COMMISSION REGULATION (EEC) No 2352/87

of 31 July 1987

laying down, for the 1987/88 wine year, detailed implementing rules for the distillation as provided for in Article 36 of Council Regulation (EEC) No 822/87

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [1], as last amended by Regulation (EEC) No 1972/87 [2], and in particular Articles 47 (3), 36 (6) and 81 thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as last amended by Regulation (EEC) No 1636/87 [4],

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture [5], as last amended by Regulation (EEC) No 1953/87 [6],

Whereas the distillation operations referred to in Article 36 of Regulation (EEC) No 822/87 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 [7], as last amended by Regulation (EEC) No 3805/85 [8];

Whereas it is necessary to determine both the conditions for the fulfilment by producers of the obligations laid down in Article 36 of Regulation (EEC) No 822/87 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 quantity 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 marketing year;

Whereas under Article 36 (2) of Regulation (EEC) No 822/87 the obligation to distil does not apply to quantities of wine normally produced; whereas those quantities should be defined for each of the different types of wine produced from grapes c[illegible]sed for two purposes;

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 of 13 July 1984 on harvest production and stock declarations relating to wine-sector products [9], as last amended by Regulation (EEC) No 2467/86 [10], 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 [11], as last amended by Regulation (EEC) No 418/86 [12];

Whereas, for wine obtained from grapes grown in Spain, a price should be fixed taking account of the new guide prices in that Member State;

Whereas the risk must be avoided that the products of the distillation of certain wines to be distilled pursuant to Article 36 of Regulation (EEC) No 822/87 may disturb the market in potable spirits with a registered designation of origin; whereas, to that end, in accordance with Article 3 (2) of Regulation (EEC) No 2179/83, provision should be made that a product obtained from the direct distillation of such wine should not have an alcohol strength less than 92 % vol;

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

Whereas distillers may, in accordance with Article 36 (4) of Regulation (EEC) No 822/87, either receive aid for the product to be distilled or send the product obtained from distillation to the intervention agency; whereas the amount of the aid must be fixed on the basis of the criteria referred to in Article 16 of Regulation (EEC) No 2179/83; whereas there is a difference between the level

[1] OJ No L 84, 27. 3. 1987, p. 1.
[2] OJ No L 184, 3. 7. 1987, p. 26.
[3] OJ No L 164, 24. 6. 1985, p. 9.
[4] OJ No L 153, 13. 6. 1987, p. 1.
[5] OJ No L 164, 24. 6. 1985, p. 11.
[6] OJ No L 185, 4. 7. 1987, p. 68.
[7] OJ No L 212, 3. 8. 1983, p. 1.
[8] OJ No L 367, 31. 12. 1985, p. 39.
[9] OJ No L 194, 24. 7. 1984, p. 1.
[10] OJ No L 211, 1. 8. 1986, p. 17.
[11] OJ No L 113, 1. 5. 1975, p. 1.
[12] OJ No L 48, 26. 2. 1986, p. 8.

of the buying-in price for wine in Spain and that fixed for the Community of Ten ; whereas the amount of the aid in Spain must accordingly be fixed at a level taking such differences into account ;

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 certain 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 ;

Whereas, in order to avoid the risk of unjustified payments, for alcohol it should be laid down that payment of aids and payment for alcohol delivered to the intervention agency is not to be made until the distiller furnishes the intervention agency with proof that the buying-in price has been paid to the producer or provides a security in its favour ;

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, for reasons mentioned, in Spain that price is to be fixed at a different level than in the Community of Ten ;

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) 2788/72 [2], should be extended to cover the taking-over by intervention agencies of the products of distillation ;

Whereas some of the wines for distillation pursuant to Article 36 of Regulation (EEC) No 822/87 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 under Article 36 of Regulation (EEC) No 822/87, 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 distillation as provided for in Article 36 of Regulation (EEC) No 822/87 for the 1987/88 wine year.

Article 2

1. Those producers subject to an obligation to distil under Article 36 of Regulation (EEC) No 822/87 shall discharge their obligation by delivering their wine to an approved distiller by 31 July 1988 at the latest. The provisions of paragraph 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 fortifier of wine for distillation by 30 June 1988 at the latest.

2. In the case of wine covered by Article 36 (1) of Regulation (EEC) No 822/87, 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 has been exported by 3 July 1988 at the latest.

Where the distillation requirement is incumbent on a collective winery, the 10 hectolitres referred to in the first indent of the first 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 1987/88.

3. In the case of wine covered by Article 36 (2) of Regulation (EEC) No 822/87, 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 1988 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 total quantity of wine normally produced shall be equal to the average quantities produced in the wine years 1974/75 to 1979/80 in the Community of Ten and in the wine years 1978/79 to 1983/84 in Spain in the case of wine produced from grape varieties classed in that administrative unit as both wine-grape varieties and varieties for other uses.

However, as regards wine produced from grape varieties classed in an administrative unit as both wine-grape varieties and varieties for the production of wine spirits, the quantities undergoing distillation other than for the production of potable spirits with a registered designation of origin shall be deducted from the quantity.

