COMMISSION REGULATION (EEC) No 2353/87

of 31 July 1987

laying down for the 1987/88 wine year detailed rules for the application of Article 35 of 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), 35 (8) 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 operations referred to in Article 35 of Regulation (EEC) No 822/87 are to 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 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 35 (2) and (3) of Regulation (EEC) No 822/87, and the obligations incumbent on distillers;

Whereas wine producers are required to deliver for distillation a quantity of product with an alcohol content which corresponds to a percentage of the volume of alcohol naturally contained in the grapes used to produce the wine; whereas the Commission is required to fix that percentage within a given upper limit;

Whereas it is particularly difficult in practice to calculate the quantity of product to be delivered in relation to the alcohol content of the grapes used, primarily on account of the significant fluctuations in the relation between the grapes used and the wine obtained, depending on the grape varieties; whereas by contrast, these difficulties are obviated and checks made simpler and more efficient if the same calculation is carried out in relation to the alcohol contained in the wine; whereas this method of calculation also enables the economic objective of the measure to be met without producers being required to deliver larger quantities;

Whereas, in accordance with Article 13 (3) of Regulation (EEC) No 2179/83, producers who deliver their grape marc for the manufacture of oenocyanin qualify for a reduced percentage; whereas, taking into account the fact that the alcohol contained in the marcs represents a substantial proportion of the quantity of alcohol to be delivered, the reduced percentage should be fixed at 3 %; whereas, pursuant to the same provision, producers of white quality wines psr qualify for a reduced rate; whereas experience in preceding wine-growing years suggests that this rate should be fixed at 5 %;

Whereas, if the must used to produce the sparkling wines has undergone a stabilization treatment, it is separated from its lees; whereas, moreover, the lees that form when secondary fermentation occurs cannot be re-used; whereas the producers in question should not therefore be subjected to the obligation specified in Article 35 (2) of Regulation (EEC) No 822/87 for these by-products;

Whereas, for the purpose of determining the quantity of alcohol to be contained in the products to be delivered, it is also necessary to fix, in accordance with Article 35 (2) of Regulation (EEC) No 822/87, a standard natural alcoholic strength for each wine-growing year and each wine-growing zone; whereas, however, by virtue of Article 35 (4) of Regulation (EEC) No 822/87, producers in certain zones are not subject to the obligation in question; whereas, in the absence of precise information on the alcoholic strength of wines for the coming wine-growing year, this determination may be undertaken by reference to the average strengths recorded in the wine-growing zones concerned in previous wine-growing years, taking into account improvements in quality; whereas, however, it is necessary to allow for the possibility of altering the alcoholic strength referred to above before the date on which distillation of the wine commences in order to take account of the quality of the vintage; whereas, moreover, experience has shown that provisions should be made for the adoption of different alcoholic strengths for administrative units which, having suffered from exceptionally bad weather conditions, are recognized as disaster areas by Member States;

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[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. 1.
[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.

Whereas the fixing of the buying-in price for by-products of wine-making should take account, on the one hand, of the need to ensure that all producers fulfil the obligation to distil in every respect and, on the other hand, of the level of the market price for alcohol distilled from wine ;

Whereas as far as the by-products of wine-making in Spain are concerned, a price should be fixed which takes account of the guide price level in that country ;

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 the need to improve the quality of wine requires that all marc and lees be distilled ; whereas the distillation of wine at the beginning of the wine-growing year should therefore be prohibited ;

Whereas distillers may, in accordance with Article 35 (6) of Regulation (EEC) No 822/87, either qualify for aid in respect of the product to be distilled or deliver to the intervention agency the product obtained by distillation ;

Whereas the amount of the aid should be fixed according to the criteria laid down in Article 16 of Regulation (EEC) No 2179/83 ; whereas, since the buying-in price fixed for Spain is lower than the price fixed for the Community of Ten, the amount of aid in that Member State should be adjusted accordingly ;

Whereas, in order to avoid the production of poor-quality potable spirits, it should be stipulated, 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 ;

Whereas, in order to avoid the risk of unjustified payments, it should be laid down that payment of the aid or the payment for the alcohol supplied to the intervention agency is not to take place unless the distiller furnishes the said agency with proof of payment of the buying-in price to the producer or provides a guarantee in its favour ;

Whereas a standard price should be fixed, to be paid by the intervention agencies for the products delivered to them ; whereas this price must be fixed in accordance with the criteria laid down in Article 18 (2) of Regulation (EEC) No 2179/83 ;

