COMMISSION REGULATION (EEC) No 2721/88

of 31 August 1988

laying down detailed rules for voluntary distillation as provided for in Articles 38, 41 and 42 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 2253/88 [2], and in particular Articles 47 (3), 38 (5), 41 (10), 42 (6) and 81 thereof,

Whereas the voluntary distillation operations provided for in Articles 38 and 41 of Regulation (EEC) No 822/87 should restore balance to the market without the quantities in keeping with good market management being exceeded; whereas, to that end, provision should be made so that only a certain maximum quantity of table wine may be distilled by each producer, depending on the area used for the production of table wine; whereas, however, to take account of national provisions on the recognition of quality wines psr in certain Member States, the maximum quantities of table wine which may be distilled in the zones conerned should be related not to the area used for the production of table wine but to the total area used by each producer concerned; whereas, however, in all cases where a precise reference to the area from which the wine comes is difficult to establish, provision should be made so that for one further wine year the quantity which may be distilled does not exceed a certain percentage of the quantity of table wine produced during the wine year; whereas that percentage must enable results to be achieved which are comparable with those obtained by limiting the quantity in relation to the area used; whereas that percentage must consequently be established taking into account the average yield recorded per hectare; whereas, as the yields in the Greek parts of zone C III and in the Spanish parts of the C zones are markedly lower than those recorded in the rest of the Community, a different percentage must be laid down for those parts of the wine-growing zones concerned;

Whereas Article 1 (4) of Council Regulation (EEC) No 2179/83 of 25 July 1983 laying down general rules for the distillation of wine and the by-products of wine-making [3], as last amended by Commission Regulation (EEC) No 2505/88 [4], provides that the producer may deliver wine for distillation only after the contract or the delivery declaration has been approved by the intervention agency; whereas, in accordance with Article 11 of Commission Regulation (EEC) No 3929/87 of 17 December 1987 on harvest, production and stock declarations relating to wine-sector products [5], that approval is subject to the presentation of the production declaration; whereas production declarations may be made until 15 December in the Federal Republic of Germany and until 30 November in the other Member States; whereas those provisions are liable to delay distillation operations; whereas, for that reason, provision should be made so that Member States may authorize the approval of contracts at an earlier date, on condition that they introduce a system for penalizing, where appropriate those producers who have not complied with the provisions referred to above or the provisions of this Regulation, and in particular those of Article 2 (1);

Whereas Article 41 (4) of Regulation (EEC) No 822/87 fixes the total quantity to be distilled at not more than 6,2 million hectolitres; whereas a procedure for meeting that requirement must consequently be defined;

Whereas a prerequisite for the opening of distillation as referred to in the second indent of the second subparagraph of Article 42 (2) of Regulation (EEC) No 822/87 for a certain type of table wine is that its representative price must be recorded as less than the activating price for three consecutive weeks; whereas, accordingly, the three-week period in question should be defined; whereas the maximum quantity to be distilled by each holder of a long-term storage contract is expressed as a percentage of the total quantity of table wine produced by that holder during the wine year in which the long-term storage contract was concluded; whereas that percentage is to be determined by the Commission; whereas, in accordance with Article 42 (3) of Regulation (EEC) No 822/87, that percentage cannot exceed 18 %;

Whereas during the storage period the volatile acidity of the wine undergoes a natural change which is likely to exceed the limit provided for in the Regulation whereby long-term private storage contracts may be concluded for certain table wines for a given wine year, such limit being fixed by reference to a storage period of nine months; whereas wine should be deemed to meet the conditions laid down even if the volatile acidity is higher than that laid down in the said Regulation, provided that the limit

[1] OJ No L 84, 27. 3. 1987, p. 1.
[2] OJ No L 198, 26. 7. 1988, p. 35.
[3] OJ No L 212, 3. 8. 1983, p. 1.
[4] OJ No L 225, 15. 8. 1988, p. 14.
[5] OJ No L 369, 29. 12. 1987, p. 59.

laid down for table wine of the type in question is not exceeded and that any other condition of an administrative or technical nature is fulfilled;

Whereas the percentage of wine which a producer may have distilled as provided for in this Regulation relates to the quantity of table wine produced on the basis of the production declaration provided for in Regulation (EEC) No 3929/87 and the registers 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 (1), as last amended by Regulation (EEC) No 418/86 (2);

