

COMMISSION REGULATION (EEC) No 3105/88

of 7 October 1988

laying down detailed rules for the application of compulsory distillation as provided for in Articles 35 and 36 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 2964/88 ⁽²⁾, and in particular Articles 35 (8), 36 (6), 47 (3) and 81 thereof,

Whereas the distillation operations provided for in Articles 35 and 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 ⁽³⁾, as last amended by Regulation (EEC) No 2505/88 ⁽⁴⁾;

Whereas it is necessary to determine both the terms of the obligations laid down in Articles 35 and 36 of Regulation (EEC) No 822/87 and the obligations incumbent on distillers;

Whereas Article 14 of Regulation (EEC) No 2179/83 provides for the possibility of releasing certain small producers from the obligation provided for in Article 35 of Regulation (EEC) No 822/87 by the withdrawal under supervision of the by-products of wine-making; whereas that possibility should, at the request of Italy, be granted in the Italian part of wine-growing zones C to persons liable whose production does not exceed 40 hectolitres in order to prevent a disproportionate burden falling on them;

Whereas wine producers are required under Article 35 of Regulation (EEC) No 822/87 to deliver for distillation a quantity of products with a total alcohol content corresponding to a percentage of the volume of alcohol naturally contained in the grapes used to produce the wine;

Whereas it is particularly difficult in practice to calculate the quantity of products to be delivered on the basis of the alcohol content of the grapes used, primarily on account of significant fluctuations from one variety to another in the ratio of grapes used to wine obtained;

whereas, however, those difficulties are eliminated and controls made easier and more efficient if the calculation is made on the basis of the alcohol contained in the wine; whereas in this way the economic purpose of the scheme will be attained without producers being obliged 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 marc represents a substantial proportion of the quantity of alcohol to be delivered, the reduced percentage should be fixed at 5%; whereas, pursuant to the same provision, producers of white quality wines *psr* qualify for a reduced rate; whereas experience in preceding wine years suggests that that rate should be fixed at 7%;

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 year and each wine-growing zone; whereas, however, pursuant to 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 accurate information on the alcoholic strength of wines in the following wine years, that determination may be undertaken by reference to the average strengths recorded in the wine-growing zones concerned in previous wine 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 provision should be made for the adoption of different alcoholic strengths for administrative units which, having suffered from exceptionally bad weather conditions, have been recognized as disaster areas by Member States;

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, in the case of delivery for distillation, the aim of laying down those characteristics is simply to enable distillers to obtain usable raw material without excessive cost, while in the case of withdrawal under supervision the minimum characteristics of the by-products are a basic factor in compliance with the scheme;

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 269, 29. 9. 1988, p. 5.

⁽³⁾ OJ No L 212, 3. 8. 1983, p. 1.

⁽⁴⁾ OJ No L 225, 15. 8. 1988, p. 14.

Whereas as regards the distillation provided for in Article 36 of Regulation (EEC) No 822/87 each producer should be exempted from the obligation to deliver for distillation a standard quantity representing at most 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 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 classified 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 3929/87 of 17 December 1987 on harvest, production and stock declarations relating to wine-sector products⁽¹⁾, 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⁽²⁾, as last amended by Regulation (EEC) No 418/86⁽³⁾;

Whereas certain time limits must be laid down for payment by the distiller to the producer of the minimum buying-in price fixed as specified in Articles 35 (5) (a) and 36 (3) of Regulation (EEC) No 822/87;

Whereas distillers may, in accordance with Articles 35 (6) and 36 (4) of Regulation (EEC) No 822/87, either receive aid in respect of the product to be distilled or deliver to the intervention agency the product obtained by distillation;

Whereas, to receive 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 unwarranted payments, it should be laid down that payment of the aid or the payment for the alcohol delivered to the intervention agency is not to take place unless the distiller furnishes the said agency with proper evidence of payment of the buying-in price to the producer or puts up a security in his favour;

Whereas, to ensure maximum effectiveness of the distillation arrangements, certain time limits for the execution of operations should be set for producers and distillers;