Whereas, in Spain, for the reasons given above, this price is fixed at a level below that 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 it is necessary to make provision for the difference between the buying-in price and selling price for such alcohol to be borne, at a standard rate, by the EAGGF Guarantee Section ;

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 the intervention agencies of products derived from distillation ;

Whereas some of the wines to be delivered for distillation in order to discharge the obligation laid down in Article 35 (2) of Regulation (EEC) No 822/87 may be made into fortified wine ; whereas the provisions concerning distillation operations should therefore be amended in consequence, in accordance with the rules laid down in Articles 25 and 26 of Regulation (EEC) No 2179/83 ;

Whereas, pursuant to the second subparagraph of Article 35 (3) of Regulation (EEC) No 822/87, the minimum characteristics those by-products must have should be laid down ;

Whereas the potential alcoholic strenghth of by-products obtained from wine grapes is on average highter than that of by-products obtained from table grapes and grapes intended for the production of wine spirits ; whereas account should be taken of this difference in the description of minimum characteristics ;

Whereas, in order that the Commission may keep a general watch on compliance with the obligation to distil the by-products of wine-making, the Member States concerned must notify it regularly, 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, for the 1987/88 wine year, detailed rules for the application of Article 35 of Regulation (EEC) No 822/87.

Article 2

Producers subject to the obligation laid down in Article 35 (2) and (3) of Regulation (EEC) No 822/87 shall discharge that obligation by delivering, in accordance with Article 3 and not later than 31 July 1988 :

— the totality of marcs and lees, to an approved distiller,

— any wine to an approved distiller or an approved processor fortifying wine for distillation.

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

Article 3

1. The amount of alcohol contained in the products delivered for distillation shall be at least:

— 8 % of the volume of alcohol contained in the wine, when the wine is obtained by direct vinification of grapes,

— 3 % of the volume of alcohol contained in the wine, when the wine is obtained by vinification of grape must, partially fermented grape must or new wines still in fermentation.

2. The percentage referred to in the first indent of paragraph 1 shall be reduced to:

— 3 % for producers delivering marc for the manufacture of oenocyanin,

— 5 % for producers of white quality wines psr, for that part of their production which qualifies as such,

— 0 % for producers of quality sparkling wines of the aromatic type or of quality sparkling wines of the aromatic type produced in specific regions, as described in the first paragraph of Article 18 (1) of Council Regulation (EEC) No 358/79 (1), who have produced their wine from grape must or bought-in, partially fermented grape must that has undergone stabilization treatment to eliminate the lees.

Article 4

For the purpose of determining the volume of alcohol contained in products delivered for distillation pursuant to Article 35 of Regulation (EEC) No 822/87, the standard natural alcoholic strength by volume shall be:

— 8,5 % for zone B,

— 9,0 % for zones C I,

— 9,5 % for zone C II,

— 10,0 % for zones C III.

However, the alcoholic strengths given above may be altered before the wine-distilling operations referred to in Article 7 begin, if the quality of the vintage so requires. Such strengths may also be altered for administrative units or parts thereof which are recognized as disaster areas by the Member States within the meaning of national law.

Article 5

1. The price to be paid by the distiller to the producer for marc, lees, the liquid product obtained by the over-pressing of grape marc and wine lees, and any wine delivered for distillation, hereinafter called 'the buying-in price for wine delivered for distillation', shall be 1,03 ECU per % vol per hectolitre of alcohol contained in the products. Where the products delivered were obtained from grapes produced in Spain, the price shall be 0,70 ECU.

2. Not later than three months after the producer has delivered the products, the distiller shall pay the producer an advance of at least 80 % of the price referred to in paragraph 1.

However, the producer and distiller may agree that the advance is to be paid after delivery of the products, but not more than one month after presentation of the invoice to be drawn up for them before 1 September 1988.

The balance shall be paid to the producer not later than 30 November 1988.

Article 6

Not later than the 10th day of each month, distillers shall communicate to the intervention agencies, for the previous month, a statement of quantities of products distilled, as referred to in Article 2 (1), and of products obtained from distillation, broken down into the categories referred to in the first subparagraph of Article 3 (1) of Regulation (EEC) No 2179/83.

Article 7

1. Subject to Article 11, the distillation operations referred to in Article 35 of Regulation (EEC) No 822/87 shall not take place after 31 August 1988.

2. Any wine delivered in order to discharge the obligation laid down in Article 35 (2) of Regulation (EEC) No 822/87 may be distilled only from 1 January 1988.