Whereas Article 47 of Regulation (EEC) No 822/87 provides that only producers who have complied with the obligations laid down in Article 35 and, where appropriate, Articles 36 and 39 of the said Regulation during a reference period may benefit from intervention measures; whereas, in certain cases, the relevant evidence may only be furnished at a date subsequent to the activating of the measures provided for in this Regulation and whereas this provision may therefore delay their implementation; whereas, for that reason, provision should be made so that Member States may authorize recourse to such measures at a subsequent date; whereas this should be made subject to conditions ensuring that producers who have not complied with the said obligations are excluded from benefiting under the measures in question;

Whereas it should be specified that delivery contracts and declarations must contain in particular the information necessary to identify the wine they cover;

Whereas certain time limits must be laid down for the completion of the operation, both for producers and for distillers, in order to ensure that the measure is as effective as possible;

Whereas steps must be taken to ensure that the products of distillation of certain wines cannot disturb the market for spirits distilled from wine with a designation of origin; whereas, to that end, pursuant to Article 3 (2) of Regulation (EEC) No 2179/83, provision should be made to the effect that products obtained from the direct distillation of such wine may not have an alcoholic strength of less than 92 %;

Whereas the price of the wine for distillation does not normally permit the products obtained by distillation to be sold at market prices; whereas provision must therefore be made for aid, the amount of which should be fixed on the basis of the criteria laid down in Article 7 of Regulation (EEC) No 2179/83, while taking account also of the current uncertainty affecting market prices for products obtained from distillation;

Whereas provision must be made so that the minimum guaranteed price is paid to producers, as a general rule, within time limits enabling them to obtain a profit comparable to that which they would obtain from a commercial sale;

Whereas, this being the case, the aid due to them for the distillation in question must be paid at the earliest opportunity, an appropriate system of securities ensuring that operations are conducted properly;

Whereas, in the absence of a Community definition of rosé wine or Spanish red-white coupage wine and for the sake of clarity, it should be stipulated that rosé table wines are to be treated in the same way as red table wines and Spanish coupage wines are to be treated in the same ways as white table wines of type A I on account of the close economic relationship existing between them;

Whereas Article 38 of Regulation (EEC) No 822/87 provides for the opening of distillation to all table wines and to wines suitable for yielding table wine; whereas, however, the minimum buying-in prices for wines delivered for distillation are fixed as a percentage of the guide prices for the various types of table wine; whereas table wines having a close economic relationship with each type of table wine should therefore be defined;

Whereas certain wines delivered for distillation may be processed into wines fortified for distillation; whereas the provisions applicable to distillation operations should be adjusted accordingly, pursuant to the rules laid down in Articles 25 and 26 of Regulation (EEC) No 2179/83;

Whereas the intervention agencies and the Commission must be informed of the progress of distillation operations and must know in particular the quantities of wine distilled and the quantities of alcohol obtained;

Whereas the storage contracts covering wine for distillation as provided for in Article 42 of Regulation (EEC) No 822/87 were concluded during the previous wine year, and the last representative rate applicable during that wine year should be used for such distillation;

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:

(a) in Title I, the detailed rules for distillation as provided for in Articles 38 and 41 of Regulation (EEC) No 822/87;

(1) OJ No L 113, 1. 5. 1975, p. 1.
(2) OJ No L 48, 26. 2. 1986, p. 8.

(b) in Title II, detailed rules for distillation for holders of long-term storage contracts for table wine as provided for in the second indent of the second subparagraph of Article 42 (2) of Regulation (EEC) No 822/87;

(c) in Title III, provisions for distillation as referred to in both Titles I and II.

TITLE I

Distillation as provided for in Articles 38 and 41 of Regulation (EEC) No 822/87

Article 2

1. Where distillation as provided for in Articles 38 and 41 of Regulation (EEC) No 822/87 is opened for a particular wine year, producers may have distilled a quantity of table wine or, in the case of distillation as provided for in Article 38, of table wine and wine suitable for yielding table wine not exceeding quantities to be determined per hectare of area used by the producers for the production of table wine.

The number of hectares to which the quantities to be determined mentioned in the first subparagraph refer shall be that appearing in the third column of Table B on the production declaration in Annex I to Regulation (EEC) No 3929/87.

