyl alcohol, the intervention agencies responsible for marketing such alcohol are obliged to resell it at less than the buying-in price ; whereas provision should be made for the difference between the buying-in price and the selling price of such alcohol to be borne, at a standard rate, by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund ;

Whereas the provisions on the financing of intervention laid down in Council Regulation (EEC) No 729/70 [1], as last amended by Regulation (EEC) No 2788/72 [2], should be extended to cover the taking-over by intervention agencies of the products of distillation ;

Whereas some of the wines which must be delivered for distillation pursuant to Article 40 of Regulation (EEC) No 337/79 may be made into fortified wines ; whereas corresponding adjustments should therefore be made to the provisions applicable to distillation operations in accordance with the rules laid down in Articles 25 and 26 of Regulation (EEC) No 2179/83 ;

Whereas, in order that the Commission may keep a general watch on compliance with the obligations regarding distillation laid down in Article 40 of Regulation (EEC) No 337/79, the Member States concerned must keep the Commission regularly informed, on the basis of reports from distillers, of the progress and outcome of distillation operations ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION :

Article 1

This Regulation lays down detailed implementing rules for the distillation provided for in Article 40 of Regulation (EEC) No 337/79 for the 1985/86 marketing year.

Article 2

1. Those producers subject to an obligation to distil under Article 40 of Regulation (EEC) No 337/79 shall discharge their obligation by delivering their wine to an approved distiller by 31 July 1986 at the latest. The provisions of paragraphs 2 and 3 shall apply.

In cases covered by Article 26 (1) of Regulation (EEC) No 2179/83, the obligation shall be discharged by delivery of the wine to an approved processor by 30 June 1986 at the latest.

2. In the case of wine covered by Article 40 (1) of Regulation (EEC) No 337/79, each producer must deliver a quantity equal to the total quantity which he has produced less :

— a standard quantity of 10 hectolitres,

— any quantity which he proves to have been exported by 31 July 1986 at the latest.

Where the distillation requirement is incumbent on a collective winery, the 10 hectolitres referred to in the first indent of the preceding subparagraph shall be deducted from the quantity produced by each member who actually delivers table grapes to the cooperative. However, the total amount deducted by the cooperative as a whole may not exceed the total quantity returned to individual members delivering table grapes in 1985/86.

3. In the case of wine covered by Article 40 (2) of Regulation (EEC) No 337/79, each producer must deliver a quantity equal to the total quantity which he has produced less :

— a standard quantity of 10 hectolitres,

— any quantity which he proves to have been exported by 31 July 1986 at the latest,

— the quantity normally produced, calculated as specified in paragraph 4.

[1] OJ No L 94, 28. 4. 1970, p. 13.
[2] OJ No L 295, 30. 12. 1972, p. 1.

4. For each administrative unit the following shall be regarded as the total quantity of wine normally produced :

— the average quantities produced during a reference period, in the case of wine produced from grape varieties listed in the classification for that administrative unit as both wine-grape and table-grape varieties,

— the average quantities produced during the wine-growing years 1974/75 to 1979/80, in the case of wine produced from grape varieties listed in the classification for that administrative unit as both wine-grape varieties and varieties for the production of dried grapes,

— the average quantities produced in the wine-growing years 1974/75 to 1979/80 less such quantities as were distilled other than for the production of wine spirits with a registered designation of origin, in the case of wine produced from grape varieties listed in the classification for that administrative unit as both wine-grape varieties and varieties for the production of wine spirits.

For wine as referred to in the first subparagraph, the quantity normally produced per hectare shall be the quantity determined :

— in the case of administrative units in France and Italy, in accordance with Article 5 of Regulation (EEC) No 2078/76 for the 1976/77 wine-growing year,

— in the case of administrative units in Greece, in accordance with the said Article 5, taking into account the results of the wine-growing years 1974/75 to 1979/80.

5. The total quantity produced by each producer shall be the sum of the quantities of wine mentioned in paragraph 1 appearing in the production declaration referred to in Article 2 (1) of Regulation (EEC) No 2102/84 and the quantities entered in the records referred to in Article 14 of Regulation (EEC) No 1153/75 and obtained by the producer, after the date of submission of the production declaration, from grapes or from must produced from grapes of the varieties referred to in Article 40 (1) and (2) of Regulation (EEC) No 337/79 which appear in that declaration.