Whereas, for the sake of improving wine quality, all marc and lees must be distilled; whereas provision should accordingly be made for the distillation of wine under Article 35 of Regulation (EEC) No 822/87 not to be permitted at the beginning of the wine year;

Whereas the risk that distillation of certain wines pursuant to Articles 35 and 36 of Regulation (EEC) No 822/87 will disturb the market in wine spirits with a registered designation of origin should be avoided; whereas, to that end, in accordance with Article 3 (2) of Regulation (EEC) No 2179/83, it should be provided that a product obtained from the direct distillation of such wine may not have an alcoholic strength of less than 92 % vol;

Whereas, in the absence of an organized Community market in ethyl alcohol, the intervention agencies responsible for marketing such alcohol are compelled to resell it at less than the buying-in price; whereas provision must 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⁽⁴⁾, as last amended by Regulation (EEC) No 2048/88⁽⁵⁾, should be extended to cover the taking over by intervention agencies of the products of distillation;

Whereas some of the wines that must be delivered for distillation under Article 36 or possibly Article 35 of Regulation (EEC) No 822/87 may be processed into fortified wines; whereas the provisions on distillation must therefore be adopted in accordance with the rules laid down in Articles 25 and 26 of Regulation (EEC) No 2179/83;

Whereas, to enable the Commission to exercise general supervision over compliance with obligations in connection with distillation under Article 36 of Regulation (EEC) No 822/87, the Member States must, on the basis of information from distillers, keep it regularly informed 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,

⁽¹⁾ OJ No L 369, 29. 12. 1987, p. 59.

⁽²⁾ OJ No L 113, 1. 5. 1975, p. 1.

⁽³⁾ OJ No L 48, 26. 2. 1986, p. 8.

⁽⁴⁾ OJ No L 94, 28. 4. 1970, p. 13.

⁽⁵⁾ OJ No L 185, 15. 7. 1988, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down:

1. in Title I, specific implementing rules for distillation under Article 35 of Regulation (EEC) No 822/87;
2. in Title II, specific implementing rules for distillation under Article 36 of Regulation (EEC) No 822/87;
3. in Title III, common provisions applicable to distillation under Titles I and II.

TITLE I

Distillation under Article 35 of Regulation (EEC) No 822/87

Article 2

1. Without prejudice to Article 13 (3) of Regulation (EEC) No 2179/83, producers subject to an obligation under 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 of the wine year in question,

- all marcs and lees, to an approved distiller, and
 - where appropriate, wine to an approved distiller or an approved processor fortifying wine for distillation.
2. In the Italian part of wine-growing zones C, persons subject to the obligation referred to in paragraph 1 may be released from that obligation by making use of the possibility provided for in Article 35 (5) of Regulation (EEC) No 822/87 where they have carried out vinification or any other processing of grapes involving a quantity corresponding to more than 25 hectolitres but not more than 40 hectolitres of wine.

Article 3

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

- 10 % of the volume of alcohol contained in the wine, where the wine is obtained by direct vinification of grapes,
 - 5 % of the volume of alcohol contained in the wine, where the wine is obtained by vinification of grape must, partially fermented grape must or new wine still in fermentation.
2. The percentage referred to in the first indent of paragraph 1 shall be reduced to:

- 5 for producers delivering marc for the manufacture of oenocyanin,
- 7 for producers of white quality wines psr, for that part of their production which qualifies as such.

Article 4

For the purpose of determining the volume of alcohol to be delivered for distillation in the form of the products indicated in Article 2, the standard natural alcoholic strengths by volume to be applied in the various wine-growing zones shall be:

- 8,5 % for zone B,
- 9,0 % for zone C I,
- 9,5 % for zone C II,
- 10,0 % for zone C III.

However, if the quality of the vintage so requires, the abovementioned strengths may be altered before commencement of distillation of wine as indicated in Article 11 (2) to take account of those results. They may also be altered for administrative units or parts thereof that have been reconized as disaster areas by Member States under national law.