Where :

— the area does not appear in the abovementioned production declaration,

or

— the wine-growing area is not broken down in accordance with the categories of vineyard referred to in Article 12 (2) of Regulation (EEC) No 3929/87,

the number of hectares shall be calculated by dividing the quantity of table wine obtained by the yield per hectare of the products used.

Producers intending to have their wine distilled shall conclude one or more delivery contracts or shall submit one or more declarations.

2. The approval of the contracts or the delivery declarations provided for in Article 6 shall be authorized before the producer has submitted the production declaration provided for in Regulation (EEC) No 3929/87, provided that the payment of the aid to the distiller or the release of the security is subject to the presentation of the said production declaration.

However, in the case referred to in the preceding subparagraph, the total quantities specified in the contract or the declaration may not exeeed those resulting from the application of the provisions of paragraph 1 to the quantities of table wine obtained by the producer since the beginning of the wine year in question and entered in the records provided for in Article 14 of Regulation (EEC) No 1153/75.

3. For the 1988/89 wine year, by way of derogation from paragraph 1, producers may have distilled a quantity of table wine or, in the case of distillation as provided for in Article 38 of Regulation (EEC) No 822/87, of table wine and wine suitable for yielding table wine not exceeding percentages to be determined of the quantity of table wine which they have produced in the Greek part of wine-growing zone C III, in the Spanish part of wine-growing zones C or in the other wine-growing zones.

The quantity of table wine produced to which the percentages referred to in the first subparagraph apply shall be, for each producer, that resulting from the sum of the quantities appearing as wine in the column headed 'Table wine' in the production declaration which he has submitted pursuant to Regulation (EEC) No 3929/87 where so required and the quantities obtained by himself after the date of submission of the said declaration and entered in the records provided for in Article 14 of Regulation (EEC) No 1153/75.

For the 1988/89 wine year, where the first subparagraph of paragraph 2 is applied, the total quantities in the contract or declaration may not exceed those resulting from the application of the first subparagraph to the quantitites of table wine obtained by the producer since the beginning of the wine year in question and entered in the records provided for in Article 14 of Regulation (EEC) No 1153/75.

Article 3

1. In the case of distillation as provided for in Article 41 of Regulation (EEC) No 822/87, where the notifications referred to in Article 12 (1) indicate that the total quantity of table wine in the contracts presented to intervention agencies exceeds the quantity fixed pursuant to Article 41 of Regulation (EEC) No 822/87, contracts may be executed for only a certain percentage of the quantity laid down.

That percentage shall be fixed by the Commission, in accordance with the procedure provided for in Article 83 of Regulation (EEC) No 822/87, no later than one month after it has received the figures referred to in the preceding subparagraph.

2. Distillation operations may not begin before the date on which the percentage referred to in paragraph 1 is fixed.

TITLE II

Distillation for holders of long-term storage contracts for table wine as provided for in the second indent of the second subparagraph of Article 42 (2) of Regulation (EEC) No 822/87

Article 4

1. The period of three consecutive weeks referred to in Article 42 (1) of Regulation (EEC) No 822/87 shall fall between 15 July and 30 November of the wine year in question.

2. Where in a given wine year distillation as provided for in the second indent of the second subparagraph of Article 42 (2) of Regulation (EEC) No 822/87 is decided on, holders of long-term storage contracts for the types of table wine for which the decision is adopted and for wines having a close economic relationship therewith may have distilled a quantity of wine under a storage contract not exceeding a percentage to be determined of the total quantity of table wine which they have produced during the previous wine year.

3. Only wine which has been the subject of a long-term storage contract concluded during the previous wine year pursuant to the Regulation opening the possibility of concluding such contracts may be the subject of distillation as referred to in paragraph 2. Such wine must have the characteristics laid down by that Regulation authorizing the conclusion of long-term private storage contracts, with the exception of the volatile acidity, which may not, however, exceed the limit laid down in Article 66 of Regulation (EEC) No 822/87.

4. The quantity of table wine produced to which the percentage referred to in paragraph 2 is applied shall, for each producer, be that given by the sum of the quantities for wine in the column headed 'Table wine' in the production declaration which he has submitted pursuant to Regulation (EEC) No 3929/87 where so required and of the quantities produced by him after the date of submission of the said declaration and entered in the records provided for in Article 14 of Regulation (EEC) No 1153/75.