Article 8

1. The distiller may receive aid under the conditions laid down in paragraph 2.

The amount of the aid is hereby fixed, on the basis of the prices referred to in Article 5 (1) at respectively:

— 0,56 ECU and 0,22 ECU per % vol per hectolitre of product produced by distillation, where the latter is a neutral alcohol complying with the definition given in the Annex to Regulation (EEC) No 2179/83,

— 0,47 ECU and 0,13 ECU per % vol per hectolitre of product produced by distillation, where the latter is a marc spirit meeting the national quality requirements applicable,

— 0,45 ECU and 0,11 ECU per % vol per hectolitre of product produced by distillation, where the latter is a wine spirit meeting the national quality requirements applicable,

— 0,45 ECU and 0,11 ECU per % vol per hectolitre of product produced by distillation, where the latter is a distillate or raw alcohol with an alcoholic strength of not less than 52 % vol.

(1) OJ No L 54, 5. 3. 1979, p. 130.

2. A distiller who wishes to receive the aid referred to in paragraph 1 shall by 31 October 1988 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 advance referred to in Article 5 (2), or

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

4. In the case referred to in the first indent of paragraph 3, the distiller shall be required to provide the intervention agency, not later than 31 December 1988, with proof that he has paid the balance referred to in the third subparagraph of Article 5 (2). If such proof is furnished after 31 December 1988 but before 1 March 1989 and the delay is not due to serious negligence on the part of the distiller, the intervention agency shall recover an amount equal to 20 % of the aid paid. If the proof is not furnished by 1 March 1989, the aid shall be recovered in its entirety.

5. In the case referred to in the second indent of paragraph 3, the distiller shall be required to provide the intervention agency :

— not later than four months after the entry into the distillery of the by-products of wine-making, with proof that he has paid the advance referred to in the first subparagraph of Article 5 (2),

— not later than 31 December 1988, with proof that he has paid the balance referred to in the third subparagraph of Article 5 (2).

Proof that he has paid the balance referred to in the third subparagraph of Article 5 (2) shall be provided to the intervention agency by 31 December 1988 at the latest.

Not later than one month after proofs of payment of the advance and the balance have been furnished, the intervention agency shall release 80 % and 20 % respectively of the security referred to in paragraph 3.

If the proof is furnished after expiry of the time limits specified but within two months of those time limits and the delay is not due to serious negligence on the part of the distiller, the intervention agency shall release 64 % and 16 % of the security respectively.

6. If it is found that the distiller has not paid the producer the buying-in price for wine delivered for distillation, the intervention agency shall pay the producer, before 1 June 1989, an amount equal to the aid, if necessary through the intervention agency of the producer's Member State.

Article 9

1. The delivery by the distiller to the intervention agency of products with an alcoholic strength of not less than 92 % vol shall be effected not later than 31 October 1988, or, in the event of application of Article 11 (2) of Regulation (EEC) No 2179/83, at a 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 5 (1), at, respectively, 1,72 ECU and 1,31 ECU per % vol of alcohol per litre.

If the distiller has received aid as provided for in Article 8, this price shall be reduced by the amount of that aid.

If the distiller has not received the aid, the provisions of Article 8 (2) shall apply.

3. Where Article 18 (3) of Regulation (EEC) No 2179/83 is applied, the differentiated prices are hereby fixed, on the basis of the prices referred to in Article 5 (1), at, respectively :

— 1,80 ECU and 1,46 ECU per % vol of pure alcohol per hectolitre, for alcohol derived from the distillation of marc,

— 1,52 ECU and 1,18 ECU per % vol of pure alcohol per hectolitre, for alcohol derived from the distillation of wine and lees.

4. The prices referred to in paragraph 2 and 3 shall apply to neutral alcohol complying with the definition given in the Annex to Regulation (EEC) No 2179/83. For other alcohols, the prices laid down in paragraphs 2 and 3 shall be reduced by 0,11 ECU per % vol of pure alcohol per hectolitre.

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

Article 8 (3) to (6) shall apply, subject to the necessary adjustments.

Article 10

1. 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 is hereby fixed, on the basis of the prices referred to in Article 5 (1) at a standard rate of, respectively, 0,74 ECU and 0,40 ECU per % vol of alcohol per hectolitre of alcohol taken over.

However, for alcohol taken over under Article 11 (2) of Regulation (EEC) No 2179/83, the contribution shall be 0,18 ECU per % vol of alcohol per hectolitre.

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

Article 11

1. In the case referred to in Article 26 (1) of Regulation (EEC) No 2179/83, the contract or declaration of delivery of wine to be fortified for distillation shall be submitted for approval by the competent intervention agency not later than 31 January 1988.