Article 3

1. The buying-in price provided for in Article 40 (3) of Regulation (EEC) No 337/79 shall be 1,59 ECU per % vol per hectolitre.

2. The buying-in price referred to in paragraph 1 shall be paid by the distiller to the producer within three months of the day on which each consignment of wine enters the distillery.

Article 4

1. The distillation operations referred to in Article 40 of Regulation (EEC) No 337/79 may not take place after 31 August 1986.

2. Wine as referred to in the third indent of the first subparagraph of Article 2 (4) must be distilled to give a product with an alcoholic strength of 92 % vol or more.

3. Distillers shall send the intervention agency, on the 10th day of each month at the latest, a statement of the quantities of wine distilled and of products obtained from distillation during the previous month, itemized according to the categories specified in the first subparagraph of Article 3 (1) of Regulation (EEC) No 2179/83.

Article 5

1. Distillers may receive aid subject to the conditions set forth in paragraph 2.

The amount of the aid shall be :

— 1,12 ECU per % vol alcohol per hectolitre of the product of distillation where the latter corresponds to the definition of neutral alcohol given in the Annex to Regulation (EEC) No 2179/83,

— 1,01 ECU per % vol alcohol per hectolitre of the product of distillation where the latter is a wine spirit having the quality characteristics provided for in the applicable national provisions,

— 1,01 ECU per % vol alcohol per hectolitre of the product of distillation where the latter is a distillate or raw alcohol having an alcoholic strength of not less than 52 % vol.

2. Distillers who wish to receive the aid referred to in paragraph 1 shall, by 31 October 1986 at the latest, submit an application to the intervention agency of the Member State in which distillation took place in accordance with the provisions of Article 17 (1) of Regulation (EEC) No 2179/83.

Member States may require that the summary referred to at (a) in the first subparagraph of the said Article be endorsed by a supervisory authority.

3. The distiller shall provide the intervention agency, before 1 February 1987, with the proof referred to in the first subparagraph of Article 17 (2) of Regulation (EEC) No 2179/83.

If such proof is not provided before 1 February 1987, the aid shall be recovered by the intervention agency. If, however, the proof is furnished after that time limit but before 1 May 1987, the intervention agency shall recover 20 % of the aid paid.

Where it is established that the distiller has not paid the buying-in price to the producer, the intervention agency shall pay to the producer, before 1 June 1987, a sum equal to the amount of the aid, where appropriate through the intervention agency of the producer's Member State.

Article 6

1. Products having an alcoholic strength of 92 % vol or more shall be delivered to the intervention agency not later than 31 October 1986 or, where Article 11 (2) of Regulation (EEC) No 2179/83 is applied, within a period fixed by the competent national authority.

2. The price to be paid to the distiller by the intervention agency shall be 2,08 ECU per % vol pure alcohol per hectolitre.

Where the distiller has received aid pursuant to Article 5, the price referred to in the first subparagraph shall be reduced by the amount of that aid.

Where the distiller has not received the aid referred to in the second subparagraph, the provisions of Article 5 (2) shall apply.

3. The prices referred to in paragraph 2 shall apply to neutral alcohol corresponding to the definition given in the Annex to Regulation (EEC) No 2179/83.

For other alcohols, the prices referred to in paragraph 2 shall be reduced by 0,11 ECU per % vol of pure alcohol per hectolitre.

4. The intervention agency shall pay the distiller for the alcohol not later than three months after the day on which it was delivered.

Article 5 (3) shall apply, subject to the necessary adjustments.

Article 7

The Guarantee Section of the European Agricultural Guidance and Guarantee Fund shall contribute to intervention agencies' expenditure on the taking over of alcohol.

The contribution shall be a flat rate of 1,12 ECU per % vol per hectolitre of alcohol taken over.

However, no contribution shall be made in respect of alcohol taken over pursuant to Article 11 (2) of Regulation (EEC) No 2179/83.

Articles 4 and 5 of Regulation (EEC) No 729/70 shall apply to this contribution.