TITLE III

Provisions for distillation as referred to in both Titles I and II

Article 5

In accordance with Article 47 (1) of Regulation (EEC) No 822/87, producers who were subject during the previous wine year to the obligations referred to in Articles 35, 36 or 39 of Regulation (EEC) No 822/87 shall only be entitled to benefit under the measures provided for in this Regulation where they submit evidence that they have complied with their obligations during the reference periods fixed in Article 16 of Commission Regulations (EEC) No 2352/87 [1], 2353/87 [2], and 441/88 [3].

However, Member States may authorize approval of the delivery contracts or declarations referred to in Article 6 before the producer has submitted the evidence referred to in the first paragraph provided that a declaration by the producer appears in those contracts or delivery declarations to the effect that he has complied with the obligations referred to in the first paragraph or that he fulfils the condition referred to in Article 11 (2) of Regulation (EEC) No 2179/83 and undertakes to deliver the residual quantities required to comply fully with the obligation within the time limits laid down by the competent national authority.

The evidence referred to in the first paragraph shall be submitted before 1 June of the wine year in question.

Article 6

1. The contracts and declarations referred to respectively in Article 4 (1) and in Article 5 (1) of Regulation (EEC) No 2179/83 shall be submitted for approval to the competent intervention agency no later than four months after the opening of each distillation operation for the wine year in question.

However, as regards distillation as provided for in Article 41 of Regulation (EEC) No 822/87, the contracts and declarations shall be submitted for approval no later than two months after the opening of the distillation operation.

2. The contracts and declarations referred to in paragraph 1 shall indicate at least:

(a) the quantity, colour and actual alcoholic strength by volume of the wine to be distilled, stating whether it is table wine or wine suitable for yielding table wine;

(b) the name and address of the producer;

(c) the place where the wine is stored;

(d) the name of the distiller of the business name of the distillery;

(e) the address of the distillery;

(f) the type of table wine in the case of table wine of types A II, A III or R III;

(g) where appropriate, a reference to the storage contract concluded in respect of the wine in question.

3. The approval referred to in paragraph 1 shall be subject to compliance with the conditions laid down in Article 11 of Regulation (EEC) No 3929/87.

4. The intervention agency shall notify the producer of the outcome of the approval procedure no later than one month after the expiry of the time limit referred to in paragraph 1.

5. The quantity of wine delivered for distillation by each producer having concluded a contract may not be less than 10 hectolitres.

Article 7

1. Distillation operations may not take place after the end of the wine year in question.

2. Only a product having an alcoholic strength equal to or greater than 92 % vol may be obtained by the direct

[1] OJ No L 213, 4. 8. 1987, p. 17.
[2] OJ No L 213, 4. 8. 1987, p. 22.
[3] OJ No L 45, 18. 2. 1988, p. 15.

distillation of wines obtained from grapes of varieties classified for the same administrative unit as both wine-grape varieties and varieties intended for preparing spirits distilled from wine.

Article 8

1. The minimum buying-in prices and the amounts of the aid shall be fixed before the beginning of each wine year.

2. The minimum buying-in prices referred to in paragraph 1 shall be paid by the distiller to the producer within three months from the date of entry into the distillery of each batch of wine delivered provided that the producer has furnished the evidence referred to in Article 5 to the competent authority within two months following the delivery of the wine. If that evidence is furnished after two months, the distiller shall pay within one month.

Article 9

1. The amount of the advance referred to in Article 9 (1) of Regulation (EEC) No 2179/83 shall be paid within three months following submission of evidence that the security has been lodged.

2. Subject to the provisions of Article 23 of Regulation (EEC) No 2179/83, the security referred to in paragraph 1 shall be released only if evidence that the total quantity of wine has been distilled and, where appropriate, that the buying-in price has been paid for the wine within the time limits laid down is provided by the end of the fifth month following the date referred to in Article 7 (1).

If that evidence is not provided within the time limit laid down but within the following two months and where such delay is not due to serious negligence on the part of the distiller, the intervention agency shall release 80 % of the security only.