Article 5

In order to keep distillation costs within acceptable limits, the minimum average characteristics that winemaking by-products must display on delivery to the distillery shall be the following:

A. grape marc:

- in wine-growing zone B: two litres of pure alcohol/100 kilograms,
- in wine-growing zone C: two litres of pure alcohol/100 kilograms where they are obtained from varieties listed in the classification of varieties of vines for the administrative unit in question as table grape varieties or as varieties intended for the production of wine spirits; 2,8 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;

B. wine lees:

- in wine-growing zone B: three litres of pure alcohol/100 kilograms, 45 % moisture content,
- in wine-growing zone C: four litres of pure alcohol/100 kilograms, 45 % moisture content.

Article 6

1. The minimum pure alcoholic strength of the by-products of winemaking withdrawn under supervision as provided for in Article 35 (4) or (5) of Regulation (EEC) No 822/87 shall be as follows:

— grape marc :

2,1 litres/100 kilograms in the case of white quality wines psr,

3 litres/100 kilograms in other cases,

— wine lees :

3,5 litres/100 kilograms in the case of white quality wines psr,

5 litres/100 kilograms in other cases.

2. Where withdrawal under supervision relates only to grape marc, the minimum average characteristics which the by-products of winemaking must display shall be as follows :

— grape marc : two litres/100 kilograms pure alcohol ;

— wine lees : three litres/100 kilograms pure alcohol, 45 % moisture content.

3. The 45 % laid down in paragraph 2 and in Article 5 (B) shall apply until 31 August 1990. A higher percentage shall be laid down before that date for the subsequent period.

TITRE II

Distillation under 36 of Regulation (EEC) No 822/87

Article 7

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 distillery by 31 July at the latest of the relevant wine year.

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 at the latest of the relevant wine year.

Article 8

1. 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 minus any quantity which he proves has been exported by 31 July at the latest of the wine year in question. Producers may also deduct a standard quantity not exceeding 10 hectolitres from the quantity to be delivered.

Where the distillation requirement is incumbent on a collective winery, the 10 hectolitres referred to in 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 may not exceed the total quantity returned to individual members who delivered table grapes during the wine year.

2. In the case of wine covered by Article 36 (2) of Regulation (EEC) No 822/87, each producer must deliver a quantity equal to total quantity which he has produced minus :

— the quantity corresponding to the quantity normally produced, calculated as specified in paragraph 3,

— any quantity which he proves to have been exported by 31 July at the latest of the wine year in question.

In addition, producers may deduct a standard quantity not exceeding 10 hectolitres from the quantity to be delivered.

3. For each administrative unit the total quantity of wine normally produced shall, in the case of wine produced from grape varieties classified in that administrative unit as both wine-grape varieties and varieties for other uses, be the average quantity 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.

However, in the case of wine produced from grape varieties classified in a given administrative unit as both wine-grape varieties and varieties for the production of wine spirits, the quantities distilled other than for the production of wine spirits with a registered designation of origine shall be deducted from the quantity.

For the purposes of 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 classified for the same administrative unit as both wine-grape varieties and varieties for other uses.

4. The total quantity produced by each producer shall be the aggregate of the quantities of wine covered by Article 7 appearing in the production declaration referred to in Article 2 (1) of Regulation (EEC) No 3929/87 and of 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 9

Pursuant to the derogation provided for in Article 36 (1) and (2) of Regulation (EEC) No 822/87, wine covered by that Article may be moved:

- to a customs office for completion of customs export formalities followed by removal from the customs territory of the Community,
- to the premises of an approved fortifier of wine for distillation for such fortification.

TITLE III

Common provisions

Article 10

1. The buying-in prices mentioned in Article 35 (5) (a) and 36 (3) of Regulation (EEC) No 822/87 shall be fixed annually before 1 August for the following wine year.