As regards the wine referred to in the first subparagraph, the quantity normally produced per hectare shall be fixed by the Member States concerned by determining for the reference period mentioned in that subparagraph the proportions of wine produced from grape varieties classed in an administrative unit as both wine-grape varieties and varieties for other uses.

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 36 (1) and (2) of Regulation (EEC) No 822/87 which appear in that declaration.

Article 3

1. The buying-in price provided for in Article 36 (3) of Regulation (EEC) No 822/87 shall be 1,56 ECU per % vol per hectolitre. The corresponding price for wines obtained from grapes grown in Spain shall be 1,06 ECU.

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 provided for in Article 36 of Regulation (EEC) No 822/87 may not take place after 31 August 1988.

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

3. Distillers shall send the intervention agency by 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 is hereby fixed, on the basis of the prices referred to in Article 3 (1), at, respectively:

— 1,09 and 0,59 ECU per % vol of alcohol per hectolitre of the product of distillation where the latter corresponds to the definition of natural spirits given in the Annex to Regulation (EEC) No 2179/83,

— 0,98 and 0,48 ECU per % vol of alcohol per hectolitre of the product of distillation where the latter is wine spirits having the quality characteristics provided for in the applicable national provisions,

— 0,98 and 0,48 ECU per % vol of 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 provided for in paragraph 1 shall, by 31 October 1988 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 in paragraph 1 (a) of the said Article be endorsed by a supervisory authority.

3. Payment of the aid by the intervention agency to the distiller shall be conditional upon the distiller, within two months following submission of the application referred to in paragraph 2:

— furnishing proof that he has paid the buying-in price referred to in Article 3,

or

— providing a security in favour of the intervention agency. The security shall be equal to 110 % of the aid applied for.

In the case referred to in the second indent of the first subparagraph, the distiller shall be required to furnish the intervention agency, not later than 31 December 1988 with proof that he has paid the buying-in price referred to in Article 3.

Not later than one month after the said proof has been furnished, the intervention agency shall release the security.

If the proof is furnished after 31 December 1988 but before 1 March 1989 and the delay is not due to negligence on the part of the distiller, the intervention agency shall release 80 % of the security.

4. 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 1989, 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 1988 or, where Article 11 (2) of Regulation (EEC) No 2179/83 is applied, by the date fixed by the competent national authority.

2. The price to be paid to the distiller by the intervention agency is hereby fixed, on the basis of the prices referred to in Article 3 (1) at, respectively, 2,05 and 1,55 % vol 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 second subparagraph, the provisions of Article 5 (2) shall apply.

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

For other spirits 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 abovementioned contribution is hereby fixed at a flat rate, on the basis of the prices referred to in Article 3 (1), of, respectively, 1,09 and 0,59 ECU per % vol per hectolitre of alcohol taken over.

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

Article 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 1988.

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 1988.

3. Wine fortified for distillation may not be distilled until the contract or declaration has been approved, and at the latest by 31 August 1988.

4. The fortifier 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 fortifier shall receive aid, which is hereby fixed, on the basis of the prices referred to in Article 5 (1), at, respectively, 0,96 and 0,46 ECU per hectolitre and per % vol of actual alcoholic strength before the wine is fortified for distillation.

In order to receive the aid, the fortifier shall submit to the competent intervention agency, not later than 30 November 1988, an application together with copies of the accompanying documents relating to the transport of the wine for which aid is requested or a summary thereof.

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 evidence 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 is approved.

6. Subject to Article 23 of Regulation (EEC) No 2179/83 the security shall be released only if evidence has been provided by 31 March 1989 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 evidence referred to in the first subparagraph is not provided by 1 July 1989 at the latest, the total amount of the security shall be forfeited.

However, if such evidence is provided after the deadline stipulated but before 1 September 1989, 80 % of the amount of the security shall be released.

If it is established that the fortifier of wine for distillation has not paid the buying-in price to the producer, the intervention agency shall pay the producer, before 1 August 1989, 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 36 (1) and (2) of Regulation (EEC) No 822/87, the wine referred to therein may be transported :

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

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

Article 10

1. Without prejudice to the application of Article 47 of Regulation (EEC) No 822/87, and except in cases of *force majeure*, where a producer or distiller does not fulfil one of the obligations incumbent on him under this Regulation, the competent authorities shall take the action they judge necessary in the light of the reasons given.

2. The Member State shall inform the Commission in cases where 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 36 of Regulation (EEC) No 822/87,

— 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 1987 of the selling prices obtaining through the 1986/87 wine year and of the characteristics and quantities of the products sold at those prices.

3. Member States shall inform the Commission not later than 31 March 1989 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 this Regulation shall be converted into national currency at the representative rate applying in the wine sector on 1 September 1987.

Article 13

For the obligations laid down in Article 47 of Regulation (EEC) No 822/87, the reference period referred to in Article 6 (1) thereof shall run from 1 September 1987 to 31 July 1988.

Article 14

This Regulation shall enter into force on 1 September 1988.

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

Done at Brussels, 31 July 1987.

For the Commission

Frans ANDRIESSEN

Vice-President