3. Distillers who have not applied for the advance referred to in paragraph 1 shall, where appropriate, be required to provide the intervention agency, within one month after lodging the evidence of distillation, with evidence that the minimum buying-in price has been paid for the distilled wine within the time limits laid down.

Where such evidence is not furnished within the time limit laid down but within the following two months and where such delay is not the result of serious negligence on the part of the distiller, the intervention agency shall, pay 80 % of the aid only.

Evidence that the wine has been distilled may not be provided by the distiller before the producer has furnished the evidence referred to in Article 5.

4. If it is ascertained that the distiller has not paid the buying-in price to the producer, the intervention agency shall pay the producer, before 1 June following the wine year in question, an amount equal to the aid, where appropriate through the intervention agency of the producer's Member State .

Article 10

1. The provisions of this Regulation relating to red wine shall also apply to rosé wine.

2. The provisions of this Regulation relating to a given type of table wine shall also apply to table wines which are in a close economic relationship with that type of table wine.

For the purposes of this Regulation, the following shall be considered to be in a close economic relationship with the type of table wine indicated :

— A I : white table wines which are not of types A I, A II or A III,

— R I : red table wines with an actual alcoholic strength of less than 12,5 % vol which are not of types R I or R III,

— R II : red table wines with an actual alcoholic strength exceeding 15 % vol which are not of type R III.

3. In Spain, for the 1988/89 and 1989/90 wine years, a producer may deliver for distillation the product obtained from the coupage of a wine suitable for yielding white table wine either with a white table wine from his own production with a wine suitable for yielding red table wine or with a red table wine from his own production. To that end that product shall be treated as a white table wine of type A I.

Article 11

1. In the case referred to in Article 26 of Regulation (EEC) No 2179/83, the contract or declaration relating to delivery for fortification shall be submitted for approval to the competent intervention agency, depending on the distillation operation concerned, before the dates laid down in Article 6 (1).

The intervention agency shall inform the producer of the outcome of the approval procedure not later than one month after the expiry of the time limits referred to in paragraph 1.

2. The wine may be fortified for distillation only after approval of the contract or declaration and not later than 31 July of the wine year in question.

3. Fortified wine may not be distilled after the following 31 August.

4. The fortifier shall send to 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 an aid, calculated per hectolitre and per % vol of actual alcoholic strengh before fortification. The amount of the aid shall be fixed before the beginning of each wine year.

To receive the aid, the fortifier shall submit an application to the competent intervention agency no later than 31 August of the wine year in question, attaching copies of the accompanying documents relating to the carriage of the wine in respect of which the aid is applied for or a summary of those documents.

Member States may require that such copies or summary be endorsed by a supervisory authority.

The aid shall be paid not later than 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, before 30 November following the wine year in question, evidence is furnished :

— that the total quantity of wine covered by the contract or declaration has been fortified and distilled,

— that the buying-in price for the wine has been paid to the producer within the time limits laid down in Article 10 (2) of Regulation (EEC) No 2179/83.

However, if such evidence is submitted after the expiry of the time limit laid down but not later than the following 31 January, the intervention agency shall release 80 % of the security only.

If it is ascertained that the fortifier has not paid the buying-in price to the producer, the intervention agency shall pay the producer, before the following 1 May, an amount equal to the aid, where appropriate, through the intervention agency of the producer's Member State.

Article 12

1. Member States shall notify the Commission, not later than one month after the expiry of the time limit for the approval of the contract or declaration, of quantities of wine and fortified wine covered by the approved delivery contracts and declarations.

2. Distillers shall forward to the intervention agency not later than the 10th day of each month, a statement of the quantities of wine distilled during the previous month, broken down according to the categories referred to in the first subparagraph of Article 3 (1) of Regulation (EEC) No 2179/83.

3. Member States shall inform the Commission not later than the 20th day of each month, in respect of the previous month, of the quantities of wine and fortified wine distilled, broken down by colour, and of the quantities, expressed in pure alcohol, of products obtained, distinguishing between the latter in accordance with paragraph 2.

4. Member States shall inform the Commission, not later than 30 September following the wine year in question, of any cases where the distiller or fortifier has failed to fulfil his obligations and of the measures taken in consequence.

Article 13

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, 31 August 1988.

For the Commission

Frans ANDRIESSEN

Vice-President