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

However, in the case of distillation under Article 35 of Regulation (EEC) No 822/87 the producer and the distiller may agree:

- that the distiller will pay the producer on account, within three months at the latest of delivery of the products, 80 % of the buying-in price,
- or
- that the payment on account referred to in the first indent will be made following delivery of the products and within one month at the latest of presentation of the invoice to be drawn up for them before the end of the wine year.

The balance shall be paid to the producer by the distiller by 30 November following at the latest.

Article 11

1. Distillers may receive aid subject to compliance with the requirements of paragraph 2.

The amount of such aid shall be fixed annually before 1 August for the following wine year.

The aid amounts applicable where Article 18 (3) of Regulation (EEC) No 2179/83 is applied shall also be fixed.

2. Distiller who wish to receive aid as mentioned in paragraph 1 shall, by 31 October at the latest following the end of the wine year in question, submit an application to the intervention agency of the Member State in which distillation took place. The provisions of

Article 17 (1) of Regulation (EEC) No 2179/83 shall apply.

Member States may require that the list specified at (a) in paragraph 1 of that Article be stamped by a supervisory authority.

3. The intervention agency shall not pay the distiller the aid unless, within two months of submission of the application indicated in paragraph 2,

- he provides proof of payment of the buying-in price as referred to in Article 10,

or

- he has lodged a security in favour of the intervention agency for 110 % of the aid applied for.

The intervention agency shall pay the distiller an amount corresponding to the aid within three months following presentation of proof that he has lodged the security referred to in the second indent of the first subparagraph:

In the case referred to in the second indent of the first subparagraph, the distiller must provide the intervention agency by 31 December at the latest following the wine year in question with proof that he has paid the whole of the buying-in price as referred to in Article 10.

Within three months as the latest of such proof being supplied, the intervention agency shall release the security.

However, if the proof is presented after 31 December but before 1 March of the following wine year and the reason for the delay is not serious negligence on the distiller's part, the intervention agency shall release 80 % of the security.

4. In the case referred to in the second subparagraph of Article 10 (2), proof of payment of the buying-in price as indicate in the first indent of the first subparagraph of paragraph 3 shall be replaced by proof that the payment on account has been made.

In such cases the distiller must by 31 December following at the latest provide the intervention agency with proof that he has paid the balance as mentioned in the third subparagraph of Article 10 (2). If such proof is presented after 31 December but before 1 March of the following year and the reason for the delay is not serious negligence on the distiller's part, the intervention agency shall recover 20 % of the aid paid out. If proof is not provided before 1 March, all the aid shall be recovered.

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

Article 12

1. Subject to the provisions of Article 11 of Regulation (EEC) No 2179/83, distillation may not be carried out after 31 August of the wine year in question.

2. Any wine delivered pursuant to the obligation laid down in Article 35 (2) of Regulation (EEC) No 822/87 may not be distilled before 1 January of the wine year in question.

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

4. Distillers shall send the intervention agency by the 10th of each month in respect of the preceding month a statement of the product quantities distilled and obtained from distillation, the latter classified as indicated in the first subparagraph of Article 3 (1) of Regulation (EEC) No 2179/83.

Article 13

1. Delivery by the distiller to the intervention agency of products with an alcoholic strength of a least 92 % vol shall be made by 31 October following the wine year in question the latest or, if Article 11 (2) of Regulation (EEC) No 2179/83 applies, by the date fixed by the competent national authority.

2. The prices to be paid to distillers for the products indicated in paragraph 1 shall be fixed annually before 1 August for the following marketing year in accordance with Article 18 of Regulation (EEC) No 2179/83.

If the distiller has received aid under Article 11 those prices shall be reduced by the amount of that aid.

If the distiller has not received aid, Article 11 (2) to (5) shall apply to the necessary adjustments.

3. The prices mentioned in the first subparagraph of paragraph 2 shall be for neutral alcohol as defined in the Annex to Regulation (EEC) No 2179/83. For other alcohols, the prices referred to in paragraphs 2 and 3 shall be reduced by an amount to be fixed annually before the beginning of each wine year.