The intervention agency shall inform the producer of the result of the approval procedure within 15 days following the date of submission of the contract or declaration.

2. Wine may be fortified for distillation only from 1 January 1988 and until 31 August 1988, and in any event not until the contract or declaration has been approved.

3. The distillation of wine fortified for distillation may not take place after 31 October 1988.

4. The processor shall send to the intervention agency, not later than the 10th 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 be entitled to an aid, which is hereby fixed, on the basis of the prices referred to in Article 5 (1) at, respectively, 0,43 ECU and 0,10 ECU per hectolitre per % vol of actual wine alcohol before fortification for distillation.

In order to receive the aid, the processor shall, not later than 30 November 1988, submit a request to the competent intervention agency, attaching a copy of the accompanying documents relating to the transport of the wine for which the aid is being 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 not more than 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, but not in any event before the date on which the contract or declaration has been approved.

6. Subject to Article 23 of Regulation (EEC) No 2179/83, the shall be released only if, by 31 March 1989, proof is provided that :

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

— the buying-in price for wine delivered for distillation has been paid to the producer within the time limits laid down in Article 5 (2).

However, if this proof is presented after expiry of the time limit but before 1 July 1989, 80 % of the security shall be released.

If the proofs referred to in the first subparagraph are not provided by 1 July 1989, all of the security shall be forfeit.

If it is found that the processor has not paid the producer the buying-in price for wine delivered for distillation, the intervention agency shall pay the producer, before 1 August 1989, an amount equal to the aid, if necessary through the intervention agency of the producer's Member State.

Article 12

1. Except for the products referred to in paragraph 2, the minimum characteristics of by-products of wine-making shall be as follows :

— grape marc :

  — in wine-growing zone B : 2 litres of pure alcohol/100 kilograms,

  — in wine-growing zone C : 2 litres of pure alcohol/100 kilograms where they are obtained from varieties listed in the classification of varieties of wines for the administrative unit in question as table grape varieties or as varieties intended for the production of wine spirits ; 3,2 litres of pure alcohol/100 kilograms where they are obtained from varieties listed in the classification for the administrative unit in question solely as wine grape varieties.

— wine lees :

  — in wine-growing zone B : 3 litres of pure alcohol/100 kilograms, 40 % humidity,

  — in wine-growing zone C : 4 litres of pure alcohol/100 kilograms, 40 % humidity.

2. The average minimum pure alcoholic strength of the by-products of wine-making withdrawn under supervision as referred to in Article 35 (4) or (5) of Regulation (EEC) No 822/87 shall be :

— in wine-growing zone A : 1,8 litres/100 kilograms of by-product,

— in wine-growing zone B : 2 litres/100 kilograms of by-product,

— in wine-growing zone C : 2 litres of pure alcohol/100 kilograms where they are obtained from varieties listed in the classification of varieties of wines for the administrative unit in question as table grape varieties or as varieties intended for the production of wine spirits ; 3,2 litres of pure alcohol/100 kilograms where they are obtained from varieties listed in the classification for the administrative unit in question solely as wine grape varieties.

3. Where, in view of the special characteristics of the harvest, application of the levels referred to in paragraphs 1 and 2 does not permit or threatens not to permit adequate supervision of compliance with the obligation laid down in the first subparagraph of Article 35 (1) of Regulation (EEC) No 822/87, Member States may fix, for one or more administrative units or parts of administrative units, levels higher than those referred to in the first subparagraph.

4. Member States shall notify the Commission of measures taken under paragraph 3.

Article 13

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

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

Article 14

1. By the 20th of each month at the latest, Member States shall communicate the following information to the Commission for the previous month :

— the quantity of wine and fortified wine distilled,

— the quantity of alcohol delivered to intervention agencies following distillation under Article 35 of Regulation (EEC) No 822/87,

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

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

2. Member States shall, for alcohol taken over by their intervention agencies, notify the Commission before 1 October 1987 of the selling prices obtaining throughout the 1986/87 wine year and of the characteristics and quantity of the products sold at those prices.

3. Member States shall inform the Commission before 1 March 1989 of cases in which distillers of wine have not fulfilled their obligations and of the measures taken in consequence.

Article 15

The amounts referred to in Articles 5, 8 and 9 shall be converted into national currency at the representative rate applying in the wine sector on 1 September 1987.

Article 16

The reference period referred to in Article 47 (1) of Regulation (EEC) No 822/87 shall, for the purposes of the obligations referred to in Article 39 of that Regulation, be the period 1 September 1987 to 31 July 1988.

Article 17

This Regulation shall enter into force on 1 September 1987.

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