Article 8

1. In the cases referred to in Article 26 (1) of Regulation (EEC) No 2179/83, the contract or declaration relating to deliveries of wine to be fortified for distillation shall be submitted for approval to the competent intervention agency not later than 31 January 1986.

The intervention agency shall inform the producer of the outcome of the approval procedure within 15 days of the date on which the contract or declaration was submitted.

2. Fortification of wine for distillation shall not be carried out after 31 July 1986.

3. Wine fortified for distillation may not be distilled until the contract or declaration has been approved, and at the latest by 31 August 1986.

4. The processor shall send the intervention agency, not later than the 10th day of each month, a statement of the quantities of wine delivered to him during the previous month.

5. For wine fortified for distillation, the processor shall receive aid amounting to 0,99 ECU per hectolitre and per % vol of actual alcoholic strength before the wine is fortified for distillation.

In order to receive the aid, the processor shall submit to the competent intervention agency, not later than 30 November 1986, an application together with copies of the accompanying documents relating to the transport of the wine for which aid is requested or a summary of those documents.

Member States may require that the copies or summary referred to in the second subparagraph be endorsed by a supervisory authority.

The aid shall be paid at the latest three months after the date of submission of proof that the security referred to in Article 26 (4) of Regulation (EEC) No 2179/83 has been lodged and, in any event, after the date on which the contract or declaration was approved.

6. Subject to Article 23 of Regulation (EEC) No 2179/83, the security shall be released only if proof has been provided, by 31 March 1987 at the latest :

— that the total quantity of wine specified in the contract or declaration has been fortified for distillation and distilled,

— that the buying-in price for the wine has been paid to the producer within the period specified in Article 3 (2).

If the proofs referred to in the first subparagraph are not provided by 31 March 1987 at the latest, the intervention agency shall recover the aid from the processor of the fortified wine.

However, if such proofs are provided after the time limit stipulated but before 1 July 1987, the intervention agency shall recover an amount equal to 20 % of the aid paid.

If it is established that the processor fortifying wine for distillation has not paid the buying-in price to the producer, the intervention agency shall pay the producer, before 1 August 1987, a sum equal to the amount of the aid, where appropriate through the intervention agency of the producer's Member State.

Article 9

By way of derogation from Article 40 (1) and (2) of Regulation (EEC) No 337/79, the wines referred to in that Article may be transported :

— to a customs office, so that customs export formalities may be completed and the wines may leave the customs territory of the Community,

— to the premises of an approved processor, so that the wines may be fortified for distillation.

Article 10

1. Without prejudice to the application of Article 6 of Regulation (EEC) No 337/79, and except in cases of *force majeure*, where a producer or distiller does not fulfil one of the obligations incumbent on him by virtue of this Regulation, the competent authority shall decide upon the action it judges necessary in the light of the reasons given.

2. Member States shall inform the Commission of cases in which paragraph 1 is applied and of the action taken where *force majeure* has been invoked.

Article 11

1. By the 20th day of each month at the latest, Member States shall send the Commission a statement specifying in respect of the previous month :

— the quantity of wine and fortified wine distilled,

— the quantity of alcohol delivered to the intervention agencies under the distillation arrangements provided for in Article 40 of Regulation (EEC) No 337/79,

— the quantity of wine spirits produced and the quantity of alcohol contained therein,

— the quantity of other products with an alcoholic strength of 52 % vol or more for which aid has been requested.

2. Member States shall, in respect of alcohol taken over by their intervention agencies, notify the Commission before 1 October 1985 of the selling prices obtaining throughout the 1984/85 wine-growing year and of the characteristics and quantity of the products sold at those prices.

3. Member States shall inform the Commission not later than 31 March 1987 of cases in which distillers of wine or fortifiers of wine for distillation have not fulfilled their obligations and of the measures taken in consequence.

Article 12

The amounts referred to in Articles 3, 5 and 6 shall be converted into national currency at the representative rate applying in the wine sector on 1 September 1985.

Article 13

For the obligations laid down in Article 40 of Regulation (EEC) No 337/79, the reference period referred to in Article 6 (1) of that Regulation shall run from 1 September 1985 to 31 July 1986.

Article 14

This Regulation shall enter into force on 1 September 1985.

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

Done at Brussels, 29 July 1985.

For the Commission

Frans ANDRIESSEN

Vice-President