4. Payment by the intervention agency to the distiller shall be made within three months at the latest of the day on which the alcohol is delivered.

Article 14

1. The Guarantee Section of the European Agricultural Guidance and Guarantee Fund shall finance part of the expenditure incurred by intervention agencies in taking alcohol over.

The contribution rate shall be set before the beginning of each wine year.

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

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

Article 15

1. If Article 26 (1) of Regulation (EEC) No 2179/83 applies, the contract or declaration of delivery for fortification for distillation shall be submitted for approval to the competent intervention agency by 31 January of the wine year in question at the latest.

The intervention agency shall notify the producer of the outcome of the approval procedure within 15 days of the date of submission of the contract or declaration.

2. In the case of distillation under Article 15 of Regulation (EEC) No 822/87 fortification may not be carried out before 1 January of the wine year in question and not before approval of the contract or declaration.

3. Fortification may not take place after 31 July of the wine year in question.

Distillation of fortified wine may not take place after 31 August of the wine year in question.

4. Fortifiers of wine for distillation shall send to the intervention agency by the 10th of each month at the latest a statement of the quantities of wine delivered to them during the previous month.

5. Fortifiers shall receive aid in respect of wine fortified for distillation at a rate set before the beginning of the wine year.

To receive the aid the fortifier shall submit, by 30 November, at the latest following the end of the relevant wine year, an application to the competent intervention agency enclosing copies of the accompanying documents covering transport of the wine for which the aid is applied for or a summary statement of the content of those documents.

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

The aid shall be paid within three months at the latest following the date of submission of proof of provision of the security indicated in Article 26 (4) of Regulation (EEC) No 2179/83. It may not be paid until the contract or declaration has been approved.

6. The security referred to in the last subparagraph of paragraph 5 shall not be released unless proof is submitted by 31 December following the end of the relevant wine year :

- that all the wine covered by the contract or declaration was fortified and distilled,
- that the buying-in price specified for the distillation operation in question was paid to the producer within the time limit laid down in Article 10 (2).

If the proof is presented after the expiry of the time limit laid down but before 1 March of the following year and the reason for the delay is not serious negligence on the part of the fortifier, 80 % of the security shall be released.

If it is found that the fortifier has paid the buying-in price to the producer, the intervention agency shall, before the following 1 June, pay the producer an amount equal to the aid, if necessary through the intervention agency of the producer's Member State.

Article 16

1. Without prejudice to Article 47 of Regulation (EEC) No 822/87, if, except in cases of *force majeure*, the producer or distiller fails to discharge any of the obligations incumbent upon him under this Regulation, the competent authority shall determine whatever action it deems necessary in the light of the circumstances invoked.

2. Member States shall notify the Commission of cases where they have applied paragraph 1 and of the action taken where *force majeure* has been invoked.

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

Done at Brussels, 7 October 1988.

Article 17

1. Member States shall send the Commission by the 20th of each month at the latest a statement for the previous month of :

- the quantities of wine, lees and fortified wine distilled,
- the quantities of alcohol delivered to intervention agencies as a result of distillation under Articles 35 and 36 of Regulation (EEC) No 822/87,
- the quantities of wine spirits produced and the quantities of alcohol contained therein,
- the quantities of other products with an alcoholic strength of at least 52 % for which application has been made for aid.

2. For alcohol taken over by their intervention agencies, Member States shall notify the Commission before 1 October in respect of the previous wine year of selling prices obtained throughout the wine year and of the characteristics and quantities of the products sold at those prices.

3. Member States shall notify the Commission by 31 March at the latest for the previous wine year of cases where distillers or fortifiers of wine for distillation have not fulfilled their obligations and of the action taken in consequence.

Article 18

The reference period mentioned in Article 47 (1) of Regulation (EEC) No 822/87 shall, for obligation under Articles 35 and 36 of that Regulation, be 1 September to 31 July of the relevant wine year.

Article 19

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

It shall apply with effect from 1 September 1988.

For the Commission

Frans ANDRIESEN

Vice-President